

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF OREGON

3 In re

4 ALPHA TEL-COM, INC.
5 FLORIDA PAY PHONE SYSTEMS, INC.
6 PACIFIC TELCOM, INC.
7 NEW YORK PAY PHONE SYSTEMS, INC.,

8 Debtors In Possession.

Case No. 301-40109-elp11 (Lead Case)

Substantively Consolidated With:
301-40108-elp11
301-40111-elp11
301-40112-elp11

NOTICE OF AUCTION SALE AND HEARING TO APPROVE THE SALE PURSUANT TO AUCTION OF SUBSTANTIALLY ALL THE DEBTORS' PAY TELEPHONE ASSETS AND THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO SECTIONS 363(f), 365(a), AND 365(f) OF THE BANKRUPTCY CODE

SALE HEARING

Date: August 2, 2002
Time: 1:30 p.m.
Address: 1001 S.W. 5th Ave., #700
Portland, Oregon 97204

16
17 **NOTICE IS GIVEN THAT** Alpha Tel-Com, Inc., Florida Pay Phone Systems, Inc., Pacific Telcom, Inc. and New York Pay Phone Systems, Inc., the above-captioned substantively consolidated chapter 11 debtors and debtors in possession (collectively, "Debtors"), by and through Thomas F. Lennon (the "Receiver"), the duly appointed receiver and natural responsible person for the Debtors, pursuant to the Order under 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014 (i) Approving Bidding Procedures And Initial Bids, (ii) Approving the Form and Manner of Notice of (a) Sale Hearing and (b) Cure Amount and Assumption Notices, and (iii) Scheduling Sale Hearing (the "Bid Procedures Order") entered by the United States Bankruptcy Court for the District of Oregon (the "Bankruptcy Court") on July 1, 2002, intend to sell substantially all remaining pay telephones (the "Phones") owned and operated by the Debtors throughout the United States. The Debtors intend to sell the Phones to the highest bidder at the Auction (defined below).

23 **PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS ARE SEEKING A COURT ORDER APPROVING THE SALE OF THE PHONES FREE AND CLEAR OF ALL LIENS, CLAIMS AND OTHER ENCUMBRANCES PURSUANT TO SECTIONS 363(f)(3) AND (5) OF THE BANKRUPTCY CODE. THUS, TO THE EXTENT YOU BELIEVE OR ASSERT THAT THE DEBTORS EITHER DO NOT OWN THE PHONES, HAVE NO RIGHT TO SELL THE PHONES, OR YOU OTHERWISE WISH TO OBJECT TO ANY ASPECT OF THE SALE OF THE PHONES YOU SHALL BOTH: (1) ATTEND THE SALE HEARING AS FURTHER DESCRIBED BELOW; AND (2) FILE A WRITTEN OBJECTION WITH THE UNITED STATES BANKRUPTCY COURT, 1001 S.W. 5TH AVENUE, #700, PORTLAND, OREGON, 97204-3233, IDENTIFYING YOUR INTEREST IN THE PHONES AND STATING WITH PARTICULARITY THE GROUNDS FOR OPPOSITION NOT LATER THAN JULY 31, 2002. THE WRITTEN OBJECTION MUST**

28 Page 1 – NOTICE OF AUCTION SALE AND HEARING TO APPROVE THE SALE

Allen Matkins Leck
Gamble & Mallory LLP
1900 Main Street, Fifth Floor
Irvine, CA 92614-7321
(949) 553-4313

1 **ALSO BE SERVED ON COUNSEL FOR THE DEBTORS SO THAT IT IS RECEIVED**
2 **ON OR BEFORE 5:00 P.M. PACIFIC STANDARD TIME ON JULY 31, 2002. SERVICE**
3 **MAY BY MAIL SENT TO MICHAEL S. GREGER C/O ALLEN MATKINS LECK**
4 **GAMBLE & MALLORY LLP, 1900 MAIN STREET, 5TH FLOOR, IRVINE,**
5 **CALIFORNIA 92614, OR BY FACSIMILE AT (949) 553-8354. FAILURE TO OBJECT**
6 **MAY RESULT IN THE COURT APPROVING THE SALE OF THE PHONES. IN LIEU**
7 **OF PERSONALLY APPEARING AT THE COURT HEARING, YOU MAY ALSO**
8 **ARRANGE TO APPEAR AT THE SALE HEARING BY TELEPHONIC APPEARANCE.**
9 **IN ORDER TO MAKE A TELEPHONIC COURT APPEARANCE AT THE SALE**
10 **HEARING, YOU MUST MAKE ARRANGEMENTS DIRECTLY WITH THE COURT**
11 **CONFERENCE CENTER BY CALLING (866) 582-6878 NO LATER THAN 4:00 P.M. ON**
12 **AUGUST 1, 2002. YOU WILL BE RESPONSIBLE FOR PAYING A FEE TO THE**
13 **COURT CONFERENCE CENTER EQUAL TO \$41.20 FOR THE COST OF THE**
14 **TELEPHONIC APPEARANCE. SUCH FEE MUST BE PAID DIRECTLY TO THE**
15 **COURT CONFERENCE CENTER BY EITHER CREDIT CARD OR CHECK PRIOR TO**
16 **THE SALE HEARING.**

