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IDAHO PUBLIC
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AN
INVESTIGATION INTO RURAL
TELEPHONE COMPANY'S
COMPLIANCE WITH COMMISSION
RULES REGARDING CLASSIFICATION
OF LOCAL SERVICE AND NOTICE OF
TERMINATION OF SERVICE

Case No.: RUR-T-07-01

RESPONSE TO ORDER 30232

Rural Telephone Company (the "Company"), through its attorneys Givens Pursley LLP, hereby responds to Order No. 30232 of the Idaho Public Utilities Commission ("Commission") directing the Company to respond to a formal complaint ("Complaint") filed with the Commission by Bill Uhl and Doris Helge on January 12, 2007 alleging, among other things, that: 1) the Company has not complied with the Commission's rules regarding classification of service as residential or business; and 2) and that the Company improperly threatened disconnection of service while an informal complaint was pending before the Commission.

BACKGROUND

The Company is a regulated telephone company that has provided basic local exchange service and expanded telecommunications services to customers in several rural exchanges in southern Idaho since 1979. The Company has been providing local exchange service to the

community of Atlanta, Idaho since approximately 1988. Atlanta is in Elmore County and situated in one of the more remote, mountainous areas of Idaho. Because of its remoteness, Atlanta presents unique public utility service challenges.

To meet these challenges, the Company has strived to integrate modern telecommunications technology into each of its exchanges, including the Atlanta exchange, as such technology becomes available and to the extent that the costs are justified and recoverable. At the same time, the Company has continually strived to ensure that its internal policies, its tariffs and the materials and information the Company provides to its customers comply with the Commission's rules and with applicable statutes.

In the winter of 2005-2006, several temporary service outages in Atlanta attributable to severe weather and snow conditions precipitated several customer service complaints from Company customers, including the Complainants. As a result, the Commission issued Order 29964, initiating an investigation into the quality of the Company's service during the December 2005-January 2006 period and directing the Company to respond to questions set forth in that order and to other questions presented to it by the Commission Staff ("Staff").

The Staff served the Company with production requests seeking information concerning the winter service outages, steps taken by the Company to mitigate the outages, and proposed steps to avoid or mitigate such outages in the future. Additionally, the Staff requested information about, and made an extensive review of, the compliance of the Company's telephone directories, office hours, customer service training policies, residential and business customer application and classification procedures, and credit investigation and customer deposit procedures. The Company responded fully to the Staff's information requests, and to those

Staff's recommendations that were incorporated as directives in Commission Order 30140 issued on October 4, 2006.

One of the directives in Order 30140 was that the Company revise its tariff to be consistent with the Commission's Customer Relations Rules regarding the classification of residential and business service. Order 30140 at 4. The Company's approved tariff at that time provided as follows:

Business Rates Apply:

At any location where activities are of a business, trade or professional nature.

At any location where the listing of service at that location indicates a business, trade or profession.

Where only one network access line is provided at a location which is both a residence and a business.

At schools, hospitals, libraries and churches and other similar institutions.

Residence Rates Apply:

In private residence where business listings are not provided and telephone service is not used for the conduct of business.

In the place of residence of a clergyman, physician or other medical practitioner provided the subscriber does not maintain an office in the residence.

At the Commission's direction, the Company revised its classification of business and residential service to mirror the Commission's Rule, and to provide that a line is to be classified as residential if it is maintained "at a dwelling *primarily* for personal or domestic purposes and not for business, professional or institutional purposes." IDAPA 31.41.01.005.09 (emphasis added). The Company has complied with Order 30140, and is seeking to consistently and

objectively apply the “primarily for personal or domestic purposes” standard to all of its customers.

Below, the Company responds to the Commission’s directive in Order 30232, and to certain of the Complainants allegations—particularly the allegations that the Company did not comply with the Commission’s rules regarding termination of service, and that the Company’s reclassification of line no. 208-864-2158 as a business line was retaliatory, discriminatory and/or arbitrary.

