

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3419

<http://www.in.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

IN THE MATTER OF THE INDIANA)
UTILITY REGULATORY COMMISSION'S)
INVESTIGATION OF TERRACOM, INC.)
AND ITS COMPLIANCE WITH THE)
ORDERS OF THIS COMMISSION)


CAUSE NO. 44332

FILED
MAR 28 2014
INDIANA UTILITY
REGULATORY COMMISSION

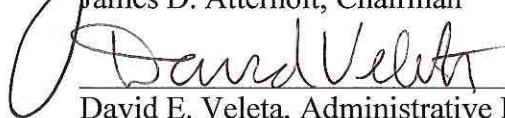
You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following Entry to be made:

Please be advised that on March 18, 2014, the Commissioners received an email with attachments from Mr. Gary Clowers that addresses matters currently pending in this proceeding. The email with attachments is attached to this Docket Entry. In addition, the Presiding Officers have included a cover letter, document matrix and Affidavit provided by counsel for TerraCom, Inc. Disclosure of this written communication is being tendered to the record pursuant to 170 IAC 1-1.5-6.


IT IS SO ORDERED.



James D. Atterholt, Chairman



David E. Veleta, Administrative Law Judge



Date

**BOSE
McKINNEY
& EVANS LLP**

ATTORNEYS AT LAW

Nikki Gray Shoultz

Direct Dial: (317) 684-5242

Fax: (317) 223-0242

E-Mail: NShoultz@boselaw.com

March 27, 2014

Beth K. Roads
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington St., Suite 1500 East
Indianapolis, IN 46204

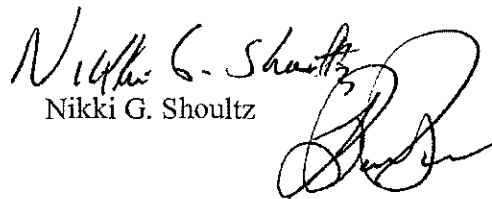
Re: Cause No. 44332
March 18, 2014 Ex Parte Communication

Dear Ms. Roads:

This letter is in response to our recent conversation regarding an ex parte communication (the "Communication") sent to certain Commissioners on or about March 18, 2014 regarding TerraCom, which is the subject of a pending Commission investigation in Cause No. 44332. In response to your indication that portions of the Communication appear to constitute information for which disclosure is prohibited by I.C. 5-14-3 *et seq.*, my client has reviewed the Communication and provides the enclosed redacted version. In the margin beside each redaction is a number ranging from 1 to 7 that indicates, by category, the reason why each redaction constitutes information of which disclosure is prohibited by I.C. 5-14-3 *et seq.* Enclosed is a matrix labeled "Exhibit A" that identifies the information associated with each category along with an explanation of why disclosure of the information in each category is prohibited by law. Also enclosed is the Affidavit of Dale Schmick affirming the information contained in Exhibit A.

Pursuant to Indiana Administrative Rule 9(H), if the information referenced in Exhibit A does not fall under one of the mandatory exemptions from disclosure found in I.C. 5-14-3-4(a), then TerraCom seeks a public hearing prior to any disclosure by the Commission. Should you have questions or need additional information, please do not hesitate to contact me.

Best regards,


Nikki G. Shoultz

2544819_1

EXHIBIT A

| Category | Description of Information | Why Disclosure is Prohibited by Law |
|----------|--|--|
| 1 | Names of TerraCom employees or anyone who worked on behalf of TerraCom | The information is part of TerraCom's proprietary list of employees, agents, subcontractors, master agents, and other individuals (collectively, the "Workforce") paid by TerraCom for activities related to TerraCom's provision of Lifeline service. This same category of information was deemed to be confidential in the Presiding Officers' November 8, 2013 docket entry. The information is personal information that includes the names of individuals that are or were employed by or worked on behalf of TerraCom. Public disclosure of the information would divulge private information of an individual as well as trade secret information that is not otherwise available to the public or to TerraCom's competitors. Competitors could use the information to target specific individuals with unique Lifeline experience in order to reproduce TerraCom's subscribership levels or win existing TerraCom customers. TerraCom does not disclose the information to the public and it restricts access to employees with a need to know the information. The information should be exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(4). Additionally, under the Federal Privacy Act, 5 U.S.C. § 552(a), certain records maintained on individuals should be maintained as confidential. The Act defines such records to include "information about an individual . . . including . . . his name, or the identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552(a)(4). As such, the information is also exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(3). |
| 2 | Employee personal contact information (email address, telephone number, mailing address) | The same rationale provided with respect to Category 1 is applicable to Category 2, which includes additional personal information including an individual's email address, telephone number, and/or mailing address. For the same reasons offered for Category 1, the information in Category 2 should be exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(3) and I.C. 5-14-3-4(a)(4). |
| 3 | Activation counts disaggregated by region coupled with paid commissions | The number of subscribers, coupled with the amount of commission paid in a particular region is confidential information that constitutes a trade secret as defined by I.C. 24-2-3. Disclosure of subscriber numbers and the corresponding commission amounts would give competitors insight into TerraCom's penetration in specific geographic areas, as well as the proprietary business processes involving the structure and payment of commissions, which would economically harm TerraCom and offer information to competitors that is not otherwise publicly available. Competitors could use the subscribership and commission levels to assess the relative success of TerraCom's business model; duplicate it; and use the model to target TerraCom's existing customer base. No amount of independent research could yield the information showing the correlation between subscribership levels and commissions paid in particular regions. TerraCom does not disclose this information to the public and restricts it to employees with a need to know the information. Accordingly, the information should be exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(4). |
| 4 | Inventory information, including amounts of inventory held in particular geographic regions and/or wire centers, business processes for handling inventory | The amount of inventory distributed by TerraCom to particular agents and/or in particular geographic regions or wire centers is confidential information that constitutes a trade secret as defined by I.C. 24-2-3. Disclosure of this inventory information would give competitors insight into TerraCom's penetration in specific geographic areas, as well as the proprietary business processes involving how and in what volumes TerraCom distributed inventory, which would economically harm TerraCom and offer information to competitors that is not otherwise publicly available. Competitors could use the inventory information and the associated volumes in specific geographic areas to assess the relative success of TerraCom's business model; duplicate it; and use the model to target TerraCom's existing customer base. No amount of independent |

| | | |
|---|--|---|
| | | research could yield the information showing the correlation between inventory levels and locations. TerraCom does not disclose this information to the public and restricts it to employees with a need to know the information. Accordingly, the information should be exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(4). |
| 5 | Commission information, including amounts paid to particular agents; business processes for paying commissions | The amount of commissions paid by TerraCom to particular agents and the internal business processes regarding the commission structure and payment protocols is confidential information that constitutes a trade secret as defined by I.C. 24-2-3. Disclosure of the commission information would apprise competitors of proprietary business processes involving the structure and payment of commissions, which would economically harm TerraCom and offer information to competitors that is not otherwise publicly available. Competitors could use the commission information to assess the relative success of TerraCom's business model; duplicate it; and use the model to target TerraCom's existing customer base. No amount of independent research could yield the information showing the commission structure and amounts. TerraCom does not disclose this information to the public and restricts it to employees with a need to know the information. Accordingly, the information should be exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(4). |
| 6 | Company computer system login information, including login IDs and email IDs | This information includes login and email information for TerraCom's proprietary computer system that, if disclosed, could allow a person to hack into TerraCom's system, which contains private customer and applicant information such as names, addresses, telephone numbers, and private records that could include social security numbers. No amount of independent research could yield the login and ID information. TerraCom does not disclose this information to the public and restricts it to employees with a need to know the information. According to I.C. 5-14-3-4(b)(10), the information should not be disclosed because it is "administrative information that would jeopardize a record keeping or security system." The email ID information is also private information of the individual to whom the email information belongs. Because the email ID and login information generally includes the first initial and last name of the individual, disclosure could reveal the identity of individuals working on behalf of TerraCom and thereby cause competitive harm as described above for Categories 1 and 2. Therefore, disclosure is also prohibited pursuant to I.C. 5-14-3-4(a)(4). |
| 7 | Personal information of those not associated with the company, such as customers and their relatives | The information includes the names of TerraCom customers and their relatives. This is the same type of information found to be confidential in the Presiding Officers' November 8, 2013 docket entry. Public disclosure of this information would divulge private information of an individual as well as trade secret information not otherwise available to the public or to TerraCom's competitors. Competitors could use the information to target TerraCom's customers. TerraCom does not disclose the information to the public and it restricts access to TerraCom employees with a need to know the information. Accordingly, the information should be exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(4). Additionally, under the Federal Privacy Act, 5 U.S.C. § 552(a), certain records maintained on individuals should be maintained as confidential. The Act defines such records to include "information about an individual . . . including . . . his name, or the identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552(a)(4). As such, the information should be exempt from public disclosure pursuant to I.C. 5-14-3-4(a)(3). |

