

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF THE *COMPETITION ACT*, R.S., 1985,  
c. C-34, as amended;**

**AND IN THE MATTER OF** an inquiry pursuant to subsection  
10(1)(b)(ii) of the *Competition Act* relating to the marketing  
practices of Universal Payphone Services Inc.;

**AND IN THE MATTER OF** an Application by the  
Commissioner of Competition for an interim order pursuant  
to section 74.11 of the *Competition Act*.

**B E T W E E N:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

**-and-**

**UNIVERSAL PAYPHONE SYSTEMS INC.**

**Respondent**

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**AFFIDAVIT OF LARRY W. BRYENTON**

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I, Larry W. Bryenton, of the City of Ottawa, in the regional Municipality of  
Ottawa-Carleton, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am employed as a senior commerce officer with the Competition Bureau (the  
"Bureau") in the Department of Industry Canada, and I am the senior officer  
responsible for an inquiry (the "Inquiry") into the marketing practices of Universal

Payphone Systems Inc. ("Universal") made under the authority of the Commissioner of Competition (the "Commissioner") and pursuant to subsection 10(1)(b)(ii) of the *Competition Act* (the "Act"), and as such have personal knowledge of the matters deposed to in this affidavit. Where such knowledge is based on information that I have received from others, I have indicated the source of this information and verily believe such information to be true.

2. I am presently a senior commerce officer with the Fair Business Practices Branch of the Bureau. I have been employed by the Bureau for 15 years, working in various enforcement branches of the Bureau as an investigator. I have been in my current position for the past two years, and have been responsible for the conduct of a number of investigations under the Deceptive Marketing Practices provisions of the *Competition Act* during this time.

#### **PRELIMINARY EXAMINATION**

3. The Bureau has received numerous complaints about the marketing practices of Universal. As a result of these complaints, the Bureau commenced an examination into this matter on August 12, 1999. As part of this examination, Bureau officers, including myself, Brendan Ross and George Weber, have conducted numerous interviews, including interviews with senior officials in Bell Canada who are knowledgeable about the pay telephone component of the telecommunications market, and many consumers ("investors") who indicated that they have invested in Universal's business opportunity as a direct result of Universal's marketing campaign. In addition, myself and fellow officers have reviewed the market and regulatory regime relating to the pay telephones, and have reviewed the various representations made by Universal in its promotional materials.

## **THE COMPETITIVE PAYPHONE MARKET**

4. On June 30, 1998, the Canadian Radio Television and Telecommunications Commission (“CRTC”) issued Telecom Decision CRTC 98-8 (Decision 98-8”), in which the CRTC announced that it would forbear from regulation of the Canadian pay telephone market. Decision 98-8 had the effect of creating a competitive market for pay telephone service, in that it permits new entrants to compete with the traditional carriers for the provision of payphone services across Canada.
5. In paragraph 101 of Decision 98-8, the CRTC set out “mandated safeguards” which it established as conditions for entering the pay telephone market. These conditions include provision of coinless and cardless access to 9-1-1 or access to other emergency medical service; provision of 6-1-1 service or other number for reporting telephone trouble; as well as the obligation of having standard information available to pay telephone users, such as to the rates charged, long distance suppliers utilized, and remote coin return capabilities.
6. The Director of Investigation and Research (as he then was) intervened in the proceeding which led to Decision 98-8. The Director argued for the early and complete deregulation of the pay telephone market to allow market forces to dictate the level and quality of service provided, while recognizing the need to provide certain essential services like emergency services.
7. Decision 98-8 and the resulting deregulation of the Canadian pay telephone market has created a business opportunity for a variety of new entities. The

entry requirements of a regulatory nature are set out in Decision 98-8.

8. Based on the results of our investigation, I have determined that entry into the pay telephone market requires:
  - I a capital investment to purchase the necessary hardware,
  - II access to telephone lines from an existing carrier,
  - III arrangements to be made to acquire pay telephone locations,
  - IV the provision of essential services as dictated by the CRTC, and
  - V long distance carrier alliances, as well as alliance with financial intermediaries for credit card and other forms of non-cash payments for phone charges.
  
