

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-) Nos. 05-0027-01/02-CR-W-HFS
)
RICHARD T. MARTINO and)
DANIEL D. MARTINO,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
PLEA HEARING

BE IT REMEMBERED, that on this 23rd day of
February, 2005, the above-entitled matter comes on
for hearing before the Honorable Howard F. Sachs,
Judge of Division No. 6 of the United States District
Court for the Western District of Missouri, sitting
in Kansas City without a jury.

A P P E A R A N C E S:

The Government appears by and through its
attorneys of record, Mr. Paul Becker and Mr. Bruce
Clark, Assistant United States Attorneys, Federal
Courthouse, Kansas City, Missouri.

The Defendant, Richard T. Martino, appears
in person and with his counsel of record, Mr. Mark J.
Sachse, 748 Ann Avenue, Kansas City, Missouri; and

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bc

Exhibit 7

1 Mr. Gustave H. Newman, 950 Third Avenue, 32nd Floor,
2 New York, New York 10022.

3 The Defendant, Daniel D. Martino, appears
4 in person and with his counsel of record, Mr. Mark J.
5 Sachse, 748 Ann Avenue, Kansas City, Kansas 66101;
6 and Mr. Alan S. Futerfas, Attorney-at-Law, 260
7 Madison Avenue, 22nd Floor, New York, New York 10016.

8
9 (WHEREUPON, the following proceedings are
10 had and entered of record.)

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS ARE HAD IN
12 CHAMBERS OUT OF THE PRESENCE OF THE DEFENDANTS.)

13 THE COURT: I thought we ought to have a
14 preliminary visit just to get a little better idea
15 where we are going. I take it you are going to be
16 taking the -- maybe you are the only attorney for
17 Richard Martino.

18 MR. SACHSE: No, Judge, I think our pro hac
19 vic motions sought to have Gustave Newman on behalf
20 of Richard Martino. I am only acting as local
21 counsel. In addition, Judge, since the matter has
22 been resolved by a plea, the defendants are going to
23 waive any conflict, and I am going to enter my
24 appearance as local counsel for Daniel Martino as
25 well. So, my only role is as local counsel.

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1 THE COURT: So, Mr. Newman will be lead
2 counsel for Richard Martino; is that correct?

3 MR. NEWMAN: That is correct, sir.

4 THE COURT: And how about Daniel?

5 MR. FUTERFAS: Your Honor, Alan Futerfas
6 for Daniel Martino. I will be appearing for him in
7 this matter.

8 THE COURT: On the description of the
9 offense, I think I have a fairly good general idea of
10 what is involved, but I would think I probably should
11 call on you for a description of the counts of the
12 Indictment that we are dealing with, maybe Counts One
13 and Two, and then the forfeiture.

14 MR. BECKER: Yes, sir.

15 THE COURT: Because this case has some
16 relationship apparently with the Matzdorff
17 prosecution that is before Judge Wright; is that
18 correct?

19 MR. BECKER: Yes, sir.

20 THE COURT: Well, I will proceed today. I
21 have not talked to Judge Wright as to his thoughts on
22 who the sentencing judge should be. So it is
23 possible that Judge Wright would be the sentencing
24 judge if we decide there was sufficient reason
25 because of his having the Matzdorff case for him to

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1 take the sentencing role here.

2 It did seem to me that counsel ought to be
3 sure that we would have discussed with the defendants
4 the issue of concurrent and consecutive sentencing,
5 because while I note a provision in the Plea
6 Agreement for the Government's recommendation of
7 concurrent sentencing, I would understand that that
8 is only a recommendation and that the sentencing
9 judge could easily decide that consecutive sentences
10 should be used.

11 I am not predicting that, but the
12 possibility is something that I think is important
13 that the defendants would understand, and my reason
14 for raising the issue is that I am not familiar with
15 all the publicity that has occurred here and
16 elsewhere.

17 But since the case in New York, or is it
18 Brooklyn, has been referred to in the newspapers as
19 being possibly the largest consumer fraud that has
20 come down the pike, I would suppose that the
21 sentencing judge would at least consider whether, if
22 I understand the maximum here, that that is the total
23 punishment that should be imposed considering this
24 case also.

25 I think for the sake of the sentencing

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1 judge, that we ought to have some assurance that the
2 defendants don't later claim surprise or
3 misinformation, or whatever, about the possibilities
4 on sentencing.

5 I do understand the Plea Agreement on that
6 point, do I?

7 MR. BECKER: Yes, sir. I think, I am sure
8 counsel will state that there has been extensive
9 discussion about the possibilities of either the
10 judges of this court or the judges in the Eastern
11 District of New York imposing a sentencing
12 consecutive to one another.

13 It has been a matter of discussion between
14 counsel about which sentencing would go first or, in
15 fact, today Mr. Newman requested and I added a
16 provision to the Plea Agreement, for whatever it is
17 worth, that the defendant, Richard Martino, will be
18 able to appeal a decision by the Court to impose a
19 sentence consecutive to that imposed in the Eastern
20 District of New York.

21 Again, we both understand the value of
22 that. But it is there. I think it shows that all
23 parties, particularly the defendants, are focused on
24 that issue and we have discussed it.

25 THE COURT: Are aware of it?

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1 MR. BECKER: Yes, Your Honor.

2 THE COURT: And the defendants want to
3 reserve the right to say it is an unreasonable
4 sentence if it was to be consecutive. I have not
5 looked at the Guidelines. The Guidelines deal with
6 this issue but, of course, we are not entirely bound
7 by the Guidelines at this point.

8 MR. NEWMAN: I can indicate, for whatever
9 assurance it provides the same problem arose as far
10 as Richard Martino was concerned in the Eastern
11 District of New York where he pled to two counts,
12 Your Honor.

13 He was also aware of the fact that the
14 recommendation, the recommendation as such,
15 recognizing that the power the Court has in
16 connection with such recommendation. It doesn't
17 obviate your concern, but I can assure you that has
18 been discussed with him.

19 THE COURT: Okay. As a matter of
20 curiosity, I am not quite clear what I am likely to
21 hear as to what Daniel Martino did in furthering the
22 conspiracy that is alleged, other than I think there
23 is an allegation about serving as an officer of one
24 of the entities involved.

25 What am I likely to hear when we have the

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1 factual disclosures?

2 MR. FUTERFAS: Your Honor, Mr. Daniel
3 Martino will fully allocute to the defense charged in
4 Count One. In his allocution, he will state that he
5 spoke with individuals in 1998 and reviewed financial
6 reports, financial data, and that the purpose of such
7 review and the meetings that he had were a part of
8 this design to inflate the invoices and receive more
9 money from these funds as alleged in Count One.

10 THE COURT: In addition to knowing about
11 it, he served as an officer of one of the entities?

12 MR. FUTERFAS: He was president of a
13 separate financial company called FSE that was based
14 in New York, but in that capacity and in the capacity
15 as being involved in having a few shares, having some
16 shares in CassTel, he reviewed these financial
17 reports. He met with individuals who were involved
18 in running CassTel at that time.

19 So, I believe, and I think the Government
20 agrees with me, that he will state a full and
21 satisfactory allocution to Count One.

22 MR. BECKER: And FSE, the financial end of
23 this other company, Overland Data, the financials
24 were handled at Overland Data. When the false
25 invoices went to Overland Data, FSE paid those false

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1 invoices. Then when these false invoices went from
2 the holding company of CassTel, LEC to Overland, FSE
3 handled those finances as well. Now, Mr. Daniel
4 Martino physically didn't do it himself. He had
5 people that did that.

6 THE COURT: It was a company that he was in
7 charge of?

8 MR. BECKER: Yes.

9 MR. FUTERFAS: He was president of that
10 company.

11 THE COURT: I was a little curious as to
12 whether the Indictment is accurately written up on
13 Page 6, and there is a five. It seemed a little out
14 of keeping of what I understood the rest of the plan
15 was to have CassTel supposedly offering consulting
16 and management, and then charging ODC.

17 The general pattern, except for that, seems
18 to have been that CassTel was paying funds and that
19 then the expenses were being reimbursed through
20 fraudulent representations.

21 Is this particular thing a turnaround where
22 CassTel is being paid?

23 MR. BECKER: Correct. Not only do they get
24 to put the expenses on their books and get reimbursed
25 by the various funds, but they get the money back.

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1 THE COURT: Okay. I see.

2 MR. BECKER: So, the money went to ODC and
3 then it came back from ODC. But the expenses --

4 THE COURT: Then the expenses were also
5 reimbursed by the Fed, if I can call them the federal
6 entities?

7 MR. BECKER: Yes, sir.

8 THE COURT: So they were getting it two
9 ways?

10 MR. BECKER: Well, they were getting their
11 money back and getting the benefit of an increased
12 expenses on their reports to the various funds.

