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U.S. Patent & TMO/TM Mail Rpt Dt. #26

U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK

MAD 11/4/99

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment
- Merger  Effective Date  
Month Day Year
- Change of Name
- Other

#### Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name TOUCH 1 COMMUNICATIONS, INC

9-10-99

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization ALABAMA

#### Receiving Party

Mark if additional names of receiving parties attached

Name FINOVA CAPITAL CORPORATION

DBA/AKA/TA

Composed of

Address (line 1) 1060 FIRST AVENUE

Address (line 2) SUITE 100

Address (line 3) KING OF PRUSSIA

PENNSYLVANIA

19406

- Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation  Association

Other

Citizenship/State of Incorporation/Organization PENNSYLVANIA

#### FOR OFFICE USE ONLY

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01 FC 481  
02 FC 482

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125.00 OP

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Mail documents to be recorded with required cover sheet(s) information to:  
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TRADEMARK  
REEL: 001990 FRAME: 0076

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

**Number of Properties** Enter the total number of properties involved.

#

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment: Enclosed  Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

TONYA CHAPPLE

*Tonya Chapple*

NOVEMBER 2, 1999

Name of Person Signing

Signature

Date Signed

## TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement") is made this 10<sup>th</sup> day of September, 1999, by TOUCH 1 COMMUNICATIONS, INC. ("Borrower"), an Alabama corporation having a mailing address at 100 Brookwood Road, Atmore, Alabama 36502 and delivered to FINOVA CAPITAL CORPORATION ("Lender").

### BACKGROUND

A. Contemporaneously herewith, Borrower and Lender are entering into certain financing agreements and related documents providing for certain loans and advances to Borrower by Lender (all such financing agreements, as they may hereafter be amended, supplemented or replaced, are hereinafter referred to as the "Financing Agreements"). As collateral security for Borrower's obligations and liabilities to Lender under the Financing Agreements, Borrower has agreed to grant a security interest to Lender in certain trademark, servicemark and tradename rights and the goodwill associated therewith. This Agreement is being executed contemporaneously with that certain Loan and Security Agreement of even date herewith (as it may hereafter be amended, supplemented or replaced, the "Loan Agreement"), under which Borrower is granting Lender a lien on and security interest in certain assets of Borrower associated with or relating to services or products sold under Borrower's trademarks and the goodwill associated therewith, and under which Lender is entitled to foreclose or otherwise deal with such assets, trademarks, servicemarks and tradenames under the terms and conditions set forth therein.

B. Borrower has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

C. Lender desires to acquire a lien and security interest on the Trademarks and the registration thereof, together with all the goodwill of Borrower associated therewith and represented thereby, as security for all of Borrower's Obligations (as defined in the Loan Agreement), and Lender desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Financing Agreements, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure Borrower's Obligations to Lender, Borrower grants a lien and security interest to Lender in all of its present and future right, title and interest in and to the Trademarks, together with all the goodwill of Borrower associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Borrower hereby covenants and agrees to maintain the Trademarks in full force and effect until all of Borrower's Obligations to Lender are satisfied in full.

3. Borrower represents, warrants and covenants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) Each of the Trademarks is valid and enforceable;

(c) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by Borrower not to sue third persons;

(d) Borrower has the unqualified right to enter into this Agreement and perform its terms;

(e) Borrower has complied with, and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §§1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks; and

(f) Borrower has used, and will continue to use for the duration of this Agreement, consistent standards of quality in services or products sold under the Trademarks and hereby grants to Lender and its employees and agents the right (with no obligation of any kind upon Lender to do so) to visit Borrower's franchisee or management locations and to inspect the use of the Trademarks and quality control records relating thereto at reasonable times during regular business hours to ensure Borrower's compliance with this paragraph 3(f).

4. Borrower further covenants that:

(a) Until all of Borrower's Obligations to Lender have been satisfied in full, it will not enter into any agreement, including, without limitation, license agreements, which are inconsistent with Borrower's obligations under this Agreement, the Loan Agreement or which restrict or impair Lender's rights hereunder.