9. Based upon our investigation, I have determined that entry into the pay telephone market may also require a revenue splitting arrangement with location providers. Payphone volume is dependent on location, with high traffic sites such as airports, prisons, schools, etc. being the prime locations for payphone placement.
  
10. During the course of this investigation, I contacted Mr. Neil Rombaugh, Industry Marketing Manager with Bell Canada, to obtain general information about the pay telephone market. He has advised me, and I verily believe, that he has over 27 years experience in the telecommunications industry, including 15 years experience working in the pay telephone market with Bell Canada. This official

indicated, and I verily believe, there are approximately 170,000 in pay telephones in Canada. The majority of pay telephones tend to be located in “single” or “few phone” installations.

11. Mr. Rombaugh has further advised me, and I verily believe, the following:
  - I that over the past 2 years, the pay telephone market has seen revenues declining at a rate of approximately 5-10% per annum;
  - II that the market is facing revenue pressure from various factors, including increased use and availability of cellular phones, the increased usage of pre-paid phone cards, which cards typically do not generate revenue for the pay telephone owner, and an increase in usage of 1-800 toll free services originating from payphone locations; and
  - III that the revenue projections for the pay telephone market are expected to see continual pressure.
  
12. Mr. Rombaugh has further advised me, and I verily believe, that the largest percentage of multi-unit phone installation locations are in large institutional settings such as airports, malls and office complexes. A significant number of pay telephones are located in small businesses such as restaurants and convenience stores, which do not necessarily generate positive net revenue after costs. As a rule of thumb, approximately 20% of payphone locations tend to generate 80% of total payphone revenues. Multi-unit payphone locations will likely be the subject of competitive offerings by sophisticated telecommunications providers, who have the ability to provide payphone as a value-added service as part of a complete line of telecommunications services to the customer, with the associated after sales service and support, reliability

and backup capability.

## **THE COMPANY**

13. Universal was incorporated under the laws of Ontario on the 28th day of January, 1999, as Ontario Corporation number 1337481. George Katsoulakis is listed as First Director and signed the articles of incorporation as Incorporator of the corporation. On page 6 of the articles of incorporation, under the heading “Signatures of Incorporators”, is a signature line with the name “George Katsoulakis” typed beneath it. The signature above the line appears to read “G. Kats”. Attached hereto as exhibit “A” is a true copy of the Articles of Incorporation. According to the Articles of Incorporation, Universal’s registered office address is 1585 Britannia Rd. East, Unit C1, Mississauga, Ontario.

## **THE REPRESENTATIONS IN THE MEDIA**

14. The Bureau’s inquiry has revealed that various advertisements have been placed in the ‘business-to business’ and ‘business opportunities’ sections of various Canadian newspapers throughout 1999. Attached hereto as exhibit “B” is a true copy of an advertisement placed on page C 12 of the National Post from Thursday, July 22, 1999. The advertisement reads as follows:

- ! “Payphones
- ! now you can own them
- ! most financially secure home based bus. in the world
- ! \$250K yr. Potential

- ! Minimum investment \$10,000
- ! Your investment is guaranteed
- ! Serious inquiries only
- ! Locations include 10yr. Contract and installation
- ! 1-800-253-9779 (24hrs)
- ! All Canadian Company. Established since 1981.”

A reverse trace indicates that the phone number set out above is owned by Universal Vending Inc. On the back of a promotional pamphlet distributed by Universal Vending Inc., a true copy of which is attached hereto as exhibit “C”, it indicates that it carried on business at the same address as Universal Payphone Systems Inc., being 1585 Britannia Road East, Unit C1, Mississauga, Ontario.

15. Based on a review of the national media, I have concluded that as of late August, 1999, the size and scope of Universal’s payphone advertising campaign has increased significantly. Attached hereto as exhibit “D” is a true copy of an advertisement in its original size taken from page A4 of the *National Post* printed on Saturday August 21, 1999. The advertisement makes similar representations, and encourages consumers to call 1-UPS-321-COIN. A reverse trace indicates that this number is owned by Universal Payphone Systems Inc.
  