2530096_1

Veleta, David E

From: Ziegner, David
Sent: Wednesday, March 19, 2014 8:33 AM
To: Veleta, David E
Subject: FW: Indiana Public Utility Commission w/ Supporting Documents
Attachments: A--FirstSeriesEmail.pdf; A2--CoverLetter.pdf; B--SecondSeriesEmail.pdf; B2--COMPLAINT.pdf; C--ThirdSeriesEmail.pdf; C--ProposedLetter.pdf; D--FourthSeriesEmail.pdf; E--AttorneyWarrenResponse.pdf; F--Service1.pdf; G--service2.pdf

Importance: High

FYI

From: gary@clowerscommunications.com [<mailto:gary@clowerscommunications.com>]
Sent: Tuesday, March 18, 2014 5:12 PM
To: ilandis@urc.in.gov; Mays, Carolene; Ziegner, David; b.anthony@occeemail.com; d.murphy@occeemail.com; p.douglas@occeemail.com
Cc: Attorney Muhammad
Subject: Indiana Public Utility Commission w/ Supporting Documents
Importance: High

Good afternoon commissioners,

Just wanted to provide you all with follow up information concerning TerraCom's response the use of my complaint as relevant information to the current proceedings. To clarify my position, I simply want to apprise the commissioners of the practices of TerraCom as it relates to its agent network, specifically my company. As we believe they used the as a scapegoat and as justification to shutdown the agent network. As you can see from the correspondence, my company was clearly, in their own words, "fully committed to compliance". Perhaps there maybe information contained in my email correspondence that may be of use to you all in regards to your investigation related to testimony, documents, etc... It is my desire to see that TerraCom is held fully accountable for its actions and the good name of those who worked for TerraCom as agents are cleared, specifically Clowers Communications, LLC.

The information I submitted is very clear and concise without any ambiguity. Additionally, they have alleged in their response to have filed a lawsuit against my company. After confirming with my attorney, Mr. Kenneth Muhammad, we have never been notified or served concerning a lawsuit. What we do know based upon their response is that if they filed a lawsuit its frivolous, without base, and filed because they knew we were filling. How can they alledge, Clowers Communications, LLC breached contract when they cancelled the contract? What you have here based upon the date they gave is an effort to file "something first" before we filed our lawsuit. Please review the below timeline and attachments.

On 1/22/2014 Attorney Kenneth Muhammad forwarded Mr. Rick Warren, Attorney for Terracom 4 Series of Emails of which Mr. Warren confirmed receipt (See Attachments A, B, C, D, and E).

These emails contained drafts of the current pending lawsuit. The purpose of this was to make an effort to settle the matter out of court.

On 1/22/2014 Mr. Warren replied and requested an extension of time to review the information with his clients and to provide a response. My attorney agreed with the understanding that if an extension is provided, TerraCom would agree

to enter into settlement negotiations in good faith with TerraCom agreeing to settle with a substantial payment to Clowers Communications, LLC for commissions owe. My attorney agreed.

On and between 1/27-31/2014 Attorney Kenneth Muhammad made several attempts to contact Mr. Warren; however he was unavailable and failed to respond to accordingly.

On 1/31/2014 Clowers Communications, LLC filed its lawsuit in the Northern District of Georgia Federal Court. Additionally the defendants TerraCom, YourTel, and SkyCom have been served. (See Attachments F, G)

Again, if you don't hear both sides TerraCom would lead you all to believe, "They ARE All Good". To the contrary. We have simply asked them to Right the Wrong (Financially and Reputation Wise), and they have refused to do so. TerraCom wouldn't even write a letter of recommendation that would clear my company of compliance issue allegations. Further from the above timeline, its obvious why a lawsuit was filed by TerraCom against Clowers Communications, LLC if one was. Its an attempt to make themselves look good as it really wouldn't look good to have a distributor/agent file a lawsuit against them if they are supposed to be the "Right Ones".

Thanks for hearing our side!!!

Gary A. Clowers Sr.
Office: 770-845-6292

Fax: 866-590-3672
Website: www.lifeline distributor.com

"Whenever you find a person that is Dependable, Loyal, Able, Has A Positive Mental Attitude, Goes The Extra Mile, and Applies His or Her Faith, You Are In The Presence of Royalty.

[Print](#) | [Close Window](#)

Subject: Clowers Communications - First of Series of Emails
From: "Kenneth Muhammad" <kennethmuhammad@gmx.com>
Date: Wed, Jan 22, 2014 2:20 pm
To: RWarren@HartzogLaw.com
Cc: kennethmuhammad@gmx.com
Attach: CoverLetter.pdf

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910

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Kenneth W. Muhammad, Esq.

Attorney at Law

99 Peachtree Street SW
Atlanta, Georgia 30303

Telephone: 404-618-0910

Fax: 404-618-0910

Email: kennethmuhammad@gmx.com

January 22, 2014

Via Email: RWarren@HartzogLaw.com

Rick L. Warren

Hartzog Conger Cason & Neville

201 Robert S. Kerr Avenue

1600 Bank of Oklahoma Plaza

Oklahoma City, Oklahoma 73102-4216

RE: Clowers Communications, LLC v. Skycom USA, LLC, et. al.

Dear Mr. Warren:

This letter is being forwarded to you via an email-chain that should include a total of at least four (4) emails containing:

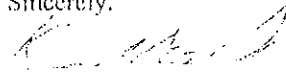
- 1) This cover letter;
- 2) A draft Complaint against Skycom, Terracom, and Yourtel America;
- 3) Attachment "A": A letter from Gary Clowers to the FCC and other regulators; and
- 4) Documents referenced in Gary Clowers' proposed letter.

As you are aware, we previously attempted to settle all claims between Clowers Communications and Skycom/Terracom/Yourtel America. We were not successful in prior negotiations. My client believes that it is in his best interest to file the proposed draft Complaint that you will receive shortly in federal court. Because both media outlets and federal and local regulators were cited by your clients as reasons that Clowers' Merchant Agreement was terminated, my client believes that it is in his best interest to inform all involved of his position regarding this dispute. Particularly since a cloud of suspicion has been left over his company, given Skycom/Terracom/Yourtel's stated reason for the termination: "agent networks".

All of this information is being provided to you in advance for two reasons. First, to give you an opportunity to inform me if you believe there are any specific facts alleged that you can immediately prove to be inaccurate. And second, to allow your client one last opportunity to consider settlement prior to initiation of legal, and other, action. Since we have previously attempted to settle this claim and your client was not prepared to negotiate any payment to Clowers Communications, we will only delay our filing of the Complaint if you acknowledge that your client is prepared to enter into good faith negotiations regarding a settlement in which Clowers is paid by Skycom/Terracom/Yourtel. We are not interested in discussing any settlement involving payments from Clowers to Skycom/Terracom/Yourtel, nor are we interested in discussing the receipt of nominal sums.

If your client would like to enter into negotiations as outlined, please inform me of their decision by 3:00 p.m. EST tomorrow, January 23, 2014. Otherwise, the Complaint will be filed tomorrow. I look forward to your response.

Sincerely,



Kenneth Muhammad

cc: Gary Clowers

[Print](#) | [Close Window](#)

Subject: Clowers COMPLAINT - Second of Series of Emails
From: "Kenneth Muhammad" <kennethmuhammad@gmx.com>
Date: Wed, Jan 22, 2014 2:22 pm
To: RWarren@Hartzoglaw.com
Cc: "Kenneth Muhammad" <kennethmuhammad@gmx.com>
Attach: COMPLAINT.pdf

Draft Complaint is attached.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

CLOWERS COMMUNICATIONS, LLC,) Case No.:
Georgia Limited Liability Company,)
)
Plaintiff,) COMPLAINT FOR:
) Breach of Contract,
) Fraud, and Punitive Damages
v.)
)
SKYCOM USA, LLC, an)
Oklahoma Limited Liability Company,)
TERRACOM, INC., an)
Oklahoma Corporation; and)
YOURTEL AMERICA, INC., a) JURY TRIAL DEMANDED
Missouri Corporation,)
)
Defendants.)