The Company does not respond to the Complainant’s allegation that the Commission’s rules improperly delegate authority or discretion to telephone carriers to establish the methods and criteria for determining whether a customer’s service will be used, or is being used, “primarily for personal or domestic purposes, and not for business, professional or institutional purposes.” The Company perceives this issue as properly raised in a proceeding challenging either the power of the Commission to adopt IDAPA 31.41.01.005.09 as provided in Idaho Code § 61-507, or the validity of the rule itself, which would not seem to be properly presented by a customer Complaint against the Company or by the scope of the issues the Commission has directed the Company to respond to.

The Company also does not respond to, nor concede or admit, any allegations of fact in the Complaint concerning the nature of the Atlanta service outage in the winter of 2005-2006, or the appropriateness of the Company’s response to those outages. The Company’s understanding is that these matters have been considered, addressed and concluded by the Commission’s final Order 30140, and by the Company’s compliance with that Order.

RESPONSE

1. **Complainant’s Allegations Regarding the Notice for Termination of Service are Without Merit.**

The Company admits that they mailed a disconnect notice (“Notice”) to Shimoda on October 16, 2006, advising Shimoda that payment was late and that service would be discontinued on November 1, 2006. See Exhibit A attached hereto. At the time, however, the Company believed that the Shimoda investigation had been fully resolved by Order 30140 on October 4, 2006, and it was unaware that a complaint was still pending when the Notice was sent.¹ Indeed, even the Commission seemed uncertain as to whether a complaint was pending. Within a few days of mailing the Notice, the Company called the Commission for clarification as to whether a complaint was still pending. A representative of the Commission could not provide an immediate answer and it was not until several days later that the Commission notified the Company that the Shimoda case was still pending. Upon learning this, the Company apologized to the customer and did not follow through with or further pursue termination of Shimoda’s service. Since the Company did not issue the Notice knowing that a complaint was pending, and *because the Company did not terminate service*, the Company did not violate the Commission’s Rule 311.²

Further, the Company disputes that the Notice was deficient in the ways complained of. The Company mailed the Notice on October 16 with a proposed termination date of November 1, fully complying with the Commission’s seven-day notice requirement. IDAPA 31.41.01.304.01. Additionally, in bold, all-capitalized letters at the top of the Notice, it stated **“YOUR TELEPHONE PAYMENT IS LATE,”** thereby clearly stating the reason why

¹ Under the Company’s standard practice, a billing clerk manually reviews all notices of termination that are automatically printed from its computer system and pulls out (i.e., does not mail) any notices to customers with complaints pending. As discussed in the main text, however, the Company was unaware that the Shimoda complaint was still pending when the Notice was mailed.

² Rule 311 states “local exchange service shall not be terminated for failure to pay amounts in dispute while a complaint over that telephone service filed pursuant to Rule 402 is pending before this Commission or while a case placing at issue payment for that telephone service is pending before a court in the state of Idaho.” IDAPA 31.41.01.311.04.

termination was proposed. Finally, the Notice adequately advised Shimoda how to avoid termination by stating that the Notice could be disregarded if payment was sent. IDAPA 31.41.01.306.

In sum, the Complainant's allegations regarding the Notice are without merit.

2. Compliance with Commission Service Classification Rules

The Company believes that it has complied with the Commission's service classification rules with respect to reclassifying the Complainants' service from residential to business. Under either the Company's prior tariff or its new tariff incorporating language of the Commission's Rule, the Complainants' line originally should have been classified as a business line when the application for service was submitted. The Company inadvertently classified the service as residential. The reclassification to business corrects that error.

As discussed previously, prior to its amendment to comply with Order 30140, the Company's tariff classified residential and business service, subject to limited exceptions, based solely on whether the line was being used for business purposes, and without regard to whether or to what extent the line also may have been used for personal or domestic purposes. This earlier tariff was consistent with the statutory definition of "Residential Customers," which was enacted in 1988 and remains in effect today. I.C. § 62-603(7), 1988 Idaho Sess. Ch. 195, § 1. Under the statute, "residential customers" are "persons to whom telecommunications services are furnished at a dwelling and which are used for personal or domestic purposes *and not* for business, professional or institutional purposes. (Emphasis added). The statute thus incorporates an either-or standard for service classification in which any business use of a line furnished to a dwelling precludes a residential classification.