16. I have confirmed that Universal is continuing to place advertisements for payphones in national newspapers. Attached hereto as exhibit “E” is a true copy of a similar advertisement to that described in paragraph 14, above, placed in the “Business to Business” section of the *National Post* on page B 10 from Saturday, September 11, 1999. Also attached hereto as exhibit “F” is a

true copy of a similar advertisement found on page B 11 of the *Globe and Mail* of Monday, September 13, 1999. A reverse trace indicates that the phone number in these advertisements is owned by Universal Vending Inc.

17. I have confirmed that Universal is also promoting itself in radio advertisements, such as an advertisement aired on CFX in Victoria, B. C. on August 29<sup>th</sup>, 1999. This radio broadcast advertised payphone business opportunities, and indicated that with a minimum investment of \$10,000, there is a potential profit of up to \$250,000 per year. The advertisement encouraged consumers to call 1-UPS-321-COIN. A reverse trace indicates that this number is owned by Universal.
18. I am advised by all investors interviewed by the Bureau, and verily believe, that consumers who call the toll-free numbers in response to these advertisements are sent a promotional package by Universal.

## **REPRESENTATIONS IN THE PROMOTIONAL PACKAGE**

19. The promotional package (The "Promotional Package") sent to potential investors by Universal is entitled "Millennium 2000", and bears the image of a payphone on the front cover. A true copy of the front and back covers of one of these promotional packages is attached hereto as exhibit "G".
20. The Promotional Package contains the following items:
  - I a brochure entitled "Connecting You to Bell and Profits - Millennium 2000" (the "Brochure"). A true copy of this brochure which is attached hereto and marked as exhibit "H";



- II a video entitled "Universal Payphone Systems Inc. Presents Millennium 2000", ("the video"), a true copy of which is attached hereto and marked as exhibit "I";
- III an audiotape labelled Universal Payphone Systems Inc. 1-888-3650 Millennium 2000", a copy of which is attached hereto as exhibit "J";
- IV a FedEx courier envelope and waybill pre-addressed for delivery to Universal, a true copy of which is also attached hereto and marked as exhibit "K";
- V a document presentation folder with a cover page entitled "Millennium 2000", a true copy of the front cover of which is attached hereto and marked as exhibit "L"; which contains the following documents:
- VI a letter to potential investors signed by "George Kats", which letter sets out what purchasers will receive, a true copy of which is attached as exhibit "M";
- VII a 'certificate' from North American Business Opportunities Services, a true copy of which is attached hereto as exhibit "N";
- VIII a 'certificate' from the Canadian Business Bureau, a true copy of which is attached hereto and marked as exhibit "O";
- IX a 'certificate' from the American Business Bureau, a true copy of which is attached as exhibit "P";

- X a five year warranty from Universal on all parts and service, a copy of which is attached hereto as exhibit "Q";
  - XI a document entitled "Guaranteed Agreement on Investment", a true copy of which is attached hereto and marked as exhibit "R";
  - XII a document entitled "Purchase Agreement", a true copy of which is attached hereto and marked as exhibit "S";
  - XIII a document entitled "Public Telephone Lease Agreement", a true copy of which is attached hereto and marked as exhibit "T";
  - XIV a document entitled "Confidential Application", a true copy of which is attached hereto and marked as exhibit "U"; and
  - XV a document entitled "Monthly Collection Report", a true copy of which is also attached hereto and marked as exhibit "V";
21. I have reviewed the foregoing documents and materials, and based upon this review, state, and do believe the following:
22. On page five of the Brochure, the second paragraph of the introductory greeting reads in part "Dear prospective Investor: Universal would like to thank you for your response to our advertisement. The Deregulation of payphones has just opened up a world of opportunity. It is a "Proven" opportunity which is exciting, profitable, and new to Canada." The signature appears to read "G Kats". Below the signature is typed "George Kats, President and CEO, Universal Payphone Systems Inc.". I verily believe this to be the same individual, George

Katsoulakis, as previously identified as Director and Incorporator of Universal, as set out in paragraph 13 of this my affidavit.

23. On page 6 of the Brochure, various “Investment Levels” are set out. The levels are two payphones for \$9,600, four payphones for \$18,000, eight payphones for \$33,600, 16 payphones for \$62,400, and 32 payphones for \$115,200.