COMPLAINT

Plaintiff, CLOWERS COMMUNICATIONS, LLC ("Clowers"), a Georgia Limited Liability Company, sues Defendants SKYCOM USA, LLC ("Skycom"), an Oklahoma Limited Liability Company, TERRACOM, INC. ("TerraCom"), an Oklahoma Corporation, and YOURTEL AMERICA, INC. ("Yourtel"), a Missouri Corporation, and states:

PARTIES, JURISDICTION, AND VENUE

1. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1332 because Clowers and Defendants are of diverse citizenship and the amount in controversy exceeds \$75,000, exclusive of interest, fees, and costs.

2. The Defendants are subject to the personal jurisdiction of this Court because the Defendants do business in the Northern District of Georgia, this case concerns a contract entered into with a Georgia limited liability company to be performed in whole or in part in the State of Georgia, and Defendants solicited business in the Northern District of Georgia in connection with said contract.

3. Venue is proper in the Northern District of Georgia because the impact of Defendants' misconduct occurred in this district, and this case concerns a contract entered into in the Northern District of Georgia, to be performed in whole or in part in the Northern District of Georgia.

4. This is an action for damages in excess of \$75,000, exclusive of interest, costs, and attorneys' fees.

5. Clowers is a Georgia limited liability company with its principal place of business in the Northern District of Georgia.

6. Skycom is an Oklahoma limited liability company, conducting business in the Northern District of Georgia, with its registered agent being Jeff White at 5708 NW 132, Oklahoma City, OK 73142.

7. Terracom is an Oklahoma corporation, conducting business in the Northern District of Georgia, with its registered agent being Len Casor at Hartzog Conger

Cason & Neville at 201 Robert S Kerr Avenue, 1600 Bank of Oklahoma Plaza, Oklahoma City, OK 73102.

8. Yourtel is a Missouri corporation, conducting business in the Northern District of Georgia, with its registered agent being the Corporation Company at 1833 South Morgan Road, Oklahoma City, OK 73128.

BACKGROUND

9. Lifeline is a program operated by the federal government through the Federal Communications Commission ("FCC") that provides monthly discounts on telephone service to eligible low-income consumers. Lifeline is funded by the government through the Universal Service Fund. The program is administered by the Universal Service Administrative Company ("USAC"). However, the FCC retains responsibility for overseeing the program's operations.

10. Lifeline support is paid to all telecommunications companies designated as eligible telecommunications carriers ("ETCs"). ETCs may permit eligible consumers to apply for discounts to wire or wireless phone service. The program pays \$9.25 per month per eligible consumer to the ETC providers.

11. To receive monthly support, an ETC must submit monthly support claims to the FCC.

12. Terracom and Yourtel are Lifeline phone service providers designated as ETCs. Terracom and Yourtel provide Lifeline phone services in various states throughout the country, offering low-income consumers low-priced phone service.

13. Skycom is a marketing agent for Terracom and Yourtel. At all times relevant hereto, Skycom conducted itself as an agent and representative of Terracom and Yourtel.

14. To expand their outreach to eligible low-income consumers in various states throughout the country, Terracom and Yourtel began entering into contracts with a network of smaller telecommunications companies throughout America. Plaintiff Clowers Communications, LLC is one such company.

THE MERCHANT AGREEMENT

15. On or about April 1, 2013, Skycom, on its own behalf and as agent and representative of Terracom and Yourtel, executed a contract with Clowers titled "Terracom-Yourtel America Merchant Agreement" (hereinafter the "Merchant Agreement"). A true and correct copy of the Merchant Agreement is attached hereto as Exhibit "A". Clowers executed the Merchant Agreement on March 25, 2013. The Merchant Agreement was a renewal of the parties' previous agreement, and it was the parties' intent that the terms of the Merchant Agreement operate retroactively from November 6, 2012 with regard to certain payments to Clowers.

16. Under the terms of the Merchant Agreement, Clowers was to submit orders (eligible low-income consumers) for Lifeline services to Terracom and Yourtel. Clowers also acted as a distributor of wireless phones provided by Terracom and Yourtel to said customers pursuant to the Lifeline program under the Merchant Agreement.

17. In exchange for this service, Clowers was to be compensated by Defendants by receiving: a) Commission Payment of \$7.50 for each customer whose phone is activated, and b) Residual Payment of \$0.50 per customer per month that the customer remains active, beginning on the fourth month that the customer remains active.

18. The Commission Payment was to be paid to Clowers "shortly after the 15th of the month for the first half of the month" and "at the beginning of each month for the last half of the previous month."

19. The Residual Payments were to begin retroactively on November 6, 2012 and continue every month for the life of the customer as long as Clowers remained active and in good standing with Skycom.

20. Under the terms of the Merchant Agreement, any wireless phone that was not used or returned to Defendants would incur a chargeback cost against Clowers in the amount of \$35 per handset.

21. The Merchant Agreement contained a thirty-six month term, with 1-year annual renewals on the anniversary.

22. The Merchant Agreement allowed Defendants to terminate the agreement only if: a) the terms of the agreement were breached by Clowers and Clowers failed to cure within 7 days, b) Skycom's standing with the FCC, USAC, or local Public Utility Commission was threatened by one of Clowers' sub-agents, c) Terracom or Yourtel America no longer provided Lifeline services, or d) either Terracom or Yourtel America ceased to operate.

CLOWERS PERFORMANCE

23. Clowers performed as required under the Merchant Agreement, adding approximately 126,200 new customers for Defendants.

24. At all times relevant hereto, Clowers performed in accordance with applicable guidelines, laws, and regulations. Defendants expressly credited Clowers for its determination to keep its sub-agents in compliance with guidelines, laws, and regulations as well since Clowers swiftly corrected and/or terminated sub-agents as required for full compliance.

25. In April 2013, according to records relied upon by all parties, Clowers had 16,930 phones in inventory. Between April 2013 and June 2013, Clowers requested and received 43,454 additional phones before Defendants ceased

providing phones. The total number of phones in Clowers' possession from April 2013 through June 2013 was, therefore, 60,384.

26. During this same April 2013 to June 2013 timeframe, Clowers added approximately 60,000 new subscribers, and returned over 1000 phones to Defendants with proof of delivery.

DEFENDANTS' MANIPULATION OF DATA
AND TERMINATION OF THE MERCHANT AGREEMENT

27. On June 24, 2013, Clowers informed Defendants that Clowers was not being paid its full residual payments as required by the Merchant Agreement.

28. Defendants paid the residual payments late, and improperly changed data to give the appearance that less residual payments were owed than what was actually required.

29. On June 26, 2013, two days after Clowers began to complain about the shortfall in payments, Defendants stopped shipping phones to Clowers. The next day, June 27, 2013, correspondence was sent to Clowers announcing that Defendants discontinued its entire agent program and they are terminating all contracts with Lifeline agents. The correspondence terminated Clowers contract for the stated purpose that "it is apparent that recent media attention targeting compliance by agent networks could threaten Terracom and Yourtel's standing with the FCC and/or USAC with an immediate notice of such a change."

30. When questioned about Defendants' purpose for terminating the Merchant Agreement, Defendants' representatives indicated that Defendants did not have to terminate the agent program, but Terracom and Yourtel's Chief Operating Officer, Dale Schmick, wanted to "fly below the radar" due to the possibility that other internal issues could be discovered by regulators concerning Defendants' Oklahoma, Missouri, and Indiana subscriber base.

31. Defendants were under investigation by state and federal regulators at the time for security lapses that caused customers' personal data (names, social security numbers, etc.) to be at risk for theft. These investigations were wholly unrelated to Clowers, Clowers' sub-agents, and the Merchant Agreement.

32. Defendants never communicated any of the following to Clowers, and none of the following took place: a) Defendants did not communicate or allege that Clowers violated any portion of the Merchant Agreement, b) Defendants did not communicate or allege that any specific act was done by Clowers or any of Clowers' sub-agents which threatened (or potentially threatened) Defendants' standing with the FCC, USAC, or any local public utility commission, c) Defendants did not request that Clowers cure any breach or possible breach of the Merchant Agreement, and d) Defendants did not cease operating as Lifeline providers.

