

09-07-2001

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

101835573

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

<p>1. Name of conveying party(ies): <u>8.31.01</u> NewSouth Communications Corporation</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies) Name: First Union National Bank Internal Address: NC 0130 Address: _____ Street Address: 301 South College St., DC-5 City: Charlotte State: NC Zip: 28288-0130</p> <p><input type="checkbox"/> Individual(s) citizenship _____ <input type="checkbox"/> Association _____ <input type="checkbox"/> General Partnership _____ <input type="checkbox"/> Limited Partnership _____ <input type="checkbox"/> Corporation-State _____ <input checked="" type="checkbox"/> Other Administrative Agent</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. Nature of conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____</p> <p>Execution Date: July 30, 2001</p>	
<p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s) Please see Schedule A attached hereto</p> <p>B. Trademark Registration No.(s)</p> <p>Additional number(s) attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>5. Name and address of party to whom correspondence concerning document should be mailed: Name: Debra A. Kozlowski Internal Address: Sidley Austin Brown & Wood _____ _____ Street Address: Bank One Plaza 10 S. Dearborn Street City: Chicago State: IL Zip: 60603</p>	<p>6. Total number of applications and registrations involved: 2</p> <p>7. Total fee (37 CFR 3.41).....\$ 65.00 <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: 19-2165 (Attach duplicate copy of this page if paying by deposit account)</p>
DO NOT USE THIS SPACE	
<p>9. Statement and signature. <i>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.</i></p> <p>Debra A. Kozlowski <u>Debra A. Kozlowski</u> August 31, 2001 Name of Person Signing Signature Date</p> <p>Total number of pages including cover sheet, attachments, and document: 15</p>	

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

09/06/2001 TDIAZ1 00000102 2444333

01 FC:481 40.00 DP
02 FC:482 25.00 DP

TRADEMARK
REEL: 002362 FRAME: 0977

Schedule A

to

Trademark Security Agreement

Dated as of July 30, 2001

Trademarks

Trademark:	Serial No.:	Registration No.:
NEWSOUTH COMMUNICATIONS	76000599	2,444,333

Trademark and Service Mark Applications

Trademark:	Serial No.:	Filing Date:
NEWSOUTH COMMUNICATIONS	76136403	9/27/2000

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement") is made as of July 30, 2001, by and between NewSouth Communications Corp., a Delaware corporation (the "Grantor"), and First Union National Bank (the "Grantee"), as "Administrative Agent" for the "Lenders" under the "Loan Agreement" (as each such term is defined below).

WITNESSETH:

WHEREAS, the Grantor and the Grantee have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of June 29, 2001 among the Grantor, NewSouth Technologies, LLC, UniversalCom, Inc., the Subsidiaries from time to time party thereto (collectively, referred to hereinafter as the "Borrowers"), the financial institutions signatory thereto from time to time as "Lenders" and the Grantee (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), the terms and provisions of which are incorporated herein by reference;

WHEREAS, the Grantee has required the Grantor to execute and deliver this Agreement (i) in order to secure the prompt and complete payment, observance and performance of all of the "Obligations" (as defined in the Loan Agreement) and (ii) as a condition precedent to the making of additional Loans to the Borrowers under the Loan Agreement;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Grantor and the Grantee agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Loan Agreement shall have the meaning specified for such term in the Loan Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference thereto and are made a part hereof.

3. Incorporation of the Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Grantor hereby grants to the Grantee, for the benefit of the Agent and the Lenders, a security interest in, as and by way of a first mortgage and security interest having priority over all other security interests, other than Permitted Liens, which may have priority over the security interest granted hereby, with power of sale to the extent permitted by applicable law and the provisions of this Agreement, all of the Grantor's now owned or existing and hereafter acquired or arising:

(i) trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, (d) the goodwill of the Grantor's business symbolized by the foregoing and connected therewith, and (e) all of the Grantor's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(e) in this paragraph 4(i), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(ii) rights under or interests in any trademark license agreements or service mark license agreements with any other party, whether the Grantor is a licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all inventory now or hereafter owned by the Grantor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 4, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security contemplated by this Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this Section 4 shall be deemed to apply thereto automatically.

5. Restrictions on Future Agreements. The Grantor will not, without the Grantee's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with the terms and conditions of this Agreement or the Loan Agreement, and the Grantor further agrees that it will not take any action, and will use its reasonable best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or

enforcement of the rights transferred to the Grantee under this Agreement or the rights associated with the Trademarks or Licenses.

