

## Enforceable Undertaking

Section 93AA



The commitments in this undertaking are offered to the Australian Securities and Investments Commission ("ASIC") by:

Uecomm Limited ("Uecomm")  
(ABN 56 079 083 195)  
Level 13  
101 Collins Street  
Melbourne Vic 3000

### 1. Background

- 1.1 ASIC has conducted an investigation pursuant to the ASIC Act 2001 ("the ASIC Act") into suspected contraventions of the continuous disclosure provisions of the Corporations Act 2001 ("the Corporations Act") and the misleading or deceptive conduct provisions of the Corporations Act and the Trade Practices Act 1974 ("the TPA") in relation to earnings and profit forecast downgrades announced by Uecomm to the Australian Stock Exchange Limited ("ASX") on 19 April and 25 June 2001.
- 1.2 It is common ground, after inquiry by ASIC, that:
- (a) Uecomm was incorporated on 26 June 1997 as United Energy Telecommunications Pty Ltd by United Energy Limited ("UEL") to provide a variety of data communications services to a broad range of customers through its fibre optic based network. United Energy Telecommunications Pty Ltd later changed its name to Uecomm.
  - (b) On 11 August 2000 Uecomm registered its prospectus with ASIC and forecast for the financial year 1 January 2001 to 31 December 2001 revenue of \$146.3 million and net profit after tax of \$33.8 million ("the Prospectus").
  - (c) Uecomm was listed on the ASX on 11 September 2000.
  - (d) UEL maintains a majority shareholding of 66% in Uecomm.

#### ***Results Year To March 2001***

- 1.3 ASIC is concerned that:
- (a) Internal management reports produced and tabled at the Uecomm board meeting held on 20 March 2001 showed that Uecomm revenues for the first two months of the year, January and February 2001, were materially lower than budgeted;
  - (b) Internal correspondence and management reports available in early April 2001 showed that Uecomm's revenues for the March quarter were again materially lower than budgeted.
- 1.4 ASIC is concerned that Uecomm failed to formally announce its poor trading results for the first two months and for the March quarter of 2001 immediately upon becoming aware of them as ASIC considers is required by ASX Listing Rule 3.1 and Uecomm may have

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contravened section 1001A (now section 674) of the Corporations Act (continuous disclosure).

***Announcement of 19 April 2001***

- 1.5 On 19 April 2001, Uecomm announced to the ASX that it had "revised its 2001 financial forecast based on actual trading for the first quarter and projections for the next nine months". Revenue was revised down to approximately \$100 million compared to the prospectus forecast of \$146.3 million and net profit after tax was revised down to around \$25 million compared to the prospectus forecast of \$33.8 million.
- 1.6 On 25 June 2001 Uecomm announced a further profit downgrade. The projected revenue for the full-year 2001 was further revised downward to the range of \$45 million to \$55 million. The projected full year loss to December 2001 was \$12.5 million as opposed to the revised projected profit figure of \$25 million.
- 1.7 ASIC is concerned that the announcement on 19 April 2001 may have been misleading or deceptive as Uecomm:
- (a) did not have reasonable grounds for making the revised forecast because the forecast revenue of \$100 million could not be fully and adequately explained by Uecomm or supported by internal documents; and
  - (b) Uecomm failed to fully and adequately explain the reasons for the earnings and profit downgrade in its announcement to the ASX.
- 1.8 ASIC is concerned that Uecomm may have contravened section 995 (now 1041H) of the Corporations Act and section 52 of the TPA (misleading or deceptive conduct) by making the announcement.
- 1.9 ASIC is concerned that the failure to disclose information referred to in paragraph 1.3 and the timing and circumstances surrounding the announcements referred to in paragraph 1.5 and 1.6 may indicate that Uecomm may not have had (and may still not have) appropriate corporate governance and compliance procedures and controls in place to ensure compliance with its continuous disclosure obligations under ASX Listing Rule 3.1 and under section 674 of the Corporations Act (formerly section 1001A) ("Continuous Disclosure Obligations").

***Acknowledgement***

- 1.10 Uecomm 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.