33. After the termination, Defendants forwarded to Clowers a fabricated inventory report on or about July 1, 2013 showing an outstanding inventory balance of 27,240 unreturned phones.

34. This new report directly contradicted all existing records and reports regarding Clowers' inventory.

35. Defendants have since refused to pay full and accurate residual payments owed to Clowers.

36. Defendants have not paid full and accurate commission payments owed to Clowers.

37. Defendants terminated Clowers' 5-year Merchant Agreement for reasons not permitted by the express terms of said agreement.

38. Defendants have publicly called into question the ethics and integrity of Clowers, without justification.

39. Defendants fabricated and/or manipulated data concerning the following: a) the number of active customers obtained by Clowers to reduce residual payments owed, b) the number of months for which payments were to be made to Clowers, and c) the number of phones unaccounted for or unreturned by Clowers.

40. Defendants also provided a false and completely fabricated justification for its termination of the Merchant Agreement to save money owed to Clowers and to

prevent regulators from discovering fraudulent book keeping practices and other activity.

COUNT I

BREACH OF CONTRACT

41. The Merchant Agreement was a valid and enforceable contract between Plaintiff and Defendants.

42. Skycom was a direct signatory and party to the Merchant Agreement on its own behalf and as agent and representative of Terracom and Yourtel.

43. Skycom, Terracom, and Yourtel benefited from the Merchant Agreement and performance of Clowers thereunder.

44. Clowers fully performed its obligations under the Merchant Agreement and remained, at all times, in full compliance therewith.

45. Defendants breached the terms of the Merchant Agreement by:

- a) terminating said agreement without valid cause,
- b) terminating said agreement without offering Clowers an opportunity to cure any alleged or perceived violation,
- c) failing to pay residual payments as owed, and
- d) failing to pay commission payments as owed.

46. Defendants' breach of the Merchant Agreement set forth in Paragraph 45 above has caused Plaintiff to incur damages in an amount in excess of \$75,000 exclusive of interest, costs, and fees.

47. Plaintiff is entitled to interest and reasonable attorneys' fees and expenses of litigation associated with Defendants' breach of contract. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense.

48. Plaintiff's claim of damages for breach of contract includes a claim for Plaintiff's expectation of commission and residual payments through the life of the 3-year Merchant Agreement. Plaintiff's damages so projected equal approximately Twelve Million Dollars (\$12,000,000).

COUNT II

FRAUD

49. Defendants made direct misrepresentations of fact to Plaintiff as follows:

- a) Defendants intentionally delayed by one month, on multiple occasions, its assessment of how many Clowers customers remained active and forwarded false numbers to Clowers to reduce Defendants' residual payment obligations.
- b) Defendants intentionally removed from accounting spreadsheets

whole months for which Clowers was owed payments from Defendants to reduce Defendant's payment obligation to Clowers.

c) Defendants intentionally fabricated and manipulated data concerning the number of phones that were provided to Clowers that were not accounted for or returned. This false data was then transmitted to Clowers in an effort to reduce Defendants' payment obligation to Clowers.

d) Defendants communicated to Clowers that it was terminated due to a direct threat to Defendants' standing with the FCC and/or USAC posed by agent networks when no such threat existed. It is believed that the state of Indiana requested that Defendants explain their decision to terminate agent networks, which is not consistent with Defendants claim that it was regulators who were poised to change Defendants' standing because of said networks.

50. Each of the misrepresentations of fact set forth in Paragraph 49 above were stated to Clowers by Defendants for the express purpose of inducing Clowers to act toward its detriment by accepting less financial compensation.

51. Defendants' misrepresentations of fact have caused damage to Clowers, as Clowers has received less financial compensation than it is owed, in accordance with Defendants' fabricated data.

52. Aggravating circumstances exist regarding Defendants' conduct warranting the award of additional damages.

COUNT III

PUNITIVE DAMAGES

53. Defendants acted with willful misconduct and fraud, warranting the award of punitive damages, a claim for which is hereby made.

WHEREFORE, Plaintiff Clowers Communications, LLC prays for the following relief:

- a) Trial by jury;
- b) Judgment in its favor and against Defendants Skycorn USA, LLC, Terracom, Inc., and Yourtel America, Inc. for Breach of Contract and Fraud;
- c) Damages;
- d) Punitive Damages;
- e) Attorneys' fees and expenses of litigation; and
- f) Such other and further relief as the Court deems proper.

THE MUHAMMAD FIRM LLC

Kenneth Muhammad
Georgia Bar No.: 527907

99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910 (Office)
Email: kennethmuhammad@gmx.com

DRAFT

Print | [Close Window](#)

Subject: Clowers PROPOSED LETTER - Third of Series of Emails
From: "Kenneth Muhammad" <kennethmuhammad@gmx.com>
Date: Wed, Jan 22, 2014 2:24 pm
To: RWarren@HartzogLaw.com
Cc: "Kenneth Muhammad" <kennethmuhammad@gmx.com>
Attach: ProposedLetter.pdf

Proposed Letter from Gary Clowers attached.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910

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ATTACHMENT "A"

Proposed Correspondence

From: Gary Clowers

To: FCC, USAC, Public Utility Commissioners,
Media Outlets Previously Reporting on Relevant Issues

To members of USAC, FCC, Public Utility Commissioners, and media. I write this letter as a formal complaint against TerraCom/YourTel/SkyCom due to: Negligence, Defamation and Conspiracy to Defraud. The blatant mischaracterization and inclusion of Clowers Communications, LLC's agent network as being a part of a network of agents plagued with compliance issues, the failure to pay commissions, the creation of fraudulent inventory reports, the misrepresentation of commission reports and the intentional delay to pay residual commissions in order to pay out less is the conduct of a criminal enterprise known as TerraCom/SkyCom/YourTel. We believe that Clowers Communications, LLC and its agent's reputation have been egregiously injured by our association and distribution opportunity with TerraCom/SkyCom/YourTel and its decision to shutdown the agent program with blame for that decision to shutdown being compliance issues with its agent network of which we were a part of. Thus placing Clowers Communications, LLC under the umbrella of suspicion for compliance violations and fraud waste and abuse allegations. This has made it very difficult for us to secure significant distribution opportunities with other Lifeline Providers and caused a tremendous decrease in revenue. We have also suffered tremendous loss of revenue due to TerraCom's decision to withhold commissions based upon what we believe are fabricated inventory reports. I simply want the governing bodies to hear "our side" and to make a decision on whether a company such as TerraCom/YourTel/SkyCom should operate as an ETC/Lifeline. I have always felt compelled after reading many of the statements concerning the shutdown of TerraCom/YourTel to address the "issue" of its contracted agents, especially as it relates to Clowers Communications, LLC. As one of TerraCom/YourTel major distributors, I believe I am qualified and justified in addressing, what I believe is the intentional misrepresentation of the truth by TerraCom's top brass, [REDACTED], and [REDACTED] concerning its agent program as it relates to fraud, waste, and abuse of the lifeline program.

Please review the letter to my company attached hereto as Attachment "B".

As fully noted, the reason or justification for TerraCom's decision to shutdown its agent program was that its agents network was being targeted by media. Was there a real issue with its agents compliance? Or were the agents used as a scapegoat to cover for internal issues, and to make the FCC, USAC, PUCs, and media think they were being "Proactive" in policing and eliminating problems. From an order entry perspective, TerraCom utilized one of the best fraud prevention portals that's available known as VCARE. With this system there are multiple features that each order must pass in order to be generated: (1) Identity Validation through Lexis Nexis, (2) Address Validation through Melissa Data, (3) Duplication Prevention within VCARE or TerraCom's database, (4) Upload ID and Proof of Benefit, (5) Electronic Signature, (6) Live Review, (7) Approval or Denial, (8) Phone Activated and Issued, (9) Activation Call Made. This system was implemented according to [REDACTED] in 2012 for the purpose of

making its lifeline program more compliant due to TerraCom's issues with fraud and duplication. As a master distributor, this system is in my opinion one of the best to use to process orders under the lifeline program. The only thing its missing is the ability to "dip into"- "check" a national database for duplication. With the above said and understanding the system that was in place, any agent who processed an order utilizing it could not create "fake" accounts as each person they signed up (1) had to be present, (2) had to have a valid ID, (3) had to have proof of benefit, (4) had to sign (electronic signature), (5) the information had to be review in "real-time" then approved or denied (6) and thereafter received a phone if approved. So where was the so-called compliance issue? The only foreseeable issues of compliance for TerraCom/YourTel/SkyCom are that they allowed almost any and everyone to distribute phones for them without taking the agents through a formal "compliance" training and thereafter overseeing the agent's activity when out in the field. The only thing they trained on and monitored was the orders being inputted - this was, to me, their only concern.