13 THE COURT: Okay. My practice generally is
14 to rely on the lawyers to ask questions that would
15 establish the factual basis, and I take it that
16 probably the defense counsel are prepared to handle
17 it in that fashion and the rest of us can chime in.

18 That is if I have some question maybe for
19 clarification, I would ask questions, and I would
20 generally invite Government counsel to ask some
21 further questions if I have got some concern about
22 the adequacy for the record.

23 MR. BECKER: Defense counsel have prepared
24 and I have reviewed allocution statements by the
25 defendants that will make out a factual basis for the

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1 plea.

2 THE COURT: Okay. And I would suppose that
3 the natural order would be -- well, I will take them
4 both together for things that can be described for
5 both of them, but as far as establishing the factual
6 basis, I suppose I would go to Richard first and then
7 Daniel, unless there is some reason to think that I
8 should switch the order.

9 All right. I think I have what I need
10 unless counsel want to ask me something or bring up
11 some other procedural issue.

12 MR. NEWMAN: There is just one particular
13 issue, Your Honor, and we can do it as well here, if
14 you don't mind. That is in connection with the
15 forfeiture. There are three Trusts that are referred
16 to. That is the Que Trust, the Yankee Trust and the
17 Aly Trust, and they are merged in the Indictment -- I
18 am sorry.

19 They are merged in the Plea Agreement, and
20 my client is relinquishing his right as Trustee,
21 which he has already done. But we have not provided
22 the documentation that Mr. Becker required. We are
23 leaving it in the Plea Agreement with the
24 understanding that when we provide the documentation
25 those items will be taken out of the Plea Agreement.

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1 MR. BECKER: Those particular Trusts that
2 Richard Martino was listed as a Trustee for holds
3 shares of units of LEC of Casstel, and we have
4 provided in the Plea Agreement that other Trusts, and
5 those Trusts as well, be subject to new Trustees.

6 Mr. Newman's office has provided some
7 documentation that those particular Trusts were not
8 for the benefit of Richard Martino's children but
9 were for the benefit of another individual, Sef
10 Mustafa, another defendant in Brooklyn.

11 In any event, the agreement between the
12 parties is that Mr. Richard Martino resign as
13 Trustee, and I believe Ms Mustafa agrees to be the
14 Trustee for those particular three Trusts, that they
15 would not be subject to the Trustee Agreement that is
16 set forth in the Plea Agreement.

17 THE COURT: Well, I don't think I probably
18 need to go through all this.

19 MR. NEWMAN: No.

20 THE COURT: But you can add it for the
21 record.

22 MR. BECKER: We wanted to put that on the
23 record.

24 THE COURT: Okay. I guess we are ready to
25 start the proceedings.

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1 (WHEREUPON, THE FOLLOWING PROCEEDINGS ARE HAD IN THE
2 COURTROOM IN THE PRESENCE OF THE DEFENDANTS.)

3 THE COURT: Court is in session for a
4 reported change of plea in the case of the United
5 States of America against Richard T. Martino and
6 Daniel D. Martino. Both defendants, I understand,
7 are in the courtroom.

8 I note Mr. Becker representing the United
9 States, and I understand that Mr. Newman will be lead
10 counsel as far as Richard Martino is concerned, and
11 Mr. Futerfas as counsel for Daniel Martino. The
12 proceeding may be somewhat longer, more involved than
13 the ordinary change of plea.

14 It seems to me that I need not call counsel
15 and the defendants up to the podium at this time, but
16 I would address the two Martino defendants and advise
17 that these proceedings are very important to their
18 rights and, therefore, they should listen carefully
19 to what is said.

20 If there is something that they may not
21 understand or that may seem different from what their
22 attorneys have said, then they should indicate that
23 they want me to stop, and there would be an
24 opportunity to confer with counsel.

25 The first procedural requirement is that I

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1 review with the defendants the nature of the charges
2 and the maximum punishment under the law. The
3 charges, particularly Count One is quite long and
4 involved, and I am going to call upon Mr. Becker to
5 help me out in describing these charges.

6 I understand that under the Plea Agreement
7 we are dealing with Count One and Count Two, as well
8 as the forfeiture count, which is Count Eleven.
9 Count One is described as a conspiracy charge, and it
10 might be best, I think at this time, to have Mr.
11 Becker give his description of that charge.

12 MR. BECKER: Thank you, Judge. Count One
13 alleges a conspiracy in violation of Title 18, United
14 States Code, Section 371. The maximum possible
15 penalty is not more than five years imprisonment, a
16 fine of \$250,000, three years supervised release, and
17 a \$100 special penalty assessment.

18 The Indictment alleges that a conspiracy to
19 violate the laws of the United States, that is mail
20 fraud and wire fraud, and making false statements to
21 a federal agency pursuant to 18 U.S.C., Sections
22 1341, 1343 and 1001.

23 The scheme involved, the ownership of the
24 Cass County Telephone Company, which is located in
25 Peculiar, Missouri. The Cass County Telephone

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1 Company was owned by a holding company called the
2 Local Exchange Company, LLC, also known as LEC.

3 Richard Martino and Daniel Martino were
4 shareholders in LEC, along with other individuals,
5 principally Kenneth Matzdorff, who was the president
6 or chief operating officer of the Cass County
7 Telephone Company.

8 As a rural telephone company, the Cass
9 County Telephone Company was eligible for subsidies
10 from the Universal Service Fund. The Universal
11 Service Fund had various programs, the principal one
12 being something called a high cost loop, which
13 subsidizes rural telephone companies for the
14 increased cost that they bear to connect people in
15 rural areas with a modern telephone system.

16 The Universal Service Fund is administered
17 by an agency known as the Universal Service
18 Administrative Company, USAC. Every July, Cass
19 County Telephone Company submits to USAC, through
20 another agency actually, a statement of their prior
21 year's expenses that are qualified for reimbursement
22 under USAC.

23 In January, 1998, these two defendants and
24 others, including Mr. Matzdorff and others, agreed
25 that Cass County Telephone would create false and

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1 fictitious invoices to another company that was
2 controlled by these defendants, the Overland Data
3 Company.

4 Overland Data would send false and
5 fictitious invoices to the Cass County Telephone
6 Company for services that were not rendered. Cass
7 County Telephone Company would pay these invoices to
8 the Overland Data Company.

9 Those expenses thereafter would be
10 submitted to the Universal Service Fund for
11 reimbursement pursuant to a formula that they
12 reimbursed certain costs. As part of this scheme,
13 the Overland Data Company then agreed to pay on false
14 invoices from, first, Cass County Telephone Company
15 and then LEC.

16 You can see, Judge, the Indictment alleges
17 that the money went from Cass County Telephone
18 Company to the Overland Data Company and then back to
19 the holding company of Cass County Tel. That is LEC.

20 Thereafter, the expenses were submitted to
21 USAC for reimbursement, and over the time period of
22 the Indictment the total was determined increased
23 subsidies to these false expenses was approximately
24 \$3.5 million.

25 The Indictment kind of also alleges that it

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1 was a scheme to defraud another program, that is
2 NECA, the National Exchange Carriers Association,
3 which administers the transfer of funds between
4 telephone companies in America.

5 These companies share wires, obviously, to
6 transfer funds from one place to another, and under
7 the cost formula the Cass County Telephone Company
8 was eligible for subsidies for their system. The
9 false and fictitious invoices to NECA resulted in
10 approximately \$5.4 million in excess funds from NECA
11 to CassTel from 1998 through 2003.

12 The overt act in Count One alleges certain
13 mailings and/or wire transfers that were made, the
14 mailings being from the Cass County Telephone
15 Company, either to USAC or NECA, and the wire
16 transfers being from the disbursing bank, Mellon Bank
17 in Pennsylvania, to the Cass County Telephone
18 Company.

19 Count Two of the Indictment, to which
20 defendants have agreed to enter a plea of guilty,
21 sets forth in the same scheme to defraud and that the
22 mailing alleged is a mailing that went via Federal
23 Express from Cass County Telephone Company in
24 Peculiar, Missouri, to NECA in St. Louis, Missouri,
25 on or about July 31, 2001.

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1 It was the year 2000 Universal Service Fund
2 submission, which contained the false and fictitious
3 expenses of that work previously outlined. The
4 penalty for Count Two is not more than five years
5 imprisonment, a \$250,000 fine, and three years of
6 supervised release, plus a \$100 special penalty
7 assessment.

8 The forfeiture alleges in Count Eleven
9 seeks the forfeiture of the funds illegally gained by
10 the defendants in the scheme and that being \$8.9
11 million.

