

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-6540

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

---

In the Matter of  
TELETEST CORPORATION  
(24NY-8628)

---

:  
:  
:  
:  
:  
:  
:

INITIAL DECISION

February 12, 1986  
Washington, D.C.

Ralph Hunter Tracy  
Administrative Law Judge



Teletest Corporation (Teletest), incorporated in Delaware on September 26, 1983, filed with the Commission on November 30, 1984 a Notification and Offering Circular for the purpose of obtaining an exemption from the registration provisions of the Securities Act of 1933, as amended (Securities Act), pursuant to Section 3(b) thereof and Regulation A thereunder, with respect to a proposed public offering of 450,000 units consisting of common stock and warrants with an aggregate offering price of \$1,800,000.00. Subsequent amendments were filed on January 16, 1985, February 11, 1985, and May 1, 1985.

On July 10, 1985 the Commission issued an Order (Order) pursuant to Rule 261 of Regulation A temporarily suspending the exemption. The Order alleges, in substance, that the Notification and Offering Circular were deficient in that they contained untrue statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; that the terms and conditions of Regulation A had not been complied with; and that the offering, if made, would have been in violation of Section 17 of the Securities Act.

The issuer, Teletest, filed an answer denying the allegations generally and requesting a hearing to determine

whether to vacate the Order or to enter an order permanently suspending the exemption.

The hearing was held in New York, New York, and Teletest was represented by its president, Hilleary Williams (Williams), who is an attorney admitted to practice in Wisconsin. Proposed findings of fact and conclusions of law and supporting briefs were filed by the parties.

#### ISSUER

Teletest Corporation was incorporated in the State of Delaware on September 26, 1983 as Cybernets Groups, Inc. and changed its name to Teletest Corporation on September 1, 1984. It is currently in a development stage and plans to market medical diagnostic equipment, including a medical alert pulse-rate monitoring system and a test kit for heart attack victims which will be developed by its wholly owned subsidiary American Monoclonetics Institute (AMI).

Williams founder and president of Teletest, age 61, graduated from the University of Michigan in 1945 as a chemical metallurgical engineer. He served in the U.S. Navy during World War II. In 1949 he graduated from Marquette University Law School and was admitted to the Wisconsin bar in October 1949. He engaged in the practice of law in Wisconsin for two years and since that time has been a management consulting engineer. More recently he

has been a registered representative serving a number of NASD firms for whom he has worked on new issues involving genetic engineering.

On November 30, 1984, Teletest filed a Notification and Offering Circular on Form 1-A, pursuant to Regulation A under the Securities Act, for the purpose of obtaining an exemption from the registration requirements of the Act for a proposed offering of a minimum of 225,000 units and a maximum of 450,000 units at an offering price to the public of \$1.00 per unit. Each unit consists of two shares of common stock, par value \$.0001 per share, and one Class A common stock purchase warrant. Each Class A warrant is immediately exercisable at \$1.00 into one share of common stock and one Class B warrant. Each Class B warrant is further immediately exercisable at \$2.00 into an additional share of common stock. The total aggregate amount which could be raised in the offering is \$1,800,000.00. Teletest proposes to make the offering through its president and selected dealers, and Monarch Funding Corporation is expected to be the statutory underwriter. Pending the sale of the units, the proceeds are to be held in a special bank account.

According to the Notification and Offering Circular Teletest issued 800,000 shares of stock on October 10, 1984, to 19 shareholders in exchange for \$8,050.00 in cash

and \$280,700.00 for cash equivalent property rights. Williams received 190,000 shares for \$800.00 cash and \$32,000.00 in property rights.

The financial statement included with the November 30, 1984 filing was dated October 31, 1984 and shows under "current assets":

Cash . . . . . \$1,100.00

Other Assets:

Patent applications, marketing data, computer systems designs and forms for cards, magnetic tape and disc, layouts, analysis and training data, and customer lists . . . . .	279,600.00
Total Assets	<u>280,700.00</u>

The staff of the New York Regional Office (NYRO) reviewed the filing, found numerous material deficiencies, and issued a comment letter addressing the most serious deficiencies. The comment letter advised the issuer that it appeared that its claimed "other assets" were actually research and development or administrative costs and should have been written off to expense. In this connection the comment letter called attention to the pertinent generally accepted accounting principles (GAAP). The staff also requested that Teletest: (1) describe in the "certain transactions" section of the Notification and Offering Circular what the property rights discussed therein were;

(2) state the basis for their valuation; and (3) file required exhibits (none of which had been filed).

Teletest amended its filing on January 16, 1985, and the staff issued a second comment letter on January 25, 1985. The staff found that its initial comment letter had not been complied with in most material respects, e.g, the balance sheet as of December 31, 1984 was identical to the one for October 31, 1984, and thus the second comment letter reiterated its initial comments.

