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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
(Tampa Division)

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CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

21<sup>ST</sup> CENTURY SATELLITE  
COMMUNICATIONS, INC., ROBERT S.  
BYRCH, AND SPENCER G. TYRRELL,

Defendants.

) CASE NO. )  
) 8:01CV1875-T-30 )  
) TGW )  
) COMPLAINT FOR )  
) INJUNCTIVE AND )  
) OTHER RELIEF )  
) )  
) )  
) )  
) )

Plaintiff, Securities and Exchange Commission (the "Commission") alleges and states as follows:

**I. INTRODUCTION**

1. The Commission brings this action to enjoin Defendants from violating the federal securities laws in connection with the fraudulent, unregistered offer and sale of securities. From approximately July 1997 through September 2000, Defendant 21<sup>st</sup> Century Satellite Communications, Inc. ("21<sup>st</sup> Century") and its principals, Robert S. Byrch and Spencer G. Tyrrell, raised over \$23 million from the sale of promissory notes ("notes") and purchase-leaseback agreements to investors nationwide. 21<sup>st</sup> Century claimed that the investors' funds were fully secured by the value of the satellite equipment owned by the company. However, neither the notes nor the purchase-leaseback agreements were fully secured, and the company used a substantial portion of investors' funds to pay undisclosed commissions to sales agents and interest to other investors.

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## II. DEFENDANTS

2. **21<sup>st</sup> Century Satellite Communications, Inc.** is a Florida corporation with its headquarters located in Tampa. 21<sup>st</sup> Century provides private satellite television services to closed communities throughout northern and central Florida. 21<sup>st</sup> Century filed a voluntary petition under Chapter 11 of the bankruptcy code on or about May 8, 2001.

3. **Robert S. Byrch**, age 55, resides in Wesley Chapel, Florida. Byrch is one of the founders of 21<sup>st</sup> Century and has been the company's president since it began operating in 1997.

4. **Spencer G. Tyrrell**, age 42, resides in Tampa, Florida. Tyrrell is one of the founders of 21<sup>st</sup> Century and has been vice-president of the company in charge of customer relations since 1997.

## III. JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); and, Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

6. The Middle District of Florida is the proper venue for this action. Certain actions and transactions alleged and stated herein constitute violations of the Securities Act and the Exchange Act within the Middle District of Florida. In addition, the 21<sup>st</sup> Century offices are located within the Middle District of Florida, and Defendants Byrch and Tyrrell reside within the Middle District of Florida.

7. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and

communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business complained of herein.

#### IV. FACTS

##### 21<sup>ST</sup> CENTURY'S BUSINESS

8. 21<sup>st</sup> Century installs, maintains, and services private satellite television systems for closed communities throughout northern and central Florida. According to its offering materials, 21<sup>st</sup> Century's satellite television systems are intended to replace cable television by offering a better quality, less expensive alternative to private property owners, including gated residential communities, retirement villages, and mobile home parks. As of May 1, 2001, 21<sup>st</sup> Century had completed 33 installations in various communities throughout northern and central Florida.

##### 21<sup>ST</sup> CENTURY'S OFFERINGS

9. Between approximately July 1997 and September 2000, 21<sup>st</sup> Century financed its operations through an unregistered offering of promissory notes and purchase-leaseback agreements. 21<sup>st</sup> Century's unregistered securities offering raised over \$23 million.

10. First, between approximately July 1997 and November 1997, 21<sup>st</sup> Century sold 121 purchase-leaseback agreements to 100 investors raising nearly \$2 million dollars. Under the terms of the purchase-leaseback agreements, 21<sup>st</sup> Century purportedly sold a percentage of certain satellite television equipment and installations to individual investors, and then purportedly leased the equipment back from the investor for a period of 60 months. Under the terms of the agreement, 21<sup>st</sup> Century agreed to pay each investor annual "rent" equal to 13% of the funds invested in quarterly installments. At the end of the 60-month term, the purchase-leaseback agreement obligated 21<sup>st</sup> Century to repurchase the equipment from the investor for the amount of the original investment.

11. According to the marketing materials produced by 21<sup>st</sup> Century, investors in the purchase-leaseback program had the right to deduct depreciation costs on the leased equipment each year. However, in late 1997, 21<sup>st</sup> Century learned that the federal tax laws precluded an investor from depreciating a portion of the investment if, as the purchase-leaseback agreement required, 21<sup>st</sup> Century would “repurchase” the equipment at the end of the 60-month term. As a result, 21<sup>st</sup> Century stopped marketing the purchase-leaseback agreements to investors.