12 THE COURT: All right. Count One that has
13 been described as a conspiracy charge, and the
14 statutes provide that if two or more persons conspire
15 to commit an offense against the United States or an
16 agency thereof, and do any act to effect the object
17 of the conspiracy, that there may be imprisonment up
18 to five years or a fine, or both.

19 Count Two is the fraud, a specific fraud
20 charge in violation of the statute that provides that
21 if a person has a scheme to defraud or to obtain
22 money by false pretenses or representations, and for
23 the purpose of executing the scheme, causes delivery
24 by private or commercial interstate carrier or by
25 mail, for that matter, that that also would be a

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1 violation of law.

2 Would counsel clarify a point for me on the
3 statute? The violation of 1341 would appear to have
4 a 20-year maximum period of imprisonment under the
5 section I am looking at, but in the Indictment form
6 there is a five-year maximum recited.

7 Have I missed something on this?

8 MR. BECKER: Judge, there was an amendment
9 to the mail fraud and wire fraud statute, I believe,
10 that was effective April, 2002. So, those acts
11 occurring before that time were subject to the five-
12 year maximum penalty.

13 THE COURT: All right. I am looking at
14 that. Okay. That is an adequate explanation that we
15 are dealing with a five-year maximum punishment under
16 each of the charges.

17 I advise that the punishment can be imposed
18 either concurrently or consecutively, so that the
19 sentencing judge could use two five-year sentences,
20 one after another, or could impose those sentences to
21 run concurrently so that the five-year sentences
22 would be served at the same time.

23 I also advise, because I am aware of the
24 prosecution in Brooklyn, that the Court would have
25 authority at sentencing, I think we will have a

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1 reference to this in the Plea Agreement, the Court
2 would have the authority at sentencing to use
3 consecutive sentencing or concurrent sentencing with
4 the sentence that would be imposed in Federal Court
5 in the case pending in the State of New York.

6 Similarly, I advise that the \$250,000 fine,
7 which applies on Count One and Count Two, could be
8 imposed as a total \$500,000 fine, or that the Court
9 would have authority to limit it to \$250,000.

10 There has been reference to the period of
11 supervised release not to exceed three years after
12 imprisonment, and I advise that that means that after
13 imprisonment there would be a period of supervision
14 by a federal probation officer.

15 One purpose of the supervision would be to
16 assure that certain conditions of release have been
17 complied with, and the conditions of release are
18 varied from case to case that are established at
19 sentencing.

20 Typically, they would include or invariably
21 they would include no further law violations. If it
22 was reported to the Court that there was a violation
23 of condition of release during the period of post-
24 imprisonment supervision, then the Court would have
25 to determine if the violation had occurred and, if

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1 so, as punishment for the violation there could be an
2 additional period of imprisonment. The second period
3 of imprisonment would be up to two years.

4 I also advise that there is no credit given
5 for complying with conditions of release, which means
6 that the same punishment would be imposed for a
7 violation if the violation occurred after a good deal
8 of supervision as would be imposed if the violation
9 occurred shortly after supervision began.

10 I also advise that at sentencing the Court
11 would have to determine whether to impose the cost of
12 imprisonment and the cost of supervision after
13 imprisonment. That depends largely on the Court's
14 view of reasonable ability to pay.

15 I think that the \$100 mandatory special
16 assessment on each count has already been referred
17 to. I also advise to the extent that there is a
18 money loss that has not been repaid, that is a money
19 loss to a victim, that an order of restitution would
20 be required as part of the sentencing process.

21 I will inquire of Richard Martino if he
22 understands the nature of the charges against him and
23 the maximum punishment under the law.

24 DEFENDANT RICHARD MARTINO: Yes, I do, Your
25 Honor.

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1 THE COURT: I would ask Daniel Martino if
2 he understands the charges against him and the
3 maximum punishment under the law.

4 DEFENDANT DANIEL MARTINO: Yes, I do, Your
5 Honor.

6 THE COURT: I need to review various
7 procedural rights. You both are represented by
8 counsel and you have a right to be represented by an
9 attorney at all stages of the proceedings. If
10 necessary, by reason of poverty, counsel is
11 appointed.

12 I advise that there is a right to plead not
13 guilty to the charges and to persist in that plea.
14 In the event there is persistence in the not guilty
15 plea, then there would be a trial to determine if the
16 Government could prove its charges.

17 It would be a jury trial in which there
18 would be, of course, the right to counsel. There
19 would be the right to hear witnesses against you in
20 open court. There would be the right to have the
21 witnesses cross-examined by your attorneys.

22 There would have a right at trial not to be
23 compelled to incriminate yourself. You would have
24 the privilege against self-incrimination. That means
25 that there would no requirement of testimony from the

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1 defendant at the trial, and there could be no comment
2 made to the jury if a defendant chose not to testify.
3 So, the jury could not conclude there was guilt
4 simply because the defendant does not testify.

5 If a defendant wishes to testify, of
6 course, the defendant can be a witness and can also
7 call witnesses to testify on his behalf. At a trial,
8 there would be a presumption of innocence, which
9 means that the defendants would not have to prove
10 innocence.

11 It would be the responsibility of the
12 prosecution, the Government, to establish by sound
13 legal evidence that there was guilt, and the
14 Government would be required to satisfy the jury of
15 guilt beyond a reasonable doubt before there could be
16 a conviction.

17 There would be 12 members of the jury and
18 all 12 would have to agree on guilt beyond a
19 reasonable doubt before there could be a conviction,
20 and the decision would have to be unanimous. If the
21 jury was unable to reach a unanimous agreement, there
22 could be another trial but there could not be a
23 conviction without all 12 jurors agreeing.

24 In the event of a trial and a conviction,
25 there would be the right to appeal to another Court,

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1 and a panel of three judges would be available to
2 review the proceedings to be sure there had been
3 essentially a fair trial and enough evidence at the
4 trial to allow a verdict of guilty.

5 I must inform you that if you plead guilty
6 to the charges that there would be no trial, and by
7 that plea you would be giving up the trial rights
8 that I have reviewed and also the right to appeal
9 from the finding of guilt.

10 Richard Martino, do you understand the
11 procedural rights I have reviewed with you?

12 DEFENDANT RICHARD MARTINO: Yes, I do, Your
13 Honor.

14 THE COURT: And, Daniel Martino, do you
15 understand the procedural rights?

16 DEFENDANT DANIEL MARTINO: Yes, I do, Your
17 Honor.

18 THE COURT: I next need to advise that if
19 guilty pleas are tendered, I have to find more than
20 that a defendant says he wants to plead guilty. I
21 have to find that there is a factual basis for
22 acceptance of the plea.

23 In order to do that, the usual procedure is
24 to have questions asked of the defendants about the
25 offense. Because of what I have said about the

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1 privilege against self-incrimination, you should both
2 understand that there is no legal duty to answer the
3 questions about the offense, but you can make what
4 amounts to a voluntary confession in the courtroom if
5 you choose to do so.

6 You will each be under oath, sworn to tell
7 the truth at that point in the proceedings. I advise
8 that your answers could be used in a prosecution for
9 perjury for making a false statement if the
10 Government would conclude there had been some false
11 statement in these proceedings.

12 Richard Martino, do you understand the
13 questioning process?

14 DEFENDANT RICHARD MARTINO: Yes, I do.

15 THE COURT: And Daniel Martino, do you
16 understand the questioning process?

17 DEFENDANT DANIEL MARTINO: Yes, I do, Your
18 Honor.

19 THE COURT: I understand there are Plea
20 Agreements in both cases and I have been supplied
21 with signed copies, which I will return to the Clerk
22 for her records.

23 We need to have a review of the Plea
24 Agreements to make sure that the defendants
25 understand what has been agreed to, and we have got

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1 some 26 pages of documents here, counting both
2 Agreements.

3 We don't have to take the time to review
4 everything, but I would ask that the principal points
5 in the Plea Agreements should be described by
6 counsel, and they can be described by Mr. Becker or
7 by defense counsel as you choose.

8 Mr. Becker.

9 MR. BECKER: Thank you, Judge. The Plea
10 Agreements are identical. There are some small
11 points that I will mention as we move along. Richard
12 Martino agrees to plead guilty to Counts One and Two
13 of the Indictment, charging conspiracy and mail
14 fraud, and Daniel Martino agrees to plead guilty to
15 Count One of the Indictment, conspiracy.

16 Both defendants agree to plead guilty to
17 Count Eleven, the forfeiture allegations in the
18 Indictment. The Agreement is between the United
19 States Attorney's Office for the Western District of
20 Missouri, the Organized Crime and Racketeering
21 Section of the Department of Justice, and each
22 individual defendant and their attorneys.

