

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,)	No. CR-03-0213 WHA
12 Plaintiff,)	
13 v.)	VIOLATIONS: 18 U.S.C. § 1341 – Mail
14 OLIVER HILSEN RATH,)	Fraud; 18 U.S.C. § 1343 – Wire Fraud;
15 Defendant.)	15 U.S.C. § 78ff – Securities Fraud; 18
)	U.S.C. § 371 – Conspiracy; 18 U.S.C. §
)	2 – Aiding and Abetting
)	SAN FRANCISCO VENUE

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18 SUPERSEDING INDICTMENT

19 The Grand Jury charges:

20 BACKGROUND

21 A. The Company

22 1. U.S. Wireless Corporation (“U.S. Wireless” or “the Company”) was a provider
23 of location-based information and services, headquartered in San Ramon, California.
24 From October 22, 1996, through May 29, 2001, U.S. Wireless was traded on the
25 NASDAQ stock exchange. U.S. Wireless filed a Chapter 11 bankruptcy petition on
26 August 29, 2001, and sold substantially all of its assets to Trafficmaster USA, Inc. on
27 December 10, 2001.

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1 B. The Defendant

2 2. The defendant, OLIVER HILSEN RATH, served as President, Chief Executive
3 Officer (CEO), and Director of U.S. Wireless beginning in or about July 1996. In or
4 about March 2000, HILSEN RATH stepped down as President and was appointed
5 Chairman of the Board of Directors. He maintained the CEO, Chairman, and Director
6 titles until his termination on or about May 26, 2001, as a result of an internal fraud
7 investigation by the Company.

8 C. The Conspiracy And Scheme To Defraud

9 3. Beginning in or about August 1996 and continuing to in or about June 2001,
10 within the Northern District of California and e
11 lsewhere, HILSEN RATH and others did knowingly and intentionally conspire (a) to
12 devise a scheme and artifice to defraud, including to deprive U.S. Wireless and its
13 shareholders of their right to honest services, and for obtaining money and property by
14 means of false and fraudulent pretenses, representations, and promises, and for the
15 purpose of executing such scheme and artifice to cause the use of the mails, in violation
16 of 18 United States Code, Section 1341; and (b) to make and cause to be made materially
17 false and misleading statements in documents required to be filed under the Securities and
18 Exchange Act of 1934, specifically, in Forms 10-KSB filed with the SEC, in violation of
19 Title 15, United States Code, Section 78ff.

20 4. The object and purpose of the conspiracy and scheme to defraud was to cause
21 U.S. Wireless to issue Company stock options, shares, and funds to offshore shell
22 corporations under the ownership and control of HILSEN RATH and others, without
23 approval from or disclosure to the corporation or its shareholders, and without adequate
24 consideration.

25 5. The shell corporations include Telecom Associates Limited, Aida Holdings
26 Limited (aka Borazon Limited), KS Legal Consultants Limited (aka Biskara Limited),
27 Silicon Valley Investment Partners (“SVIP”), Craiglands Limited, IDS Telecom
28 Investment Group, and MSD Investment Advisors, Inc. All of these shell corporations

1 were incorporated and managed in the British Virgin Islands and/or the Channel Islands
2 (United Kingdom).

3 6. It was part of the conspiracy and scheme to defraud that HILSEN RATH,
4 directly and indirectly, did the following:

5 a. by letters dated on or about May 11, 1999, August 2, 1999, and
6 December 19, 1999, falsely represented to U.S. Wireless's transfer agent that certain of
7 the shell corporations had properly purchased shares upon the exercise of options;

8 b. by letters dated on or about May 11, 1999, August 2, 1999, and
9 December 19, 1999, requested that the transfer agent issue the shares of U.S. Wireless
10 common stock to the shell corporations;

11 c. on or about May 17, 1999, August 9, 1999, and January 5, 2000, caused
12 the transfer agent to mail, via federal express, stock certificates for the requested number
13 of U.S. Wireless shares, to the shell corporations at the address of U.S. Wireless in San
14 Ramon, California;

15 d. in or about and between March 2000 and April 2001, caused certain of
16 the shell corporations to sell the stock they had received through the unauthorized
17 transfers of shares and options, and to transfer the proceeds for the benefit of himself and
18 third parties;

19 e. in or about and between August 1997 and January 2000, caused U.S.
20 Wireless to wire cash payments to certain offshore corporations under the ownership and
21 control of HILSEN RATH and his co-conspirator, in exchange for inadequate
22 consideration and without approval or knowledge by U.S. Wireless's Board of Directors
23 or any other corporate body or officer empowered to authorize the wire transfers; and

24 f. on or about July 14, 1998, June 29, 1999, and June 29, 2000, caused U.S.
25 Wireless to make materially false statements to the Securities and Exchange Commission
26 ("SEC") in its Forms 10-KSBs, in order to cover up and conceal from the SEC, other
27 officers and directors of U.S. Wireless, and shareholders, his misappropriation of
28 Company shares, options, and funds.