(b) If Borrower acquires rights to any new Trademarks, the provisions of this Agreement shall automatically apply thereto and Borrower shall give Lender prompt written notice thereof along with an amended Schedule "A."

5. So long as this Agreement is in effect and so long as Borrower has not received notice from Lender that an Event of Default has occurred under the Loan Agreement and that Lender has elected to exercise its rights hereunder, Borrower shall continue to have the exclusive right to use the Trademarks and Lender shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Borrower agrees not to sell, license, grant any option, assign or further encumber its rights and interest in the Trademarks without prior written consent of Lender.

7. Anything herein contained to the contrary notwithstanding, if and while Borrower shall be in default hereunder or an Event of Default exists under the Loan Agreement, Borrower hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in Arizona, may take such action permitted under

the Financing Agreements or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, and in the event of Borrower's default hereunder or an Event of Default under the Loan Agreement and while such default or Event of Default exists, Borrower hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its exclusive discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Agreement, the Financing Agreements, and until all Borrower's Obligations are satisfied in full.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted to Lender under the Financing Agreements. In the event of an inconsistency between this Agreement and the Loan Agreement, the language of the Loan Agreement shall control.

10. Upon Borrower's performance of all its obligations under the Financing Agreements and full satisfaction of all of Borrower's Obligations to Lender, Lender shall execute and deliver to Borrower all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Agreement, shall be borne and paid by Borrower on demand by Lender and until so paid shall be added to the principal amount of Borrower's Obligations to Lender and shall bear interest at the rate prescribed in the Financing Agreements for the Revolving Credit Facility.

12. Subject to the terms of the Loan Agreement, Borrower shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Agreement or thereafter, until Borrower's Obligations shall have been satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of Lender, Borrower shall make federal application on registrable but unregistered trademarks belonging to Borrower.



Any reasonable expenses incurred in connection with such applications shall be borne by Borrower.

The Borrower shall not abandon any Trademark without the written consent of the Lender.

13. Borrower shall have the right to bring suit in its own name to enforce the Trademarks, in which event Lender may, if Borrower reasonably deems it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its discretion, that it is not thereby incurring any risk of liability because of such joinder. Borrower shall promptly, upon demand, reimburse and indemnify Lender for all damages, reasonable costs and reasonable expenses, including attorneys' fees, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. Upon the occurrence of an Event of Default under the Loan Agreement, Lender may, without any obligation to do so, complete any obligation of Borrower hereunder, in Borrower's name or in Lender's name, but at Borrower's expense, and Borrower hereby agrees to reimburse Lender in full for all reasonable expenses, including reasonable attorneys' fees, incurred by Lender in protecting, defending and maintaining the Trademarks.

15. No course of dealing between Borrower and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Financing Agreements, or by any other future agreements between Borrower and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

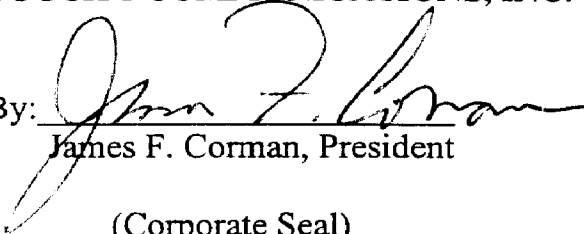
16. The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions, which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in conformity with the laws of the State of Arizona, without regard to its otherwise applicable principles of conflicts of laws. Borrower waives jury trial in connection with any proceeding or controversy concerning this Agreement.

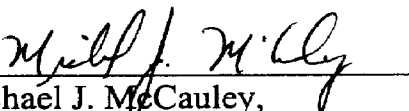
IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, under seal, the day and year first above written.

TOUCH 1 COMMUNICATIONS, INC.

