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RESPOND TO NEW YORK

October 18, 2006

**BY FACSIMILE**

Honorable Kenneth C. MacKenzie, J.S.C.
Superior Court of New Jersey
General Equity Division
Washington & Court Sts.
Morristown, NJ 07963-0910

**Re:** ***University Communications Inc. v. Net Access Corp.***
**Docket No. MRS-C-87-04**

Dear Judge MacKenzie:

We submit this reply letter brief in support of plaintiff/counterclaim defendants' once-again renewed motion to strike defendants' answer, enter a Judgment of Default, dismiss defendants' counterclaim with prejudice, and to award sanctions, attorneys' fees and costs for defendants' failure to comply with discovery requests and court orders. It also constitutes an opposition to the "joint cross-motion" of our adversaries and a request that the materials submitted by them be stricken from the record for reasons that, if not already obvious, are stated below.

We have advised our clients that it is not an appropriate use of their resources for this office to do more legal research, draft more affidavits, and submit the sort of papers that might be appropriate in these circumstances if this were a "normal" court case in the Chancery Division. We believe we have met the legal burden required of petitioners seeking the relief in question many times over, and that our efforts have borne little fruit with this Court. We hope each time it will be different only because the facts grow more outrageous, more bizarre, and this time is the same. We write briefly merely to cover a few basic points based on the existing record.

Our clients' motion was opposed by the submission of papers that in no way meet the Rules of Court or any other standard of legal practice in the Superior Court of the State of New Jersey. "Joint motions" and "joint cross-motions" are supported by "joint

certifications" – an absurdity in law and logic alike; a non-sequitur; an insult to the intelligence of both court and counsel, as has been argued extensively in the past. Our motion for sanctions with respect to the unauthorized, bullying videotaped recording of a deposition in the very sanctuary of the law – the courthouse in which this Court sits – is answered by submission of that unauthorized recording itself, which defendants fully expect the Court to review and consider. Thus defendants accomplish their goal of turning this entire process into a sideshow, making – by force – an illicit recording of a deposition in gross violation of the Rules of Court now part of the record of this case, and making it impossible for my client to conduct discovery by the Rules of Court and Orders of this Court. That submission of papers and materials is made directly to the judge's chambers, instead of being filed with the clerk's office and thereby bypassing the Court's requirements that no papers be accepted for **filing** without a certificate of service, no certificate being included among the papers. The reason for this is there is no timely service on my clients; service of these materials is not made upon this office until over a week later, after a threatening letter is sent.

These papers contain no legal argumentation – cases cited in favor of plaintiff's motion are not distinguished, not addressed, not rebutted. Under normal circumstances, this would be deemed a concession, but this case has never represented a normal circumstance. Defendants' requests for relief, similarly, are submitted without any resort to legal authority whatsoever.

All this is done the day before the return date of the original motion, a technique used not once but twice before in recent months. These parties do not request extensions of time, they merely grab them, and do so with no apparent risk of meaningful sanction. These papers even claim a right to sanctions against a party for not "participating" in depositions so tainted – depositions taken by our adversary of his own witnesses, his own company's officers, his own relatives! – as if there were some inherent right of a circus promoter not only to put on his show but to require his competitors to watch it, and pay for the privilege, too.

How can parties in litigation in a distinguished court do this? It is a wonder. Two people sign and submit these "joint" papers. One is a member of the Bar of this Court in good standing but is evidently little more than a sock-puppet for the other, his real client. Nonetheless the first man's status as an attorney is used when needed for his client's purposes; yet no rules governing the conduct of attorneys seem to apply to him and he is given the wide range of deference afforded the simplest *pro se* party. The other is a man, evidently something of a genius, who has supposedly sold himself an interest in this action, which he refuses to document or disclose, whom this Court has given that same

latitude and permitted to act as amateur attorney, not only with respect to his own narrow interest in this case according to his own lights, but to all aspects of the litigation including the defense of claims against the corporate client that the law says he may not, as a non-attorney, represent, and yet whom he does represent in absolutely every real respect.

We submit that all of the materials delivered to Your Honor (not filed) by our adversaries should be struck for lack of timeliness and for a failure to comply with the Rules of court regarding filing and service; that all "joint certifications" in this matter be struck, *nunc pro tunc*, as not constituting papers defined by the Rules of Court among those that may be considered by the Court in deciding a motion; and that in particular the unauthorized video recording submitted by our adversaries be struck for reasons set out in our moving papers; that the answer of defendants and the claims of the supposed "real party in interest" be struck for the reasons set out in those papers as well; and that the Court order the submission of an affidavit of services for purposes of awarding attorneys' fees to reimburse plaintiff for the time spent preparing for and attending the deposition in question, the attendant motion practice, this motion, and the previous discovery motions.

At this juncture, however, we are certain that no more legal research, factual analysis or double-spaced certifications will make a difference in the Court's determination of these requests, however. Our legal arguments stand utterly unrebutted; more significantly, the appalling record already before the Court speaks for itself.

We do pray however that the Court seriously consider denying our adversaries' request for oral argument on this motion. We solemnly submit to Your Honor that there is absolutely nothing more to be gained, and potentially much to be lost, from engaging in such an exercise.

Respectfully submitted,

Ronald D. Coleman

cc: Feng Li, Esq.
Mr. Kenneth Ellman