23 The defendants are prepared to make a
24 factual basis for their plea and the Plea Agreement
25 sets forth the allegations in the Indictment are to

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1 be true and will support the forfeiture and the
2 allegations in the Indictment.

3 THE COURT: Let me interrupt to say that
4 anyone interested in more exact understanding of what
5 is charged and what is being admitted is free to
6 study the Indictments rather than to just rely on
7 what they think they have heard in the courtroom.

8 Go ahead.

9 MR. BECKER: The Plea Agreements set forth
10 the maximum possible penalties for each of the counts
11 of conviction, and thereafter sets forth the
12 sentencing provisions that the Court will now apply
13 according to the Booker decision.

14 The Government agrees that based upon the
15 plea guilty, the Government will move as to Mr.
16 Daniel Martino to dismiss Counts Two through Ten of
17 the Indictment at the time of sentencing, and for Mr.
18 Richard Martino move to dismiss Counts Three through
19 Ten of the Indictment.

20 Further, the United States Attorney's
21 Office agrees not to bring any further charges in
22 this district arising out of the conduct alleged in
23 the Indictment. Also, the United States Attorney's
24 Office for the Western District of Missouri agrees to
25 recommend to the Court that a sentence in this case

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1 shall run concurrently with any sentence imposed in
2 the Eastern District of New York, in the case against
3 these defendants entitled United States versus
4 Salvatore LoCascio, Criminal Docket No. 03-304.

5 THE COURT: Again, I think I should
6 interrupt to emphasize that this is only a
7 recommendation by the United States Attorney and,
8 therefore, the Court is free to use the sentencing
9 authority that I referred to earlier.

10 MR. BECKER: The Plea Agreement provides
11 the defendant will comply with the forfeiture
12 provision contained in this Agreement, and the United
13 States would recommend to the Court that no fine be
14 imposed.

15 Further, if the defendants fully comply
16 with the forfeiture provisions of the procedure, that
17 the United States Attorney for the Western District
18 of Missouri agrees to recommend to the Department of
19 Justice that the forfeited currency be remitted to
20 the victims, the Universal Service Administrative
21 Company and the National Exchange Carriers
22 Association.

23 Judge, that is the procedure by which the
24 victims have an opportunity to get the funds that are
25 forfeited. Each has prepared petitions for remission

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1 and we have been in contact with counsel for both of
2 those entities, and they are fully prepared to go
3 forward with that procedure.

4 There is a paragraph about the preparation
5 of the Presentence Report will be done by the
6 Probation Department. There is the provision that
7 the defendant will not be able to withdraw his plea
8 if he is not happy with the sentence imposed by the
9 Court.

10 Then there is the agreement between the
11 parties on what we would believe to be the applicable
12 Guidelines, the applicable Guideline Manual being
13 that of November, 2000, and then an estimate of the
14 Guideline range with certain enhancements for the
15 dollar amount, more than minimal planning and
16 particularly --

17 THE COURT: The dollar amount is apparently
18 agreed to be in excess of \$5 million in both?

19 MR. BECKER: Yes, sir. The particular
20 allegation alleged \$8.9 million. The Guideline
21 cutoff at that time was more than \$5 million, and
22 with the next level being more than \$10 million.

23 THE COURT: All right.

24 MR. BECKER: There is an estimate of the
25 Guideline for each defendant based upon the

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1 particular factors to be applied. For Richard
2 Martino, that would be a Level 23, Criminal History
3 Category I, and a 46 to 57-month sentence, and for
4 Mr. Daniel Martino, an Offense Level 22, a Criminal
5 History Category I, with a resulting Guideline range
6 of 41 to 51 months. There are several paragraphs
7 relating to sentence and stating that this does not
8 bind the Court or the Probation Department.

9 The Plea Agreement states there are no
10 other agreements or any other Guideline provisions
11 other than those set forth in Paragraph 10.

12 Paragraph 13 sets forth the forfeiture
13 provisions. Mr. Richard Martino agrees to forfeit to
14 the United State specific property, that is, \$5.9
15 million in United States currency, and Mr. Daniel
16 Martino agrees to forfeit to the United States
17 specific property, that is, \$500,000 in United States
18 currency.

19 The numbers frankly were arrived at in
20 conjunction with the prosecution in the Eastern
21 District of New York, recognizing that the allegation
22 here is of a total loss of \$8.9 million. Mr.
23 Matzdorff has agreed to forfeit to the United States
24 \$2.5 million, leaving \$6.4 million to be agreed upon
25 for forfeiture by these defendants, which would

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1 represent the balance of that amount, \$6.4 million.

2 Both defendants agree that they will use
3 their best effort to divest themselves of their
4 holdings in LEC, LLC, also known as the Local
5 Exchange Company. For each defendant, as we spoke
6 earlier, there are certain Trusts that hold some of
7 these LEC units for Mr. Richard Martino, those Trusts
8 being the Yankee Irrevocable Trust, the Aly
9 Irrevocable Trust, and the Que Irrevocable Trust, and
10 some unit shares in a company called Qualitel.

11 Mr. Newman and I have discussed those
12 particular Trusts. As we said in chambers, counsel
13 has indicated and provided some documentation that
14 those Trusts are not for the benefit of Richard
15 Martino's children, but for another person's
16 children, and should the trusteeship of those Trusts
17 be transferred, I can imagine by the time of
18 sentencing that will be accomplished, that those
19 particular Trusts, that is the Que Trust, the Aly
20 Trust and the Yankee Trust would not be subject to
21 the filing provision relating to other Trusts.

22 The other Trusts are set forth in Daniel
23 Martino's Plea Agreement and those Trusts are for the
24 benefit of Richard Martino's children, and they are
25 called the Dee Irrevocable Trust, the Jan Irrevocable

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1 Trust and the May Irrevocable Trust. Those Trusts
2 will be subject to the appointment of two Trustees.

3 The Plea Agreement provides that the United
4 States Attorney's Office will designate one Trustee
5 and the defendant would designate another Trustee,
6 both parties having the opportunity to approve of the
7 other's Trustees.

8 Those Trustees will manage those Trusts
9 until such time as they divested themselves of the
10 interest in LEC, and then thereafter the Trustees'
11 role would dissolve, I guess, revert to whatever name
12 the defendants would name as the Trustee of those
13 Trusts.

14 There is a recitation of the waiver of
15 constitutional rights that the Court has reviewed.
16 Paragraph 17 relates to the waiver of appellate
17 rights. Both defendants waive their right to appeal
18 a finding of guilt upon the entry of a plea of
19 guilty.

20 The Defendant, Daniel Martino, waives his
21 right to appeal a sentence, other than a sentence
22 that is in excess of the statutory maximum or even a
23 sentence that is contrary to law. Richard Martino
24 has reserved the right to appeal the decision by the
25 Court to impose a sentence consecutively on any

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1 sentence that the defendant may receive in the United
2 States versus Richard Martino, No. 03-304, in the
3 Eastern District of New York.

4 The defendants waive their rights under the
5 Freedom of Information Act, and they waive their
6 right to make a claim under the Hyde Amendment for
7 attorney's fees. That is a recitation of the
8 significant consequence for a breach of the Plea
9 Agreement, and that the defendants have acknowledged
10 that each of them has read the Plea Agreement,
11 reviewed it with counsel, and there is a signature of
12 the attorneys for the United States as well as the
13 defendants and their attorneys.

14 THE COURT: Mr. Newman, on behalf of
15 Richard Martino, is there anything that you would
16 want to disagree with on the description of the Plea
17 Agreement, or is there something of importance that
18 you think should be mentioned?

19 MR. NEWMAN: No, sir.

20 THE COURT: And, Mr. Futerfas, on behalf of
21 Daniel Martino, I will ask the same question. Is
22 there anything you disagree with or that you think is
23 important that should be added?

24 MR. FUTERFAS: No, Your Honor.

25 THE COURT: Richard Martino, I take it that

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1 you have reviewed the Agreement with your attorney
2 before signing it and also you have heard the
3 description in the courtroom. Is there anything that
4 you believe you don't understand after that sort of
5 review?

6 DEFENDANT RICHARD MARTINO: No, Your Honor.

7 THE COURT: And, Daniel Martino, having
8 presumably reviewed it before signing it, and also
9 having heard the description, are you satisfied that
10 you do understand the Plea Agreement?

11 DEFENDANT DANIEL MARTINO: Yes, I do
12 understand it, Your Honor.

13 THE COURT: I would ask the defense counsel
14 to state the reasons for recommending the Agreements
15 to your clients.

16 Mr. Newman.

17 MR. NEWMAN: If Your Honor please, after
18 considering the evidence and the situation, and the
19 evidence against my client, and the fact that in a
20 trial what chances might or might not be in
21 connection with this, and after a long consideration
22 of this and a matter pending in the Eastern District
23 of New York, we came to the conclusion that the best
24 interest of the client would be protected by entering
25 into this Agreement and putting it behind him and

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1 allowing him to go on with the balance of his young
2 life.

