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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re HARMONIC INC. SECURITIES LITIGATION	)	Master File No. C-00-2287-PJH

This Document Relates To:	CLASS ACTION
ALL ACTIONS.	[CORRECTED] CONSOLIDATED AMENDED COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS
	Plaintiffs Demand a Trial by Jury

INTRODUCTION AND OVERVIEW

1. This is an action on behalf of those who purchased or otherwise acquired Harmonic Inc. ("Harmonic" or the "Company") stock between 1/19/00 and 6/26/00, inclusive (the "Class Period") or C-Cube Microsystems Inc. ("C-Cube") securities between 1/19/00 and 5/3/00, inclusive (the "Subclass Period") against Harmonic, C-Cube and certain of their executive officers for violation of the federal securities laws.

2. In early 2000, Harmonic shares were one of the hottest performers on the NASDAQ as it appeared that the Company was poised to provide the lion's share of the fiber nodes for AT&T Corp.'s ("AT&T") cable network upgrade. In addition, the market highly anticipated the merger/acquisition of the DiviCom, Inc. ("DiviCom") division of C-Cube, which was represented to be a leader in providing digital video transmission equipment for the satellite and cable television industries. This acquisition was intended to be consummated in early May 2000 after shareholder approval by both Harmonic and C-Cube shareholders.

3. During the period leading up to the merger, defendants represented that strong business trends from the last year were continuing and that Harmonic was seeing strong demand from large traditional operators such as AT&T as well as new operators such as RCN. Defendants also represented that the acquisition of C-Cube's DiviCom division, would be highly beneficial to Harmonic, doubling its size and providing synergy to boost its growth as the leading supplier of open-systems solutions for delivering video, voice and data over a variety of network architecture.

4. Between announcement of the merger and the close some six months later, defendants peppered the press with over a dozen press releases touting Harmonic's and DiviCom's products and businesses. As a result, the price of Harmonic stock surged to a Class Period-high of $152-3/8 on 3/6/00 and C-Cube's stock surged to a Class Period-high of $102.125 on March 6, 2000. This upsurge in stock value of both Harmonic and C-Cube enabled the companies to obtain shareholder approval to complete the $1.7 billion acquisition of DiviCom. It also enabled the Harmonic and C-Cube defendants to dump $106,483,442 in stock.

5. Since then, Harmonic and DiviCom have missed analyst projections for two straight quarters. Only 12 days after the close of the merger, both Harmonic and C-Cube admitted

to DiviCom's disastrous business conditions. Sales over the prior year's quarter had failed to grow. Harmonic's stock price, which now included the DiviCom division, fell nearly 20% from $65-3/4 with volume of 1,213,300 on 5/15/00, down $10-7/8 to $54-7/8 on volume of 16,587,000 on 5/16/00. By 5/26/00, as the market digested this news through the issuance of analyst reports, Harmonic's stock had dropped to $38 per share - a 42% drop in share value. Then, Harmonic revealed on 6/26/00 that it was in fact suffering a huge drop in revenues and exposed problems Harmonic had been experiencing during the Class Period. Orders from AT&T never really ramped for Harmonic. Harmonic has since struggled with the failed acquisition of Divicom due to the known decline in orders. The revelation of these events caused Harmonic's stock price to drop to as low as $22-11/16 on record volume of 21.9 million shares on 6/27/00 causing hundreds of millions of dollars in damages to members of the class. On 11/13/00, Harmonic further announced that it would restate its results for the quarter ended 9/29/00, as RCN, which was supposedly one of the major customers diversifying Harmonic's dependence on AT&T, returned $4.1 million worth of products previously booked as revenue by Harmonic. Purportedly, Harmonic agreed to the return in order "to maintain their relationship" with this customer, reducing third quarter net sales to $68.2 million from a previously reported $72.3 million. As of 11/17/00, Harmonic stock sells for $11.88 per share or just over 10% of its Class Period-high.

6. The charts below demonstrate the price action of Harmonic's and C-Cube's shares during the Class Period, defendants' stock sales and the collapse of Harmonic's share price as the facts about defendants' businesses began to emerge compared to the index of similar companies. They show that the drop in stock price was due largely to company-specific events and not market forces.

JURISDICTION AND VENUE

7. This action arises under §§11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§77k, 771(a)(2) and 77o, §§10(b), 20(a) and 14(a) of the Securities Exchange Act of 1934 ("the Exchange Act"), 15 U.S.C. §78j(b), 78t(a) and 78n(a), and Rules 10b-5 and 14(a)-9 promulgated by the U.S. Securities and Exchange Commission ("SEC"), 17 C.F.R. §240.10b-5.

8. This Court has jurisdiction under §22(a) of the Securities Act, 15 U.S.C. §77v(a), §27 of the Exchange Act, 15 U.S.C. §78aa, and 28 U.S.C. §§1331 and 1337.

9. Venue is proper in this District under §22(a) of the Securities Act, 15 U.S.C. §77v(a), and §27 of the Exchange Act, 15 U.S.C. §78aa. The wrongs alleged herein occurred, in substantial part, in this District. At all relevant times, Harmonic and C-Cube conducted, and still conduct, significant business in this District and maintain their principal places of business at Sunnyvale, California and Milpitas, California, respectively. At all relevant

times, defendants named herein conducted substantial business and/or resided in this District or committed violations of U.S. law by acts committed in this District.

THE PARTIES

10. a. Plaintiff Hans-Peter Wild ("Wild") purchased options shares of Harmonic on the open market during the Class Period and was damaged thereby.

b. Plaintiff Glynn Emerging Opportunity Fund, L.P. ("Glynn") exchanged shares of C-Cube stock for Harmonic stock during the Class Period and was damaged thereby.

c. Plaintiff Robert G. Knollenberg ("Knollenberg") purchased Harmonic shares on the open market and exchanged shares of C-Cube stock for Harmonic stock during the Class Period and was damaged thereby.

d. Plaintiff Bruce Burns ("Burns") purchased shares of C-Cube stock on the open market during the Class Period and was damaged thereby.

11. Defendant Harmonic maintains its headquarters at Sunnyvale, California. During the Class Period, Harmonic's common stock traded in an efficient market on the NASDAQ National Market System. During the Class Period, Harmonic utilized its artificially inflated stock as currency in consummating a critical stock-for-stock acquisition of C-Cube.

12. The Harmonic Defendants are:

a. Anthony J. Ley ("Ley") was, at all relevant times during the Class Period, President, Chief Executive Officer ("CEO") and Chairman of the Board of Directors (the "Board") of the Company.

b. Robin N. Dickson ("Dickson") was, at all relevant times during the Class Period, Chief Financial Officer ("CFO") of the Company.

c. Michael Yost ("Yost") was, at all relevant times during the Class Period, Vice President, Operations of the Company. Yost disposed of 30,000 shares of his Harmonic stock during the Class Period for estimated proceeds of $1.1 million from his insider trading activity.

d. Kirk Flatow ("Flatow") was, at all relevant times during the Class Period, an Officer of Harmonic. On 6/2/00, Flatow disposed of 5,100 shares of his Harmonic stock for estimated proceeds of $288,660.

e. Moshe Nazerathy ("Nazerathy") was, at all relevant times during the Class Period, a Director of the Company.

f. Floyd Kvamme ("Kvamme") was, at all relevant times during the Class Period, a Director of the Company.

g. David Lane ("Lane") was, at all relevant times during the Class Period, a Director of the Company.

h. Barry Lemieux ("Lemieux") was, at all relevant times during the Class Period, a Director of the Company.

i. Michel Vaillaud ("Vaillaud") was, at all relevant times during the Class Period, a Director of the Company.