17 **PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS WILL ASK THE**
18 **COURT TO RULE THAT THE SALE OF THE PHONES WILL BE FREE AND CLEAR**
19 **OF ANY LIENS, CLAIMS OR OTHER INTERESTS AND THAT ANY SUCH LIENS,**
20 **CLAIMS OR OTHER INTERESTS WILL BE EXTINGUISHED BY SUCH SALE. THUS,**
21 **IF YOU BELIEVE THAT THE PHONES DO NOT BELONG TO THE DEBTORS OR**
22 **THE DEBTORS HAVE NO RIGHT TO EXTINGUISH YOUR INTEREST, YOU MUST**
23 **FILE A WRITTEN OBJECTION AS OUTLINED ABOVE. TO THE EXTENT THAT**
24 **YOU HAVE INVESTED MONEY WITH THE DEBTORS AND ARE UNCERTAIN**
25 **WHETHER THE DEBTORS ARE SEEKING TO SELL PHONES WHICH YOU**
26 **BELIEVE YOU HAVE ANY INTEREST IN, THE DEBTORS' HAVE PUBLISHED AN**
27 **ALPHABETICAL LISTING OF ALL INVESTORS WHO MAY ALLEGE TO OWN**
28 **SOME OF THE PHONES ON THEIR WEBSITE – WWW.ALPHATEL.COM.COM.**

1 **PLEASE TAKE FURTHER NOTICE** that pursuant to the Bid Procedures Order, the
2 Court has ordered that the Phones be sold by way of a public auction (the "Auction") to be held on
3 July 25, 2002, beginning at 10:00 a.m., at the Debtors' corporate offices located at 1905 N.W.
4 Washington Street in Grants Pass, Oregon. The Phones shall be sold to the highest bidder(s)
5 pursuant to the following terms and conditions:

- 6 • The Debtors shall establish a list of Phones, segregated by state that will be included
7 within the Auction. The Debtors' shall make such lists available, at the requesting
8 party's expense, to potential bidders upon written request sent to William Johnston at
9 (619) 668-6680. Each list of Phones for a particular state shall constitute a route (the
10 "Route"). The assets sold as part of the sale of a Route shall include: (i) the physical
11 public pay telephones, and related equipment, for each pay telephone identified by the
12 Debtors on the list of Phones for such Route; (ii) the contracts or leases with various
13 parties that allow the Debtors to install and operate the Phones for such Route (the
14 "Site Agreements"); (iii) to the extent transferable by the Debtors without cost to the
15 Debtors, the licenses, permits registrations and authorizations used exclusively in the
16 operation of the Phones for the particular Route; and (iv) to the extent transferable by
17 the Debtors without cost to the Debtors, all of the Debtors' interests in and to the
18 telephone numbers (the "ANI's") associated with the Phones that comprise the
19 particular Route. The Debtors shall have no obligation to remain current or otherwise
20 cure any defaults or outstanding balances on phone bills for the ANI's transferred as
21 part of the sale.
- 22 • Each Bid must be broken down by Route and shall be unconditional with the exception
23 of Court approval. To the extent a party desires to purchase more than one Route, such
24 party shall submit separate bids for each Route.

