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Free Conferencing Corporation

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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<p><b>FREE CONFERENCE CALL HOLDINGS, INC., a Georgia corporation, and FREE CONFERENCING CORPORATION., a Nevada corporation,</b></p> <p style="text-align: center;"><b>Plaintiffs,</b></p> <p>v.</p> <p><b>POWERHOUSE COMMUNICATIONS, LLC, a Utah limited liability company, and DARIN ROHEAD, an individual,</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p><b>COMPLAINT</b></p> <p><b>and</b></p> <p><b>JURY DEMAND</b></p>  <p><b>Civil No.</b></p> <p><b>Honorable</b></p>
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Plaintiffs Free Conference Call Holdings, Inc. (“FCCH”) and Free Conferencing Corporation (“Free Conferencing”) (collectively, “Plaintiffs” or “FCC.com”) by and through counsel of record MAGLEBY & GREENWOOD, P.C., hereby complain against Defendant Powerhouse Communications, LLC (“Powerhouse”) and Darin Rohead (“Rohead”) (collectively, “Defendants”) as follows:

## **PARTIES**

1. Plaintiff Free Conference Call Holdings, Inc. is a Georgia corporation, and the predecessor in interest to Plaintiff Free Conferencing Corporation, a Nevada corporation. At all relevant times, these companies have conducted business in Utah, and other states within the United States.

2. Defendant Powerhouse is a Utah limited liability company which has at all relevant times conducted business in Utah, and other states within the United States.

3. Defendant Darin Rohead is a Utah resident, and upon information and belief, is the managing member of PowerHouse.

4. Defendants Powerhouse and Rohead may be collectively referred to below as “Defendants.”

## **VENUE AND JURISDICTION**

5. This Court has jurisdiction over this action pursuant to [28 U.S.C. § 1332](#), Diversity Jurisdiction, and [28 U.S.C. § 2201](#), the Declaratory Judgment Act. This action is between Plaintiffs, corporations organized under the laws of Georgia and Nevada, and PowerHouse and Rohead, a Utah company and Utah citizen. The amount in controversy exceeds \$100,000.

6. The Court has supplemental jurisdiction over all related state law claims under [28 U.S.C. § 1367](#).

7. Venue is proper in this District pursuant to [28 U.S.C. § 1391](#).

## **FACTS**

### **The Business Model for FreeConferenceCall.com**

8. FCC.com is in the business of providing the public (hereinafter “users”) with audio conference call capabilities, at no extra charge beyond the cost of the telephone call for the conferencing capabilities.

9. FCC.com promotes its services by, among other things, its website at [www.freeconferencecall.com](http://www.freeconferencecall.com).

10. FCC.com provides its services by contracting with local telephone companies, sometimes called an “Incumbent Local Exchange Carrier” (“ILEC”).

11. The ILECs agree to allow FCC.com to collocate conferencing bridges and other audio conferencing equipment in their facilities.

12. The telephone companies then provide FCC.com with a series of telephone numbers dedicated to the conferencing equipment.

13. FCC.com then advertises free conferencing services, and provides the numbers from the ILECs to interested users.

14. Thus, the user can dial one of the numbers provided by FCC.com and access and use the conferencing equipment at no extra charge beyond the regular charges for the cost of the telephone call.

15. In turn, the ILEC compensates FCC.com for the traffic on its lines by paying FCC.com a certain amount of money for every minute used by the user on the conference call (the “Minutes” or the “Minute Rate”).

16. Each ILEC is only willing to pay a certain maximum Minute Rate to utilize FCC.com's conference call services, depending on location, volume and other factors.

17. Thus, the terms, especially Minute Rate terms, of each contract with an ILEC differ one with another, and are kept strictly confidential.

### **The Consulting Agreement**

18. On or about February 23, 2004, FCC.com and Rohead, on behalf of Powerhouse Communications, LLC ("PowerHouse"), executed a written agreement providing for certain consulting and other services (the "Consulting Agreement").

19. Pursuant to the Consulting Agreement, Defendants agreed to provide services to locate and negotiate with ILECs who were interested in obtaining telephone traffic through FCC.com.

20. In return, FCC.com agreed to pay Rohead a certain amount of the net revenue that FCC.com realized from collection of its Minute Rate with each particular ILEC that was obtained through Rohead's services.

21. The higher the Minute Rate that Rohead was able to extract from the ILEC on behalf of FCC.com, the more revenues that FCC.com would realize from the ILEC.