12. Second, between November 1997 and September 2000, 21<sup>st</sup> Century raised funds from the investing public through the sale of 60-month promissory notes that paid annual interest of 13% per year. From early 2000 to September 2000, 21<sup>st</sup> Century also offered investors a 9-month promissory note that paid an annual interest rate of 11%. In its offering materials, 21<sup>st</sup> Century represented that it was seeking “financing of equipment and installations” so that 21<sup>st</sup> Century could expand its base of private satellite television installations. In addition, the promissory note application assured investors that the value of the equipment underlying the collateral mortgage “shall be maintained at a minimum of the amount loaned as the principal balance of the note.”

13. 21<sup>st</sup> Century raised \$20.14 million from the sale of 60-month promissory notes to 599 investors nationwide and raised \$941,000 from the sale of the 9-month promissory notes to 36 investors.

#### **21<sup>ST</sup> CENTURY'S SALES EFFORT**

14. In order to sell the promissory notes and purchase-leaseback agreements, 21<sup>st</sup> Century enlisted a network of individual insurance agents throughout Florida and the rest of the United States. These insurance agents oftentimes offered and sold the notes and purchase-leaseback agreements to their existing insurance clients.

15. The agents received commissions from 21<sup>st</sup> Century that ranged between 20% and 30% of every dollar invested.

16. No registration statements have been filed with the Commission or are otherwise in effect with respect to the notes sold by 21<sup>st</sup> Century.

**MATERIAL MISREPRESENTATIONS AND OMISSIONS**

17. 21<sup>st</sup> Century's offering materials contained misrepresentations and omissions regarding the use of investor funds and the security of the investment. For example, 21<sup>st</sup> Century used investor funds to make payments to other investors, and to pay commissions to the sales agents. During the time period covered by the offering, 21<sup>st</sup> Century paid over \$6.1 million in commissions to sales agents and \$3 million in interest payments to investors.

18. As a result of the funds it used to pay commissions, interest, and other business expenses, 21<sup>st</sup> Century purchased and installed far less equipment than was necessary to fully secure the investors' promissory notes.

19. Byrch and Tyrrell were aware that the value of the equipment did not fully collateralize the notes, yet continued to conduct the securities offering.

**COUNT I**

**SALE OF UNREGISTERED SECURITIES IN  
VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT**

20. The Commission realleges and repeats its allegations set forth at paragraphs 1-19 of this Complaint as if fully restated herein.

21. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described herein.

22. From approximately 1997 through September 2000, Defendants 21<sup>st</sup> Century, Byrch and Tyrrell, directly or indirectly:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise;

(b) carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; and/or

(c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, as described herein,

without a registration statement having been filed or being in effect with the Commission as to such securities.

23. By reason of the foregoing, Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell have violated Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

## **COUNT II**

### **FRAUD IN VIOLATION OF SECTION 17(a)(1) OF THE SECURITIES ACT**

24. The Commission realleges and repeats its allegations set forth at paragraphs 1-19 of this Complaint as if fully restated herein.

25. From approximately July 1997 through September 2000, Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of

securities, as described herein, have knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

26. By reason of the foregoing, Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell, directly and indirectly, have violated Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

### **COUNT III**

#### **FRAUD IN VIOLATION OF SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT**

27. The Commission realleges and repeats its allegations set forth at paragraphs 1-19 of this Complaint as if fully restated herein.

28. From approximately July 1997 through September 2000, Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described herein: (i) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (ii) engaged in transactions, practices and courses of business operating as a fraud or deceit upon purchasers and prospective purchasers of such securities.

29. By reason of the foregoing, Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell, directly and indirectly, violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

**COUNT IV**

**FRAUD IN VIOLATION OF  
SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5**

30. The Commission realleges and repeats its allegations set forth at paragraphs 1-19 of this Complaint as if fully restated herein.

31. From approximately July 1997 through September 2000, Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails, and of any facility of any national securities exchange, in connection with the purchase or sale of the securities, as described herein, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud; (ii) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities.

32. By reason of the foregoing, Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell, directly or indirectly, violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

**A.**

**Declaratory Relief**

Declare, determine and find that Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell committed the violations of the federal securities laws alleged herein.



**B.**

**Permanent Injunctive Relief**

Issue a Permanent Injunction, restraining and enjoining Defendants 21<sup>st</sup> Century, Byrch, and Tyrrell, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (i) Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); (ii) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); (iii) Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3); and (iv) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

**C.**

**Disgorgement**

Issue an Order (to be enforced in 21<sup>st</sup> Century's bankruptcy proceedings for so long as it is pending or to be enforced in this proceeding in the absence of a pending bankruptcy) requiring 21<sup>st</sup> Century to disgorge all profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

**D.**

**Penalties**

Issue an Order directing Defendants Byrch and Tyrrell to pay civil fines and/or penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

**E.**

**Further Relief**

Grant such other and further relief as may be necessary and appropriate.

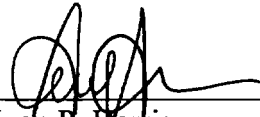
K.

**Retention of Jurisdiction**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

September 27, 2001



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