Teletest filed a second amendment on February 11, 1985. Upon review the staff found no substantial corrections had been made. It noted further that Teletest had in fact exacerbated its problems by filing only a partial amendment, which made it more difficult to understand.

Teletest filed a third amendment on May 1, 1985. This filing included a balance sheet as of March 31, 1985 which showed cash assets of \$1,100.00 and other assets of \$139,250.00, or a total of \$140,350.00. The staff reviewed this filing, learned that the deficiencies had not been corrected, and furthermore that Teletest's proposed offering exceeded the \$1,500,000.00 ceiling limitation of Regulation A.

On July 10, 1985, the Commission entered an Order temporarily suspending Teletest's Regulation A exemption,

stating the reasons therefore, and giving Teletest notice of and opportunity for hearing. The Order alleges that Teletest's Notification Offering Circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning among other things: (1) material overstatement of Teletest's assets, and (2) failure to disclose that Teletest's financial statements were not prepared in accordance with GAAP. The Order also alleges non-compliance with the terms and conditions of Regulation A in that Teletest failed to file exhibits required by Regulation A, and that the offering, if allowed to commence, would exceed the dollar ceiling limitation of Regulation A. Further, the Order alleges that, if made, the offering would be in violation of Section 17 of the Securities Act.

Teletest's third amendment, filed on May 1, 1985, contains a balance sheet as follows:

<u>ASSETS</u>	As of 12/31/73	As of 12/31/84	As of 3/31/85
Current Assets:			
Cash	\$ 8,750.00	\$ 1,100.00	\$ 1,100.00
Other Assets	<u>271,950.00</u>	<u>279,600.00</u>	<u>139,250.00</u>
TOTAL ASSETS	<u>\$280,700.00</u>	<u>\$280,700.00</u>	<u>\$140,350.00</u>



Teletest wrote down its other assets from \$279,600.00 at December 31, 1984 to \$139,250.00 at March 31, 1985 without substantive explanation. Note 4 to Teletest's financial statement simply states:

4. Other Assets

After conferences with accountants and attorneys, the Board of Directors, prior to March 31, 1985, decided to write down the value of assets as previously shown:

Tables of Other Assets as of March 31, 1985:

Total Monoclonal Antibody <u>Data Base</u>	\$63,000.00
Total Voice Technology <u>Data Base</u> and Related Patent Applications Commenced	50,000.00
Total Medical Alert, Electronic Central Station Oriented <u>Data Base</u> including FDA, patent and copyright potential	<u>26,250.00</u>
Total Other Assets	<u>\$139,250.00</u>

The "selected financial data" section of Teletest's Notification and Offering Circular states further that

"the principal asset of (Teletest) is the data base involving patent application for two voice technology products and supporting competitive analysis, marketing data and values recognized by GAPP (sic) and various boards recognized by the Securities and Exchange Commission. A conservative Net Worth Value of \$140,350.00 has been placed on our assets through appraisal by several authorities." (Emphasis added)

Teletest claims that it filed another amendment on or about July 26, 1985, following the Commission's Order of July 10, 1985, upon which there was no comment by the staff

and that it should have been considered by the staff and in this proceeding. This filing, which was introduced at the hearing as respondent's "exhibit F," contains a balance sheet identical to the one in amendment 3, discussed above.

In concluding his testimony concerning the review of Teletest's financial statement the Division's accountant stated:

It is still my opinion that that amount, \$139,250.00 of other assets should not be on the balance sheet as assets but should be expensed as either research and development costs and/or administrative costs pursuant to Financial Accounting Standards Board Statements (FASBS) Nos. 2 and 7, because the recoverability of such costs are at best uncertain and there is no economic resource established. - - I might also add paragraph 160 of FASBS No. 4.

The financial analyst with the branch of small issues in the Commission's New York Regional Office testified that from December 1973, when he first joined the Commission, until December 1980 he reviewed registration statements and Regulation A filings in the Division of Corporation Finance in Washington, and since December 1980 has had similar duties in the New York Regional Office. He estimates that he has reviewed more than 2,000 filings during his career with the Commission. He testified at some length concerning the deficiencies he found in the original Offering Notification Circular and the three amendments filed by Teletest. He

stated that none of the material deficiencies noted in the Division's comment letters was ever corrected. In conclusion he was asked:

Q. Can you make a comparison between this filing and other filings that you reviewed?

A. Yes.

Q. What is that?

A. Well, in general all along from the time this thing was initially filed in my mind it was one of the most, if not the most disorganized, difficult to understand and materially deficient filings I had ever seen.