22. Conversely, the lower the Minute Rate that Rohead extracted from the ILEC on behalf of FCC.com, the less the revenue would be that FCC.com would realize from the ILEC.

### **Defendants' Obligations to Maximize FCC.com's Income and Duty of Good Faith and Fair Dealing**

23. Among other terms, the Consulting Agreement provided that Powerhouse would locate and refer ILECs interested in doing business with FCC.com, and would "use its best efforts to perform the terms and conditions of the Agreement," and that the parties would

“conduct their business in relation to this Agreement in an ethical, moral and financially sound manner....”

24. Defendants also promised “to keep secret and retain in the strictest confidence...trade secrets, know how lists, pricing policies, customer lists, and other business information....”

#### **Defendants’ Obligation Not to Compete**

25. Defendants further agreed to “not engage in, or attempt to engage in, nor encourage or support any other person or entity to engage in, any business relationship with said entities that would compete with the terms and obligations set forth in this Agreement.”

#### **Defendants’ Fiduciary Obligation**

26. Subsequent to the entry of the Consulting Agreement, Defendants engaged in negotiations with various ILECs on behalf of FCC.com.

27. Defendants were obligated to negotiate for FCC.com’s benefit the highest possible Minute Rate that each ILEC would agree to pay FCC.com.

28. In negotiating with the ILECs, Defendants would typically communicate to FCC.com the maximum Minute Rate that particular ILEC would agree to pay for FCC.com’s services, and if acceptable to FCC.com, then FCC.com and the ILEC would execute a agreement.

29. Rohead would typically draft the agreements for FCC.com, and would obtain the signatures from FCC.com and the ILECs.

30. Rohead was the primary, if not exclusive, contact between FCC.com and the ILECs. Rohead was given access to, and possessed, relevant knowledge, influence, and bargaining power for FCC.com when negotiating with the ILECS on FCC.com's behalf.

31. FCC.com expected and reasonably relied upon Rohead to act in FCC.com's best interest and govern himself honestly and appropriately, and to act in FCC.com's best interest, when negotiating deals for FCC.com with the ILECs.

### **Defendants' Breaches and Wrongful Conduct**

32. Unbeknownst to FCC.com, at the same time he was purporting to negotiate on behalf of FCC.com with each ILEC, including while negotiating a Minute Rate for FCC.com, Rohead was also negotiating and demanding that, in addition to the Minute Rate to be paid to FCC.com for its services, each ILEC would also pay Rohead or Powerhouse an *additional* amount for the same conference calls from which each ILEC was to pay FCC.com (the "PowerHouse Minute Rate").

33. Defendants, either separately, together, or through other entities or agents, entered into agreements with the same ILECs contracting with FCC.com (the "PowerHouse-ILEC Agreements"), for the payment of the PowerHouse Minute Rate to Defendants (or affiliated persons or entities).

34. Each ILEC was only willing to pay a certain maximum amount per minute for FCC.com's services.

35. The ILEC would not have paid the PowerHouse Minute Rate to Defendants, but for the use of FCC.com's services.

36. The PowerHouse Minute Rate was calculated and based upon the use of FCC.com's services.

37. But for the services provided by FCC.com, the ILECs would not have paid Defendants the PowerHouse Minute Rate.

38. But for the services provided by FCC.com, the ILECs would not have entered into the PowerHouse-ILEC Agreements.

39. Because the ILECs were only willing to pay a certain maximum amount per minute of conference call time using FCC.com's services, Defendants were necessarily negotiating against FCC.com's financial and business interests in negotiating and accepting payments from the ILEC for the PowerHouse Minute Rate.

40. In other words, for each penny or dollar that Defendants received from the PowerHouse Minute Rate paid by each ILEC, there was a corresponding loss to FCC.com.

41. Upon information and belief, Defendants have represented other companies in locating and negotiating with ILECs for minutes that would otherwise have been made available to FCC.com.

42. Upon information and belief, Defendants have engaged in other wrongful, improper, or tortious conduct, to the injury and damage of FCC.com.

43. Defendants' actions created a direct conflict of interest between their financial interests and those of FCC.com.

44. Defendants' actions constituted self-dealing, including because Defendants were using FCC.com's services to advance Defendants' financial interest, instead of that of FCC.com.

45. Defendants' actions constituted direct competition with FCC.com, including because Defendants were directly competing with FCC.com for the same source of revenue, arising from the same services.