13. Defendant C-Cube maintains its headquarters at Milpitas, California. During the Class Period, C-Cube's common stock traded in an efficient market on the NASDAQ National Market System.

14. The C-Cube Defendants are:

a. Alex Balkanski ("Balkanski") was, during the Class Period, President of C-Cube until May 3, 2000, after which he became Chairman of the Board of C-Cube.

b. Tom Lookabaugh ("Lookabaugh") was, at all relevant times during the Class Period, President of DiviCom and/or President of Harmonic's Convergent Systems division and sold 236,781 shares of C-Cube stock during the Class Period for estimated proceeds of $10,276,827.

c. Fred Brown ("Brown") was, at all relevant times during the Class Period, Vice President, Worldwide Sales at C-Cube and sold 132,458 shares of C-Cube stock for estimated proceeds of $3,587,042.

d. Richard Foreman ("Foreman") was, at all relevant times during the Class Period, Chief Information Officer ("CIO") and Vice President, Information Technology at C-Cube and sold 69,296 shares of C-Cube stock for estimated proceeds of $2,499,580.

e. Donald McKinney ("McKinney") was, at all relevant times during the Class Period, on the Board of C-Cube and sold 60,000 shares of C-Cube stock for estimated proceeds of $1,732,817.

f. Umesh Padval ("Padval") was, at all relevant times during the Class Period, CEO and a Director of C-Cube and sold 75,000 shares of C-Cube stock for estimated proceeds of $3,630,900.

g. Donald T. Valentine ("Valentine") was, during the Class Period, Chairman of the Board of C-Cube until May 3, 2000 and sold 720,315 shares of C-Cube stock for estimated proceeds of $60,610,796.

h. Walt Walczykowski ("Walczykowski") was, at all relevant times during the Class Period, CFO of C-Cube and sold 79,783 shares of C-Cube stock for estimated proceeds of $4,047,995.

i. Baryn Futa ("Futa") was, at all relevant times during the Class Period, a Director of C-Cube and sold 48,000 shares of C-Cube stock for estimated proceeds of $2,632,800.

j. Gregorio Reyes ("Reyes") was, at all relevant times during the Class Period, a Director at C-Cube and sold 20,000 shares of C-Cube stock for estimated proceeds of $l,175,000.

PLAINTIFFS' CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of the class, which consists of all persons and entities who purchased or acquired Harmonic securities during the Class Period or C-Cube securities during the Subclass Period (the "Class"). Plaintiffs also bring claims arising under the Securities Act on behalf of a subclass consisting of all persons who acquired Harmonic's shares pursuant to a Registration Statement and Prospectus for the 5/3/00 merger between Harmonic and C-Cube (the "Subclass"). Excluded from the Class and Subclass are defendants, members of their immediate families, any entity in which any defendant has or had a controlling interest and the legal representatives, heirs, successors or assigns of any defendant.

16. Unless otherwise indicated, the term "Class" includes the above-defined Subclass.

17. The members of the Class are so numerous that joinder of all members is impracticable.

18. Plaintiffs' claims are typical of the claims of the Class in that each Class member purchased or acquired Harmonic or C-Cube securities during the Class Period at artificially inflated market prices and sustained injury as a result.

19. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained lead counsel who are competent and experienced in class action securities litigation.

20. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members is impracticable.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class.

FIRST CLAIM FOR RELIEF

For Violation of Sections 11 and 15 of the Securities Act (Against Defendants Harmonic, Ley, Dickson, Nazerathy, Kvamme, Lane, Lemieux and Vaillaud)

22. Plaintiffs incorporate by reference and reallege ¶¶1-21 above as though fully set forth herein.

23. Plaintiffs Knollenberg and Glynn assert this claim for violations on behalf of themselves and other members of the subclass for violation of §11 of the Securities Act, 15 U.S.C. §77k, against defendants Harmonic, Ley, Dickson, Nazerathy, Kvamme, Lane, Lemieux and Vaillaud. Each of the plaintiffs bringing this Count acquired Harmonic's shares issued and registered pursuant to Harmonic's 3/23/00 Registration Statement. This Claim is also asserted against defendants Harmonic and Ley for violation of §15 of the Securities Act, 15 U.S.C. §77o, by virtue of their direct and indirect control and domination of Harmonic.

24. The defendants named in this Claim either issued, signed or were a director of the issuer in the preliminary and final registration statement and prospectus (collectively, the "Registration Statement") relating to the Harmonic/C-Cube merger, which was consummated on 5/3/00.

25. Harmonic issued the common stock pursuant to the Registration Statement on 5/3/00. Defendants Ley, Dickson, Nazerathy, Kvamme, Lane, Lemieux and Vaillaud were officers and/or directors of Harmonic and signed the Registration Statement. All are therefore liable, under §11(a)(1) and (2), 15 U.S.C. §77k(a)(1) and (2), to plaintiffs and the other members of the Subclass who acquired Harmonic stock in exchange for C-Cube stock pursuant to the Registration Statement.

26. The allegations giving rise to this Claim do not rest upon, involve or derive from any allegations of fraud or fraudulent conduct by defendants.

Background

27. On 10/27/99, the Company entered into an Agreement and Plan of Merger and Reorganization with C-Cube, pursuant to which C-Cube would merge into Harmonic (the "Merger Agreement"). Under the terms of the Merger Agreement, C-Cube would spin off to its shareholders all of the assets and liabilities of its semiconductor business prior to the merger closing. C-Cube would then merge into Harmonic, and, as a result, Harmonic would acquire C-Cube's DiviCom division. The DiviCom division designs, manufactures and sells products and systems that enable companies to deliver digital video, audio and data over a variety of networks, including satellite, wireless, telephone and cable.

28. The merger was structured as a tax-free exchange of stock and accounted for under accounting purchase methods. In the merger, each share of common stock of C-Cube would be converted into the right to receive .5427 of a share of Harmonic common stock. Approximately 25.7 million shares of Harmonic common stock would be issued, and the purchase price, including acquisition-related costs, was expected to be approximately $1.7 billion. The consummation of the merger was subject to a number of conditions, including Harmonic and C-Cube shareholder approval, the prior disposition of C-Cube's

semiconductor business and regulatory approvals. The shareholder meetings were scheduled to be held on 4/24/00.

Harmonic's Largest Customer, AT&T, Had Reduced Orders and Purchases

29. AT&T was Harmonic's largest customer, accounting for 41% of Harmonic's revenues in 1999. Unlike many of Harmonic's customers, AT&T purchased custom-made products. Because these products were not interchangeable with other Harmonic products and could not easily be sold to other customers, the majority of AT&T's orders could not be cancelled after Harmonic ordered the components from its subcontractors. Further, because the products purchased by AT&T had to be specially produced, they required much longer lead times between when the products were ordered and when they would be delivered.

30. In mid-1999, AT&T changed its cable strategy and decided to emphasize increasing its subscriber base rather than improving and expanding its network. Accordingly, AT&T needed far fewer products from Harmonic going forward and cancelled several purchases. However, AT&T could not cancel many of its outstanding orders, so it repeatedly rescheduled delivery as far into the future as possible.