① In fact, this is one of the issues I addressed with [REDACTED] and [REDACTED] in a phone conference where I reported from my field agents that in St Louis, Baton Rouge, and New Orleans there were agents distributing phones for TerraCom but also signing up the same customers for Access and SafeLink at the same time and location. And their response to me was worry about your people. I also addressed the issue of allowing any individual who wants to distribute phones to become a master distributor without any kind of supervision just coming into the industry, getting phones, and being out there without any accountability. I recommended to [REDACTED] to hire compliance officer(s) who trained the agents and periodically visited their sites or locations or requested site audit photos of locations; however, to my knowledge that never happened.

What I learned about TerraCom is that whenever issues surfaced related to agents they were reactive instead of proactive. According to [REDACTED] and [REDACTED] they didn't really have to shut down the agent program but [REDACTED] was very persistent in wanting to do so because he [REDACTED] wanted the company to "fly below the radar" due to the possibility of other internal issues that could be discovered related to their Oklahoma, Missouri, and Indiana subscriber base which could cause them to be completely shutdown. They never divulged the issue(s) but did reluctantly and hesitantly acknowledge a few issues existed. In our phone conference, I said you guys gotta give me more than this because companies don't just shutdown because of what agents do unless there are some other things going on. And after saying that, there was a moment of brief silence, [REDACTED] started out and [REDACTED] finished with admitting the aforementioned. (See Doc 2 "Fly Below The Radar")

Now since TerraCom only had a order entry training program, all the agents who worked with my company, was trained on compliance by us, and thereafter supervised by my company. I'm not saying all my agents were "angels" out in the field but when issues arose we were able to address them without a shutdown. In fact there were instances of where we caught agents attempting to sell the free phones, working with other providers in the same state while working with Clowers Communications, LLC but we never shutdown. (See Doc 9, 10 pgs 3-4, 11a, 11b, 12a, 12b) We strove to be 100% compliant all the time and even TerraCom acknowledged our commitment to compliance. (See Doc 10 pg 2) You may also visit our website at www.liflinedistributor.com to see video and agent ethical conduct pledge.

1

So if Clowers Communications, LLC can address and resolve misconduct issues related to field agents and other providers can do likewise, why couldn't TerraCom do the same? Perhaps they were attempting to hide something bigger? Perhaps they just don't have what it takes to enforce compliance or even want to enforce it? And/or perhaps they wanted to use the agents to add to their subscriber base, terminate them and then ride the money train generated from the (agents) work? I know my company never received any kind of required compliance signage or material from TerraCom/YourTel/SkyCom; however, we did receive marketing material to "brand" their company. (See Doc 18) The compliance signage was something I purchased and sent to every one of my agent's locations after they refused to issue it to us. So in essence what I'm saying is the biggest issue TerraCom has ever had with compliance from an agent is their unwillingness to **train and enforce** compliance on its agent network. I respectfully assert that the agents who used this system was not the issue and their firing or termination was used as a cover. We believe that it was TerraCom/YourTel/SkyCom's drive to make money (Greed) over what matters (Principles, Policy, and the Enforcement of) is, has always been, and will always be the issue if allowed to remain a provider. (See Doc 13) To remedy the issue of enforcing compliance, I suggested in an email to [REDACTED] and [REDACTED] to allow my company to assume full responsibility of distribution and enforcement of compliance. (See Documents 1, 2, 3)

2

Additionally, another issue we have with TerraCom is not only how they shutdown the agent program but whether it was actually used to deprive my company of its legitimate right to new subscriber commissions and residuals from customers we added to its database. This is a matter we have attempted to work out with TerraCom however, they have refused to acknowledge any error on their part in calculating major inventory discrepancies against us and intentionally delaying by one month residuals owe to Clowers Communications, LLC per the agreement even when active. This is a matter that may have to be settled in court however, I would like to apprise the recipients this letter of TerraCom's practice in cooking the books to benefit TerraCom to the detriment of whomever. Perhaps they did the same with the form 497s? Something to think about!!!

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Clowers Communications, LLC added approximately 126,200 new subscribers for TerraCom [REDACTED]. In March of 2013 TerraCom and Clowers Communications, LLC renewed its original to contract to an agreement with a 3 year term. (See Document 14 pg 3) In this agreement, the terms of termination states that if TerraCom determines that if a sub-agent of Clowers Communications, LLC threatens its standing with the FCC/USAC this is grounds for termination if the matter is not corrected within 7 days. In actuality, the contract has no language contained that would allow either party to outright terminate even if they didn't want to be in a contractual obligation within the 3 year term. The contract is automatically renewed yearly. The residual component is retroactive to the actual original starting month of November for the life of the customer as long as the Clowers Communications, LLC remains active and in good standing. (See Document 14 pgs 3, 4, 5)

We submit the following as our positions are as follows but not limited to:

1. There are no records or correspondence of any type sent from TerraCom at anytime notifying Clowers Communications, LLC that any of its agents fabricated its standing with the FCC/USAC.
2. There are no records or correspondence of any type sent from TerraCom at anytime notifying Clowers Communications, LLC that it or its agents had committed acts that would place or have placed it in bad standing with TerraCom/YourTel/SkyCom.
3. Since this was a volunteer or self imposed shutdown of its (TerraCom) agent program, and Clowers Communications, LLC was in good standing and active at that time, Clowers Communications, LLC should not be barred or precluded from receiving its monthly residuals for all active accounts.
4. Since a 3 year agreement existed and was breached by TerraCom, Clowers Communications, LLC should be entitled to compensation for its commitment to the agreement (A Buy Out/Settlement). This compensation should be determined by the 3 year potential income projection that shows estimated \$2,000,000.00 potential earnings. (See Doc 30)

As for inventory, TerraCom alleges that Clowers Communications, LLC has outstanding inventory in excess of [REDACTED] remaining after withholding nearly [REDACTED] in commissions. (See Document 14 pg 1, 2) In the reports submitted to Clowers Communications, LLC , TerraCom uses missing or unreturned ESNs and MDNs to justify withholding new activation commission and residuals. They refuse to look at the actual numbers. In our explanation to them using their own documents and emails we simply outlined the impossibility of any outstanding inventory that would justify holding such a large amount of new activation commissions and residual commissions. We also question whether TerraCom, breached contract with the shutdown, whether Clowers Communications, LLC is entitled to residuals after self-imposed shutdown, whether Clowers Communications, LLC is entitled to compensation for the remaining term of the 3 year agreement using projected activation income and projected residual income computations to determine the amount owe, whether TerraCom fabricated inventory reports, whether TerraCom's management conspired to defraud Clowers Communications of commissions on both new activations and residuals, whether TerraCom displayed a pattern of fraudulently miscalculating commissions to short Clowers Communications, LLC for 4 consecutive months prior to shutdown. (See Document 16)

Fabricated Inventory Reports: According to email correspondence between [REDACTED] and Clowers Communications, LLC in April Clowers Communications had 16930 phones in system inventory based upon the system inventory spreadsheet from 3.29.2013 (See Doc 5a, 5b) From April to June Clowers Communications requested and received approximately 43454 additional phones. (See Doc 6) Since there was an actual reconciliation in April the amount of 16930 and 43454 total 60384 phones shipped to Clowers Communications. (See Doc 5a,5b, 6) Clowers Communications between the months of April and June added approximately 60000 new subscribers and returned over 1000 phones with proof of delivery. (See Doc 7, 8, 9—Must be

①

filtered or sorted according to date) Although our numbers for the amount of activations show we activated 95% of what was shipped to us from April – June and what was on hand on 3/29/2013, we received a inventory report from [REDACTED] on July 1st 2013 which showed an outstanding inventory balance of 27240 phones. (See Doc 15, 15b) In conclusion, TerraCom could show us with an outstanding inventory; however, they have never shown how and where the phones came from. We submitted all supporting documentation and TerraCom has refused to acknowledge any errors on their part and refuse to pay.