46. Defendants requested and/or required that the ILECs not disclose to FCC.com the existence of the side deals, i.e., the PowerHouse-ILEC Agreements, between Defendants and the ILECs.

47. Defendants concealed and failed to disclose material facts to FCC.com, including without limitation the facts that Defendants were negotiating with the ILECs for payment of the PowerHouse Minute Rate that Defendants were representing other companies in locating and negotiating with ILECs, that Defendants had the self-created conflict of interest between Defendants' financial interest and that of FCC.com, that Defendants were engaged in self-dealing, that Defendants were in competition with FCC.com, and / or that Defendants had taken steps to conceal the PowerHouse-ILEC Agreements from FCC.com.

48. Defendants' conduct, including the concealment and omissions of material information, was knowing, intentional and malicious.

#### **FCC.com Discovers Defendants' Unlawful Conduct**

49. In or about August 2007, FCC.com learned about Defendants' unlawful and improper conduct.

50. Shortly after learning of Defendants' improper actions, FCC.com confronted Rohead.

51. In FCC.com's discussion with Rohead, Rohead admitted to negotiating and entering the above-referenced deals with the ILECs, and to receiving significant compensation from each ILEC for the services FCC.com provided to the ILECs.

52. To date, Defendants have refused, and continue to refuse, to identify the amount of payments and profits realized from each ILEC.

53. To date, Defendants have refused, and continue to refuse, to provide any documents or information relating to the PowerHouse-ILEC Agreements.

54. FCC.com believes that Defendants have improperly diverted monies that would have been paid to FCC.com in an amount estimated to be in the range of \$4,000,000 to \$7,000,000.

#### **FCC.com's Lawful Termination of the Consulting Agreement**

55. As a direct consequence of Defendants' unlawful conduct, including Powerhouse's material breaches of the Consulting Agreement and Defendants' breaches of their other duties, FCC.com lawfully terminated the Consulting Agreement.

56. Defendants have asserted to Plaintiffs that Defendants are due and owing consulting fees under the Consulting Agreement.

57. However, the monies due and owing FCC.com by Defendants arising from Defendants' unlawful conduct set forth above, far exceed any alleged amount owing Defendant under the Consulting Agreement.

58. In addition, FCC.com is excused from any past or further performance of the Consulting Agreement, based upon Defendants' wrongful conduct.

59. In addition, FCC.com is entitled to recover all amounts paid to Defendants, including under a disgorgement theory.

**FIRST CAUSE OF ACTION  
(Breach of Contract)  
(Against Powerhouse)**

60. FCC.com incorporates the preceding paragraphs by reference.

61. The Consulting Agreement constitutes a binding and enforceable contract between FCC.com and Powerhouse.

62. Plaintiff has performed all of its obligations and conditions precedent to the contract.

63. Defendant Powerhouse has materially breached the Agreement by the conduct set forth above, including without limitation by competing with FCC over the compensation each ILEC is willing to pay FCC.com for FCC.com's services.

64. As a direct and proximate cause of the breach, FCC.com is entitled to judgment against Defendants for all damages incurred by FCC.com, including without limitation the return of all monies paid to Defendants, in an amount to be determined, plus costs, interest, and attorney fees.

**SECOND CAUSE OF ACTION  
(Breach of Covenant of Good Faith and Fair Dealing)  
(Against Powerhouse)**

65. FCC.com incorporates the preceding paragraphs by reference.

66. The Consulting Agreement constitutes a binding and enforceable contract between FCC.com and Powerhouse.

67. FCC.com has performed all of its obligations and conditions precedent to the contract.

68. Defendant Powerhouse was obligated not to destroy or injure Plaintiffs' right to receive the fruits of the agreement.

69. Defendant's obligation included, among other things, an implied covenant and obligation not to engage in conduct that would destroy, injure, or otherwise negatively impact FCC.com's ability to obtain the most favorable Minute Rate with the ILECs, and to thereby maximize FCC.com's revenues.

70. Defendant Powerhouse's conduct is inconsistent with the agreed common purpose of the agreement with FCC.com, and FCC.com's justified expectations.

71. Defendant's actions constitute material breaches of its obligations of good faith and fair dealing owed to FCC.com under the agreements.

72. As a direct and proximate result of the breaches of the covenant of good faith and fair dealing, FCC.com is entitled to judgment against Defendants for all damages incurred by FCC.com, including without limitation the return of all monies paid to Defendants, in an amount to be determined, plus costs, interest, and attorney fees.