3 THE COURT: All right. And, Mr. Futerfas,
4 can you state the reasons that you may have had for
5 recommending the Agreement to Daniel Martino?

6 MR. FUTERFAS: Your Honor, for the same
7 reasons that are articulated by Mr. Newman for Mr.
8 Martino. They are brothers and they have had many
9 discussions amongst themselves and with counsel, and
10 we think for all of the reasons articulated by Mr.
11 Newman went into the decision to enter into this
12 Agreement on behalf of Daniel Martino.

13 THE COURT: The record should reflect that
14 I have not participated in the negotiations regarding
15 the Agreement, and I would accept the Agreements
16 conditionally, subject to further consideration when
17 I receive a Presentence Report.

18 If I should reject one or both of the Plea
19 Agreements, then I would afford that defendant an
20 opportunity to withdraw the plea. This almost never
21 happens. But I mention it simply to indicate that if
22 despite the proceedings here there should be a trial,
23 nothing said today could be used to prove the charges
24 brought by the Government.

25 Now, having made that reference to a

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1 possible withdrawal of the plea, I do want the
2 defendants to understand that other than a rejection
3 of the Plea Agreement it is almost impossible to
4 obtain the Court's approval for withdrawal of a
5 guilty plea once it has been tendered to the Court
6 and accepted by the Court. It does take Court
7 approval before a plea can be withdrawn.

8 I will now ask Richard Martino how he
9 wishes to plead to Count One, the conspiracy charge,
10 guilty or not guilty?

11 DEFENDANT RICHARD MARTINO: Guilty, Your
12 Honor.

13 THE COURT: And how do you wish to plead to
14 Count Two, guilty or not guilty?

15 DEFENDANT RICHARD MARTINO: Guilty, Your
16 Honor.

17 THE COURT: And as to the forfeiture, Count
18 Eleven, do you agree to the forfeiture that is set
19 forth in Count Eleven?

20 DEFENDANT RICHARD MARTINO: Yes, I do, Your
21 Honor.

22 MR. NEWMAN: Your Honor, just one proviso
23 is modified, Your Honor, by the Plea Agreement, as
24 you heard Mr. Becker state it.

25 THE COURT: There is a limitation?

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1 MR. NEWMAN: Yes.

2 THE COURT: Yes. All right. And, Daniel
3 Martino, how do you wish to plead to the conspiracy
4 charge, Count One, guilty or not guilty?

5 DEFENDANT DANIEL MARTINO: Guilty, Your
6 Honor.

7 THE COURT: And I believe the only other
8 count in the Agreement is Count Eleven, the
9 forfeiture charge. Do you consent to the forfeiture
10 as further limited in the Plea Agreement?

11 DEFENDANT DANIEL MARTINO: Yes, I do, Your
12 Honor.

13 THE COURT: And could I ask the defense
14 counsel if they are satisfied that the defendants are
15 competent to enter the pleas?

16 MR. NEWMAN: Yes, sir, on behalf of Richard
17 Martino, we have consulted and gone over the prior
18 drafts, which I might add were approximately nine,
19 and Mr. Martino has been involved in the discussions
20 concerning them, and he is fully competent and able
21 to enter into both the Plea Agreement and the plea
22 today, Your Honor.

23 MR. FUTERFAS: The same with Mr. Daniel
24 Martino, Your Honor. We reviewed all the drafts.
25 Mr. Martino and I have been in numerous discussions

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1 about the various drafts, including the final draft
2 which Your Honor has in hand, and I am confident that
3 he is competent to proceed here today.

4 THE COURT: Mr. Becker, to what extent has
5 the investigative file been disclosed in this case?

6 MR. BECKER: The materials really were
7 derived, the discovery materials, from part of the
8 investigation of the Eastern District of New York.
9 The defendants have had a full opportunity to review
10 those documents, which consists of business records
11 from CassTel, business records from LEC and business
12 records from the Overland Data Company.

13 THE COURT: And, Mr. Newman, for the
14 record, would you advise whether you have reviewed
15 the materials made available by the Government and
16 made appropriate inquiry and investigation on your
17 own?

18 MR. NEWMAN: Yes, I have, Your Honor. In
19 addition to the material Mr. Becker alluded to, there
20 was also 3500 materials in the form of 302s, and
21 interviews of various individuals, all of which we
22 have acquainted ourselves with and read through and
23 discussed with our clients.

24 THE COURT: And the same question to you,
25 Mr. Futerfas.

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1 MR. FUTERFAS: Yes, Your Honor, we have.
2 We have reviewed all those materials.

3 THE COURT: All right. We will now take
4 the defendants one by one. Daniel Martino and
5 counsel can return to the table, and I would ask the
6 Clerk to administer the oath to Richard Martino.

7 (Whereupon, Defendant Richard Martino was
8 duly sworn at this time.)

9 THE COURT: The file indicates that you
10 were born in 1959.

11 Would that be correct?

12 DEFENDANT RICHARD MARTINO: That is
13 correct.

14 THE COURT: How much education have you
15 completed?

16 DEFENDANT RICHARD MARTINO: High school,
17 the twelfth grade.

18 THE COURT: Are you satisfied with the way
19 your attorney has handled the case?

20 DEFENDANT RICHARD MARTINO: Yes, Your
21 Honor.

22 THE COURT: And have you conferred with him
23 as much as you believe you need to before entering a
24 plea?

25 DEFENDANT RICHARD MARTINO: Yes, I have.

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1 THE COURT: Are you mentally under the
2 influence of any drugs, medicine, pills, alcohol or
3 anything you have had to eat or drink in the past 48
4 hours?

5 DEFENDANT RICHARD MARTINO: No, Your Honor.

6 THE COURT: Have you understood the
7 proceedings so far?

8 DEFENDANT RICHARD MARTINO: Yes.

9 THE COURT: Was there any physical force
10 used to cause you to enter into the Agreement or to
11 plead guilty?

12 DEFENDANT RICHARD MARTINO: No, Your Honor.

13 THE COURT: Were there any threats made
14 causing you to enter into the Agreement or plead
15 guilty?

16 DEFENDANT RICHARD MARTINO: No, Your Honor.

17 THE COURT: Were there any promises made,
18 other than the Plea Agreement itself, that caused you
19 to plead guilty?

20 DEFENDANT RICHARD MARTINO: No, Your Honor.

21 THE COURT: We now have reached the place
22 where I need to have the factual basis for the pleas
23 that have been tendered, and this is the time when I
24 remind the defendant that there is a privilege
25 against self-incrimination, but I understand that he

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1 is prepared to answer questions about the offenses,
2 and I also understand that Mr. Newman is prepared
3 with questions to establish the factual basis.

4 If that is so, Mr. Newman, you may proceed.

5 MR. NEWMAN: If Your Honor please, with
6 your permission, I don't know the procedure here, I
7 have prepared something for Mr. Martino to read, Your
8 Honor, which is based on my discussions with him and
9 his understanding.

10 I have gone over it with him. With your
11 permission, he will read it. If there is anything
12 factually you want me to add to it, I will be pleased
13 to do that.

14 THE COURT: Well, go ahead in the way you
15 are used to doing it. We will see how we proceed.

16 DEFENDANT RICHARD MARTINO: From on or
17 about January, 1998, until on or about October, 2001,
18 in the Western District of Missouri and elsewhere, I
19 began with others to agree that inflated invoices
20 would be sent from Overland Data Company to the Cass
21 County Telephone Company and LEC, LLC, for the
22 purposes of obtaining additional monies for CassTel
23 from the Universal Service Administration, a trader
24 company.

25 More specifically, I and others knew that

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1 false invoices were prepared by ODC for LEC, LLC and
2 CassTel, which reflected inflated false expenses to
3 CassTel.

4 THE COURT: Pardon me. It might be a
5 little better if you swing the equipment up a little
6 closer to you.

7 DEFENDANT RICHARD MARTINO: I knew that
8 these inflated expenses would then be included by
9 CassTel and submission to be mailed to USAC in order
10 to obtain additional funds from these programs.

11 On or about January, 1998, I met with
12 others to discuss the 1998 budget for CassTel, for
13 the inflation of CassTel expenses to obtain
14 additional funds from USAC were discussed.

15 Count Two, I aided and abetted in the
16 devising of the scheme to defraud the Universal
17 Service Fund, by knowingly and intentionally causing
18 the submission of false claims to the Universal
19 Service Fund knowing that the submission would be
20 through mail or by wire. I did this knowingly and
21 intentionally by allowing the claims to be submitted
22 to the Universal Service Fund on July 31, 2001, by
23 mail.