Compensation--Commission & Residual: We often question their motive for the shutdown, especially as it relates to Clowers Communications. We believe they used the shutdown not only as a cover for company misconduct but also as a way to terminate a contract that would've eventually had them paying out large sums of residual commissions to Clowers Communications, LLC had the contract continued for the term of 3 years. (See Doc 30 Projected New Activations & Residuals) We believe they fabricated inventory reports to justify not paying the final new activation commission and increased the outstanding balance by enough so that they wouldn't have to pay out the residuals for months to come. In fact their actions of intentionally delaying residual payout from the onset of the new agreement demonstrate their lack of desire to pay. (See Docs - 23a, 23b, 23c, 25a, 25b, 25c, 27a, 27b) In fact, it was not long after Clowers Communications, LLC began to question the delay in paying residual commissions and the continuous shortfall that the contracts were terminated. (See Doc 26) On June 24th 2013 we began to question TerraCom concerning residual commission payout, on June 26th they discontinued shipping phones, then on June 27th they sent letters announcing shutdown of agent program. According to the residual pay structure Clowers Communications is to receive a \$0.50 residual commission for a each customer who remains on in the 4th month. (See Doc 14 pg 5) For example, a November customer who is still on in February will get paid in March, November December will be paid in April, November December January will be paid in May, November December January February will be paid in June, November December January February March will be paid in July.

We raised the question concerning calculation of residual and actually stated that they delayed the residual payout by one month was to avoid a larger residual commission pay to Clowers Communications, LLC. For example, in emails from [REDACTED] where he sends the residual commission reports, and for June the commission payout, the report clearly shows that the commission payout should've been [REDACTED] of which Clowers Communications, LLC only received [REDACTED] (See Doc 27a, 27b) The commission is calculated based upon the number of customers from the "Data" tab in the excel spreadsheet. [REDACTED]

[REDACTED] For the months of March and April, which cover November, November-December the residual commission payout according to [REDACTED] email should've been [REDACTED] however, Clowers Communications, LLC only received [REDACTED] (See Doc 25a, 25b, 25c) Then the May report show November-December again; however they don't include January which was actually due based upon the "data" tab, the payout is [REDACTED] instead of [REDACTED] (23a, 23b, 23c) If you take a look at the "data" tab on the each spreadsheet for residuals it will tell you what's due.

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CONFIDENTIAL - NOT FOR PUBLICATION

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The data section on each excel spreadsheet report show the length of time the subscribers remain active and therefore qualify for a residual payout. For example; **May Residual Commission Report** in the data section show [REDACTED] (Doc 23b Data Tab) active subscribers who remained on from the months of November, December, and January to the month of April to be paid in May. The residual commission for Clowers Communications, LLC should've been [REDACTED] instead of [REDACTED] **June Residual Commission Report** in the data section [REDACTED] (Doc 27b Data Tab) subscribers who remained on from the months of Nov, Dec, Jan, and Feb to the month of May for residual commission pay for June. The correct amount is [REDACTED] but Clowers Communications, LLC only received [REDACTED] For **July Residual Commission** the data section show [REDACTED] (Doc 31) active subscribers from the months of Nov, Dec, Jan, Feb, Mar. to June for commission pay in July. The correct commission is [REDACTED] instead of [REDACTED] as shown in the summary as stated by TerraCom's attorney (See Doc 14 pgs 1,2)

Clowers Communications, LLC was paid a total of [REDACTED] for the March, April, May, June, and July residuals; however, CC, LLC should've received the months of March and April [REDACTED] May [REDACTED] June [REDACTED] and July [REDACTED] totaling [REDACTED]. Due to the intentional delay in paying commissions CC, LLC was shorted [REDACTED]. Furthermore, the reports show a lower churn rate of [REDACTED] as presented in the March-April report. It would be reasonable to conclude that the customer churn rate is closer to [REDACTED] therefore Clowers Communications, LLC has prepared a churn report to reflect projected loss of residual income over the life of the customer. With the balance of [REDACTED] and utilizing the residual schedule set at [REDACTED] churn our Clowers Communications, LLC residual has grossed over [REDACTED]. The full term of the 3 year agreement has a projected potential residual income considering existing subscribers and new activation of nearly [REDACTED]. Further even without considering the addition of new subscribers and the associated residual, TerraCom would still have to pay out nearly estimated [REDACTED] in residual commission to Clowers Communications, LLC for the existing customers customer base. (See Projected Residual Income Documents)

In closing, we believe TerraCom/YourTel/SkyCom shutdown its agent program to appear proactive in rooting out fraud, waste, and abuse in order to stop, stall, and prevent any ongoing investigation or future investigation from digging too deep and thereby discovering major violations on their part. We believe they have caused serious injury to the agent network of Clowers Communications, LLC with its inclusion as being within the agent network that was the cause of its shutdown for compliance issues. Basically we have been given a bad name as a result of being contracted with TerraCom/SkyCom/YourTel. We believe they (TerraCom) are financially liable for this injury. We believe they also used the shutdown as a means to defraud Clowers Communications, LLC out of millions of dollars by fabricating inventory documents and commission reports. The intentional delay in paying out full residuals from the months of March, April, May, June, and July demonstrate their willingness to manipulate and intentional misinterpret reports to avoid paying what's owe.

We have attached or included all supporting documents for your review and if you have any questions, please do not hesitate to call on us. We are prepared to answer all questions either by the agencies or TerraCom's attorney in a hearing forum.

ATTACHMENT "B"

ACTUAL EMAIL RECEIVED:

From: [REDACTED]
Date: Fri, 28 Jun 2013 06:34:36 -0700
To: gary@clowerscommunications.com<gary@clowerscommunications.com>
Subject: ACTION REQUIRED: Clowers Agent Agreement (CONFIDENTIAL)

①

June 27, 2013
Gary Clowers
1572 Hwy. 85 N., Suite 305
Fayetteville, GA 30214
RE: Agent Agreement (CONFIDENTIAL)

Dear Mr. Clowers,

As you are aware, both TerraCom, Inc. and YourTel America, Inc. have relied on a successful agent network to expand their subscriber base for Lifeline services. That portion of the company's business relies on funding from the FCC and USAC to support these services. Although TerraCom and YourTel have the strongest protections in the industry to root out waste, fraud, and abuse, it is apparent that recent media attention targeting compliance by agent networks could threaten TerraCom and YourTel's standing with the FCC and/or USAC with an immediate notice of such a change.

As a result, the company is terminating all Agent Agreements effective July 1, 2013. We will begin the termination process outlined in the Agreement, including final commissions, handset returns and reconciliation, and the return of company marketing materials. Sales by your company through June 30 will be honored and commissions included in this termination process. We appreciate the work your company has done to help grow our subscriber base, but are unfortunately, not on a position to continue our commitment to you given the recent USAC notice. We are fully cooperating with USAC's request and are confident in a positive outcome in the near future. As soon as we know more we will contact you to discuss our strategic plans for the future.

Sincerely,

[REDACTED]
Sustainability

[REDACTED]
TerraCom & Yourtel Wireless
[REDACTED]
[REDACTED]
[REDACTED]

ONLY NOT FINALIZED

Print | Close Window

Subject: Clowers - DOCUMENTS - Fourth of Series of Emails

From: "Kenneth Muhammad" <kennethmuhammad@gmx.com>

Date: Wed, Jan 22, 2014 2:35 pm

To: RWarren@HartzogLaw.com

Cc: "Kenneth Muhammad" <kennethmuhammad@gmx.com>

Attach: Doc 30 - CCLLC-Documnt--Projected Residual- New Activation Commission 3 year term.xlsx

Doc 19 Clower Q2 Forecast 2013 Revised.xlsx

Doc 18 TerraCom COMBINED ORDER CLOWER 2.19.13.xlsx

Doc 5b --Generated From Terracom T1003 CLOWERS FREE INVENTORY 3.29.2013.xlsx

Doc 14 AttorneyLetter-Response-Contract.pdf

Email-Doc 13-AskingCCLLCToDoMoreActivations.pdf

Email-(11b)-AgentIssueResolution [REDACTED].pdf

Email-11a-AgentIssue [REDACTED].pdf

Email-10-TerraComAcknowledgesClowersCommunicationsComitmentToCompliance.pdf

Email- (Doc 9)-IssueWithAgentSellingPhoneAndPenalty.pdf

Doc -25b-Clowers Communications Commissions March April_ Residual_ Report.xlsx

Doc 25a-Email-[REDACTED]March-AprilResidualReport.pdf

Doc 23b Clowers_May_ Residual Comission_Report-Data Section Show 23160 With January Included.xlsx

