

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989**

**Undertaking to the Australian Securities and Investments Commission
given for the purposes of section 93AA by
Pahth Telecommunications Limited (ACN 087 813 080)**

1. BACKGROUND

- 1.1 Pahth Telecommunications Ltd (ACN 087 813 080) ("Pahth") is a public company listed on the Australian Stock Exchange ("ASX").
- 1.2 On 8 September 1999 Pahth lodged a prospectus ("the Prospectus") containing financial projections ("the Projections") for the year ended 30 June 2000 for anticipated revenue of \$19,599,000 and earnings after tax of (\$5,000)
- 1.3 In accordance with its financial reporting obligations the company lodged its half year report to 31 December 1999 on 14 March 2000. This report contained no reference to the Prospectus projections.
- 1.4 On 13 September 2000, Pahth released its preliminary final report to the ASX showing revenue for the year ended 30 June 2000 of \$11,493,000 and an operating profit after tax of (\$1,169,000).
- 1.5 During the period December 1999 to 14 June 2000 Pahth was involved in two key negotiations in respect of future business initiatives for the company. These negotiations were understood by Pahth to have potentially significant financial implications for the company.
- 1.6 On 14 June 2000 Pahth became aware that both these key negotiations would not be proceeding and made an announcement to the ASX. This announcement contained no reference to the Projections or to the resulting impact on the anticipated financial results of the company.
- 1.7 During the period between 8 September 1999 and 13 September 2000, the company made no announcements to the market indicating an anticipated financial performance different from the Projections.
- 1.8 As a result of its investigations and the facts in paragraphs 1.2 to 1.7 above, ASIC is of the view that Pahth failed to comply with its continuous disclosure obligations pursuant to ASX Listing Rule 3.1 ("LR3.1") and under section 1001A of the Corporations Law ("the Law"). Specifically, ASIC is of the view Pahth was required by LR 3.1 and the Law to have disclosed to the ASX the fact that its financial performance for the year ended 30 June 2000 would be significantly worse than that set out in the Projections as soon as Pahth became aware of that fact.
- 1.9 As a result of its investigations ASIC has concerns that Pahth may not have appropriate corporate governance and compliance procedures and controls in

place to ensure future compliance with its continuous disclosure obligations under the Law and the Listing Rules.

- 1.10 While Pahth does not agree with all aspects of ASIC's concerns as set out in this Undertaking and specifically does not believe that its failure to disclose the information referred to in paragraph 1.8 was occasioned by any intentional, reckless or negligent failure or dishonesty on the part of the Company, it acknowledges ASIC's concerns and has agreed to put in place a number of compliance measures (including the specific requirements set out below) for the purposes of ensuring best practice in ongoing compliance with its continuous disclosure obligations.
- 1.11 Pursuant to section 1001A of the Law, ASIC may take enforcement action against Pahth in respect of an alleged breach of that provision. Among other remedies, if ASIC makes a determination that there has been a contravention of section 1001A of the Law, ASIC may make an order in accordance with section 713(6) of the Law.
- 1.12 Pahth has requested and ASIC has accepted the commitments in this enforceable undertaking as an alternative to the actions referred to in clause 1.11.

2. UNDERTAKINGS

- 2.1 Pahth undertakes to ASIC that within 30 days of this Enforceable Undertaking it will:
- (a) review its corporate governance practices;
 - (b) provide to ASIC a written set of Corporate Governance Practices in accordance with ASX Listing Rule 4.10, including but are not limited to those matters identified in clause 2.2; and
 - (c) provide ASIC with a statutory declaration by an officer of Pahth declaring that the Pahth Corporate Governance Procedures have been adopted by unanimous resolution of directors of Pahth and that in establishing the Corporate Governance Procedures the company has considered the ASX Guidance Note on Corporate Practices issued in September 1999.
- 2.2 Pahth undertakes that its Corporate Governance Practices will as a minimum provide for:
- (a) monthly meetings of the directors of Pahth;
 - (b) preparation of monthly unaudited accounts complying with section 286 of the Law as it stands at the date of this undertaking no more than 25 days after the end of the month to which they relate;

- (c) the directors of Pahth to review the accounts referred to in (b) at the meeting immediately following their preparation;
- (d) consideration by directors at each directors meeting of Pahth's compliance with its continuous disclosure obligations and disclosure decisions taken since the previous meeting of directors; and
- (e) annual review of the Corporate Governance Practices by the external auditors of the company to ensure that at all times they represent industry best practice for a company like Pahth.

2.3 Pahth undertakes to provide to ASIC within 30 days of the date of the undertaking a written set of procedures for:

- (a) preventing, and where necessary identifying and responding to, breaches of LR 3.1 and section 1001A of the Law; and
- (b) promoting a culture of compliance with LR 3.1 and section 1001A within Pahth.

("Pahth Compliance Procedures").

