## AFFIDAVIT OF DANIEL NICHERIE

## STATE OF ALABAMA

## COUNTY OF JEFFERSON

Before me, the undersigned notary public in and for said county and state, personally appeared Daniel Nicherie, who, being personally known to me and after being first duly swom, deposed as follows:

- 1. My name is Daniel Nicherie and I am the President and Chief Executive Officer of Federal Transtel, Inc. ("FTT"), the defendant. I make this affidavit from my own personal knowledge and from my familiarity with the books and records of FTT.
- 2. FTT is not insolvent. Attached hereto as Exhibit A is a true and correct copy of the Financial Statement of FTT, prepared internally as of September 30, 2001. As reflected on the second page of the Balance Sheet, FTT has total stockholders equity of \$1,209,411.03. Contrary to allegations or statements I have read in the Affidavit of Lester Alexander, the Note Receivable identified on the first page of Balancing Sheet is a valid asset. Though the Note is in default, the Note is secured by two mortgages on real property located in California which have sufficient equity to fully secure and collateralize the Note. Thus, while the Note is in default, it remains a valid and completely secured asset of FTT.
  - Moreover, FTT has and does pay its obligations on a regular basis.
- 4. Again, contrary to statements contained within the Affidavits filed in this matter, I have not taken money from FTT in any inappropriate fashion. Offsets to monies payable to Mercury Marketing are justified under our contract. Moreover, any monies that



have been paid to me by FTT have been used for the corporate purposes and direct benefit of FTT.

- It is my understanding and I state upon information and belief that Mercantile . 5. Capital owns 35% of Mercury Marketing. It is also my understanding and I state upon information and belief that the controller of Mercantile Capital is the son of the principal of Any rights of Mercantile Capital are derived through Mercury Mercury Marketing. Marketing, and are subject to a setoff of those obligations owed by Mercury Marketing to FTT. Attached hereto as Exhibit B is correspondence authorized by me to be sent to Mercury Marketing on October 31, 2001. The statements contained within the letter are true and correct. Mercury Marketing has breached its contract with FTT and owes FTT \$1,994,623.16 through underfunding of the reserve maintained at FTT. Any obligation owed to Mercury Marketing is more than offset by that underfunding debt, and we believe that Mercury Marketing presently owes FTT at least \$263,455.27. More importantly, I am aware that the Federal Trade Commission ("FTC") determined that Mercury Marketing defrauded its customers. Mercury Marketing has settled with the FTC without admitting any improprieties. However, the knowledge of that claimed defalcation by the FTC exposes FTT to much larger chargebacks, by which the amount owed to FTT by Mercury Marketing probably will far exceed the amount presently due.
- 6. Several contracts of FTT with local exchange carriers (LEC) contain provisions by which the appointment of a receiver constitutes an immediate term of default and enables the LEC to terminate the contract immediately. Hence, the appointment of a Receiver for FTT would constitute a term of default of these agreements. Because the revenue obtained by FTT is generated solely through its contractual relationships with the

LECs, the appointment of a Receiver would expose FTT to an immediate breach of these contracts and termination of any ability to obtain revenue, thereby putting FTT out of business.

- 7. FTT has not taken any money or falled to pay any money due Mercury Marketing under its contractual relationships, until it was determined that FTT had overpaid Mercury Marketing or had underfunded the Reserve for Mercury Marketing held by FTT.
- 8. I have read the above and foregoing Affidavit and it is true and correct to the best of my knowledge.

Further the affiant saith not.

DANIEL NICHERIE

Sworn to and subscribed before me this the 1st day of November, 2001.

ANGELLE MARIE ALEMAN

NOTARY PUBLIC, ALABAMA, STATE AT LARGE

My Commission Expires: September 2, 2003

ANGELLE MARIE ALEMAN
Notary Public, Ainbame, State et Large
Hy Commission Expires September 2, 2003



PEDERAL TRANSPISE, ENG.

FORMULAL STATISHENTS

2864 ACTOR SEND SUITE 100 BIBHINGBOM, AL 35242

> As of 4ep 30 01

THIS DOWNSTION IS RIGHLY CHAPTERWILL, NOT FOR USE OR DISCLOSING WITHOUT PRIOR WRITTEN CHARGEST OF FIX.

5:48am Oct 23 2001

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.d #556231	1	* *** ***	2.00	\$1. p	2,462,686,35
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(220,000.00)	0.00	0.00	(320,000,00)
1,372,779.11	0.00	<b>₹.5</b> ₽	1,922,775,11
(294,268,041	(124,760,74)		(267,607,34)
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1.309,411.93	(125,750,74)	10.48	1.336,171,77
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29,540,Q46,S\$	(351,978.65)	1.65	21,351,175,23
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(continued) DISTRIBUTION PETADOES ENVIRONES Profit (love) YEAR-TO-DATE Total shareholders' equity

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