Doc 23c- Email-[REDACTED]MayResidualWithAttachment.pdf

Doc 23a-[REDACTED]SendMayResidualCommission--January Not Included.pdf

Doc 25c-[REDACTED]SendsMarch-AprilResidualReportPayOweDec-DecNov.pdf

Doc 31 Generated By TerraCom - Disk- Clowers_July_ Residual Comission_Report 2013 -Lower Than June.xlsx

Doc 27a [REDACTED]SendsJuneResidualReportEmail--June Higher Than July.pdf

Doc 27b -Generated By TerraCom--Clowers_June_ Residual Comission_Report.xlsx

Doc - 1-

[REDACTED]ResponseToExclusiveDistributionOrAssistClowersWithBecomingAProvider.pdf

Doc - 9- CCLLC--ProofofDeliveryMasterList.xlsx

CCLLC Doc 12b MissouriIncidentLetterofTermination.pdf

CCLLC Email-Doc 12a-MissouriAgentincident6-24.pdf

Doc 15-Email-[REDACTED]InventoryReportJune24--27240 Outstanding.pdf

Doc 15b Generated From TerraCom [REDACTED]- Inventory June Update 27420.xlsx

Doc - 5a -Email-Generated From Terracom [REDACTED]Inventory April.pdf

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Subject: Fwd: RE: Clowers Communications - First of Series of Emails
From: kennethmuhammad <kennethmuhammad@gmx.com>
Date: Wed, Jan 22, 2014 5:55 pm
To: gary@clowerscommunications.com

Sent via the Samsung Galaxy S™ III, an AT&T 4G LTE smartphone

----- Original message -----

From: "Rick L. Warren" <RWarren@HartzogLaw.com>
Date:
To: 'Kenneth Muhammad' <kennethmuhammad@gmx.com>
Subject: RE: Clowers Communications - First of Series of Emails

Kenneth,

I received all five of your emails. I am just now opening them as I am out of the office today with what I hope is only a 24 hour stomach virus. I just forwarded these to my client a moment ago. I will let you know our position. Given the volume of data you sent today, a deadline of 3:00 pm tomorrow seems short and a bit unrealistic.

Thank you,

Rick L. Warren
Hartzog Conger Cason & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102
405-235-7000 Main

405-996-3325 Direct
405-996-3403 Facsimile

rwarren@hartzoglaw.com

www.hartzoglaw.com

CONFIDENTIALITY NOTICE: This electronic mail transmission, and any attachments, contains information that is confidential and/or legally privileged. The information belongs to the sender and

is intended only for the use of the person or entity to whom it is addressed. If you are not the named recipient, you are hereby notified that taking, copying or disclosing this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at 405-235-7000 to arrange for the return of the message and any attachments. Thank you.

IRS CIRCULAR 230 NOTICE: Any tax advice in this email was not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties.

From: Kenneth Muhammad [mailto:kennethmuhammad@gmx.com]
Sent: Wednesday, January 22, 2014 1:21 PM
To: Rick L. Warren
Cc: kennethmuhammad@gmx.com
Subject: Clowers Communications - First of Series of Emails

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910

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Affidavit of Process Server

United States District Court (For the Northern District of Georgia)

(NAME OF COURT)

Clayco's Communications vs Shirley Ann LLC, North America, Inc. 1:18-cv-0291
PLAINTIFF/PETITIONER DEFENDANT/RESPONDENT CASE NUMBER

I Stewart A. Truitt, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Eric J. Rappaport @ 5008 NW 132nd
NAME OF PERSON SERVED ADDRESS

with (list documents) Summons, Complaint, Affidavit

by leaving with Eric Rappaport at 5008 NW 132nd at _____
NAME RELATIONSHIP

Residence _____
ADDRESS CITY / STATE
 Business 5008 NW 132nd OK, GA 30042
ADDRESS CITY / STATE

On Friday, Feb 23rd, 2019 at 2:21 PM
DATE TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on Not Applicable
DATE

from N/A N/A N/A
CITY STATE ZIP

Manner of Service:

- Personal: By personally delivering copies to the person being served.
- Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business: By leaving, during office hours, copies at the office of the person or entity being served with the person apparently in charge thereof.
- Posting: By posting copies in a conspicuous manner to the front door of the premises being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person or entity being served because of the following reason(s):

- Unknown at Address
- Moved, Left no Forwarding
- Service Cancelled by Litigant
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other _____

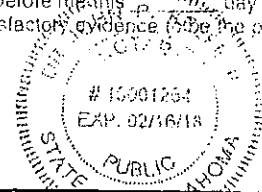
Service Attempts: Service was attempted on: (1) _____ (2) _____
DATE TIME DATE TIME

(3) _____ (4) _____ (5) _____
DATE TIME DATE TIME DATE TIME

Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

Stewart A. Truitt
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____ by Stewart A. Truitt
Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of Georgia



Affidavit of Process Server

United States District Court For the Northern District of Georgia
(NAME OF COURT)

Clowers Communication vs Telecom for You Tel America Inc 2:14-cv-00092
PLAINTIFF/PETITIONER DEFENDANT/RESPONDENT CASE NUMBER

I, Seven A. Truitt, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. Tennessee

Service: I served Levi Cason "Registered Agent" @ Jackson Court House
NAME OF PERSON / ENTITY BEING SERVED

with (list documents) Summons To Appear before the Court

by leaving with Chris Douglas Registered Agent for Levi Cason
NAME RELATIONSHIP

Residence _____
ADDRESS CITY / STATE

Business 201 Robert Street Avenue, 1602 Federal Office Building, Chattanooga, TN 37402
ADDRESS CITY / STATE

On Friday, June 11th 2014 at 2:20 pm
DATE TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on Not Applicable
DATE

from N/A N/A N/A
CITY STATE ZIP

Manner of Service:

- Personal: By personally delivering copies to the person being served.
- Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

- Unknown at Address Moved, Left no Forwarding Service Cancelled by Litigant Unable to Serve in Timely Fashion
- Address Does Not Exist Other _____

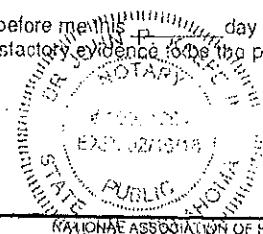
Service Attempts: Service was attempted on: (1) _____ (2) _____
DATE TIME DATE TIME

(3) _____ (4) _____ (5) _____
DATE TIME DATE TIME DATE TIME

Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

Seven A. Truitt
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2014, by Seven A. Truitt
 Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



[Signature]
NOTARY PUBLIC for the state of _____



Affidavit of Process Server

United States District Court, For the State of Oklahoma (District of Tulsa)
Chavez Commercial, Inc. vs Terrence John Yarbrough America, Inc.
PLAINTIFF/PETITIONER DEFENDANT/RESPONDENT CASE NUMBER

I, Shera A. Trudl, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Not Applicable / Erroneous Address Could not make serve to Registered Agent
NAME OF PERSON / ENTITY BEING SERVED

with (list documents) At Yourtel America, 1833 South Morgan Road, OKC, OK 73102

by leaving with Not Applicable Not Applicable AI
NAME RELATIONSHIP

Residence Not Applicable Not Applicable
ADDRESS CITY / STATE

Business Not Applicable Not Applicable
ADDRESS CITY / STATE

On _____ DATE

Inquired if subject was a member of the U.S. Military and was informed they are not

Thereafter copies of the documents were mailed by prepaid, first class mail on N/A DATE
from _____ CITY STATE ZIP

Manner of Service:

- Personal: By personally delivering copies to the person being served.
- Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s).