**2. Undertakings**

Pursuant to section 93AA of the ASIC Act, Uecomm undertakes as follows:

***Review of disclosure procedures***

- 2.1 Uecomm will, within 60 days of acceptance of this Undertaking:
- (a) with the assistance of an appropriate external consultant, whose appointment and terms of reference are to be approved by ASIC ("Consultant"), review its practices, policies and procedures for dealing with continuous disclosure and, in particular, compliance with ASX Listing Rule 3.1 ("Compliance Procedures");

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- (b) provide to ASIC a written set of Compliance Procedures, including but not limited to those matters identified in paragraph 2.2;
  - (c) provide ASIC with a statutory declaration by an officer of Uecomm declaring that the Uecomm Compliance Procedures have been adopted by unanimous resolution of the directors of Uecomm and that in establishing the Compliance Procedures the company has considered the ASX Guidance Note on Continuous Disclosure issued in March 2002; and
  - (d) provide ASIC with a certificate by the Consultant in the form of that set out in Schedule 1 to this Undertaking.

2.2 Uecomm undertakes that the Compliance Procedures will, 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 Uecomm's Continuous Disclosure Obligations and the consequences to the company and its officers if the company fails to comply with them;
- (b) procedures to ensure that each officer involved in the management of Uecomm ("Senior Officers") is made aware on an ongoing basis of Uecomm's Continuous Disclosure Obligations;
- (c) procedures to require Senior Officers to immediately report any material information or potentially material Information to the Chief Executive Officer, the Chairman, or the Responsible Officer (the person appointed by the company under Listing Rule 12.6 with responsibility for communication with the ASX in relation to Listing Rule matters) for assessment and consideration of immediate disclosure to the ASX;
- (d) procedures to ensure the accuracy of information released to the market;
- (e) procedures to ensure the basis for financial forecasts or projections contained in any future disclosure documents is reasonable and verifiable and that the basis for such forecasts or projections is accurately recorded;
- (f) procedures to maintain accurate records of all disclosure or potential disclosure matters; and
- (g) procedures for ensuring that the Uecomm'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.

2.3 Uecomm will engage the Consultant to review, assess, make recommendations and report in writing by 30 March 2003 but not before 31 January 2003, to Uecomm with a copy to ASIC on the effectiveness and operation of the Compliance Procedures including Uecomm's adherence to the Compliance Procedures.

2.4 Uecomm will implement any recommendations from the Consultant arising from the review referred to in paragraph 2.3 as soon as practicable but in any event by 31 May 2003.

2.5 Uecomm will by 15 June 2003 provide to ASIC written verification of the steps taken to implement the recommendations referred to in paragraph 2.3.

**Exclusion from s713**

- 2.6 Uecomm undertakes that, unless otherwise agreed by ASIC, it will not for a period of 12 months from the date of execution of this Undertaking:
- (a) issue a prospectus under section 713 of the Corporations Act; or
  - (b) seek to rely on any ASIC relief under section 741(1) of the Corporations Act which is expressed not to apply in relation to a company where a determination under section 713(6) of the Corporations Act is in force in relation to that company.

**3. Acknowledgements**

- 3.1 Uecomm acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this undertaking; and
  - (c) will make this undertaking available for public inspection.
- 3.2 Uecomm acknowledges that this undertaking in no way derogates from the rights and remedies available to any person or entity arising from any conduct described in this undertaking.
- 3.3 ASIC acknowledges that nothing in this undertaking constitutes an admission by Uecomm to ASIC or any other person.
- 3.4 Uecomm acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or to pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order in relation to such conduct.
- 3.5 Uecomm acknowledges that this undertaking has no operative force until accepted by ASIC.

The Common Seal of Uecomm Limited )  
(ABN 56 079 083 195) was duly affixed to )  
this undertaking on *16/10/02* 2002 in the )  
presence of and the sealing is attested by: )



Director

Director/Secretary

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

Dated this *17<sup>th</sup>* day of *October* 2002.

per AJ Orchard  
Director Enforcement South West

## Schedule 1

### Certificate

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1. I have reviewed the compliance procedures developed by the directors of Uecomm, a copy of which are attached to this certificate (***Uecomm Compliance Procedures***);
2. From my review of the Uecomm Compliance Procedures, I hereby certify to the Australian Securities and Investments Commission that the Uecomm Compliance Procedures:
  - (a) comply with the Enforceable Undertaking dated [#];
  - (b) represent industry best practice for a company of the kind as Uecomm 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 Uecomm.
  - (d) Uecomm has put into effect the Uecomm Compliance Procedures.

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Signature

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Date

.....  
Date

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Firm Name

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