## **Representations with respect to Universal itself**

### **Incorporation**

24. On page four of the Brochure, Universal states under the heading “Company Profile” that “[f]or the past 16 years at Universal Payphone Systems Inc., we have prided ourselves in providing the most effective, well-structured, entrepreneurial programs on the market”. However, the corporate information for Universal reveals that Universal was incorporated on January 28, 1999.

### **Headquarters**

25. On the Video, prospective investors are introduced to Universal. At that point, the video image is of a modern “glass-wall” office tower which appears to be approximately 20 stories in height. Printed on the screen beneath the building are the words, “North American Headquarters, Toronto, Canada.” The audio component of this shot is as follows, “ From their North American Headquarters in Toronto, Canada, [Universal] provides the most effective...”. The clear impression created is that the office tower shown is Universal's North American Headquarters.

26. The Canadian address for Universal in the Promotional Package is 1585 Britannia Rd. East, Unit C1, Mississauga, Ontario L4W 2M4. I am advised and verily believe that Patti Cruickshank, an officer with the Competition Bureau attended at the foregoing address. She has confirmed to me that at the address in question she found a single story brick building located in an industrial strip mall, with a sign in the window which reads “Universal Payphone Systems Inc.”. Immediately adjacent, in the window of unit C2 is a sign which reads “Universal Vending Inc.”. Stacked directly behind and towering over the building are what appear to be freight shipping containers, from a rail yard.

### **Accreditation**

27. As set out above, in Universal’s Promotional Package there are several ‘certificates’, true copies of which are attached hereto as exhibits “N, O, & P”. One is a “Certificate of Registration” from the Canadian Business Bureau. The certificate states “Whereas the Company has fulfilled all registration requirements established by the Canadian Business Bureau that protect the interest of the consumer and has pledged to conduct its business activities in an ethical manner, therefore I issue this Certificate of Registration to Universal Payphone Systems Inc....” The certificate bears a signature and an “Official Seal” on the bottom right hand corner, with the letters CBB in the seal.
28. Below the certificate, the document further elaborates, by stating that Universal is a registered member, and that the “...Canadian Business Bureau provides information on Companies at no cost to the inquirer and does not recommend, approve, or endorse any Franchise, Business Opportunity or Business Venture...”, and invites people to contact them for “...information on member companies...” at the address or phone number listed.

29. There are similar certificates provided from the American Business Bureau and from North American Business Opportunity Services, both of which represent themselves as being consumer protection organizations, and both also inviting people to call for information on member companies.
  
30. My investigation reveals that the Canadian Business Bureau is not the same as, or affiliated with, the members of the Canadian Council of Better Business Bureaus. The Better Business Bureau's report on Universal, a true copy of which is attached hereto as exhibit "W", indicates that "Universal Payphone has an unsatisfactory record with the Better Business Bureau system. This rating is due to the unauthorized use of a Canadian Council logo and their lack of response to Bureau and consumer complaints". The report goes on to state "[t]his company is reported to be claiming that it is a member of North American Bureaus, The Canadian Business Bureau, American Business Bureau, North American Business Opportunity Services , or NABOBS. Whatever these may be, they are NOT part of the Better Business Bureau System".
  
31. On September 14, 1999, I contacted an investor with Universal who provided me with information about the business practices of Universal. This individual wishes to remain confidential due to private negotiations involving the investor and Universal. I verily believe the information provided to me by this investor. This investor indicated that in response to a newspaper advertisement, he called and received a promotional package from Universal in early February of 1999. He advises that he was subsequently contacted by a salesperson from Universal calling himself Ira Newman, who discussed Universal's business opportunity with the investor.
  
32. This investor informs me, and I verily believe, that before deciding to invest, he called the number listed on the Canadian Business Bureau certificate provided

in Universal's promotional package. When the investor called the number, he immediately recognized the voice answering the phone for the Canadian Business Bureau as being the Universal sales person to whom the investor had spoken to the previous day, being Ira Newman. When the investor queried as to why a Universal salesperson was answering for the independent organization, Mr. Newman stated " I guess this doesn't look very good", and then indicated that although it looked strange, occasionally the lines for the Canadian Business Bureau were monitored by Universal. Universal took a message, and the investor was subsequently contacted by someone identifying himself as Mr. Hall of the Canadian Business Bureau.