31. Finally, in 4Q99, AT&T was forced to accept millions of dollars in custom components that it had ordered and no longer wanted but could not cancel. Consequently, in 1Q00, AT&T was placing very few new orders. Further, AT&T had few back orders pending. As such, due to the long lead times involved for AT&T's custom products, Harmonic would deliver very little product to AT&T in 2Q00.

The Registration Statement

32. On 3/23/00, Harmonic filed a Form S-4 Registration Statement with the SEC in connection with the acquisition of C-Cube. The Registration Statement highlighted Harmonic's explosive growth in revenue and earnings, comparing sales and net income for the nine months ended October 1, 1999 to the nine months ended October 2, 1998, as follows:

	Nine Months Ended	
	10/2/98	**10/1/99**
Net Sales	$56,760	$120,789
Cost of Sales	36,574	69,326
Gross Profit	20,176	51,463
Operating Expenses	$42,712	$35,942
Net Income (Loss)	(22,526)	15,521

With respect to AT&T, the Registration Statement stated:

> Both Harmonic's and the DiviCom business' customer bases have historically been highly concentrated. The loss of AT&T or any other key

customer would have a negative effect on the combined company's business after the merger.

> Historically, a significant majority of Harmonic's and the DiviCom business' sales have been to relatively few customers. During 1998, sales by Harmonic to AT&T accounted for approximately 17% of its net sales. More recently, Harmonic's sales to AT&T has accounted for an increasing significant portion of its historic net sales. On a pro forma consolidated basis, sales to AT&T by Harmonic and the DiviCom business would have accounted for approximately 19.3% of net sales for the first nine months of 1999. Due in part to the consolidation of ownership of cable television systems, Harmonic expects that sales to AT&T and relatively few other customers will continue to account for a significant percentage of net sales of the combined company for the foreseeable future. The loss of, or any reduction in orders from, a significant customer would harm the combined company's business.

33. The Registration Statement incorporated by reference various SEC filings which Harmonic recently made. Among them was Harmonic's Annual Report on Form 10-K for the year ended December 31, 1998 (as amended) (the "1998 10-K").

34. The 1998 10-K painted a rosy picture for Harmonic. In it, Harmonic highlighted its explosive growth, as evidenced in the following chart:

	Q1	Q2	Q3	Q4
Net Sales	$16,204	$18,174	$22,382	$27,097
Gross Profit	5,090	6,662	8,434	10,369

The 1998 10-K attributed this growth to an increase in demand for its broadband products and, in particular, orders from TCI, which was acquired by AT&T in 1999. Indeed, Harmonic recognized that its increase in net sales in the last three quarters of 1998 was "due to increased spending in the U.S. cable television industry" and that the 55% increase in domestic sales Harmonic experienced in1998 was "principally due to increased shipments to TCI [AT&T]."

35. The Registration Statement also incorporated by reference Harmonic's Quarterly Reports on Form 10-Q for the first three quarters of 1999. These reports continued to reflect positive growth trends and increased demand for Harmonic's broadband products:

	Q1	Q2	Q3
Net Sales	$30,263	$37,902	$52,624
Gross Profit	12,411	15,956	23,096

> Compared to 1998 results, net sales increased 87% in 1Q99, 109% in 2Q99 and a whopping 135% in 3Q99. Domestic sales in these same periods increased 89%, 147% and 226%, respectively. All of these increases in domestic sales were principally due to increased shipments to

> TCI/AT&T. In particular, TCI/AT&T represented 40% of net sales during 2Q99 and 52% of net sales during 3Q99.

36. Despite attributing much of Harmonic's past success to AT&T, and despite warning that a reduction of orders from AT&T would harm Harmonic's business, the Registration Statement omitted to state that AT&T had drastically reduced its orders to Harmonic.

37. On 5/3/00, the Registration Statement became effective, and C-Cube stockholders received .5427 of a share of Harmonic common stock in exchange for each share of C-Cube common stock.

38. After the close of trading on 6/26/00, Harmonic revealed expected second quarter revenue of $74 million to $82 million, approximately half the amount previously represented by defendants and expected by the market. Harmonic later confirmed that this shortfall was largely caused by the drastic reduction in orders from AT&T. After Harmonic made its announcement on 6/26/00, its stock collapsed from over $40 per share to just over $23, a 47% drop in one day.

39. Plaintiffs and the Subclass acquired their Harmonic shares in connection with the merger without knowledge of the untruths or omissions alleged herein. As a direct and proximate result, plaintiffs and the Subclass have suffered substantial damages.

40. In connection with issuing the Registration Statement, the Harmonic Defendants used the means and instrumentalities of interstate commerce and the U.S. mails.

41. This action was brought within one year after the discovery of the untrue statements and omissions (and within one year after such discovery should have been made in the exercise of reasonable diligence) and within three years after the merger between Harmonic and C-Cube was consummated.

42. By reason of the foregoing, Harmonic and the Harmonic Defendants violated §11 of the Securities Act and are liable to plaintiffs and the other members of the Subclass who acquired Harmonic stock in exchange for C-Cube stock pursuant to the Registration Statement, each of whom has been damaged by reason of such violations.

SECOND CLAIM FOR RELIEF

For Violation of Sections 12(a)(2) and 15 of the Securities Act (Against Defendants Harmonic and Ley)

43. Plaintiffs incorporate by reference ¶¶1-42 above as though fully set forth herein.

44. Plaintiffs Knollenberg and Glynn assert this Claim on behalf of themselves and the other members of the Subclass against defendants Harmonic and Ley for violations of §12(a)(2) of the Securities Act, 15 U.S.C. §771(a)(2). This Claim is also asserted against defendants Harmonic and Ley for violation of §15 of the Securities Act, 15 U.S.C. §77o,

by virtue of their direct and indirect control and domination of Harmonic. Plaintiffs acquired their Harmonic shares from the Company pursuant to its 3/23/00 Prospectus.

45. The allegations giving rise to this Claim do not rest upon, involve or derive from any allegations of fraud or fraudulent conduct by defendants.

46. By use of the Registration Statement which contained the materially misleading statements and omitted material facts, Harmonic sold its common stock to the Subclass in exchange for their C-Cube stock. The defendants named in this Claim actively and jointly caused to be drafted, revised and approved the Registration Statement, which was provided to plaintiffs, finalized it and caused it to become effective. But for these defendants having drafted, filed and/or signed the Registration Statement, the merger between Harmonic and C-Cube would not have closed and plaintiffs would not have acquired Harmonic shares, as further alleged herein. These defendants also solicited the exchange of Harmonic shares by institutional investors, fund managers and other investment professionals by means of the Registration Statement.

47. Absent the selling efforts by defendants named in this Claim, as set forth above, the exchange of Harmonic shares for C-Cube shares could not and would not have been accomplished. At all relevant times, these defendants knew, or in the exercise of reasonable care should have known, of the material untrue statements in and omissions from the Prospectus, as set forth above.

48. None of the untrue statements and omissions from the Prospectus as described herein were known to plaintiffs at the time they acquired Harmonic shares, pursuant to the Prospectus.