2.4 Pahth undertakes that the Pahth Compliance Procedures will be, as far as is reasonable, be in accordance with AS3806-1998, the Australian Standard for Compliance Programs and will at least contain the following matters:

- (a) a clear identification of the company's disclosure obligations under LR 3.1 and section 1001A of the Law and the consequences to the company and its officers if the company fails to comply with them;
- (b) a requirement to appoint a company officer or officers who are primarily responsible for ensuring the company complies with LR 3.1 ("Responsible Officer");
- (c) a requirement to establish procedures to ensure that the Responsible Officer is made aware of all information a reasonable person would expect to have a material effect on the price or value of the company's securities immediately after that information comes into existence;
- (d) a requirement to identify "areas of risk" for which specific compliance procedures must be in place, for example, disclosure of events which require the consent or comment of a third party, and detail those procedures;
- (e) the decision making process for determining whether LR 3.1 requires the company to disclose information brought to the attention of the Responsible Officer;
- (f) guidelines for determining what information must be disclosed in compliance with LR 3.1 including a non-exhaustive list of examples of information to be disclosed (for example, information possibly material to the company's prospects, earnings, assets or liabilities or to the price of any of the company's securities) - the guidelines should incorporate any provisions in the ASX Listing Rules designed to allow a company to withhold information;
- (g) record keeping procedures to record the process for review of specific information and the decision whether or not to disclose that information;

- (h) procedures to ensure that all officers and other employees or agents, who may from time to time be in the possession of undisclosed information that maybe material to the company's prospects, earnings, assets or liabilities or to the price or value of the company's securities, understand the continuous disclosure obligations on the company imposed by the Law and ASX Listing Rules and have those obligations drawn to their attention on a periodic basis;
- (i) procedures for the orientation of new directors and senior staff to ensure their awareness of the Pahth Compliance Procedures and ensure a culture of Compliance within Pahth;
- (j) procedures to ensure that undisclosed information that a reasonable person would expect to have a material effect on the price or value of the company's securities remains confidential until it is disclosed by the company;
- (k) procedures for ensuring that the company's compliance procedures are updated from time to time to reflect changes in the company's business operations and changes in the law and the ASX Listing Rules;
- (l) a requirement that the company's audit committee and external auditors annually audit the company's adherence to the compliance procedures and pass an opinion on whether the procedures continue to be appropriate for the company.

2.6 Pahth further undertakes that within 30 days of the date of this undertaking it will provide ASIC with:

- (a) a statutory declaration by an officer of Pahth declaring that the Pahth Compliance Procedures have been adopted by unanimous resolution of directors of Pahth;
- (b) audit certificate by a principal of a member of the ASX with not less than 10 years experience in the broking industry in the form of that set out in Schedule 1 to this Undertaking.

3. ACKNOWLEDGEMENTS

3.1 Pahth acknowledges that ASIC:

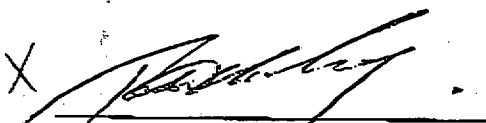
- (a) may from time to time publicly refer to this undertaking;
- (b) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution the content of which will not be substantially different to the background set out in this Undertaking; and
- (c) will place a copy of the executed undertaking on a Public Register.


3.2 Pahth acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order.

- 3.3 Pahth acknowledges that ASIC's acceptance of this undertaking will in no way inhibit ASIC from taking action as outlined in Clause 1.11 as a result of concerns in the background.
- 3.4 Pahth acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- 3.5 Pahth acknowledges that this undertaking has no operative force until accepted by ASIC.
- 3.6 Pahth and ASIC each acknowledge that the terms of this undertaking can be varied only with the prior written consent of each party to the undertaking by its duly authorised representative.

Executed on the 2nd day of February 2001

The common seal of Pahth Telecommunications Ltd (ACN 087 813 090) was duly affixed to this undertaking in the presence of -


X 

Director / Secretary


DIRECTOR



Accepted by the Australian Securities and Investments Commission pursuant to the ASIC Act section 93AA by its duly authorised delegate



Michael Gething
Acting Regional Commissioner
Delegate of the Australian Securities and Investments Commission

Schedule 1

CERTIFICATE OF COMPLIANCE

1. I am a principal of a member of Australian Stock Exchange Ltd with not less than 10 years experience in the broking industry.
2. I have reviewed the compliance procedures developed by the directors of Pahth Telecommunications Ltd ("Pahth"), a copy of which is attached to this certificate.
3. From my review of the Pahth Compliance Procedures, I hereby certify to the Australian Securities and Investments Commission that the Pahth Compliance Procedures:
 - (a) comply with the Enforceable Undertaking dated _____ ;
 - (b) represent industry best practice for a company of the kind as Pahth for a continuous disclosure compliance procedure; and
 - (c) meet the requirements of AS3806-1998 to an extent that is reasonable for a company of the kind as Pahth.
4. Pahth has put into effect the Pahth Compliance Procedures.

Signature

Date

Name (please print)

Firm Name