33. This investor has further advised me, and I verily believe, that this Mr. Hall of the Canadian Business Bureau recommendation for Universal's operations, indicating that it was a great company, and that it was on the cutting edge.
34. This investor further advised me, and I verily believe, that after investing in Universal, the investor began to have problems with Universal, and re-contacted the Canadian Business Bureau. When this investor re-contacted the Canadian Business Bureau, the aforementioned sales person, Mr. Ira Newman, again answered on behalf of the Canadian Business Bureau. Mr. Newman advised the investor at that time that he was indeed still employed with Universal.
35. I am advised by Patti Cruickshank, a commerce officer with the Fair Business Practices Branch of the Competition Bureau and I verily believe, that she attended the address provided for the Canadian Business Bureau on the certificate contained in the Promotional Package, being 1930 Yonge Street, Suite 2000, Toronto, and found it to be the address for a "Mail Boxes Etc." franchise.

36. Ms. Veronica Castanan, Director of Operations of the National Business Opportunity Bureau, also known as NBOB, has stated, and I verily believe, that the North American Business Opportunity Services, or NABOS, is in no way the same as or affiliated with NBOB.
37. I am advised by Patti Cruickshank, and do verily believe, that she attended the address set out on the NABOS certificate included in the Promotional Package, being 60 Norbert Road, in Brampton, Ontario, and found the address to be a semi-detached private residence in a residential community.

**Representations with respect to the payphones offered for sale by Universal to prospective investors**

38. The information in the Promotional Package indicates that the payphone that Universal is marketing is called the "Millennium 2000". Displayed quite prominently on the cover of the Promotional Package itself, as well as throughout the Brochure and the Video, are photographs and images of payphones.
39. All of the images of phones are of the same type of phone. On most of the phones shown, the word "Millennium" is visible on the upper right hand corner. For example, see the photographs on the cover of the Brochure and page 3 of the Brochure. On page 7 of the Brochure, the payphone offered by Universal is described under the caption "THE PAYPHONE OF THE 21<sup>ST</sup> CENTURY". Beneath the caption, the Brochure goes on to state "Universal payphone Systems Inc. newest 'smart' payphone, the Millennium 2000, is uniquely designed to carry Independent Payphone Providers into the 21<sup>st</sup> Century". Directly beside this caption is an image of what appears to be the same phone featured on the cover and on page 3. The rest of page 7 is devoted to describing the features of the Millennium 2000 payphone.

40. The phones depicted in the Promotional Package appear to be Bell Canada's familiar-looking pay telephones, which are manufactured by Nortel as the "Millennium". On the picture on the front of some of the Promotional Packages that Universal has distributed, at the bottom of the picture on the front cover in small print it reads: "Not exactly as shown".
41. On the Video included with the Promotional Package, there are numerous shots of people using payphones with the word "Bell" clearly written across the booth in Bell Canada's yellow trademark logo.
42. At counter point 3.19 of the Video, the payphone offered by Universal is introduced to prospective investors. At this point, the video image shows a close up of a payphone keypad of what appears to be a Bell Canada payphone, and a female hand dialling the phone. Also visible in this shot is the cable which attaches the handset to the payphone. The audio component which accompanies this "hand dialling" shot states as follows: "Universal Payphone Systems Inc. is pleased to introduce the Millennium 2000 telephone." Immediately thereafter, there is a wide angle shot of what appears to be the same woman speaking on a Bell Canada payphone.
43. I am advised by an investor, who wishes to remain confidential due to private negotiations involving the investor and Universal, and do verily believe, that the Universal salesperson he was dealing with, who called himself Ira Newman, stated that the phones sold by Universal are manufactured by Nortel. This investor further advised, and I verily believe, that the fact that the phones were manufactured by Nortel and looked the same as Bell Canada's telephones was an important consideration in his decision to invest, because he believed that consumers would be just as likely to use his phones as Bell Canada's phones.