49. By reason of the conduct alleged herein, the defendants named in this Claim violated §12(a)(2) of the Securities Act, 15 U.S.C. §771(a)(2). As a direct and proximate cause of defendants' violation of §12(a)(2), plaintiffs have sustained damages. Plaintiffs seek rescission to recover the consideration paid for their Harmonic common stock. Plaintiffs hereby tender their Harmonic shares, or proceeds from the sale thereof, to defendants in exchange for the value of the consideration paid for such shares, plus interest. In the alternative, plaintiffs seek recovery of damages in an amount to be proven at trial.

50. This action was brought within one year after the discovery of the untrue statements and omissions (and within one year after such discovery should have been made in the exercise of reasonable diligence) and within three years after the shares were sold to plaintiffs and the other members of the Subclass.

THIRD CLAIM FOR RELIEF

Against Defendants Harmonic, Ley, Nazerathy, Kvamme, Lane, Lemieux, Vaillaud, C-Cube, Balkanski, McKinney, Padval, Valentine, Futa and Reyes For Violations of Section 14(a)of the Exchange Act and Rule 14(a)-9 Promulgated Thereunder

51. Plaintiffs incorporate by reference and reallege ¶¶1-50 above as though fully set forth herein.

52. This Claim is asserted by plaintiffs Knollenberg and Glynn against defendants Harmonic, Ley, Nazerathy, Kvamme, Lane, Lemieux, Vaillaud, C-Cube, Balkanski, McKinney, Padval, Valentine, Futa and Reyes on behalf of all Subclass members who held Harmonic or C-Cube common stock on 4/24/00 and still held those shares on 5/3/00 for violations of §14(a) of the Exchange Act, 15 U.S.C. §78n(a), and Rule 14(a)-9, 17 C.F.R. §240.14a-9. Each defendant named in this Claim solicited proxies by means of the Joint Proxy, which was distributed to Harmonic and C-Cube shareholders, by permitting the use of their names in the Joint Proxy and by recommending in the Joint Proxy that Harmonic and C-Cube shareholders approve the merger.

53. The Joint Proxy described herein was a "proxy solicitation" within the meaning of §14(a) of the Exchange Act and Rule 14(a)-9 promulgated thereunder.

54. Defendants Ley, Nazerathy, Kvamme, Lane, Lemieux and Vaillaud signed the Harmonic Registration Statement which contained the Joint Proxy allowing it to be filed with the SEC. Defendants Ley, Nazerathy, Kvamme, Lane, Lemieux and Vaillaud were members of Harmonic's Board at all relevant times and authorized Ley to sign the Joint Proxy on their behalf. Defendants Balkanski, McKinney, Padval, Valentine, Futa and Reyes were members of C-Cube's Board at all relevant times and authorized Balkanski to sign the Joint Proxy on their behalf.

55. The Harmonic and C-Cube Boards issued the following statement, that appeared in bold text on the first page of the Joint Proxy:

> ***The Boards of Directors of Harmonic and C-Cube unanimously recommend that you vote in favor of merger and, in the case of Harmonic, the amendment to Harmonic's certificate of incorporation. Your vote is very important.***

56. Similarly, in the Joint Proxy, under their respective "Notice of Special Meeting of Stockholders," the Boards each stated, "By Order of the Board of Directors," that each Board unanimously determined that the merger was in the "best interests" of their stockholders and recommended a vote in approval of the merger.

57. The Joint Proxy was materially false or misleading in that it contained misleading statements of material facts or omitted to state material facts necessary to make the statements made not misleading. The materially misleading statements and omissions include those set forth in the First and Second Claims for Relief, above, and the fact that by March, DiviCom's business had slowed dramatically as customers - especially satellite customers - had reduced or rescinded orders and sales, rendering DiviCom's growth flat.

58. The defendants named in this Claim sought to secure Harmonic and C-Cube shareholder approval of the Harmonic/DiviCom merger by means of the materially

misleading Joint Proxy and/or permitted the use of their names to solicit proxies from plaintiffs and other members of the Subclass.

59. The following facts give rise to a strong inference that each of the defendants named in this Claim acted with the requisite state of mind for liability under §14(a) and Rule 14(a)-9, *i.e.*, negligence, at the time they issued or caused to be issued the Joint Proxy or permitted the use of their names in the Joint Proxy. As detailed more fully in Claim Four, below, these defendants knew that the Joint Proxy contained misstatements of material fact and that it omitted to state material facts necessary in order to make the statements therein not misleading.

60. The merger required and received the affirmative vote of both the Harmonic and C-Cube shareholders at Special Meetings of Harmonic and C-Cube shareholders held on 5/3/00. Accordingly, the materially misleading proxy statement was an essential link in the accomplishment of the Harmonic/DiviCom merger.

61. As a result of the foregoing, defendants named in this Claim have violated §14(a) of the Exchange Act and SEC Rule 14(a)-9 promulgated thereunder.

62. Plaintiffs and other members of the Subclass have sustained injury and damages by reason of defendants' misrepresentations and omissions in the Joint Proxy Statement/ Prospectus.

FOURTH CLAIM FOR RELIEF

For Violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 Against Defendants Harmonic, Ley, Yost, Flatow, C-Cube, Balkanski, Lookabaugh, Brown, Foreman, McKinney, Padval, Valentine, Wakszyvowski, Futa and Reyes

63. Plaintiffs incorporate by reference and reallege ¶¶1-62 above as though fully set forth herein.

64. This Claim is asserted by plaintiffs and the Class against each defendant, except Nazerathy, Kvamme, Lane, Lemieux and Vaillaud, for violations of §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder. In addition, this Claim is brought against defendants Harmonic, C-Cube, Ley and Balkanski for violation of §20(a) of the Exchange Act, 15 U.S.C. §78t(a), by virtue of their direct and indirect control and domination of Harmonic or C-Cube.

BACKGROUND

<u>Harmonic</u>

65. Harmonic is a Silicon Valley-based cable equipment supplier. The Company was founded in 1988 and spent its first ten years pioneering innovations in the implementation of fiber optics in cable television networks, including the first application of dense wavelength division multiplexing ("DWDM") in a cable architecture.

66. Harmonic designed, manufactured and marketed digital and fiber optic systems for delivering video, voice and data services over cable, satellite and wireless networks. Its advanced solutions enable cable television and other network operators to provide a range of broadcast and interactive broadband services that include high-speed Internet access, telephony and video on demand. Harmonic offered a range of fiber optic transmission and digital headend products for hybrid fiber coax, satellite and wireless networks. Its acquisition of New Media Communication Ltd. in 1/98 has allowed Harmonic to develop and expand its product offerings to include high-speed data delivery software and hardware. On 3/23/99, Harmonic Lightwaves, Inc. announced the merger of its subsidiary, Harmonic Inc., with and into Harmonic Lightwaves, Inc. pursuant to a Certificate of Ownership and Amendment dated 3/22/99. Pursuant to this merger, Harmonic Lightwaves, Inc. changed its corporate name to Harmonic Inc.

67. Historically, the majority of Harmonic sales have been to relatively few customers, and, in 1999, Harmonic publicly represented that it expected this customer concentration to continue in the foreseeable future. In 1998, sales to TCI accounted for 17% of net sales and sales to a Chinese distributor accounted for 11% of net sales. Harmonic stated in its 1998 10-K that "The loss of a significant customer or any reduction in orders by any significant customer, or our failure to qualify our products with a significant cable operator could adversely affect our business and operating results."