- Unknown at Address
- Moved, Left no Forwarding
- L. Service Cancelled by Diligent Effort
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other Please Note that the address listed for Yourtel America was not in existence

1833 South Morgan Road, OKC, OK, 73102 is not affiliated with Yourtel

Service Attempts: Service was attempted on: (1) Fri Feb 28th 2014 @ 12:34 pm (2) _____ DATE TIME DATE TIME

(3) _____ DATE TIME (4) _____ DATE TIME (5) _____ DATE TIME

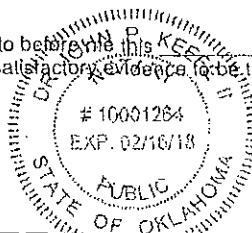
Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

Shera A. Trudl
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2014, by Shera A. Trudl
Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

[Signature]
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of Oklahoma



Affidavit of Process Server

United States District Court "Eastern District of Oklahoma"
Chavez Communications vs Skylar USA, LLC
PLAINTIFF/PETITIONER DEFENDANT/RESPONDENT

I, Steven A. Truitt, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Eric "Receptionist" @ Skylar USA, LLC by Personal Copy to Jeff White
NAME OF PERSON/ENTITY BEING SERVED

with (list documents) Summons, F.A. & Civil Action
by leaving with Eric "Receptionist" @ Jeff White @ Skylar USA, LLC At
NAME RELATIONSHIP

Residence
 Business 5708 NW 132nd OK 73142
ADDRESS CITY/STATE
ADDRESS CITY/STATE

On Friday Feb 28th 2014 AT 2:31 PM
DATE TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid first class mail on Feb 28th 2014
DATE
from N/A N/A N/A
CITY STATE ZIP

Manner of Service:

- Personal: By personally delivering copies to the person being served
- Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s).

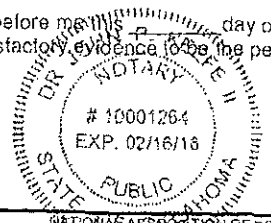
- Unknown at Address
- Moved, Left no Forwarding
- Service Cancelled by Litigant
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other _____

Service Attempts: Service was attempted on: (1) _____ : (2) _____
DATE TIME DATE TIME
(3) _____ DATE TIME _____ DATE TIME

Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

Steven A. Truitt
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me on this _____ day of _____ 20____ by Steven Truitt
Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Chad M. [Signature]
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of Oklahoma



AFFIDAVIT OF DALE R. SCHMICK

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

Dale R. Schmick, being first duly sworn on oath, deposes and states as follows:

1. I am the Chief Operating Officer of TerraCom, Inc. ("TerraCom"), and in this capacity I have personal knowledge of all relevant matters pertaining to the letter dated March 26, 2014 from TerraCom's counsel, Nikki G. Shoultz, to Beth Krogel Roads, General Counsel for the Indiana Utility Regulatory Commission ("IURC"), including the matrix attached thereto as Exhibit A. I am authorized to make this affidavit on behalf of TerraCom. My business address is 401 E Memorial Rd, Suite 400, Oklahoma City, Oklahoma, 73114.

2. I am the same Dale R. Schmick who pre-filed testimony in IURC Cause No. 44332 and who testified at the final evidentiary hearing in the same proceeding on December 16, 2013.

3. I have reviewed the ex parte communication (the "Communication") sent on or about March 18, 2014 to certain IURC Commissioners in Cause No. 44332 from Gary Clowers.

4. For the reasons set forth in the matrix attached as Exhibit A, the information redacted from the Communication (the "Redacted Information") is trade secret information and private personal information that is protectable from disclosure pursuant to Indiana law.

5. The Redacted Information falls into seven categories, as described in the first column of the matrix attached as Exhibit A. The Redacted Information qualifies as "information" as contemplated by I.C. 24-2-3.

6. TerraCom derives economic value from maintaining the confidentiality of the Redacted Information. As set forth in Exhibit A, competitors could use certain Redacted Information on geographic locations of inventory and sales activity to assess the relative success of TerraCom's business model; duplicate it; and use the model to target TerraCom's existing customer base. Competitors could use certain of the Redacted Information revealing employee and customer names and contact information to target specific individuals with unique Lifeline experience in order to reproduce TerraCom's subscribership levels or win existing TerraCom customers. The Redacted Information also provides economic value to competitors who could gain insight into the specific terms and business processes surrounding the payment of sales commissions. Competitors could duplicate the model to structure a sales force designed to reproduce TerraCom's subscribership levels or to win existing customers. If disclosed, other aspects of the Redacted Information could would jeopardize TerraCom's record keeping system and expose private customer and applicant information such as names, addresses, telephone numbers, and private records. Additionally, under the Federal Privacy Act, 5 U.S.C. § 552(a), certain of the Redacted Information showing the name and identifying information of individuals should be maintained as confidential.

7. The Redacted Information is not publicly reported or readily ascertainable by TerraCom's competitors. No amount of independent research could yield the Redacted Information to TerraCom's existing or potential competitors.

8. TerraCom does not disclose the Redacted Information to the public and it restricts access to TerraCom employees with a need to know the information.

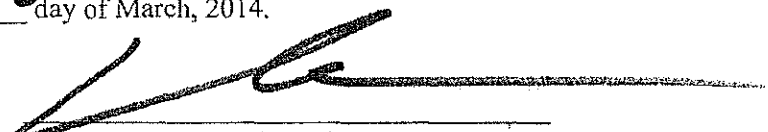
9. If the Commission believes that the Redacted Information is not mandatorily protected by Indiana law, I would request a public hearing pursuant to Indiana Administrative Rule 9(H) and I show as follows:

a. The public interest will be substantially served by prohibiting access. This is because granting access would undermine an individual's right to privacy in his/her own identifying information. Further, prohibiting access ensures that the confidential and proprietary trade secrets of TerraCom (and any other private business) are secured.

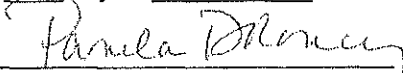
b. Access or dissemination of the Redacted Information will create a significant risk of substantial harm to TerraCom in that it will reveal the trade secret information of TerraCom. Further, access or dissemination of the Redacted Information will create a significant risk of substantial harm to the individuals whose personal information will be disclosed.

c. The Redacted Information should be excluded from public access because (1) it constitutes a trade secret of TerraCom; and (2) it contains the personal information, data, and identifying marks of current or former TerraCom customers, employees and agents.

Dated at Oklahoma City, OK this 26 day of March, 2014.


Dale R. Schmick, Chief Operating Officer
TerraCom, Inc.

Subscribed and sworn to before me
this 26 day of March, 2014


Notary Public, State of Oklahoma
My Commission Expires 4-21-14
2544828_1

PAMELA D. RONEY
Notary Public, State of Oklahoma
Commission # 10003352
My Commission Expires April 21, 2014

Coe, Shala

From: Veleta, David E
Sent: Friday, March 28, 2014 1:57 PM
To: Coe, Shala
Subject: FW: TerraCom
Attachments: Ltr to Beth K. Roads 3-27-14.PDF; Redacted Ex Parte Communication.PDF; Exhibit A.PDF; Affidavit of Dale R. Schmick.PDF

From: Roads, Beth Krogel
Sent: Thursday, March 27, 2014 4:25 PM
To: Veleta, David E
Subject: FW: TerraCom

David,

Please find attached TerraCom's proposed redaction, which appears reasonable to me. Let me know if you disagree or if you have any questions and want to discuss this with me.

If you're okay with this redaction, please go ahead and tender the redacted ex parte communication to the record, and let me know when this is complete.

Thanks!
Beth

Beth Krogel Roads

General Counsel

Indiana Utility Regulatory Commission

101 W. Washington St., Suite 1500 East

Indianapolis, IN 46204

Direct line: (317) 232-2092

Fax #: (317) 232-6758

Email: bkroads@urc.in.gov

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From: Beach, Julie A. [<mailto:jbeach@boselaw.com>] **On Behalf Of** Price, L. Parvin
Sent: Thursday, March 27, 2014 2:12 PM
To: Roads, Beth Krogel
Subject: TerraCom

Beth,
Attached please find a letter from my Partner Nikki Shoultz dated March 27th concerning information that should be redacted from the additional ex parte communications of Mr. Clowers prior to such communication being tendered to the record. Separately I have also attached the ex parte communications showing such redactions, and reference to the

matrix which explains our position. Finally I have attached the Affidavit of Dale R. Schmick in support of the proposed redactions.

Once you have made a final decision and in turn tendered Mr. Clowers' communications as suggested here to the record please let me know. It is our intent to follow-up that tender with a Response similar to the one we have previously filed.

Thank you for your assistance in this matter.

Parvin Price

Julie A. Beach | Administrative Assistant
Bose McKinney & Evans LLP | www.boselaw.com
111 Monument Circle | Suite 2700 | Indianapolis, Indiana 46204
JBeach@boselaw.com | P 317-684-5289 | F 317-223-0289 |

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