44. I have received and examined one of the phones provided by Universal to an investor and am of the view that the phone does not appear to be a Nortel Millennium phone as used by Bell Canada. The phone bears no manufacturer's name or CSA certification mark. The phone I inspected is not the same as the payphone featured in the Brochure or in the Video, and does not bear Northern Telecom's stamp.
45. I have reviewed the contents of Federal Court file # T-1292-99, being Bell Canada, (Plaintiff), and Universal and George Katsoulakis, (Defendants), and have determined that Bell has commenced an action in the Federal Court against Universal, alleging, inter alia, that Universal "...directs the public's attention to its goods, services and business in such a way as is likely to cause confusion in Canada between its goods and services and those of Bell".

**Representations with respect to the 'turnkey' nature of the business opportunity**

46. The Promotional Package appears to give the general impression that the investment being marketed by Universal is in the nature of a turnkey operation, such that Universal will do all that is required to get the investor's payphone business up and running. For example, page 15 of the Brochure reads, "We acquire all locations (with your final approval), and completely set up your business for you." Similarly, the Video states "everything you need to get started is included in your investment". There does not appear to be any information available in the Promotional Package that derogates from this general impression.
47. In fact, the opportunity offered by Universal is not turnkey in nature. I have reviewed Decision 98-8 of the CRTC, Telecom Order 98-626, and Telecom

Order 98-1186, and believe that they create the following requirements for a competitive pay telephone service provider (CPTSP) in order to be able to operate a payphone in Canada:

- I The CPTSP must attest in writing that it understands and will conform with the obligations and consumer safeguards set out in decision 98-8;
- II The CPTSP must provide the name of the carrier supplying the access lines in each serving area;
- III The CPTSP must provide the Commission 'serving area maps' for information purposes, and make such 'serving area maps' available upon request at their business offices;
- IV The CPTSP must provide details as to how it proposes to deal with consumer complaints;
- V The CPTSP must provide coinless and cardless access to 9-1-1, or access to emergency call routing by an operator accessed by dialing 0 at a pay telephone. Where required by civic authorities, provision of a list of detailed pay telephone locations to the enhanced 9-1-1 administrator;
- VI The CPTSP must provide message Relay Service (MRS);
- VII The CPTSP must provide 6-1-1 or other number for reporting telephone trouble;
- VIII The CPTSP must provide non-discriminatory access to the networks of all alternate providers of long distance service connected to the underlying

local exchange network, if long distance calling is permitted;

- IX The CPTSP must post on or near the pay telephone the company name, address and toll free number where information can be obtained and complaints addressed;
- X The CPTSP must post the Commission's address and toll free number (1-877-249-CRTC) on all pay telephone equipment, in order to ensure that consumers have direct recourse to facilitate resolution of unresolved complaints;
- XI Operator services, if provided, (other than emergency services access and MRS) that are in compliance with Telecom Order 95-316 as well as with procedures that evolve from the CRTC Interconnection Steering Committee;
- XII The CPTSP must display prominently, at each pay telephone location, the following information: rates of local calls, the name of the default long distance provider, and any surcharges not included in the price of the call;
- XIII The CPTSP must provide for coin return for uncompleted calls, such as busy signals or no answer if coin access is applicable, and similarly if a card is used, alternately billed charges must not apply if the call is not connected to the called party;
- XIV The CPTSP must ensure that there is a standard arrangement of letters as well as numbers provided on the dial in order to permit callers to reach their provider of choice through the use of commonly used vanity access sequences;

XV The CPTSP must ensure that all pay telephones are to meet existing and future CSA and the Terminal Attachment Program Advisory Committee standards to prevent network harm;

XVI The CPTSP must ensure that all pay telephones are to be accessible to the physically disabled, be hearing aid compatible and meet the standards established in Telecom Order CRTC 98-626, as modified by Telecom Order CRTC 98-1186, for provisioning of service to visually impaired consumers. These include:

- ! Bright contrasting-colour coin and/or card mechanisms to make them easier to see;
- ! A feature which enables the user to start the call over if an error is made;
- ! A screen which displays context-sensitive dialling instructions in a larger size than can be accommodated with printed instruction cards;
- ! A card-reader for a variety of telephone cards; and
- ! Voice prompts to assist in placing calls or using features.