68. Increased demand for high-speed broadband access, combined with recent and proposed regulatory reform, has spurred competition among communications service providers worldwide to offer combinations of video, voice and data services. Historically, U.S. long distance carriers and regional Bell operating companies ("RBOCs") were generally limited to providing only telephony services in the residential market. Cable television multiple system operators ("MSOs") also were generally limited to providing video programming. As a result, neither the RBOCs nor the MSOs had networks conducive to providing high-speed data services to residential subscribers. The Telecommunications Act of 1996, however, permitted cable operators, long-distance carriers and local exchange carriers such as the RBOCs to enter each other's markets. As a result, AT&T acquired, in late 1998 or early 1999, Harmonic's largest customer, TCI, and announced plans to offer broadband and interactive services, including telephony, on a broad scale over TCI's cable systems in the next few years. Harmonic's dependence on AT&T to deliver promised growth continued.

69. A key factor in Harmonic's competitive position was its ability to offer several types of solutions for delivering video, voice and data over cable and telephone networks.

70. Harmonic had been trying to strengthen its broadband product offerings into the digital end of its business for three years. For this reason, Harmonic had been aware of C-

Cube and DiviCom and their reputations. The acquisition of DiviCom was of critical importance to the Harmonic Defendants because they believed that DiviCom would give Harmonic a major boost into the digital sphere through DiviCom's digital product. DiviCom was to provide Harmonic with the ability to sell digital video encoders and remultiplexers to its traditional cable customers.

C-Cube

71. C-Cube was established as a California corporation in 1988 and reincorporated in Delaware in 1994. C-Cube designs, manufactures and sells semiconductors and systems for digital video applications. As a leading supplier of semiconductors used for digital video applications, C-Cube's semiconductor division has played a major role in enabling the growth of digital video. C-Cube focused on working with its OEM customers and service providers to enable key applications in its consumer and communications target markets. In the consumer market, it is focused on Video Compact Disc ("VideoCD"), playback and recordable Digital Video Disc ("DVD") and Digital VCR players. The communications market targets interactive set-top boxes, broadcast encoders and emerging appliances like non-linear editing, time shifting and internet TV boxes.

72. On 8/28/96, C-Cube acquired DiviCom, a digital video networking company, which at the time was a faltering long-time customer of C-Cube, reportedly to keep it from going under. C-Cube paid $65.7 million in cash, issued 2.3 million shares of its common stock, assumed options exercisable for 264,000 shares of its common stock and incurred $1.35 million in other costs in exchange for the outstanding shares of DiviCom stock that C-Cube did not already own. DiviCom designed, manufactured and sold a full spectrum of products and systems that enable the transmission of digital video, audio and data over a variety of networks including satellite, wireless, terrestrial, fiber and cable. In the video networking system business, DiviCom competed with vertically integrated system suppliers including General Instruments, Scientific Atlanta, NDS, SGS-Thomson and Philips, as well as more specialized suppliers including SkyStream and Imedia.

73. In the market of digital video communication systems, DiviCom provided applications for satellite delivery, terrestrial and cable broadcasting, video networking to customers such as British Digital Broadcasting, systems Canal+, Comark, DIRECTV, GTE, Look Communications, NTL, Paxson Communications, Pioneer and Ultracom .

74. With both systems and semiconductor divisions focused on digital video applications, C-Cube claimed that it was uniquely positioned to support the continued growth of digital video in a number of important consumer and communication markets. In reality, C-Cube had no intention of keeping DiviCom. Rather, it planned to help it get back on its feet, repackage it as a successful company and resell it to a third party. As a result, C-Cube never integrated DiviCom within C-Cube. However, for tax reasons, C-Cube had to wait for three years before it could sell DiviCom.

Harmonic Pursues DiviCom

75. Harmonic had been engaged for some time in developing and marketing digital video headend systems to complement its core business of providing fiber optic systems for cable operators. From time to time, Harmonic has considered expanding its digital video broadcasting systems business through acquisitions of digital video companies, including C-Cube's DiviCom division. In 8/97, Edward Thompson ("Thompson"), Harmonic's Vice President, Business Development, met with Lookabaugh, President of C-Cube's DiviCom division, to talk in general terms about the advantages of combining Harmonic and DiviCom. They discussed the merits of such a combination and arranged a meeting in 9/97 between Ley, Chairman, President and CEO of Harmonic, and Balkanski, President and CEO of C-Cube. Following that meeting, Harmonic received indications from C-Cube that it had no interest in pursuing a transaction which would involve the sale of DiviCom. During 1998, Thompson and Lookabaugh continued to have conversations from time to time about a possible combination of Harmonic and DiviCom.

76. In 6/99, Harmonic became aware that C-Cube had retained investment bankers to explore strategic options for C-Cube. Harmonic subsequently held meetings in July with representatives of Warburg Dillon Read ("Warburg"), its financial advisor, to discuss possible methods of acquiring DiviCom. On 7/8/99, Harmonic authorized Warburg to explore merger possibilities with C-Cube's financial advisor, Credit Suisse First Boston Corporation ("Credit Suisse"), which was acting on behalf of C-Cube.

77. On 7/29/99, Thompson, Ley and Dickson, CFO of Harmonic, met with Balkanski and Lookabaugh, together with both companies' financial advisors, to discuss a potential business combination. The meeting focused on the two companies' business operations and strategies, whether a cultural fit existed and how the two companies could be integrated. Both companies executed a confidentiality agreement. The same individuals met again on 8/2/99 to discuss structural issues and various ways to value DiviCom. At that meeting, Harmonic submitted an initial verbal proposal to merge with C-Cube provided that C-Cube spin-off or sell its semiconductor business prior to the merger. Ley, Dickson, Balkanski and Lookabaugh, along with representatives from Credit Suisse and Warburg were present.

78. On 8/18/99, Ley, Dickson, Balkanski and Lookabaugh, along with representatives from Credit Suisse and Warburg, met, and C-Cube's representatives offered their response to Harmonic's initial proposal. The response focused primarily on the tax implications of the proposed transaction. Various discussions continued during August and early September between C-Cube and Harmonic and their financial advisors, regarding a potential transaction involving Harmonic and DiviCom. The parties agreed that, prior to further financial due diligence by Harmonic, they would try to reach agreement on a valuation for DiviCom. On 9/8/99, Harmonic, through its financial advisor, presented a revised merger proposal to C-Cube that Harmonic would purchase DiviCom in an all-stock transaction.

79. On 10/1/99, Ley, Dickson, Thompson, Balkanski, Lookabaugh and Walczykowski, C-Cube's CFO, along with representatives from Credit Suisse, Warburg and respective legal counsel to Harmonic and C-Cube, met to more fully discuss the potential

transaction and the potential strategic and financial benefits of a business combination. On 10/5/99, Harmonic and C-Cube and their respective representatives met to discuss the revised merger proposal proposed by Harmonic on 9/8/99. On 10/7/99, Balkanski, along with other representatives from C-Cube, met with a group of C-Cube's legal and financial advisors and accountants to discuss the structure and timing of the transaction. Shortly thereafter, Harmonic and C-Cube each requested access to information for due diligence purposes from each other. During the week of 10/11/99 through 10/15/99, defendants and their advisors conducted extensive due diligence on each other; management of both companies met to discuss combining operations of the two companies; and negotiations continued on significant issues including: (a) the issue of ***unvested options*** currently held by C-Cube employees; and (b) ***the cash remaining with C-Cube*** after the disposition of its semiconductor business.

