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RECEIVED

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PUBLIC SERVICE COMMISSION

July 31, 2012

Sharon Thomas
Consultant
Technologies Management, Inc.
2600 Maitland Center Pkway, Suite 300
Maitland, FL 32751

RE: AT&T Communications of the Midwest, Inc. vs. YMax Communications Corporation - Case No. PU-12-433

Dear Ms. Thomas:

I am the Administrative Law Judge designated by the Office of Administrative Hearings to conduct a procedural hearing on the complaint of AT&T against YMax in the North Dakota Public Service Commission. The Public Service Commission would like to schedule the hearing on October 18, 2012. Prior to scheduling of the hearing, it is necessary for me to schedule a prehearing conference. I am hoping that the morning of August 17 will work for all concerned for that purpose.

It is my understanding that you recently filed an Answer to the Public Service Commission (Commission) concerning AT&T's formal complaint before the Commission concerning Case No. PU-12-433. In reviewing the file, I noticed the Answer to Complaint was signed by "Sharon Thomas, Consultant to YMax Communications Corporation." I am unclear whether Ms. Thomas is an attorney licensed to practice law in North Dakota, or has an association with a licensed attorney. Some of the attachments to the Answer to Complaint indicate that in similar matters in another jurisdiction, namely Rhode Island, YMax was represented by an attorney licensed in that jurisdiction.

I wanted to bring your attention to North Dakota Century Code § 27-11-01 and Rule 3 of the North Dakota Supreme Court Admissions to Practice Rules. The North Dakota

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Supreme Court has held that corporations involved in legal proceedings in North Dakota, which include administrative hearings, must be represented by a licensed attorney or an out of state attorney with pro hac vice authorization. See Carlson v. Workforce Safety & Insurance, 2009 ND 87, 765 N.W.2d 691.

Rule 3 provides for pro hac vice admission:

Rule 3. Pro Hac Vice Admission and Registration of Nonresident Attorneys

- A. Pro Hac Vice Admission. Pro hac vice admission is required for all nonresident attorneys admitted and licensed to practice law in another state or the District of Columbia, but not licensed in North Dakota, and who engage in the practice of law in this state by appearing, either in person, by signing pleadings, or by being designated as counsel in actions filed in state courts, **administrative agencies**, or tribunals.
- B. 1. Filing Requirements.
- C. (a) A nonresident attorney may occasionally be permitted to appear as counsel in an action in a trial court of this state or before an administrative agency or tribunal in this state if the attorney first:
- D. (1) designates an associate attorney admitted and licensed to practice law in this state;
(2) files a motion requesting permission to appear and an affidavit in support of the motion with the clerk of the trial court, the hearing officer of the administrative agency matter, or the presiding officer of the tribunal;
(3) files a copy of the motion and affidavit with the State Board of Law Examiners at the same time they are filed with the appropriate individual identified in Section A(1)(a)(2);
(4) remits to the State Board of Law Examiners the fee required for an attorney who has been licensed in this state for five years or more or certifies the attorney has paid the fee to the State Board of Law Examiners during that calendar year; and
(5) obtains permission from the court, hearing officer, or presiding officer.

NDCC 27-11-01 governs unauthorized practice of law, and provides as follows:

27-11-01. Practicing law and serving on courts of record without certificate of admission and without payment of annual license fee prohibited - Penalty.

Except as otherwise provided by state law or supreme court rule, a person may not practice law, act as an attorney or counselor at law in this state, or commence, conduct, or defend in any court of record of this state, any action or proceeding in which the person is not a party concerned, nor may a person be qualified to serve on a court of record unless that person has:

- 1. Secured from the supreme court a certificate of admission to the bar of this state; and

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2. Secured an annual license therefor from the state board of law examiners.

Any person who violates this section is guilty of a class A misdemeanor.

27-11-02. Power to admit vested in the supreme court.

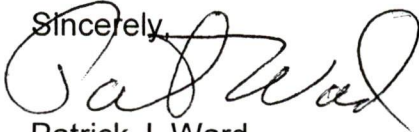
The power to admit persons to practice as attorneys and counselors at law in the courts of this state is vested in the supreme court

Therefore, if it is your intention to retain counsel to appear on YMax's behalf who is not licensed to practice in North Dakota, they must follow the provisions of Rule 3 of the Admission to Practice Rules. If you would like a recent example to refer to, go to the North Dakota Public Service Commission website http://www.psc.nd.gov/database/company_case_list.php, select "public utilities" in the first field in the Case # field, type 10 in the second field, and 657 in the third field. Click on PU-10-657 under total records, then review docket item numbers 54, 55 and 63.

It is my intention to set up a telephone conference through the PSC on approximately August 17, 2012, in order to establish a workable schedule to facilitate discovery and preparation and briefing in advance of the hearing on the complaint. I am tentatively planning the prehearing conference for 9:30 a.m. on August 17, 2012. Each party may appear by telephone represented by counsel. It should take less than an hour. If any of the participants have a major conflict with the above time and date, I will move the prehearing telephone conference to the following week.

If you have any questions, please let me know.

Sincerely,



Patrick J. Ward

c: Tom Kelsch
Mark Gruman

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