By:   
James F. Corman, President  
(Corporate Seal)

Approved and Accepted:

FINOVA CAPITAL CORPORATION

By:   
Michael J. McCauley,  
Assistant Vice President

CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA :  
COMMONWEALTH OF PENNSYLVANIA : SS  
COUNTY OF PHILADELPHIA :

On this 10 day of September, 1999, before me personally appeared JAMES F. CORMAN, to me known and being duly sworn, deposes and says that he is the President of Touch 1 Communications, Inc., the Borrower corporation described in the foregoing Agreement; that he/she knows the seal of the corporation; that the seal so affixed to the Agreement is such corporate seal; that he signed the Agreement and affixed the seal of the corporation thereto as such officer pursuant to the authority vested in him/her by law; that the within Agreement is the voluntary act of such corporation; and he desires the same to be recorded as such.

  
Notary Public

My Commission Expires: Sept 6, 2000

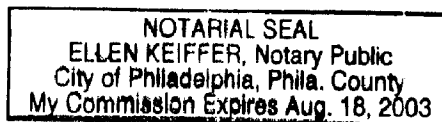
CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
COMMONWEALTH OF PENNSYLVANIA : SS  
COUNTY OF PHILADELPHIA :

On this 10 day of September, 1999, before me personally appeared MICHAEL J. McCAULEY to me known and being duly sworn, deposes and says that he is Assistant Vice President of Finova Capital Corporation, the Lender described in the foregoing Agreement; that she signed the Agreement as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such corporation; and he desires the same to be recorded as such.

*Ellen Keiffer*  
Notary Public

My Commission Expires:



SCHEDULE A

Trademark

<u>TRADEMARKS</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>REGISTRATION OR FILING DATE</u>
"TOUCH 1"	1,710,435	US	8/25/92
"PERSONAL TOUCH 800 SERVICE"	2,137,253	US	2/17/98
FIRST TOUCH	2,138,847	US	2//24/98
TWILIGHT TIME	2,138,848	US	2/24/98
BUSINESS TOUCH	2,138,845	US	2/24/98
SALLY	2,225,680	US	2/23/98

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TRADEMARK ASSIGNMENT

WHEREAS, TOUCH 1 COMMUNICATIONS, INC., an Alabama corporation ("Grantor"), is the owner of the entire right, title and interest in and to the United States trademarks, tradenames and registrations listed on Schedule A attached hereto and made a part hereof (the "Trademarks"), which are registered in the United States Patent and Trademark Office; and

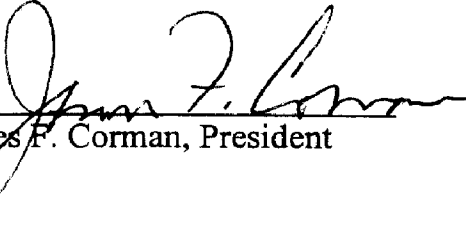
WHEREAS, FINOVA Capital Corporation, having a place of business at 1060 First Avenue, Suite 100, King of Prussia, Pennsylvania 19406, identified as the "Lender" under that certain Loan and Security Agreement of even date herewith ("Grantee"), is desirous of acquiring said Trademarks;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith. No rights or duties of any kind are intended to be granted or conferred upon Grantee unless and until this Trademark Assignment is recorded with the United States Patent and Trademark Office.

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed by its duly authorized officer on this  7  day of September, 1999, to be effective only upon its recording with the United States Patent and Trademark Office.

Attest:   
Title: SECRETARY

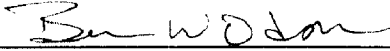
TOUCH 1 COMMUNICATIONS, INC.

By:   
James F. Corman, President

COMMONWEALTH OF PENNSYLVANIA :  
 : SS  
COUNTY OF PHILADELPHIA :

On this the 7<sup>th</sup> day of September, 1999 before me a Notary Public for the said County and State, personally appeared James F. Corman, known to me or satisfactorily proven to me to be the president of Touch 1 Communications, Inc. ("Grantor"), and he acknowledged to me that he executed the foregoing Trademark Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

  
\_\_\_\_\_  
(Individual Notary)

My Commission Expires:

Sept 6, 2000, 1999



SCHEDULE A

Trademark

<u>TRADEMARKS</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>REGISTRATION OR FILING DATE</u>
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