80. On 10/14/99, in a special meeting of C-Cube's Board and C-Cube's management, C-Cube's legal and financial advisors reviewed with the Board the terms of the proposed transaction. The Board considered the proposed acquisition and determined that management should continue to pursue and evaluate the business combination. On 10/16/99, Harmonic's Board met to consider the proposed transaction. At the Harmonic Board meeting, senior management and Harmonic's financial and legal advisors discussed the following with the Board: the status of the negotiations with respect to the proposed transaction; the potential benefits and risks associated with an acquisition of DiviCom; and the principal terms and conditions of the Merger Agreement. Harmonic's financial advisors reviewed the financial analyses relating to the merger. The Harmonic Board then discussed the terms of the proposed merger and the analyses presented by the financial advisors, unanimously approved the merger and authorized management to finalize the terms of the Merger Agreement.

81. On 10/18/99, C-Cube's Board met again. At the meeting, C-Cube's management, along with its financial, accounting and legal advisors, updated the directors on their due diligence investigations and reviewed the revised terms of the proposed transaction. On 10/19/99, Harmonic's Board met again to consider the proposed transaction. At this meeting, Harmonic's Board discussed the status of the negotiations with respect to the proposed transaction, the structure of the proposed transaction and additional information about C-Cube gathered from its due diligence review process. On 10/19/99, substantially all outstanding issues related to the Merger Agreement were finalized, except for certain open due diligence matters. The C-Cube Board met and again reviewed the proposed transaction. The Board further discussed the proposed merger and elected to continue to pursue and evaluate the proposed business combination.

82. On 10/26/99, C-Cube's Board met again to review the proposed transaction. Representatives of Credit Suisse delivered an oral opinion, subsequently confirmed in writing on 10/27/99, the date of the Merger Agreement before the amendment and restatement, to the effect that, as of the date of the opinion and based upon and subject to the matters stated in the opinion, the exchange ratio provided for in the Merger Agreement was fair to the holders of C-Cube common stock, from a financial point of view. This meeting concluded with the Board unanimously voting to approve the

acquisition, the Merger Agreement and related documents and to recommend that C-Cube's stockholders adopt the Merger Agreement and approve the merger, subject to satisfactory resolution of the outstanding issues.

83. On 10/26/99, Harmonic's Board met telephonically to review the proposed transaction. Representatives of Warburg delivered an oral opinion, subsequently confirmed in writing as of the same date, to the effect that, ***as of the date of the opinion and based upon and subject to the matters stated in the opinion, the exchange ratio provided for in the Merger Agreement was fair*** to Harmonic, from a financial point of view. At the meeting, Harmonic's management and its advisors updated the directors on the revised terms of the proposed transaction. This meeting concluded with the Board unanimously voting to approve the acquisition, the Merger Agreement and the related documents and to recommend that Harmonic's stockholders adopt the Merger Agreement and approve the merger, subject to satisfactory resolution of the outstanding issues. C-Cube and Harmonic entered into the Merger Agreement on 10/27/99. A press release stating the general terms of the Merger Agreement was released after the markets closed on 10/27/99.

Announced Merger of Harmonic and C-Cube/ DiviCom

84. On 10/27/99, Harmonic and C-Cube issued a joint press release announcing the merger of Harmonic and C-Cube in a manner that Harmonic would acquire DiviCom and all other assets would be spun off to a new C-Cube consisting of C-Cube's semiconductor business and having the same stock ownership, officers and directors. The Joint Press release stated:

> C-CUBE ANNOUNCES AGREEMENT TO COMBINE DIVICOM WITH HARMONIC COMBINATION **CREATES PREMIER PROVIDER OF OPEN-SYSTEMS** SOLUTIONS FOR DELIVERING VIDEO, VOICE AND DATA OVER BROADBAND NETWORKS
>
> MILPITAS, CALIFORNIA -- OCT. 27, 1999 - C-Cube Microsystems (Nasdaq: CUBE) today announced that it has entered into a definitive agreement to combine its wholly-owned DiviCom subsidiary with Harmonic (Nasdaq: HLIT), and to spin off or sell its semiconductor business in a taxable transaction prior to the closing of the transaction.
>
> DiviCom is the leading provider of open solutions for digital television.
>
> Under the terms of the agreement between C-Cube and Harmonic, the Harmonic transaction will be structured as a tax-free exchange of stock in which C-Cube shareholders will receive, in exchange for each share of C-Cube stock, 0.5427 shares of Harmonic stock. Based upon Harmonic's closing price of $64.875 on October 26, 1999, the value of the Harmonic combination would be approximately $1.7 billion. In addition, the C-Cube

shareholders will receive spun off shares of the semiconductor business or net, after-tax proceeds of any sale of the semiconductor business.

As a condition to the closing of the Harmonic transaction, C-Cube will spin out its semiconductor division.

"**The combination of DiviCom and Harmonic creates a powerful broadband networking company that is the premier provider of open solutions for voice, video and data infrastructure**," said Alexandre Balkanski, C-Cube's Chief Executive Officer. "The spin off launches a semiconductor pure play that is number one and strengthening in digital video.

"**C-Cube shareholders will gain a significant stake in Harmonic/DiviCom in addition to their continued ownership in our thriving semiconductor business**," Balkanski said.

"C-Cube Semiconductor has made excellent gains over the past year, and leads the world in the digital video marketplace," said Umesh Padval, President-C-Cube Semiconductor. "We foresee accelerating opportunities in our growth platforms of DVDs, Set-top Boxes and Codecs."

The merger is subject to the approval of the stockholders of each company, customary closing conditions, including applicable regulatory clearances, and the spin-off or sale of the semiconductor business. The closing is anticipated to take place during Q1 2000.

The Merger Agreement and Terms

85. Simultaneously, the Harmonic and C-Cube Defendants filed Form 8-Ks with the SEC containing more of the terms of the Merger Agreement.

86. On 10/27/99, the defendant companies entered into the Merger Agreement. Under the terms of the Merger Agreement, C-Cube would sell or spin-off to its shareholders all of the assets and liabilities of its semiconductor business prior to closing. C-Cube would then merge into Harmonic, and, as a result, Harmonic would acquire C-Cube's DiviCom division. DiviCom designs, manufactures and sells products and systems that enable companies to deliver digital video, audio and data over a variety of networks including satellite, wireless, telephone and cable. The merger was structured as a tax-free exchange of stock and accounted for under the purchase method of accounting. In the merger, each share of common stock of C-Cube would be converted into the right to receive .5427 of a share of Harmonic common stock. Approximately 25.7 million shares of Harmonic common stock would be issued, and the purchase price, including acquisition-related costs, was expected to be approximately $1.7 billion. In Harmonic's 2Q00 10-Q, Harmonic placed the total purchase price for DiviCom at $1.8 billion, which is comprised of $1.6 billion in issued stock, $155 million in Harmonic stock options costs and $9.6

million in transaction expenses. Clearly, the C-Cube defendants stood to gain a lot by this sale over their small investment a few years earlier.

87. The consummation of the merger, however, was subject to a number of conditions, including Harmonic and C-Cube shareholder approval, the prior disposition of C-Cube's semiconductor business and regulatory approvals. The shareholder meetings were scheduled to be held on 4/24/00. The Harmonic Defendants knew that if Harmonic's shares dropped prior to the shareholder vote or otherwise appeared to be subject to great selling pressure prior to the vote, C-Cube's shareholders would not endorse the merger. Similarly, the C-Cube Defendants knew that if C-Cube's shares dropped prior to the shareholder vote, Harmonic's shareholders would not endorse the merger. Moreover, if the shareholeders of either Harmonic or C-Cube failed to approve the merger, the defendant companies would be required to pay $50 million to the other.