1 COUNT ONE: 18 U.S.C. § 371 (Conspiracy to Commit Mail, Wire, and Securities
2 Fraud)

3 7. Paragraphs 1 through 6 are realleged as if fully set forth in this Count.

4 8. Beginning in or about August 1996 and continuing to in or about June 2001,
5 within the Northern District of California and elsewhere, the defendant,

6 OLIVER HILSENATH,

7 and others did knowingly and intentionally conspire (a) to devise a scheme and artifice to
8 defraud, including to deprive U.S. Wireless and its shareholders of their right to honest
9 services, and for obtaining money and property by means of false and fraudulent
10 pretenses, representations, and promises, and for the purpose of executing such scheme
11 and artifice to cause the use of the mails, in violation of 18 United States Code, Section
12 1341; and (b) to make and cause to be made materially false and misleading statements in
13 documents required to be filed under the Securities and Exchange Act of 1934,
14 specifically, in Forms 10-KSB filed with the SEC, in violation of Title 15, United States
15 Code, Section 78ff.

16 9. In furtherance of the conspiracy and to effect the objects thereof, in the
17 Northern District of California and elsewhere, the defendant and others committed the
18 overt acts as described in paragraph six of this Superseding Indictment, which are
19 realleged and incorporated here by reference.

20 All in violation of Title 18, United States Code, Section 371.

21 COUNTS TWO through SIX: 18 U.S.C. §§ 1341, 1346, and 2 (Mail Fraud; Aiding,
22 Abetting, and Willfully Causing)

23 10. Paragraphs 1 through 6 are realleged as if fully set forth in this Count.

24 11. On or about December 31, 1999, within the Northern District of California
25 and elsewhere, for the purpose of executing the scheme and artifice to defraud, to deprive
26 his employer, U.S. Wireless, of the intangible right to honest services, and for obtaining
27 money and property by means of false and fraudulent pretenses, representations, and

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promises, the defendant,

1 OLIVER HILSEN RATH,

2 did knowingly cause the following items to be delivered by mail according to the
3 directions thereon:

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<u>Count</u>	<u>Approx. Date</u>	<u>Point of Receipt</u>	<u>Description</u>
5 2	5/17/99	San Ramon, CA	U.S. Wireless stock certificate for 149,425 shares to Craiglands Limited
6 3	8/4/99	San Ramon, CA	U.S. Wireless stock certificate for 43,300 shares to Silicon Valley Investment Partners
7 4	8/4/99	San Ramon, CA	U.S. Wireless stock certificate for 43,300 shares to Borazon Limited
8 5	12/31/99	San Ramon, CA	U.S. Wireless stock certificate for 130,520 shares to IDS Telecom Investment Group
9 6	12/31/99	San Ramon, CA	U.S. Wireless stock certificate for 134,416 shares to MSD Investment Advisors, Inc.

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13 _____ All in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

14 COUNTS SEVEN and EIGHT: 18 U.S.C. §§ 1343, 1346, and 2 (Wire Fraud; Aiding,
15 Abetting, and Willfully Causing)

16 12. Paragraphs 1 through 6 are realleged as if fully set forth in this Count.

17 13. On or about the following dates, within the Northern District of California and
18 elsewhere, for the purpose of executing the scheme and artifice to defraud, to deprive his
19 employer, U.S. Wireless, of the intangible right to honest services, and for obtaining
20 money and property by means of false and fraudulent pretenses, representations, and
21 promises, the defendant,

22 OLIVER HILSEN RATH,

23 did knowingly cause to be transmitted the following wire communications in interstate
24 and foreign commerce:

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<u>Count</u>	<u>Approx. Date</u>	<u>Point of Origin</u>	<u>Point of Receipt</u>	<u>Communication</u>
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7	8/3/98	Menlo Park, CA	New York, NY	\$12,000 wire transfer from Merrill Lynch to the Chase Manhattan Bank
8	9/1/98	Menlo Park, CA	New York, NY	\$5,000 wire transfer from Merrill Lynch to Citibank

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT NINE: 15 U.S.C. § 78ff and 18 U.S.C. § 2 (False SEC Filing for Year Ended March 31, 1998; Aiding, Abetting, and Willfully Causing)

14. Paragraphs 1 through 6 are realleged as if fully set forth in this Count.

15. On or about July 14, 1998, within the Northern District of California and elsewhere, the defendant,

OLIVER HILSEN RATH,

did willfully and knowingly make, and cause to be made, statements in a document required to be filed under the Securities and Exchange Act of 1934, specifically, in a Form 10-KSB filed with the SEC for the period ended March 31, 1998, which statements were false and misleading with respect to material facts.