XVII Adherence to all applicable Commission rules concerning protection of customer privacy.

48. Additionally, as set out in paragraph 55, subparagraphs XVII and XXI, Ms. Ruth Perriam has advised me, and I verily believe, that investors must also enter into a

contract with a long distance carrier, enter into a contract with a provider of operator services and credit card processing, enter into a contract with a payphone access line provider, and arrange for and pay for the installation of those lines, plus pay a security deposit to the payphone access line provider.

### **Representations with respect to profitability**

49. I have reviewed the Brochure (pages 9 through 13) and the Video, and can attest to the fact that both items contain representations entitled “profit projections”. The projections in the Brochure and the Video are identical. The projections vary, based on the number of phones purchased by the investor. For example, the Video explains projected profits on two phones by stating:

“Here is how the investment works. In the following months, you will see that Bell will be raising the cost of a call to 35 cents. You charge the consumer 35 cents to make a call. Based on our research, 50 calls are made on each of the two telephones on a daily basis. 70 cents X 50 calls equals \$35 in one day, in one month \$1050.”

50. A similar representation is made on page nine of the Brochure. While the Brochure has a disclaimer on the bottom of each page of projections indicating that the earnings are “...strictly in the nature of possibilities...”, the Video contains no such disclaimer.
51. Mr. Neil Rombaugh of Bell Canada has advised me, and I verily believe, that making general projections about the profitability of all payphones is impossible, without knowing the type of location where the payphone is to be placed and the specific traffic patterns associated with the given location.

52. Universal's advertisements indicate that the business has a potential to earn \$250, 000 per year. Information provided by the above noted Mr. Rombaugh which I verily believe to be true, indicates that depending on location and traffic patterns, on average, it would require approximately 100 phones to generate \$250,000 per annum in gross revenues.
53. In Universal's projections, once gross profits have been calculated, net profits are determined by subtracting 20% from the gross profit figure, which amount Universal indicates is to be paid to the owner of the location where the payphone is located. To that figure, an amount for third party collect credit card calls is added to arrive at a Total Net Profit figure. However, Ruth Perriam has advised me, as set out in paragraph 49, subparagraph XXVI, and I verily believe, that this calculation fails to disclose that payphone owners have to pay additional charges, such as monthly payphone access line charges.
54. Further, a review of the Public Telephone Lease Agreement provided by Universal, a copy of which is attached hereto as exhibit "T", indicates that the Location Provider is in fact entitled to the percentage negotiated on both local and long distance revenues derived from the payphone, and not just revenue from local charges.

#### **EXPERIENCE OF UNIVERSAL PAYPHONES INC. INVESTOR RUTH PERRIAM**

55. Sheila Ruth Perriam, of Arkona, Ontario, has advised me, and I verily believe:
- I That she is a chartered accountant, who went on maternity leave in January of 1999;
  - II That she and her husband Ron Perriam were looking for a new business

opportunity, and saw an advertisement relating to payphones in the business opportunities section of the London Free Press in early 1999;

- III That they called the number listed in the advertisement, and were sent a promotional package from Universal entitled "Millennium 2000";
- IV that this package contained a brochure entitled "Connecting You to Bell and Profits - Millennium 2000", and a video tape entitled "Universal Payphone Systems Inc. Millennium 2000"; an inspirational audiotape, as well as a group of documents clipped together with a cover page entitled "Millennium 2000". The documents included a certificate from the North American Business Opportunities Services, a certificate from the Canadian Business Bureau, a Guaranteed Agreement on Investment" and blank Purchase Agreement, and a certificate for a five year warranty on parts and service;
- V That she and her husband reviewed the package in its entirety and were very impressed with its contents;
- VI That she subsequently contacted Universal Salesman Mike Pivato. That Mr. Pivato marketed this business opportunity as a turnkey operation, and indicated that the projections contained in the promotional package were reasonable;
- VII That she thought that the Canadian Business Bureau and the North American Business Opportunity Services were consumer protection agencies, similar to the Better Business Bureau;
- VIII That she called the phone numbers provided for both the Canadian