88. In order for this merger to go smoothly and with as little dilution to Harmonic as possible, the Harmonic Defendants knew that they had to keep the Company's stock price inflated until the vote occurred. They also knew that they needed strong 1Q00 10-Q results in order for the C-Cube vote to go through, which meant that they needed to show an increase in revenues and high net earnings for the quarter. The C-Cube Defendants, moreover, did not want to reveal any problems at DiviCom, or else the deal could be terminated by Harmonic or, in the least, renegotiated.

FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

89. On 1/19/00, Harmonic and C-Cube issued a joint press release entitled, "Harmonic Announces Record Fourth Quarter and Year-End Results" announcing results for the quarter and year ended December 31, 1999. The press release stated:

> For the fourth quarter of 1999, Harmonic reported net sales of $63.3 million, up 134% from $27.1 million for the fourth quarter of 1998. Net income for the fourth quarter of 1999 was $10.8 million or $0.33 per diluted share on 33,074,000 shares outstanding, compared to net income of $628,000 or $0.02 per diluted share on 25,250,000 shares outstanding for the same period of the previous year.
>
> For 1999, Harmonic reported net sales of $184.1 million, up 119% from $83.9 million for 1998. Net income for 1999 was $23.7 million or $0.76 per diluted share, compared to a net loss of $21.5 million or ($0.92) per diluted share for 1998. The loss for 1998 included a charge of $14.0 million or $0.60 per diluted share resulting from the acquisition of Harmonic Data Systems.
>
> Harmonic experienced strong demand for its fiber optic products across its worldwide base of cable customers during the fourth quarter. Domestic sales increased 197% from the fourth quarter of 1998. While *AT&T*

> ***continued to be the Company's largest single customer,*** Harmonic's shipments to other major domestic cable operators grew strongly during the quarter. International sales increased across all regions, up 47% from the fourth quarter of 1998. During the quarter, ***Harmonic announced a definitive agreement to acquire the DiviCom business of C-Cube Microsystems (Nasdaq: CUBE).*** DiviCom is a leading developer of standards-based MPEG-2 encoding systems for digital video. The combination will position Harmonic as a leading supplier of open-system solutions for delivering video, voice and data over a variety of network architectures. The transaction is currently expected to close by the end of March, 2000.
>
> "This was a great year for Harmonic," said Anthony J. Ley, Chairman, President and Chief Executive Officer. ***"We are very pleased with our growth in sales and profitability,*** **and** ***our continued development and roll out*** of exciting new systems. Backed by stronger financial resources and subscriber demand for bandwidth, cable operators continued to upgrade their networks to other video-on-demand, high-speed internet access, telephony and other advanced services."
>
> *"**In 2000, we intend to continue*** to develop advanced fiber optic and digital systems, expand our worldwide sales and marketing effort, ***and complete the acquisition and integration of DiviCom***. The combination with DiviCom ***will double the size of our company and allow us to offer more complete solutions for cable operators, as well as expand our penetration into telecommunications, satellite, wireless and other emerging broadband markets. We expect that combining DiviCom's strengths in digital compression and our strengths in fiber optics will significantly enhance Harmnoic's position in the broadband market.***"

The press release directed all media inquiries to Public Relations at Harmonic and DiviCom.

90. The above news beat First Call Consensus earnings per share ("EPS") estimates by 43.5%, one of the largest earnings surprises of the quarter.

91. On 1/19/00, subsequent to the release of its 4Q99 results, Harmonic held a conference call for analysts, money and portfolio managers, institutional investors and large Harmonic shareholders to discuss Harmonic's 1Q00 results, its business and its prospects. During the call, and in follow-up one-on-one conversations with analysts, Ley and Dickson made the following statements with the intent that they would be repeated and become part of the total mix of information concerning Harmonic stock:

> o Fiberoptic transport systems (roughly 90% of total sales) were a source of strength again this quarter.

> o AT&T's (41% of total sales) demand for METROLink transport systems remains strong.
>
> o Harmonic shipped 130 multiplexing nodes to AT&T in the second half of 1999 for a trial in Salt Lake City. Harmonic expects to ship multiplexing nodes to several AT&T cities in 2000.
>
> o Harmonic expects that AT&T will remain a 40% customer.
>
> o Revenue continues to be fueled by strong demand in the domestic market (73% of revenue, up 194% Y/Y) as operators continue to upgrade their networks.
>
> o The combination with DiviCom should provide a huge boost to the Company's position in the digital market.

92. On 1/20/00, CBIC Worldmarket's ("CIBC") analyst Jim Jungjohann ("Jungjohann") raised his price target for Harmonic stock from $85 to $150, noting Harmonic's superior growth rate and the fact that DiviCom's higher margin sales could provide potential upside. The report based on Jungjohann's conversations with Ley and Dickson, stated:

> Given an improved outlook, we are raising our revenue and EPS estimates to for 2000 from $254 million and $0.97 to $261 million and $1.04, respectively. We are postponing publishing 2001 estimates pending the closing of the DiviCom acquisition expected near the end of 1Q. ***We are also raising our price target to $150 from a far surpassed $85.*** HLIT shipped a total of 130 new mux-nodes to AT&T's lightwire (see Exhibit 2) trial in Salt Lake City. We expect a contract for this trial could be awarded in 1Q00 with HLIT well positioned to take a substantial portion of the business with deployment anticipated this year ... AT&T's demand for METROLink DWDM transport systems remains strong.

93. Also on 1/20/00, SG Cowen Securities Inc. ("Cowen") issued a report written by Blaine Carroll ("Carroll"). The report rated Harmonic a strong buy and stated:

> RAISING OUR ESTIMATES ONCE AGAIN, INTRODUCING '01 ESTIMATES AND REITERATE STRONG BUY (1) RATING - We are once again raising or EPS estimates for HLIT. In 2000 our new EPS estimate is $0.95, which reflects a 49% increase versus 1999. Our increase is largely due to higher revenue of $260MM, a 41% increase Y/Y. Additionally, we are introducing our 2001 estimates of $1.35 and 364MM in revenue, a 40% and 41% increase, respectively. We should note that our estimates do not include any impact from the pending acquisition of Divicom, which is still on schedule for a 1Q close. ***Remember, the acquisition of Divicom will roughly double the current revenue of HLIT.*** With the strong growth prospects continuing in the CATV area, the

> company's strong position in the market and good visibility over the next few quarters, we would encourage investors to continue to view HLIT as a core holding in the CATV equipment space. As such we re-iterate our strong buy (1) rating with a ***$130 price target.***

94. On the same day, 1/20/00, H.C. Wainwright issued a report written by J.N. Ader entitled, "Harmonic Reports Blowout Q4; Raising Estimates and Target Price to $130" which stated:

> DiviCom Merger Continues To Move Forward
>
> As we have mentioned, we believe that Harmonic's acquisition of DiviCom positions the company to become the ***category killer*** in supplying next generation digital video and fiber optic systems to the complete spectrum of broadband service providers. The combined company will be able to offer complete solutions from the head-end to the neighborhood node, while allowing each company to leverage their relationships in different markets. ... An analysis of comparable companies in the broadband infrastructure space yields a mean P/E on 2001 EPS estimates of roughly 75 times. Applying this multiple to our pro forma combined 2001 EPS estimate for Harmonic yields a target price of $130. We reiterate our ***strong buy*** rating.