By comparison, Commission Rule 31.41.01.005.09 “(Rule”)), adopted in 1999, contains a definition of “Residential Telephone Service” that establishes a “*primarily* for personal or domestic purposes” standard. As discussed above, to comply with the Commission’s directive in Order 30140, the Company has revised its tariff to match this definition of “Residential Telephone Service” contained in the Rule.

It is implicit in the Rule that a line may be classified as residential even though it also is used for business purposes, and that the business use could be substantial in comparison to the personal or domestic use without requiring classification as a business line. The Company interprets the “*primarily* for personal or domestic purposes” standard to require that, as to any service provided to a dwelling, the preponderance (i.e., greater than 50%) of the line’s use must be for personal or domestic purposes to qualify for the residential classification and rates under the Company tariff. Conversely, if a preponderance of the use at the dwelling is for business purposes, the service would be classified as business.

Both the statute’s either-or standard and the Rule’s preponderance/>50% standard are objective standards. The difference between them lies in the difficulty under the preponderance standard of marshalling information sufficient to demonstrate that a majority of either business or residential use is occurring. A telephone company’s means of obtaining such information is limited. Current technology and public policy preclude monitoring the nature of calls originating and terminating at a customer’s premises. And given the higher rate for business service, voluntary customer responses to service provider inquiries concerning the number and duration of personal versus business calls might be expected to have a certain level of inherent unreliability. Absent technology to identify business traffic, or reliable documentation provided by the customer, the Company has looked to information sources that it believes are relevant and

reliable when a question of proper classification is presented. These sources include, but are not necessarily limited to:

- whether the customer has used a business name or an individual's name in applying for telephone service;³
- whether the customer has requested a residential or business listing (or both) in the service provider's telephone directory;
- whether the customer's assigned number is listed in the residential or business sections (or both) of other telephone directories;
- whether the number is provided as a means of contact in business advertising;
- the relative extent to which the assigned number is associated with personal, as opposed to business or commercial, activities;
- whether the customer is known to conduct business out of the residence.

The Company respectfully submits that in reviewing whether the Company complied with Commission Rules regarding classification of service for the Shimoda line in Atlanta, this Commission should ask whether a preponderance of the reliable information available to the Company when it reclassified the line is indicative of use of the 208-864-2158 line primarily for business purposes.

Under the current state of the record before the Commission, there simply is no information to indicate that the line is used for any personal or domestic purposes. The Complainants have not alleged or provided any information to the Company or the Commission suggesting that the preponderance of their use of this line is for their personal or domestic purposes; they only allege that the Company's reclassification of their service to business is discriminatory and/or retaliatory. Indeed, one might fairly read the statements in the Complaint to indicate that the Complainants conduct all or a majority of their personal affairs using their

satellite Internet access, and that they rely on their land line for conducting their several business ventures—hence the prolific use of the 208-864-2158 number in their business advertising and directory listings.

The Company has made what it believes to be a reasonable and diligent inquiry into the facts concerning the use of this line. *All of the information* it has obtained and reviewed indicates that the Complainant's line is used for business purposes. On that basis, the service was reclassified to business.

The information forming the basis for the reclassification of this line to business service is as follows:

1. In May of 1998, the Company received a completed Application for Telephone Service from "Shimoda" requesting voice grade and data/fax network access lines to a house in the Atlanta townsite. See Exhibit B attached hereto.
2. The applicant did not provide an individual social security number in the space provided. See <http://www.ssa.gov/employer/stateweb.htm> listing all social security number sequences currently issued or authorized. The Company presumes that the number provided on the Shimoda application for service is a taxpayer or employer identification number.
3. The applicant requested a regular telephone listing in the Company's directory under the name "Shimoda."
4. In the space provided for the Applicant's Signature, the applicant signed "Shimoda."

³ The Company applies a business classification to all service, whether provided to a business facility or dwelling, where an application has been submitted in the name of a business.