**THIRD CAUSE OF ACTION  
(Fraudulent Non-Disclosure / Fraudulent Concealment)  
(Against Powerhouse and Rohead)**

73. FCC.com incorporates the preceding paragraphs by reference.

74. Defendants had a legal duty to communicate to FCC.com, including the duty to communicate to FCC.com the maximum amounts that the ILECs were willing to pay in connection with obtaining FCC.com's services, that Defendants were requesting and negotiating

on their own behalf for compensation and/or Minute Rates on top of the monies being demanded by FCC.com, and other material information.

75. Defendants intentionally did not disclose material information FCC.com.

76. The material information not disclosed by Defendants to FCC.com, was known by Defendants.

77. Defendants by concealment or other action intentionally prevented FCC.com from acquiring material information regarding the secret agreements and revenue Defendants were requesting and obtaining from the ILECs in connection with FCC.com's services.

78. As a direct and proximate result of Defendants' fraudulent conduct, FCC.com is entitled to judgment against Defendants for all damages incurred by FCC.com, including without limitation the return and disgorgement of all monies paid to Defendants, in an amount to be determined, plus costs, interest, and attorney fees.

79. The conduct by these Defendants was and is willful or malicious, or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and disregard of, FCC.com's rights. Thus, FCC.com is entitled to an award of punitive damages against them under [Utah Code § 78-18-1](#).

**FOURTH CAUSE OF ACTION  
(Breach of Fiduciary Duty)  
(Against Powerhouse and Rohead)**

80. FCC.com incorporates the preceding paragraphs by reference.

81. Defendants were in a special relationship of trust and confidence with FCC.com, and owed an existing and continuing duty to act with the utmost good faith and in FCC.com's

best interest, to, among other things, obtain the highest possible minute rates and not to injure FCC.com's economic and business interests.

82. Defendants breached their duties to FCC.com and knowingly acted against FCC.com's interests.

83. As a direct and proximate result of Defendants' breaches of fiduciary duty, FCC.com is entitled to judgment against Defendants in an amount to be determined, including without limitation the return and disgorgement of all monies paid to Defendants, plus costs, interest, and attorney fees.

84. The conduct by these Defendants was and is willful or malicious, or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and disregard of, FCC.com's rights. Thus, FCC.com is entitled to an award of punitive damages against them under [Utah Code § 78-18-1](#).

**FIFTH CAUSE OF ACTION  
(Tortious Interference with Business Relations)  
(Against Powerhouse and Rohead)**

85. FCC.com incorporates the preceding paragraphs by reference.

86. Defendants intentionally interfered with FCC.com's existing and potential economic relations with FCC.com's clients, the ILECs, for an improper purpose and/or by improper means.

87. Defendants intentional interfering included, among other things, interfering with FCC.com's economic relationship with each ILEC by drawing away from FCC, and taking for itself, various monetary incentives and other economic benefits, which FCC otherwise would

have been entitled to received from each ILEC had Defendants not engaged in the unlawful conducts set forth above.

88. As a direct and proximate result of Defendants' interference, FCC.com has been damaged in an amount to be determined, including without limitation the return and disgorgement of all monies paid to Defendants, plus costs, interest, and attorney fees.

89. The conduct of these Defendants was and is willful or malicious, or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and disregard of, FCC.com's rights. Thus, FCC.com is entitled to an award of punitive damages against these Defendants under [Utah Code § 78-18-1](#).

**SIXTH CAUSE OF ACTION  
(Constructive Trust)  
(Against Powerhouse and Rohead)**

90. FCC.com incorporates each of the preceding paragraphs by reference.

91. Defendants have engaged in wrongful acts described above.

92. By virtue of their wrongful acts, including by secretly negotiating adverse to FCC while simultaneously negotiating for FCC.com in relation to the ILECs, Defendants have been unjustly enriched including by secretly realizing payment directly from ILECs of monies that rightfully belong to FCC.com had Defendants acted lawfully.

93. The monies wrongfully acquired by Defendants can be traced to Defendants' wrongful behavior.

94. Injustice will result if Defendants are allowed to keep money or property that rightfully belongs to FCC.com.

95. FCC.com is entitled to an equitable and constructive trust against Defendants for all monies Defendants received as a result of their secret negotiations and agreements formed directly with the ILECs, and for all monies paid to Defendants, as set forth above, plus all costs, interest and attorney fees.