24 THE COURT: Mr. Becker, is there any
25 additional questioning that you would think would be

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1 helpful to establish the factual basis?

2 MR. BECKER: Your Honor, I believe that
3 makes an adequate factual basis.

4 THE COURT: All right. I note that in the
5 Plea Agreement that you have signed, Mr. Martino,
6 that you recite that you admit that the facts in the
7 allegations set forth in the Indictment are true.

8 Is that still accurate, having heard the
9 description of the Indictment here in the courtroom?

10 DEFENDANT RICHARD MARTINO: Yes, it is,
11 Your Honor.

12 MR. NEWMAN: Your Honor, may I just add
13 this one caveat, sir? That is a number of the acts
14 that Your Honor is familiar with as overt acts, he
15 may not have participated in directly. Yet he knew
16 these facts were true but he had no individual
17 knowledge of it.

18 THE COURT: He may not have personal
19 knowledge of everything?

20 MR. NEWMAN: That is what I am trying to
21 get to. I didn't do it artfully, so thank you for
22 your assistance.

23 THE COURT: Based on the testimony and
24 statements of the defendant, I do accept the plea of
25 guilty to Count One and the plea of guilty to Count

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1 Two, and I accept the response that has been given to
2 the forfeiture charge.

3 I find that the pleas are voluntarily made
4 and that there is a factual basis for acceptance of
5 the pleas, and that the defendant understands the
6 consequences of the plea.

7 A Presentence Investigation is ordered. A
8 draft of the report will be made available to both
9 sides, and both sides will have an opportunity to ask
10 the Probation Officer to make changes in the
11 Presentence Report.

12 When there is as much agreement as
13 possible, then it will be prepared in final form and
14 submitted to the Court, at which time a sentencing
15 proceeding can be scheduled at the mutual convenience
16 of counsel and the Court's schedule.

17 I take it there also is going to be some
18 coordination, attempted coordination with the
19 scheduling in New York. It isn't clear to me if
20 there is any preferred priority that either the
21 Government or defense counsel has as to proceeding
22 with sentencing.

23 Is there any suggestion at this time from
24 counsel?

25 MR. BECKER: The defense counsel indicated

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1 a preference to be sentenced here first in this
2 district.

3 THE COURT: In this case first, and is that
4 your view?

5 MR. NEWMAN: We have been treated
6 hospitably, Your Honor, and that is our preference.

7 THE COURT: All right. I think I have
8 mentioned, I told the lawyers in our preliminary
9 conference that I was not positive at this time
10 whether I would be doing the sentencing or perhaps
11 Judge Wright would be because he is already in a
12 related case. So that is something that we will need
13 to work out.

14 Has a sentencing date been scheduled in New
15 York?

16 MR. NEWMAN: Yes, sir. The tentative
17 scheduling date has been set for May 20th in New
18 York, Your Honor. I might add, Your Honor, with
19 leave for counsel to make application to the Court to
20 put it over, because as you can see by the extent of
21 the forfeiture, you are not familiar with the
22 forfeiture in New York, in order to get all our ducks
23 in a row to make that available, we may need some
24 additional time.

25 So, the Judge has given us leave in

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1 Brooklyn to make application for an extension on that
2 particular sentencing.

3 THE COURT: We may try to do a little
4 conferring with the Sentencing Judge there so that
5 there is a mutual agreement as to both the procedures
6 and as to how rapidly we should try to get this done.

7 I take it the Government does not ask that
8 the defendant be taken into custody at this time; is
9 that correct?

10 MR. BECKER: That is correct, Judge.

11 THE COURT: All right. Then, Mr. Martino,
12 you may remain at liberty until further order of the
13 Court, and you are subject to any previous conditions
14 about bonds and conditions of release that have
15 previously been established by the Magistrate. So
16 the two of you may now return to the counsel table.

17 DEFENDANT RICHARD MARTINO: Thank you.

18 THE COURT: I don't think I had the oath
19 administered to both at the same time.

20 MR. FUTERFAS: You did not, Your Honor.

21 THE COURT: All right. Will the clerk
22 administer the oath to Mr. Daniel Martino.

23 (Whereupon, Defendant Daniel Martino was
24 duly sworn at this time.)

25 THE COURT: The file indicates you were

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1 born in 1950.

2 Would that be correct?

3 DEFENDANT DANIEL MARTINO: That is correct,
4 Your Honor.

5 THE COURT: How much education have you
6 completed?

7 DEFENDANT DANIEL MARTINO: I have a
8 Master's Degree in Chemical Engineering.

9 THE COURT: Are you satisfied with the way
10 your attorney has handled the case?

11 DEFENDANT DANIEL MARTINO: Very much
12 satisfied.

13 THE COURT: Have you conferred with him as
14 much as you believe you need to before entering the
15 plea?

16 DEFENDANT DANIEL MARTINO: Yes, I have.

17 THE COURT: Are you under the influence of
18 any drugs, medicine, pills, alcohol or anything you
19 have had to eat or drink in the past 48 hours?

20 DEFENDANT DANIEL MARTINO: No, Your Honor.

21 THE COURT: Have you understood the
22 proceedings so far?

23 DEFENDANT DANIEL MARTINO: Yes, I have.

24 THE COURT: Was there any physical force
25 used to cause you to enter into the Plea Agreement or

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1 to plead guilty?

2 DEFENDANT DANIEL MARTINO: No, Your Honor.

3 THE COURT: Were there any threats made
4 causing you to enter into the Agreement or plead
5 guilty?

6 DEFENDANT DANIEL MARTINO: No, Your Honor.

7 THE COURT: Were there any promises, other
8 than the Plea Agreement itself, that caused you to
9 plead guilty?

10 DEFENDANT DANIEL MARTINO: No, Your Honor.

11 THE COURT: We have again reached the need
12 for establishing the factual basis, and on the
13 assumption that this defendant also is prepared to
14 answer questions or make a statement in support of
15 the factual basis of the plea, I will ask that
16 counsel proceed with him.

17 MR. FUTERFAS: Yes, Your Honor. At this
18 time we have a statement by Mr. Martino. The
19 Government has reviewed the statement, and he is
20 prepared to read that statement which will, I
21 believe, give a full-blown factual recitation.

22 THE COURT: Similar to the procedure that
23 was used with the other defendant?

24 MR. FUTERFAS: Yes, similar.

25 THE COURT: All right. I would ask him to

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1 make the statement to the Court.

2 DEFENDANT DANIEL MARTINO: From on or about
3 January, 1998, until on or about October, 2001, in
4 the Western District of Missouri, and elsewhere, I,
5 together with others, agreed that inflated invoices
6 would be sent between Overland Data and Cass County
7 Telephone and LEC/LOC for the purpose of obtaining
8 additional monies for CassTel from the National
9 Exchange Carriers Association and the Universal
10 Service Administration Company.

11 More specifically, I and others knew that
12 false invoices were prepared from ODC and LEC/LOC to
13 CassTel, which were inflated, false expenses to
14 CassTel. These inflated expenses were then included
15 by CassTel in its submission to NECA and USAC in
16 order to obtain additional funds from these programs.

17 On or about January, 1998, I met with
18 others to discuss the 1998 budget for CassTel, and
19 the inflation of CassTel's expenses to obtain
20 additional funds from USAC.

21 THE COURT: All right. I would suppose,
22 Mr. Becker, you have no further questioning that you
23 think is needed?

24 MR. BECKER: That is correct, Judge.

25 THE COURT: I will ask the question that I

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1 asked of the co-defendant. The Plea Agreement
2 recites that you admit the facts and the allegations
3 set forth in the Indictment, and the qualification
4 was offered that that would be to the best, as you
5 observed it and to the best of your knowledge as to
6 the things you did not observe.

7 Would that be correct, that the Indictment
8 is sound?

9 DEFENDANT DANIEL MARTINO: Yes, it is, Your
10 Honor.

11 THE COURT: Based on the record before me,
12 I will accept the plea of guilty to Count One, and
13 direct that that plea be entered in the record, and
14 also the consent to forfeiture that is established in
15 the record.

16 I find that the plea is voluntarily made
17 and there is a factual basis for acceptance, and that
18 the defendant understands the consequences of the
19 plea. Again, I will advise that the Presentence
20 Investigation will be ordered and that the report
21 will be made available.

22 A draft will be made available for whatever
23 changes counsel on each side might suggest, and that
24 sentencing will be scheduled when we have a completed
25 Presentence Report. And I also mention again that it

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1 is possible that I would not be the Sentencing Judge.
2 I would think the alternative would be Judge Wright
3 as the Sentencing Judge.