Business Bureau and the North American Business Opportunities Services, and was advised by both of those organizations that Universal was a member in good standing and that there were no complaints filed;

- IX That Universal salesperson Mike Pivato insisted that the Perriams call these two organizations before he would let them sign a contract with Universal;
- X That they found the revenue projections very convincing, and thought that with the Guarantee provided, that they could not lose;
- XI That she and her husband decided to invest in eight payphones with Universal, for a total of \$33,600, by a cheque dated March 16, 1999; and that they financed this purchase through their line of credit;
- XII That Mr. Pivato told Ms. Perriam that the money had to be paid up front, advised her to sign the Purchase Agreement and to courier him the cheque;
- XIII That the Perriams paid for their investment by cheque dated March 16, 1999; and, that they financed this purchase through a line of credit with a financial institution;
- XIV That at no time prior to investing did Universal or its representative, Mike Pivato, advise the Perriams that the payphones depicted throughout the promotional materials were not the same as the payphones that Universal was actually selling;
- XV That Universal subsequently contacted the Perriams and invited them to a



training session hosted by Mr. Ali Jafri of Universal, to be held in April, 1999;

- XVI That at the session with Mr. Jaffri, Ms. Perriam learned for the first time that, before she could begin operating her pay telephone business, she would have to become a “Competitive Pay Telephone Service Provider” (“CPTSP”) registered with the CRTC and that she would have to satisfy certain requirements before she could become a CPTSP;
- XVII That at the session with Mr. Jafri, she also learned for the first time that she would have to arrange to get payphone access lines from Bell Canada, that she would have to enter into a contracts for long distance service provision, credit card billing, and operator services;
- XVIII That at this session, she and other attendees were asked to give testimonials;
- XIX That Universal sent out a locator, who provided Ms. Perriam with a list of 15 possible locations, from which they chose eight;
- XX That they were required to have the location providers sign letters of authorization necessary for Bell to install the payphone access lines;
- XXI That when she contacted Bell to get the payphone access lines installed, she learned that she would have to pay Bell a deposit of \$150 per phone line, plus an installation charge of \$102.60 per line, which costs were not disclosed by Universal prior to investing, and which costs Universal refused to pay, and that the Perriams had to pay those charges to get the phones installed;

- XXII That the 8 phones were ultimately installed on July 18, 1999;
- XXIII That it was discovered that the phones that Universal supplied for installation were not yet programmed to charge the proper rate schedules as prescribed by the CRTC;
- XXIV That there have been consistent problems with the phones, many of which are still unresolved. For example, at this point in time, it appears that long distance calls are being made from the phones, but that they are generating no long distance revenues;
- XXV That one location provider has threatened to remove the phone due to the persistent and unresolved problems with the Universal phone on his premises, despite a number of calls made to Universal to resolve the problem;
- XXVI That between July 18, 1999 and September 10, 1999, the payphones have generated revenues of less than \$300, of which approximately \$50 has been paid to their location providers, while their base costs for payphone access lines is \$63.75 per month per phone, for a total of \$510 a month, and therefore the phones are operating at a net loss; and
- XXVII That they anticipate that they will eventually have to collapse their RRSP's in order to pay off the line of credit used to finance the purchase.
56. I have confirmed through a review of other investors interviewed by the Bureau, that despite the investment decision to enter the Universal system based on the representations made, none of these investors are currently operating a profitable pay telephone business.

57. I have further confirmed that two independent class actions are being developed against Universal by groups of unsatisfied Universal investors.

## THE HARM

58. Mr. Robert Hayami, an analyst with the CRTC has stated, and do verily believe, that there are approximately 300 Competitive Pay Telephone Service Providers currently registered with the CRTC, and that he estimates that at least 75% of those registered purchased phones through Universal. Given that the minimum purchase through Universal is \$9,600, this would indicate that investors may have already paid a minimum of \$2,100,000 to Universal since Universal started this promotion in January of this year.

Sworn before me in the City of Hull)  
In the province of Québec this \_\_\_\_ )  
day of September, 1999. )

\_\_\_\_\_  
Larry W. Bryenton

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A Commissioner of Oaths in  
and for Canada