16. Specifically, the Form 10-KSB (a) falsely stated the amount of HILSEN RATH's beneficial ownership of U.S. Wireless stock by omitting his beneficial ownership of shares unlawfully misappropriated through Aida/Borazon; (b) failed to include as a "Related Party Transaction" the monthly payments via wire transfer to Telecom Associates; and (c) omitted the material fact that U.S. Wireless issued stock options to Biskara, which performed no services for the Company, thereby rendering misleading the statement that U.S. Wireless issued stock options "to various consultants performing services for the Company."

All in violation of Title 15, United States Code, Section 78ff and Title 18, United States Code, Section 2.

COUNT TEN: 15 U.S.C. § 78ff and 18 U.S.C. § 2 (False SEC Filing for Year Ended March 31, 1999; Aiding, Abetting, and Willfully Causing)

1 17. Paragraphs 1 through 6 are realleged as if fully set forth in this Count.

2 18. On or about June 29, 1999, within the Northern District of California and
3 elsewhere, the defendant,

4 OLIVER HILSENATH,

5 did willfully and knowingly make, and cause to be made, statements in a document
6 required to be filed under the Securities and Exchange Act of 1934, specifically, in a
7 Form 10-KSB filed with the SEC for the period ended March 31, 1999, which statements
8 were false and misleading with respect to material facts.

9 19. Specifically, the Form 10-KSB (a) falsely stated the amount of
10 HILSENATH's beneficial ownership of U.S. Wireless stock by omitting the fact of his
11 beneficial ownership of U.S. Wireless shares unlawfully misappropriated through his
12 ownership and control of Aida/Borazon; and (b) failed to include as "Related Party
13 Transactions" the monthly payments via wire transfer to Telecom Associates and KS
14 Legal.

15 All in violation of Title 15, United States Code, Section 78ff and Title 18, United
16 States Code, Section 2.

17 COUNT ELEVEN: 15 U.S.C. § 78ff and 18 U.S.C. § 2 (False SEC Filing for Year
18 Ended March 31, 2000; Aiding, Abetting, and Willfully Causing)

19 20. Paragraphs 1 through 6 are realleged as if fully set forth in this Count.

20 21. On or about June 29, 2000, within the Northern District of California and
21 elsewhere, the defendant,

22 OLIVER HILSENATH,

23 did willfully and knowingly make, and cause to be made, statements in a document
24 required to be filed under the Securities and Exchange Act of 1934, specifically, in a
25 Form 10-KSB filed with the SEC for the period ended March 31, 2000, which statements
26 were false and misleading with respect to material facts.

27 22. Specifically, the Form 10-KSB (a) falsely stated the amount of his and other
28 U.S. Wireless officers' beneficial ownership of U.S. Wireless stock by omitting their

1 beneficial ownership unlawfully misappropriated through their control and ownership of
2 Biskara, Craiglands, IDS Telecom, Silicon Valley Investment Partners, Borazon, and
3 MSD Investment Advisors; (b) falsely and misleadingly stated that U.S. Wireless
4 “awarded 149,425 shares to a private placement agent” in connection with a preferred
5 stock issuance, when in fact the shares were issued to Craiglands; and (c) failed to include
6 as “Related Party Transactions” the monthly payments via wire transfer to Telecom
7 Associates and KS Legal.

8 All in violation of Title 15, United States Code, Section 78ff and Title 18, United
9 States Code, Section 2.

10 FORFEITURE ALLEGATION: 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), and 982(b)(1);
11 21 U.S.C. § 853(p); and 28 U.S.C. § 2461(c)

12 23. The allegations of Counts 1 through 8 above are realleged and incorporated
13 herein.

14 24. As a result of said offenses, the defendant,

15 OLIVER HILSEN RATH

16 shall forfeit to the United States all property constituting and derived from proceeds
17 traceable to said offenses.

18 25. If, as a result of any act or omission of the defendant, any of said property,

- 19 a. cannot be located upon the exercise of due diligence;
- 20 b. has been transferred or sold to or deposited, with a third party;
- 21 c. has been placed beyond the jurisdiction of the Court;
- 22 d. has been substantially diminished in value; or
- 23 e. has been commingled with any other property which cannot be
24 divided without difficulty;

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28 any other property of defendant HILSEN RATH, up to the value of the property described

1 in Paragraph 31, shall be forfeited to the United States.

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3 DATED:

A TRUE BILL

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FOREPERSON

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8 KEVIN V. RYAN
9 United States Attorney

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11 _____
12 ROSS W. NADEL
Chief, Criminal Division

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14 (Approved as to form: _____)
AUSA Hartley M. K. West