- 1 • All bids must specify the particular Site Agreements the bidder desires the Debtors to
2 assume and assign to the bidder. Unless otherwise expressly specified by the bidder in
3 its bid, the bidder shall be responsible for all cure and compensation costs, whether
4 arising pre or post Closing, associated with the assumption and assignment of Site
5 Agreements. The submission of a bid by a bidder shall constitute the bidder's
6 agreement to assume all obligations under the Site Agreements.
- 7 • All income from the Phones, including coin, dial-around and any other income, shall
8 be prorated between the Debtors and the bidder based upon the Closing of the sale.
- 9 • Bids for the Routes may be received by private written bid prior to or at the Auction.
- 10 • The Routes will be offered to the bidder(s) making the offer(s) that the Debtors deem
11 to be, in their discretion, the highest or best offer.
- 12 • To become a qualified bidder, potential bidders must provide the Debtors at least five
13 (5) business days before the Auction with either certified financial statements or
14 evidence of financial wherewithal, experience and other relevant considerations, and
15 any other information the Debtors may, in their discretion, require to determine the
16 bidder is able to consummate a transaction as contemplated herein.
- 17 • In addition, at or before the Auction, to be qualified to bid upon Routes where the bid
18 exceeds \$100,000 in aggregate value, potential bidders must deliver to the Receiver
19 \$50,000.00 in good funds which amount shall be applied to a successful bid or returned
20 upon written request to the Debtors' counsel within two business days. At the option of
21 an unsuccessful bidder, the funds may be left on deposit with Receiver to keep a bid in
22 place as a backup. If a successful bidder on a sale approved by the Court shall fail to
23 close by the "Closing Date," as defined below, the \$50,000 shall be retained by the
24 Debtors as liquidated damages, and not a penalty, it being agreed by the parties
25 participating in the Auction in advance that actual damages are impossible of precise
26 determination.
- 27 • All offers accepted by the Debtors at the Auction shall be subject to the approval of the
28 Court.
- To the extent a bid involves any contingency, delayed payment, or non-cash
component, the Debtors may, at their option, value such components at any amount,
including zero, and the bidder shall have no rights of appeal whatsoever from such
valuation.
- Successful bidders must, at the conclusion of the Auction or within such extended
period as the Debtors may permit, deliver to the Debtors good funds in an amount
equal to ten percent (10%) of their bid, which will not be refunded, but will be retained
as liquidated damages if the bidder fails to consummate the sale of the Route within the
time period required herein or as extended by agreement of the Debtors. (A deposit to
obtain qualified-bidder status shall be a credit toward the ten percent.)
- At the close of the Auction, the Debtors shall consider Auction results for the Routes.
The Debtors shall seek approval from the Court at the Sale Hearing (defined below) for
the qualified bid or bids, which they believe, represent the highest or best offer or
offers received for the Routes.
- The Debtors reserve the right (a) to determine in their discretion which competing
qualified bids, if any, for the Routes is the highest or otherwise best qualified bid and
(b) to reject any bid which the Debtors believe to be (i) inadequate or insufficient,
(ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy

1 Rules, the Local Bankruptcy Rules, or the terms of the sale order, or (iii) contrary to
2 the best interests of the Debtors and their estates.

- 3 • Any bid that requires submission to the Department of Justice and the Federal Trade
4 Commission under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the
5 "HSR Act") shall, upon the Debtors' request, be accompanied by the bidder's HSR Act
6 application. Upon the request of a party submitting an HSR Act application, the
7 Debtors shall take reasonable steps to ensure the confidentiality of the information.
8
- 9 • If a closing with a successful qualified bidder is not concluded by the Closing Date or
10 within such other time as is further agreed by the Debtors, the Debtors may, without
11 further Court approval or order, conclude the contemplated transactions with the next
12 highest or best qualified bidder in accordance with the terms of the next highest or best
13 qualified bidder's bid, providing such bid has been approved by the Court as a back-up
14 bid.
- 15 • The Phones shall be transferred on an "AS IS," "WHERE IS," and "WITH ALL
16 FAULTS" basis. THE DEBTORS EXPRESSLY DISCLAIM ALL EXPRESS AND
17 IMPLIED WARRANTIES WITH RESPECT TO THE PHONES, INCLUDING,
18 WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND
19 FITNESS FOR A PARTICULAR PURPOSE. UNLESS EXPRESSLY MADE PART
20 OF THE BID, THE DEBTORS SHALL HAVE NO OBLIGATION TO PAY ANY
21 CURE AND COMPENSATION OBLIGATIONS ASSOCIATED WITH THE SITE
22 AGREEMENTS ASSUMED BY A BIDDER AND THE BIDDERS SHALL
23 EXPRESSLY ASSUME ALL SUCH OBLIGATIONS.
- 24 • All of the Debtors' interests in the Routes sold shall be sold free and clear of any, liens,
25 claims or other encumbrances.
- 26 • After the Debtors announce the first acceptable bid on a Route at the Auction, each
27 subsequent bid must exceed the previous bid by not less than \$100,000 for Routes
28 where the bid price exceeds \$2,000,000; by \$50,000 for Routes where the bid price is
between \$1,000,000 and \$2,000,000; by \$25,000 for Routes where the bid price is
between \$500,000 and \$1,000,000; and by \$10,000 for Routes where the bid price is
between \$50,000 and \$500,000. When the bid price is less than \$50,000, the Debtors
will set minimum bids at the Auction(s). The Debtors retain the right to lower any
minimum incremental bids at the Auction(s) in the Debtors' discretion.
- By participating in the Auction(s), each qualified bidder shall be deemed to have
reviewed the Routes and all pertinent documents before bidding and to rely solely on
its review in making any offer.
- If deemed to be the successful bidder for a Route, immediately upon the conclusion of
the Auction scheduled for that particular Route (or by such time as the Debtors may
agree), such qualified bidder shall deliver good funds by certified, bank check, wire or
other acceptable means ("Good Funds") to the Debtors, in an amount equal to ten
percent (10%) of the purchase price of such Route (the "Purchase Price Deposit"). The
amount deposited to become a qualified bidder shall be a credit against the ten percent
(10%) deposit.