4 Do I understand, Mr. Futerfas, that the
5 same scheduling is desired here as in the co-
6 defendant's case, that is, that if it can be worked
7 out that sentencing should occur first in this court?

8 MR. FUTERFAS: That is our preference, yes,
9 Your Honor.

10 THE COURT: All right. We will see how it
11 works out. Again, I would ask confirmation by the
12 Government that you are not asking that this
13 defendant be taken into custody.

14 MR. BECKER: We are not, Judge.

15 THE COURT: All right. Mr. Martino, you
16 may remain at liberty until further order of the
17 Court and the bonding conditions and conditions of
18 release will be the same as previously established by
19 the Magistrate.

20 If there is nothing further to take up with
21 me in this litigation today, court will be adjourned.

22
23
24
25

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REPORTER'S CERTIFICATE

I, JOHN M. BOWEN, hereby certify that
I am the Official Court Reporter for Division
No. 6 of the Western District of Missouri;
that the foregoing pages numbered 1 through 50,
inclusive, contain a true and correct transcript
of the proceedings had in the above-entitled
cause on the date stated herein and that said
transcript is a true transcription of my
shorthand notes taken therein.

IN WITNESS WHEREOF, I hereunto set my
hand this 15th day of March, 2005.



Official Reporter

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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

DANIEL D. MARTINO,)

Defendant.)

No. 05-00027-02-CR-W-HFS

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri and the Organized Crime and Racketeering Section ("OCRS") of the United States Department of Justice, Criminal Division, acting on its behalf (otherwise referred to as "the Government" or "the United States"), represented by Todd P. Graves, United States Attorney, and Paul S. Becker, Bruce E. Clark and Jess E. Michaelsen, Assistant United States Attorneys, and the defendant, Daniel D. Martino ("the defendant"), represented by Ronald P. Fischetti and Alan S. Futerfas.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri and the OCRS, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

**ECF
DOCUMENT**

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of Missouri.

Date Filed: 2-23-05

P.L. BRUNE, CLERK

By: W. Fred Cusack Deputy Clerk

Exhibit 8

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count One of the Indictment, charging him with a violation of 18 U.S.C. § 371, that is, conspiracy to commit mail and wire fraud. The defendant also agrees to forfeit to the United States the property described in Count Eleven of the Indictment, as modified by Paragraph 13 below. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses.

3. Factual Basis for Guilty Plea. To furnish a factual basis to support his guilty plea to the charge contained in the Indictment, the defendant admits that the facts and allegations set forth in the Indictment are true and that those facts support the forfeiture of the property described in the Indictment.

4. Use of Factual Admissions. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to Count One of the Indictment charging him with conspiracy to commit mail and wire fraud, the maximum penalty the Court may impose on the count is not more than five years of imprisonment, a \$250,000 fine, three years of supervised release, an order of restitution and a \$100 mandatory special

assessment which must be paid in full at the time of sentencing. The defendant further understands that the offense to which he is pleading guilty is a Class D felony.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

- a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are merely advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";
- b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;
- c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;
- d. if the defendant violates a condition of his supervised release, the court may revoke his supervised release and impose an additional period of imprisonment of up to two years, without credit for time previously spent on supervised release, and that in addition to a new term of imprisonment, the Court may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;
- e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;
- f. any sentence of imprisonment imposed by the Court will not allow for parole.
- g. the Court must order restitution to be paid to victims of the offense to which he is pleading guilty, the conduct charged in any dismissed counts of the indictment, and all other uncharged related criminal activity;

- h. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and
- i. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to conspiracy to commit mail and wire fraud and the commission of mail and wire fraud for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss Counts Two through Ten at the time of sentencing. Further the United States Attorney for the Western District of Missouri agrees to recommend to the Court that any sentence shall run concurrent with any sentence imposed in the Eastern District of New York in United States v. Salvatore LoCascio, et al., Criminal Docket No. 03-304.

If the defendant fully complies with the forfeiture provisions contained in this plea agreement prior to sentencing, the United States Attorney for the Western District of Missouri agrees to recommend to the Court that no fine be imposed. If the defendant fully complies with the forfeiture provisions contained in this plea agreement prior to sentencing, the United States Attorney for the Western District of Missouri agrees to recommend to the Department of Justice that the forfeited currency be remitted to the victims, the Universal Service Administrative Company and the National Exchange Carriers Association.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any

limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are merely advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines Manual is the one that took effect on November 1, 2000;

c. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2F1.1, which provides for a base offense level of six;

d. The defendant is subject to a fourteen-level enhancement for an amount of loss in excess of five million dollars pursuant to U.S.S.G. § 2F1.1(b)(1)(O);

e. The defendant is subject to a two-level enhancement because the offense involved more than minimal planning pursuant to U.S.S.G. § 2F1.1(b)(2)(A);

f. The defendant is also subject to a three-level enhancement because he was a manager or supervisor of a criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1(b);

g. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting

the Government and the Court to allocate their resources efficiently. Therefore, he is entitled to a three-level reduction pursuant to U.S.S.G. § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect;

h. The parties estimate that the defendant's criminal history category is Category I. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

i. The parties agree that these estimates provide for a adjusted offense level of 22, which results in a sentencing range of 41 to 51 months in prison.

j. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in paragraph nine of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

k. The United States agrees not to seek an upward departure from the Guidelines or a sentence outside the Guidelines range, and defendant agrees to not seek a downward departure from the Guidelines or a sentence outside the Guidelines range. However, the defendant is permitted to seek a motion for downward departure from the Guidelines upon the limited basis of U.S.S.G. § 5H1.4. The agreement by the parties to not seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable";

l. The defendant consents to judicial fact-finding by a preponderance of the evidence of any contested issues pertaining to the determination of the defendant's sentence under the United States Sentencing Guidelines. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence under the Guidelines, may consider any reliable information, including hearsay; and

m. The defendant understands and agrees that the factual admissions contained in paragraphs 3 and 4 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Forfeiture. In satisfaction of the forfeiture allegation in the Indictment, the defendant agrees to forfeit the following specific property: \$500,000 in U.S. Currency. With respect to this forfeiture the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution.

Defendant agrees that the United States may institute civil judicial or administrative forfeiture proceedings against all forfeitable assets in which he has an interest up to \$500,000 and that he will not contest any such forfeiture proceedings. Defendant agrees to take all steps to comply with the forfeiture matters set forth herein before his sentencing.

14. Divestiture. The defendant will promptly use his best efforts to divest all of his securities, rights, or interests in LEC, LLC, also known as Local Exchange Company, LLC, over which he exercises control either directly or indirectly, including, but not limited to LEC, LLC units held by entities as follows: 5.0227 units in the Dee Irrevocable Trust; 5.0227 units in the Jan Irrevocable Trust; 5.0227 units in the May Irrevocable Trust; and two units in Qualitel, Inc. Upon the defendant's plea of guilty he shall convey his trusteeship in all trusts that hold an interest in LEC, LLC, to two trustees approved by both parties. One trustee shall be designated by the United States Attorney for the Western District of Missouri, and one trustee shall be designated by the defendant. Both trustees must agree to all trust matters. All trustee costs, expenses and fees shall be paid for out of the assets of the trusts. The trusts shall be administered by the two approved trustees until the trusts have sold or otherwise divested any and all interest in LEC, LLC. Within 10 days of the sale, transfer or divestiture of the above-described LEC, LLC interests, the defendant shall provide written documentation of the foregoing transaction to the United States Attorney for the Western District of Missouri. Upon satisfaction of the United States Attorney for the Western District of Missouri that the LEC, LLC interests have been sold, transferred or otherwise divested from the trusts, the trustee designated by the United States Attorney for the Western District of Missouri shall be terminated.

15. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the Indictment;

- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

16. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the rights to vote or register to vote, hold public office, or serve on a jury.

17. Waiver of Appellate and Post-Conviction Rights.

- a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement.
- b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except a sentence imposed in excess of the statutory maximum or an illegal sentence, *i.e.*, a sentence that is contrary to law. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

18. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

19. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

20. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its

obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

21. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

22. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

23. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

DATED this 23rd day of February 2005.

Todd P. Graves
United States Attorney

Dated: 2/23/05

By: /s/Paul S. Becker
Paul S. Becker
Assistant United States Attorney
Chief, Organized Crime Strike Force Unit

/s/Bruce E. Clark
Bruce E. Clark, #31443
Assistant United States Attorney
Organized Crime Strike Force Unit

/s/Paul S. Becker
for Jess E. Michaelsen, #52253
Assistant United States Attorney
Organized Crime Strike Force Unit

I have consulted with my attorneys and fully understand all of my rights with respect to the offenses charged in the Indictment. Further, I have consulted with my attorneys and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorneys. I understand this plea agreement and I voluntarily agree to it.