Mr. A, a CPA called by Williams on behalf of Teletest, testified that before undertaking an audit of Teletest he and Williams had conferred with the Division accountant and analyst to ascertain what problems the Division was having with the filing. He described the "other assets" on Teletest's balance sheet as intangible assets which could be properly included on the balance sheet in accordance with FASBS No. 2, APB Bulletin No. 17, and the GAAP Guide. Mr. A. described the intangible assets as follows:

They're information that has been determined through some research, they're mailing lists, they're cross reference lists, they're information they have gathered from the medical field. It's an informational thing. If you want to use the general term as data base, whatever --

In describing Teletest's "other assets" Williams testified as follows:

- Q. Would you define for me what you mean by your data base?
- A. 35 cubic feet of documentation, 320 or more binders.
- Q. What kind of documentation?
- A. Letters, customers lists, competitive evaluation, everything that would lead to the technical and the marketing evaluation of a product and its likelihood to succeed.
- Q. What particular product?
- A. The three that we're offering are myocardic infarction heart attack test kit, a voice stress predictive for heart attacks, and a wrist medical alert.
- Q. But this data base consists of what? It consists of opinions or research or what?
- A. It's got nothing to do with research. 320 documents, binders with 50 pages, this is 15,000 pages --
- Q. Of what?
- A. Technical and marketing data having to do with the products that Teletest expects to sell to the medical community.

In his testimony Williams also admitted that Teletest had not filed all of the exhibits that it was required to file. These included copies of its common stock certificate, warrant and underwriting agreements, and the consents of appraisors of its property.

Williams complains that he received no comment letter concerning the amendment he filed on July 26, 1985. He takes the position that he should have been informed of every

deficiency and given an opportunity to amend the filing thereafter, which he is willing to do. Contrary to this position, an issuer is not entitled to a deficiency letter as a matter of right. <sup>1/</sup> It is clear that the issuer does not have an absolute right to amend its filings as an alternative to permanent suspension, particularly where, as here, three amendments were reviewed and commented upon yet the issuer failed to make the appropriate corrections. <sup>2/</sup>

It is clear from the record that Teletest's "other assets" are research and development costs which in accordance with GAAP should have been expensed and not capitalized. Therefore, Teletest's assets were materially overstated in all of the financial statements which it filed. Not only was there no disclosure that Teletest's financial statements had not been prepared in accordance with GAAP, but the Notification and Offering Circular stated that Teletest's marketing data and values had been recognized by GAPP (sic) and various boards recognized by the Securities and Exchange Commission (supra p. 7).

Accordingly, it is found that the Notification and Offering Circular of Teletest Corporation contains untrue

---

1/ Jackpot Exploration Corp., 44 SEC 303,307 (1980).

2/ International Aerospace Associates, Inc., 44 SEC 432, 436 (1970).

statements of material facts and omits to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.<sup>3/</sup>

The Order alleges further that there has been no compliance with the terms and conditions of Regulation A in that certain required exhibits have not been filed and that the offering, if allowed to go forward as proposed, would exceed the ceiling limitations imposed by Rule 254 of Regulation A. In view of Teletest's admitted failure to file exhibits or to adhere to the ceiling limitations of Regulation A, it is found that the terms and conditions of Regulation A have not been complied with, as alleged in the Order.

SECTION 17(a) OF THE SECURITIES ACT

As found above, the Notification and Offering Circular filed on November 30, 1984, and subsequent amendments, intended for use in Teletest's proposed offering, contains materially false and misleading statements concerning the company and its assets. Therefore, the use of the Notification Offering Circular in connection with the offer and

---

<sup>3/</sup> TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

sale of Teletest's common stock would operate as a fraud and deceit upon purchasers in violation of Section 17(a) of the Securities Act.

#### CONCLUSIONS

Each of the violations found is sufficient to suspend the exemption. The obligation to comply with the terms and conditions of Regulation A rests with the one seeking to take advantage of it, in this case Teletest. <sup>4/</sup> It is clear that Teletest failed to comply with the terms and conditions of Regulation A. Therefore, it is concluded that the exemption of Regulation A should be permanently suspended.

Accordingly, IT IS ORDERED, pursuant to Rule 261(c) of Regulation A under the Securities Act of 1933, that the suspension of Teletest Corporation under Regulation A is permanently suspended.

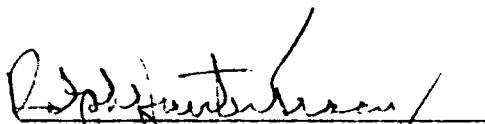
This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each

---

4/ Securities and Exchange Commission v. Ralston-Purina Co., 346 U.S. 119.

party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. <sup>5/</sup>

  
Ralph Hunter Tracy  
Administrative Law Judge

Washington, D.C.  
February 12, 1986

---

<sup>5/</sup> All proposed findings, conclusions, and contentions have been considered. They are accepted to the extent that they are consistent with this decision.