**SEVENTH CAUSE OF ACTION  
(Accounting)  
(Against Powerhouse and Rohead)**

96. FCC.com incorporates by reference the above allegations.

97. Defendants, in their capacity in dealing with the ILECs on behalf of FCC, owed a fiduciary and confidential relationship with FCC.com.

98. Defendants have secretly reached side agreement with the ILECS for Defendants' benefit, to the detriment of FCC.com, including by directly taking monies from ILECs that otherwise belonged to FCC.com, which monies FCC.com is rightfully entitled to.

99. Defendants have refused to account for the monies they have taken from the ILECs pursuant to Defendants secret and unlawful conducts set forth above.

100. FCC.com is entitled to an accounting from Defendants on the amounts and dates of receipt of these monies, the source of these monies, and the whereabouts and use of such monies.

101. The information to be accounted is in exclusive possession of Defendants.

102. Defendants are obligated to pay for such accounting.

103. On completion of the accounting, FCC.com is entitled to judgment distributing these monies realized from Defendants directly from the ILECs, in an amount to be determined, plus costs, interest, and attorney fees.

**EIGHTH CAUSE OF ACTION  
(Unjust Enrichment)  
(Against Powerhouse and Rohead)**

104. FCC.com incorporates the preceding paragraphs by reference.

105. FCC.com has conferred a benefit on the Defendants, including without limitation by providing ILECs with services for which each ILEC compensates Defendants, without Defendants having compensated FCC.com for providing such services.

106. FCC.com is entitled to compensation and damages from Defendants for doing so.

107. Defendants accepted the benefits of the FCC.com's efforts, albeit without informing FCC.com, and did so under circumstances whereby it would be inequitable for Defendants to retain benefits without paying the value thereof.

108. FCC.com is entitled to a judgment against Defendants in an amount to be determined at trial, including without limitation the return and disgorgement of all monies paid to Defendants, plus costs, interest and attorney fees.

**NINTH CAUSE OF ACTION  
(Declaratory Relief)  
(Against Powerhouse and Rohead)**

109. FCC.com incorporates by reference all above allegations as though fully set forth herein.

110. There exists an actual, ripe and justiciable controversy between FCC.com and Powerhouse.

111. Such controversy includes, among other things, that Defendant Powerhouse has represented to FCC.com its position that FCC.com still owes Powerhouse certain monies under the Consulting Agreement. FCC.com disputes this position, and to the contrary, takes the

position that Defendant Powerhouse has breached the terms of the Consulting Agreement, and by such breach and other unlawful conduct set forth above, Defendant Powerhouse is not entitled to any further benefit under the Consulting Agreement, and in fact, is obligated to pay to FCC.com all monies it has received directly from the ILECs for FCC.com minutes, along with damages, costs, and attorney fees.

112. Declaratory relief will settle the controversy, and effectively clarify and resolve the rights and obligations of the parties between each other with regard to the controversy addressed above.

113. FCC.com requests a declaratory judgment, seeking declaration of its rights under the Consulting Agreement, and the rights and obligations of Defendant Powerhouse under the Consulting Agreement, including without limitation the following declaration:

- a. That the Consulting Agreement between FCC.com and Defendant Powerhouse is terminated;
- b. That Defendant Powerhouse is not entitled to any further enjoyment, benefits, or monies pursuant to the Consulting Agreement;
- c. That Defendants Powerhouse and Rohead are obligated to pay to FCC.com all monies that Powerhouse received directly from the ILECs as a result of FCC's services to such ILECs;
- d. That Defendants Powerhouse and Rohead are obligated to pay FCC.com for all damages, costs, and fees incurred by FCC.com as a result of Powerhouse's unlawful conduct set forth above;

- e. For costs, interest and attorney fees; and
- f. For additional relief and declarations, as are determined appropriate at the time of trial or otherwise.

**WHEREFORE**, FCC.com requests the following relief:

- I. On each Cause of Action, judgment and declaratory relief and equitable in favor of Plaintiffs and against Defendants as pled, including all available damages, including punitive damages, interest, and costs and attorney fees as allowed by law.
- II. For costs and attorney fees.
- III. For all other just and equitable relief as is appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to [Fed. R. Civ. P. 38](#), Plaintiffs requests a jury trial on all issues so triable.

DATED this 16<sup>th</sup> day of November 2007.

**MAGLEBY & GREENWOOD, P.C.**



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