6. New Trademarks and Licenses. With respect to all of the Grantor's trademarks that are or will be registered with the Federal Trademark and Patent Office, the Grantor represents and warrants that, from and after the date first listed above, (a) the Trademarks listed on Schedule A include all of the material trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by the Grantor, (b) the Licenses listed on Schedule B include all of the material trademark license agreements and service mark license agreements under which the Grantor is the licensee or licensor and (c) no liens, claims or security interests in such Trademarks and Licenses have been granted by the Grantor to any Person other than the Grantee. If, prior to the termination of this Agreement, the Grantor shall (i) obtain rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor, or (iii) enter into any new trademark license agreement or service mark license agreement, the provisions of paragraph 4 above shall automatically apply thereto. The Grantor shall use its reasonable best efforts to give to the Grantee written notice of events described in clauses (i), (ii) and (iii) of the preceding sentence (to the extent that such events relate to trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications which are material) promptly after the occurrence thereof, but in any event not less frequently than on a quarterly basis. The Grantor hereby authorizes the Grantee to modify this Agreement unilaterally (i) by amending Schedule A hereto to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule B hereto to include any future trademark license agreements and service mark license agreements, which are Trademarks or Licenses under paragraph 4 above or under this paragraph 6, and (ii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedules A or B thereto, as the case may be, such future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, and trademark license agreements and service mark license agreements.

7. Royalties. The Grantor hereby agrees that the use by the Grantee of the Trademarks and Licenses as authorized hereunder in connection with the Grantee's exercise of its rights and remedies under paragraph 15 shall be coextensive with the Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Grantee to the Grantor.

8. Right to Inspect; Change of Location; Further Assignments and Security Interests. The Grantee may at all reasonable times upon reasonable notice (and at any time when an Event of Default has occurred and is continuing) have access to, examine, audit, make copies (at the Grantor's expense) and extracts from and inspect the Grantor's premises and examine the Grantor's books, records and operations relating to the Trademarks and Licenses as the Grantee deems necessary; provided, that in conducting such inspections and examinations, the Grantee

shall use reasonable efforts not to disturb unnecessarily the conduct of the Grantor's ordinary business operations. If the Grantor shall change the location of its books and records, chattel paper, records of account, principal place of business or chief executive office, the Grantor shall notify the Agent thereof not later than ten (10) days after the occurrence thereof. From and after the occurrence of, and during the continuation of, an Event of Default, the Grantor agrees that the Grantee, or a conservator appointed by the Grantee, shall have the right to establish such reasonable additional product quality controls as the Grantee or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by the Grantor under the Trademarks and the Licenses or in connection with which such Trademarks and Licenses are used. The Grantor agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior and express written consent of the Grantee, (ii) to maintain the quality of such products as of the date hereof, and (iii) not to change the quality of such products in any material respect without the Grantee's prior and express written consent.

9. Nature and Continuation of the Grantee's Security Interest; Termination of the Grantee's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall terminate only when the Obligations have been paid in full in cash and the Loan Agreement has been terminated. When this Agreement has terminated, the Grantee shall promptly execute and deliver to the Grantor, at the Grantor's expense, all termination statements and other instruments as may be necessary or proper to terminate the Grantee's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by the Grantee pursuant to this Agreement.

10. Duties of the Grantor. The Grantor shall have the duty, to the extent desirable in the normal conduct of the Grantor's business, to: (i) prosecute diligently any material trademark application or material service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, and (ii) apply for federal registration for material trademarks or material service marks. The Grantor further agrees (i) not to abandon any material Trademark or material License without the prior written consent of the Grantee, and (ii) to use its reasonable best efforts to maintain in full force and effect the material Trademarks and the material Licenses that are or shall be necessary or economically desirable in the operation of the Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by the Grantor. The Grantee shall not have any duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, the Grantee shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against any other parties, but the Grantee may do so at its option from and after an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of the Grantor and shall be added to the Obligations secured hereby.

11. The Grantee's Right to Sue. From and after the occurrence, and during the existence, of an Event of Default, the Grantee shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks and the Licenses and, if the Grantee shall commence any such suit, the Grantor shall, at the request of the Grantee, do any and all lawful reasonable acts and execute any and all proper documents reasonably required by the Grantee in aid of such enforcement. The Grantor shall, upon demand, promptly reimburse the Grantee for

all reasonable costs and expenses incurred by the Grantee in the exercise of its rights under this paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for the Grantee).