5. Payment for connection was paid by money order signed by "Shimoda." See Exhibit C attached hereto.⁴
6. An internet search using "208-864-2158" produced results for the following businesses advertising OHV, ATV and snowmobile training and certification, expert witness services, self-help/motivational book sales and seminars:
 - a. Forest Education Assembly, Box 32 Atlanta, ID 83601
 - b. FEA c/o Uhl, P.O. Box 32, Atlanta, ID 83601
 - c. OHV Training, c/o P.O. Box 32, Atlanta, ID 83601 USA (offering field training and corporate seminars in OHV, ATV and snowmobile riding)
 - d. The Billy Uhl Riding School (offering training in OHV, ATV and snowmobile riding)
 - e. emotionalstrength.com, FEA c/o Uhl, P.O. Box 32, Atlanta, ID 83601. See Exhibit D attached hereto.
7. Internet searches, including searches using internet-based business and residential telephone directories such as AllPages.com, Phonenum.com, PeopleLookup.com, Qwest's DexOnline.com, WhitePages.com, Superpages.com, ATT's AnyWho.com Online Directory and Switchboard, using the number "208-864-2158," or the names "Shimoda," or "Uhl" and "Helge" with "Atlanta, ID" produced results only for Shimoda. See Exhibit E attached hereto.

In summary, an extensive search of reasonably available, independent information sources, without exception, indicates that the line is being listed and used only for business

⁴ On these facts, the Company concedes that Shimoda should have been given a business classification when service was initiated nine years ago. The Company is not aware of the reason why that did not occur.

purposes. Based on this consistent search result, and the application for service, the Company has concluded that the Shimoda line is a business line and is required to pay a business rate for service under the Company's tariff.

3. Complainants Allegations that the Company's Reclassification of Service was Discriminatory, Retaliatory and/or Arbitrary are Without Merit.

The Complainants have alleged that the Company's action in reclassifying service to the Shimoda line, because it occurred when the Complainants were lodging complaints about the winter of 2005-2006 service outages, was discriminatory and retaliatory.⁵ The Company categorically denies these allegations.

The Company's original classification of the Shimoda line as a residential line was inadvertently incorrect. It did not comport with the Company's tariff then, and would not comport with it now. Admittedly, the recent reclassification occurred because the Complainants had drawn the Company's attention to their account in the course of their communications with the Company and the Commission staff. When the Company identified the apparent inadvertent error in the original classification, it undertook an Internet search, which produced results similar to those provided in the attached Exhibits, concluded that the line should be reclassified as a business line and then notified Shimoda and corrected the error. That simply is proper business administration, not retaliation.

Discrimination occurs when similarly situated persons are disparately treated without any rational basis. Here, it would have been discriminatory *to other customers* for the Company not to classify the Shimoda line as a business line once the Company became aware of the facts,

⁵ Significantly, the Complainants have not offered any information to suggest that their service is entitled to anything other than a business classification under the Commission's Rule or the Company's tariff.

since it would have allowed Shimoda to continue to pay a lower residential rate while other similarly situated customers paid a business rate under the Company's approved tariff.

The Complainants also allege that the Company's action was arbitrary. The Company denies this allegation. Because of the substantial information the Company has obtained and reviewed concerning the nature of use of the Shimoda line, including the Shimoda application for service, and because of the absence of any countervailing information, the Company's decision that the Shimoda line should be classified as a business line cannot be deemed arbitrary.

CONCLUSION

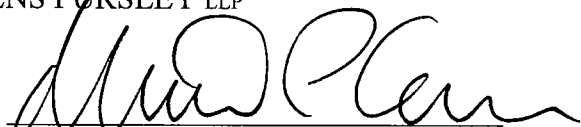
For the foregoing reasons, the Company respectfully requests that the Commission find that the Company did not violate the Commission's Rules by sending the Notice, and that the Company had legitimate and proper grounds for reclassifying Shimoda's service from residential to business.

DATED this 26th day of February 2007.