Dated: 2/23/05

/s/Daniel D. Martino
Daniel D. Martino, Defendant

We are defendant Daniel D. Martino's attorneys. We have fully explained to him his rights with respect to the offenses charged in the Indictment. Further, we have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. We have carefully reviewed every part of this plea agreement with him. To our knowledge, Daniel D. Martino's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 2/23/05

/s/Ronald P. Fischetti (by ASF)
Ronald P. Fischetti
Attorney for Defendant Daniel D. Martino

Dated: 2/23/05

/s/Alan Futerfas
Alan S. Futerfas
Attorney for Defendant Daniel D. Martino

psb:sgs

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD T. MARTINO,

Defendant.

No. 05-00027-01-CR-W-HFS

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri and the Organized Crime and Racketeering Section ("OCRS") of the United States Department of Justice, Criminal Division, acting on its behalf (otherwise referred to as "the Government" or "the United States"), represented by Todd P. Graves, United States Attorney, and Paul S. Becker, Bruce E. Clark and Jess E. Michaelsen, Assistant United States Attorneys, and the defendant, Richard T. Martino ("the defendant"), represented by Gustave H. Newman.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri and the OCRS, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Counts One and Two of the Indictment, charging him with violations of 18 U.S.C. §§ 371 and 1341,

**ECF
DOCUMENT**

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of Missouri.

Date Filed: 2-23-05

P.L. BRUNE, CLERK

By: W. Bruce Clark, Deputy Clerk

Exhibit 9

that is, conspiracy to commit mail and wire fraud and mail fraud. The defendant also agrees to forfeit to the United States the property described in Count Eleven of the Indictment, as modified by paragraph 13 below. By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses.

3. Factual Basis for Guilty Plea. To furnish a factual basis to support his guilty plea to the charges contained in the Indictment, the defendant admits that the facts and allegations set forth in the Indictment are true and that those facts support the forfeiture of the property described in the Indictment.

4. Use of Factual Admissions. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines (“U.S.S.G.”), including the calculation of the defendant’s offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as “relevant conduct” pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his plea of guilty to Counts One and Two of the Indictment charging him with conspiracy to commit mail and wire fraud, and mail fraud, the maximum penalty the Court may impose on each count is not more than five years of imprisonment, a \$250,000 fine, three years of supervised release, an order of restitution and a \$100 mandatory special assessment which must be paid in full at the time of sentencing. The defendant further understands that the offenses to which he is pleading guilty are Class D felonies.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

- a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are merely advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";
- b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;
- c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;
- d. if the defendant violates a condition of his supervised release, the court may revoke his supervised release and impose an additional period of imprisonment of up to two years, without credit for time previously spent on supervised release, and that in addition to a new term of imprisonment, the Court may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;
- e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;
- f. any sentence of imprisonment imposed by the Court will not allow for parole.
- g. the Court must order restitution to be paid to victims of the offense to which he is pleading guilty, the conduct charged in any dismissed counts of the indictment, and all other uncharged related criminal activity;
- h. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

- i. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to conspiracy to commit mail and wire fraud and the commission of mail and wire fraud for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss counts Three through Ten at the time of sentencing. Further the United States Attorney for the Western District of Missouri agrees to recommend to the Court that any sentence shall run concurrent with any sentence imposed in the Eastern District of New York in United States v. Salvatore LoCascio, et al., Criminal Docket No. 03-304.

If the defendant fully complies with the forfeiture provisions contained in this plea agreement prior to sentencing, the United States Attorney for the Western District of Missouri agrees to recommend to the Court that no fine be imposed. If the defendant fully complies with the forfeiture provisions contained in this plea agreement prior to sentencing, the United States Attorney for the Western District of Missouri agrees to recommend to the Department of Justice that the forfeited currency be remitted to the victims, the Universal Service Administrative Company and the National Exchange Carriers Association.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against

the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve

the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are merely advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines Manual is the one that took effect on November 1, 2000;

c. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2F1.1, which provides for a base offense level of six;

d. The defendant is subject to a fourteen-level enhancement for an amount of loss in excess of five million dollars pursuant to U.S.S.G. § 2F1.1(b)(1)(O);

e. The defendant is subject to a two-level enhancement because the offense involved more than minimal planning pursuant to U.S.S.G. § 2F1.1(b)(2);

f. The defendant is also subject to a four-level enhancement because he was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1(a);

g. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, he

is entitled to a three-level reduction pursuant to U.S.S.G. § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect;

h. The parties estimate that the defendant's criminal history category is Category I. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

i. The parties agree that these estimates provide for a adjusted offense level of 23, which results in a sentencing range of 46 to 57 months in prison.

j. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in paragraph nine of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

k. The United States agrees not to seek an upward departure from the Guidelines or a sentence outside the Guidelines range, and defendant agrees to not seek a downward departure from the Guidelines or a sentence outside the Guidelines range. The agreement by the parties to not seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable";

l. The defendant consents to judicial fact-finding by a preponderance of the evidence of any contested issues pertaining to the determination of the defendant's sentence under the United States Sentencing Guidelines. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence under the Guidelines, may consider any reliable information, including hearsay; and

m. The defendant understands and agrees that the factual admissions contained in paragraphs 3 and 4 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Forfeiture. In satisfaction of the forfeiture allegation in the Indictment, the defendant agrees to forfeit the following specific property: \$5.9 million in U.S. Currency. With respect to this forfeiture the defendant waives any constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment under the Eighth Amendment to the United States Constitution.

Defendant agrees that the United States may institute civil judicial or administrative forfeiture proceedings against all forfeitable assets in which he has an interest up to \$5.9 million and that he will not contest any such forfeiture proceedings. Defendant agrees to take all steps to comply with the forfeiture matters set forth herein before his sentencing.

14. Divestiture. The defendant will promptly use his best efforts to divest all of his securities, rights, or interests in LEC, LLC, also known as Local Exchange Company, LLC, over which he exercises control either directly or indirectly, including, but not limited to LEC, LLC units held by entities as follows: four units in the Que Irrevocable Trust; four units in the Aly Irrevocable Trust; four units in the Yankee Irrevocable Trust; and 5.5 units in Qualitel, Inc. Upon the defendant's plea of guilty he shall convey his trusteeship in all trusts that hold an interest in LEC, LLC, to two trustees approved by both parties. One trustee shall be designated by the United States Attorney for the Western District of Missouri, and one trustee shall be designated by the defendant. Both trustees must agree to all trust matters. All trustee costs, expenses and fees shall be paid for out of the assets of the trusts. The trusts shall be administered by the two approved trustees until the trusts have sold or otherwise divested any and all interest in LEC, LLC. Within 10 days of the sale, transfer or divestiture of the above-described LEC, LLC interests, the defendant shall provide written documentation of the foregoing transaction to the United States Attorney for the Western District of Missouri. Upon satisfaction of the United States Attorney for the Western District of Missouri that the LEC, LLC interests have been sold, transferred or otherwise divested from the trusts, the trustee designated by the United States Attorney for the Western District of Missouri shall be terminated.

15. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the Indictment;

- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

16. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the rights to vote or register to vote, hold public office, or serve on a jury.

17. Waiver of Appellate and Post-Conviction Rights.

- a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement.
- b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except a sentence imposed in excess of the statutory maximum or an illegal sentence, *i.e.*, a sentence that is contrary to law. Further, the defendant reserves his right to appeal a decision by the Court to impose a sentence consecutive to any sentence the defendant may receive in United States v. Martino, No. 03-304 (EDNY). However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

18. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

19. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

20. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its

obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

21. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

22. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

23. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

DATED this 23rd day of February 2005.

Todd P. Graves
United States Attorney

Dated: 2/23/05

By: /s/Paul S. Becker
Paul S. Becker
Assistant United States Attorney
Chief, Organized Crime Strike Force Unit

/s/Bruce E. Clark
Bruce E. Clark, #31443
Assistant United States Attorney
Organized Crime Strike Force Unit

/s/Paul S. Becker
for Jess E. Michaelsen, #52253
Assistant United States Attorney
Organized Crime Strike Force Unit

I have consulted with my attorneys and fully understand all of my rights with respect to the offenses charged in the Indictment. Further, I have consulted with my attorneys and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorneys. I understand this plea agreement and I voluntarily agree to it.

Dated: 2/23/05

/s/Richard Martino
Richard T. Martino, Defendant

I am defendant Richard T. Martino's attorney. I have fully explained to him his rights with respect to the offenses charged in the Indictment. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Richard T. Martino's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 2/23/05

/s/Gustave H. Newman

Gustave H. Newman

Attorney for Defendant Richard T. Martino

psb:sgs