12. Waivers. The Grantee's failure, at any time or times hereafter, to require strict performance by the Grantor of any provision of this Agreement shall not waive, affect or diminish any right of the Grantee thereafter to demand strict compliance and performance therewith nor shall any course of dealing between the Grantor and the Grantee have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of the Grantor contained in this Agreement shall be deemed to have been suspended or waived by the Grantee unless such suspension or waiver is in writing signed by an officer of the Grantee and directed to the Grantor specifying such suspension or waiver.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part hereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

14. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraph 6 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney. (a) The Grantor hereby irrevocably designates, constitutes and appoints the Grantee (and all Persons designated by the Grantee in its sole and absolute discretion) as the Grantor's true and lawful attorney-in-fact, and authorizes the Grantee and any of the Grantee's designees, in the Grantor's or the Grantee's name, from and after the occurrence of, and during the continuation of, an Event of Default and the giving by the Grantee of notice to the Grantor of the Grantee's intention to enforce its rights and claims against the Grantor, to (i) endorse the Grantor's name on all applications, documents, papers and instruments necessary or desirable for the Grantee in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (iv) take any other actions with respect to the Trademarks or the Licenses as the Grantee deems in its own best interest. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Obligations shall have been paid in full in cash and the Loan Agreement shall have been terminated.

(b) The Grantee shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction

in which the Trademarks or the Licenses may be located or deemed located. Upon the occurrence of, and at any time during the continuation of, an Event Default, and the election by the Grantee to exercise any of its remedies under Section 9-504 or Section 9-505 of the Uniform Commercial Code with respect to the Trademarks and Licenses, the Grantor agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to the Grantee or any transferee of the Grantee and to execute and deliver to the Grantee or any such transferee all such agreements, documents and instruments as may be necessary, in the Grantee's sole discretion, to effect such assignment, conveyance and transfer. All of the Grantee's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of, and at any time during the continuation of, an Event of Default, the Grantee may exercise any of the rights and remedies provided in this Agreement and any of the other Loan Documents. The Grantor agrees that any notification of intended disposition of any of the Trademarks and Licenses required by law shall be deemed reasonably and properly given if given at least ten (10) days before such disposition; provided, however, that the Grantee may give any shorter notice that is commercially reasonable under the circumstances.

(c) Notwithstanding any other provision of this Agreement, the Grantee shall not seek to assign any of the Grantor's existing or future trademark or service mark applications based on an intent-to-use the mark prior to the filing of a verified Statement of Use, pursuant to 15 U.S.C. §1060.

16. Successors and Assigns. This Agreement shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its nominees, successors and assigns. The Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for the Grantor; provided, however, that the Grantor shall not voluntarily assign or transfer its rights or obligations hereunder without the Grantee's prior written consent.

17. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties herein shall be governed by in all respects in accordance with the internal laws (as opposed to conflict of laws provisions) and decisions of the State of New York.

18. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

19. Section Titles. The section titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

20. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

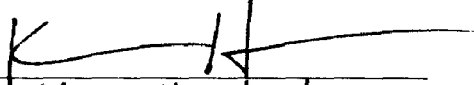
21. Merger. This Agreement represents the final agreement of the Grantor and the Grantee with respect to the matters contained herein and may not be contradicted by

evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Grantor and the Grantee.

The remainder of this page is intentionally blank.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

NEWSOUTH COMMUNICATIONS CORP.

By: 
Name: Kevin Hendricks
Title: Secretary

Accepted and agreed to as of the day and year first above written.

FIRST UNION NATIONAL BANK, as Agent

By: _____
Name:
Title:

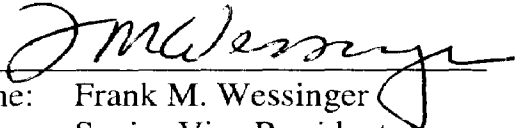
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement
s of the day and year first above written.

NEWSOUTH COMMUNICATIONS CORP.

By: _____
Name:
Title:

Accepted and agreed to as of the day and year
first above written.

FIRST UNION NATIONAL BANK, as Agent

By: 
Name: Frank M. Wessinger
Title: Senior Vice President

Schedule B

to

Trademark Security Agreement

Dated as of July 30, 2001

License Agreements

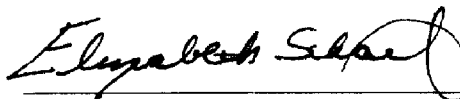
None

STATE OF SOUTH CAROLINA)

) SS'

COUNTY OF GREENVILLE)

The foregoing Trademark Security Agreement was acknowledged before me this 30th day of July, 2001, by Kevin Hendricks, Secretary of NewSouth Communications Corp., a Delaware corporation, on behalf of such corporation.



Notary Public

My commission expires: 10/5/10

STATE OF NC)

) SS

COUNTY OF Mecklenburg)

The foregoing Trademark Security Agreement was acknowledged before me this 30th day of July, 2001, by FRANK WESSINGER a Senior VP of First Union National Bank, on behalf of such bank, as Agent.



Notary Public

My commission expires:

9-28-2004