Respectfully submitted,

GIVENS PURSLEY LLP

By


Michael P. Lawrence

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February 2007, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

Bill Uhl and Doris Helge
P.O. Box 32
Atlanta, ID 83601

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery
 E-mail



Michael P. Lawrence

EXHIBIT A

YOUR TELEPHONE PAYMENT IS LATE



RURAL
TELEPHONE COMPANY
 892 WEST MADISON • GLENNS FERRY, IDAHO 83623
 PHONE (208) 366-2614 TOLL FREE PHONE 1-888-366-1211 033

SERVICE WILL BE DISCONTINUED ON

11/01/2006

YOUR LAST PAYMENT WAS		CURRENT	PAYMENTS			TOTAL
DATE	AMOUNT		10/04	10/04	10/04	
10/04	32.23	51.92	51.92	51.92	22.44	178.20

10/16/06

SHIMODA
 C/O HELGE
 PO BOX 32
 ATLANTA ID

**B 1

83601 0032

ACCORDING TO OUR RECORDS, WE HAVE NOT RECEIVED PAYMENT ON YOUR ACCOUNT. IF YOUR REMITTANCE HAS BEEN SENT PLEASE DISREGARD THIS NOTICE.

Thank You

ACCOUNTS ARE DUE AND PAYABLE WHEN PRESENTED, AND BECOME PAST DUE TWENTY DAYS FROM STATEMENT DATE.

EXHIBIT B

Voice CW - 864-2158
Fax 864-2162
2159

APPLICATION FOR TELEPHONE SERVICE

SECTION 1 - BILLING INFORMATION

NAME: Shimoda
(Last) (First) (Initial)

ADDRESS: % Box 32
Atlanta ID 83601
(City) (State) (Zip Code)

Can be reached at: 281-970-0423

60
Dine
Dinner

SECTION 2 - EMPLOYMENT

Social Security Number: 826060805 Employer: Self
Position: owner Years with Company: 15 Wk. Phone: 1-800-218-6110
Spouse Name: _____ Social Security Number: _____
Spouse Employer: _____ Years with Company: _____ Wk. Phone: _____
Nationality: _____

SECTION 3 - PREVIOUS TELEPHONE SERVICE

Previous Telephone Company: USLD Previous Phone Number: 281-970-0423
Estimated Monthly Charges: (Local) 50.70 100.00

SECTION 4 - DIRECTORY LISTING INFORMATION

Please read the following choices carefully! This will determine how and if your name(s) will be listed!

NONPUBLISHED NUMBER: The directory assistance operator DOES NOT provide you number to anyone, nor is it listed in any telephone directory.

UNLISTED NUMBER: The directory assistance operator DOES provide your number to asking parties, but it is not listed in any telephone directory.

REGULAR LISTED NUMBER: Each customer is allowed, free of charge, one listing in the Rural Telephone Company Directory. The telephone number is provided to the directory assistance operator for distribution to asking parties.

Which form of Directory Listing do you wish to have? Regular Listed #
How do you wish the listing to appear? Shimoda

SECTION 5 - BUILDING TYPE

House already built Manufactured home
 House under construction R.V. trailer
 Shop or Garage Other

Note: Phone service is already to the House South side

SECTION 6 - PHYSICAL LOCATION

Please provide a brief description of the location where the service is to be provided. Telephone service WILL NOT BE PROVIDED unless this section is filled out COMPLETELY.

LOT # 6 BLOCK # 3 SUBDIVISION NAME: Atlanta TNST
 STREET NAME: Quartz STREET ADDRESS: _____
 NEAREST CROSSROAD: Pine
 DESCRIPTION & COLOR OF HOUSE: Plain Wood
 ANY SPECIAL DIRECTIONS TO HOUSE: Corner of Quartz & Pine
 NAME (if any) OF PREVIOUS CUSTOMER AT THIS HOUSE: _____
 CLOSEST TELEPHONE COMPANY PEDESTAL #: Hooked into Box Quartz & Main
 NUMBER OF LINES REQUESTED (voice grade): 1
 NUMBER OF SPECIAL LINES REQUESTED (data, fax, ect.): 1

SECTION 7 - CUSTOM CALLING FEATURES

Please mark any features that you would like to have added to your line. Depending on the area that you are in, some of these features may not be available at this time. If you would like to know the monthly rates on these features please contact the billing department.

Call Waiting Call Forwarding Last Number Redial
 Wake up Call Speed Dial Caller Identification
 Anonymous Call Rejection Restrictive Dialing

The subscriber is responsible for their own inside wiring, connecting jacks, and other telephone equipment. If requested, Rural Telephone Company will install these items, although applicable time and materials will be billed to the customer. Installer fees are \$35.00 per hour for all inside work.