- 1 • The Debtors shall have no duties or obligations except those expressly set forth herein
2 and shall not be required to invest the deposits in an interest earning account or to
3 segregate each deposit, but may, in their sole discretion, do so. If there is a dispute
4 between a qualified bidder and the Debtors, the Debtors shall have the right to retain
5 the Purchase Price Deposit, and either party may apply to the Court for a determination
6 of the rights and obligations of the parties. The Court shall retain jurisdiction to
7 resolve all disputes with respect to the Purchase Price Deposit.
- 8 • Each successful bidder shall execute a purchase and sale agreement with the Debtors
9 consistent with the instant terms of the Auction as soon as reasonably possible
10 following their becoming a successful bidder.
- 11 • The closing of the sale of the Debtors' interests in the Routes (the "Closing") shall take
12 place (i) within ten business days following approval by the Court of the sale and the
13 entry of the order approving the assumption, assignment and sale of all Site
14 Agreements and other agreements required for the operation of the Phones in a
15 particular Route to the successful bidder, or (ii) at such later time as may be agreed to
16 by the Debtors in their sole discretion, not to exceed an additional twenty days unless
17 otherwise provided by the Court (the "Closing Date"). With respect to the Closing,
18 time is of the essence against the bidder and to the benefit of the Debtors.
- 19 • At closing, the successful bidder shall pay the balance of the purchase price in Good
20 Funds.
- 21 • All adjustments to be made in connection with the Closing shall be made as of
22 midnight of the date preceding the Closing (the "Adjustment Date"). Any adjustments
23 attributable to escalation or passthrough charges that would be billed after the
24 Adjustment Date shall be made based upon the most recent billing received by the
25 Debtors for such charges. The bidder shall be liable for all obligations from the
26 Adjustment Date forward and shall indemnify the Debtors with respect thereto.
- 27 • The Debtors shall not be required to accept any bid and may elect in their sole
28 discretion to exclude or withdraw for the Auction any or all property or assets.

18 **PLEASE TAKE FURTHER NOTICE** that all interested parties are invited to make bids
19 for any of the Routes in accordance with the Bidding Procedures. The Debtors may adopt rules
20 for bidding at the Auction, that, in the Debtors' business judgment, will better promote the goals of
21 the bidding process and that are not inconsistent with any of the provisions of the Bidding
22 Procedures, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection
23 herewith. Prior to the start of the Auction, the Bidders will inform the Qualified Bidders
24 participating in the Auction of the manner in which the Auction will be conducted. At the
25 conclusion of the Auction, the Debtors shall announce the bid(s) determined to be highest and
26 best, and shall thereafter present such bid(s) to the Court for approval at the Sale Hearing.

23 **PLEASE TAKE FURTHER NOTICE** that the Debtors are seeking an order from the
24 Bankruptcy Court finding that section 1146(c) of the Bankruptcy Code applies to the sale and that
25 the sale of the Phones and Routes will not be subject to any state transfer or similar taxes.

25 **PLEASE TAKE FINAL NOTICE** that the Sale Hearing is scheduled for August 2, 2002
26 at 1:30 p.m. before the Honorable Elizabeth L. Perris, United States Bankruptcy Court Judge,
27 1001 S.W. 5th Avenue #700, Portland, Oregon 97204-3223. At the Sale Hearing, the Debtors will
28 seek entry of an order, among other things, authorizing and approving the sale of the Route(s) to
the Successful Bidder(s) and authorizing the assumption and assignment of certain executory
contracts and unexpired leases.

This notice is qualified in its entirety by the Bidding Procedures Order.