The Rural Telephone Company is required to furnish the applicant, in accordance with its rates, regulations and rules, on file with the State Public Utilities Commission, services and facilities as detailed herein and as may be ordered.

The applicant certifies that the information, as shown herein, is correct and agrees to pay all exchanges, toll and other service charges against this service made in accordance with the provision of the Tariffs, until such time as the applicant notifies the Rural Telephone Company that the service is to be discontinued.

* Applicant's Signature: Shivoda Date: 5-29-98

Note: \$100.00 is being furnished as a credit
 Deposit to be refunded plus intrest at the
 end of the first 6 months. Money order # 69839 468246 980602 770704
 also; have service start on June 13, 1998

EXHIBIT C

UNITED STATES POSTAL MONEY ORDER			
NO. 98039468246	980602	770704	100*00
YEAR, MONTH, DAY	POST OFFICE	U.S. DOLLARS AND CENTS	
PAY TO THE ORDER OF <i>Rural Telephone Corp</i>		CHECK NUMBER PAYMENT MADE FROM <i>Shirley</i>	
<i>210 West Main Ave</i> <i>Box 964 Columbia Ferry</i> <i>Tenn 37623</i>		ADDRESS OF <i>Atlanta, Tenn 3060</i>	
NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS			
NO. 98039468246		NO. 98039468246	

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 - If you are unsure of the spelling of the last name, enter just the first few letters (in this case, omit the first name).
 - Try a Web search for "[uhl](#)" near "[atlanta, id](#)".
 - [uhl](#) - Current Unlisted Phone Numbers & Address Found
- Information was found in Public Records, including Age, Address History and Family Members.

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e.g. Smith, Joe or Joe Smith

Location

e.g. Houston, TX or 77002

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Available Available Helge (Age:47)	Address & Phone Number Atlanta, ID	Background Check
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First Name [checked] Begins with [input]

Last Name* [unchecked] Begins with uhl

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Last Name <i>Required</i>	First Name	Street
uhl		
<small>TIP: Try the 1st 4 letters</small>	<small>TIP: Try just the 1st letter</small>	<small>TIP: Don't include St, Ave, etc</small>
City	State	ZIP Code
atlanta	ID <input type="button" value="v"/>	
<input type="button" value="SEARCH"/>		

You searched for: uhl in atlanta ID

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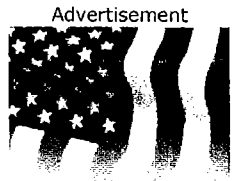
Reason: No listings were found.

- We searched on **uhl** in **atlanta ID** however; we could not find any listings to display.

Possible solutions: Please alter your search information using one of the following (in priority order).

1. Check to see if your information was entered correctly. Make sure you're using the correct spelling or location (street, city, state or zip).
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 - b. For cities with multiple zip codes, use the city instead of the zip code when possible or just search within the state.
 - c. **For a Person:** Use a partial (wildcard) last name instead of the full last name. Try removing the first name or only use the first initial. Also, the listing may be under a spouse's name.
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FIND A PERSON

Last Name <i>Required</i> <input type="text" value="helge"/> <small>TIP: Try the 1st 4 letters</small>	First Name <input type="text"/> <small>TIP: Try just the 1st letter</small>	Street <input type="text"/> <small>TIP: Don't include St, Ave, etc</small>
City <input type="text" value="atlanta"/>	State <input type="text" value="ID"/>	ZIP Code <input type="text"/>
<input type="button" value="SEARCH"/>		

You searched for: helge in atlanta ID

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Type: Land Line
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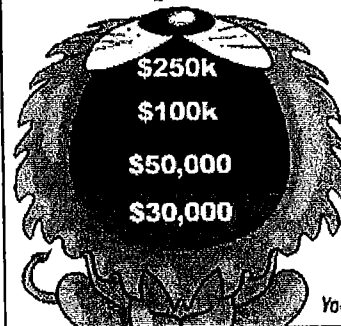
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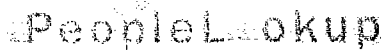
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