95. Due to AT&T's overall importance to Harmonic, defendants were aware that a decline in sales to AT&T would have such a negative impact on Harmonic as to make it impossible for the Company to meet future projections.

96. Also 1/20/00, C-Cube issued a press release entitled "C-Cube Sets Quarterly, Annual Revenue Records" discussing not only C-Cube's record results, but DiviCom's accomplishments and the Merger Agreement with Harmonic. The press release stated:

> C-Cube Microsystems (Nasdaq: CUBE - news) today announced record revenues for the fourth quarter and for fiscal 1999. Revenues for the quarter totaled $115.7 million compared with $95.8 million for Q4 98 and $101.4 million for Q3 99. Total revenues for 1999 reached $407.6 million compared with $351.8 million for 1998.
>
> Net income for the fourth quarter was $18.6 million, or $0.40 per diluted share, 50% higher than the Q4 98 net income of $12.4 million, and a 33% increase over Q3 99.
>
> "Our fourth-quarter financial performance ***highlights an excellent year*** for C-Cube," said the company's Chief Executive Officer Alexandre Balkanski.

> During the quarter, C-Cube entered into a definitive agreement to combine its wholly-owned DiviCom subsidiary with Harmonic (Nasdaq: HLIT-nes), and to spin off or sell its semiconductor business in a taxable transaction prior to the close. The transaction is currently expected to close in March, 2000.
>
> During the quarter, DiviCom joined partners MediaOne, Canal+ and Philips to launch the nation's first open digital cable-television architecture in Jacksonville, Florida.
>
> ***"The succession of major MSO's that have adopted DiviCom technology validate an accelerating trend toward a new, more open and competitive cable equipment market,"*** said Tom Lookabaugh, President of DiviCom. ***"We are confident we can win in an open-cable equipment market because we have the technology, partners and expertise to target each customer's specific competitive situation."***
>
> Other fourth-quarter business achievements include:
>
> - *Cablevision selects DiviCom* to provide digital television head-end equipment to its largest market, the New York metropolitan area.
>
> - *DiviCom teams up with 21 other members* of the OpenCAS consortium to submit for standards-body approval a new set of open cable standards that will enhance services, increase competition and give greater choice to U.S. cable television consumers.
>
> - *DiviCom wins a head-end deployment* for the first digital MMDS television system in China.

97. On 2/24/00, C-Cube issued a press release reporting a win of new business for the DiviCom division. The release was entitled "***DiviCom® Wins Head-End Deployment for New Direct-to-Home Digital Satellite Service in Latin America***-SATEL TV Selects Leading Digital Video Open Solutions Provider for Integration Expertise, Technical Flexibility and Superior Video Quality" and stated:

> Milpitas, Calif. - February 22, 2000 - DiviCom, a C-Cube Microsystems (Nasdaq: CUBE) subsidiary and the world's leading provider of open solutions for digital television, today announced that **it had been selected to deploy its digital head-end solution** for SATEL TV, a new Panama-based uplink facility that will provide direct-to-home (DTH) satellite television service throughout Latin America via PanAmSat. DiviCom will integrate its encoders, multiplexers and other digital head-end equipment with a DVB-compliant conditional access subsystem and digital set-top-boxes. SATEL TV's DTH system will transmit Chinese- and Spanish-language satellite television programming to as many as 20,000 homes the

> first year and eventually reach 100,000 subscribers throughout Latin America, home to about 1 million Chinese-speaking people. "**DiviCom distinguished itself** from other head-end suppliers with its superb video and audio quality and its exceptional ability to integrate with other systems," said Hector Chong, SATEL TV's General Manager. "But our decision to choose DiviCom hinged on its flexible solution, which enables us to expand our programming and choose the most advanced head-end equipment and set-top boxes." In the coming months, Chong said SATEL plans to take advantage of the DiviCom head-end's expandability by more than doubling the DTH provider's channel count. "SATEL TV clearly recognizes the importance of open solutions in enabling television program providers to adapt to today's dynamic market requirements while planning for future expansion," said Tom Lookabaugh, President of DiviCom. "We've long provided open solutions to cable and satellite service providers in Latin America, Asia, Europe and satellite television operators in the United States. Around the world, open solutions are quickly becoming a critical element of successful digital video deployments." **The SATEL TV deployment follows three recent DiviCom wins in the region** - Colombia's primary television network INTRAVISION, WHTV in Puerto Rico and Television Distribution Systems (TDS) in Curacao.

98. With these announcements, Harmonic's and C-Cube's stock skyrocketed to as high as $152.50 and $72.50, respectively. At the same time, Valentine began to unload 570,000 C-Cube shares for a total value of $57,609,314 in 2/00.

99. On 3/23/00, Harmonic and C-Cube filed with the SEC a Registration Statement on Form S-4 containing a Joint Proxy Statement/Prospectus dated 3/24/00 on the Merger Agreement between Harmonic and C-Cube. These documents made the representations discussed above in Claims I and II. In addition, these documents omitted any information about Harmonic's problems with AT&T and DiviCom's poor sales, as set forth in ¶115 below.

100. On or about 3/28/00, C-Cube and Harmonic announced the filing of the Joint Proxy Statement/Prospectus. Harmonic's top management, including Ley and Dickson, met with analysts in Cannes, France to discuss the acquisition of DiviCom and the Company's prospects. The Harmonic Defendants knew that Harmonic was experiencing declining sales to AT&T due to its excessive shipments of product to AT&T in the prior quarter. With AT&T's bloated inventory and grim prospects for Harmonic's business, the Harmonic Defendants knew that the Company planned acquisition of DiviCom was at grave risk - unless they could convince the public that its business prospects remained strong. Based on this meeting and statements made by Ley and Dickson, Cowen analyst Carroll issued a report on Harmonic repeating Ley's and Dickson's statements. Ley and Dickson made these statements with the intent that they would be repeated to shareholders. The report rated Harmonic a strong buy, forecast 2000 EPS of $ .95 and stated:

> STRONG TRENDS CONFIRMED AT SG COWEN CONFERENCE - At the 6th Annual SG Cowen Global Tech Conference being held in Cannes, France, ***management of HLIT once again expressed that the strong business trends that it has experienced over the past year are continuing.*** The company is ***seeing strong demand*** from traditional operators (***AT&T***, Cox, Charter) ***as well as from new operators, such as RCN*** (remember that in early January, RCN increased its CapX for 2000 by 44%). ***We believe that the business with AT&T remains at healthy levels*** ($20-25MM), and that its sales as a percentage of sales will be in the high-30% range, a lower percentage versus previous quarters, which should ease investor's concerns regarding HLIT's dependence on AT&T. Additionally, we believe that the mini-node (*i.e.*, Lightwire) architecture that AT&T is trialing in Salt Lake City is now ready to be deployed in other major markets with more typical network builds in AT&T's smaller markets. Interestingly, a number of larger MSOs that have been very vocal regarding the near-completion of their network upgrade (*i.e.*, 80% complete by EOY) are now circling back to HLIT for additional bandwidth enabling solutions (transmitters, DWDM) as they begin to add enhanced services to their networks. They are realizing that the network is not as robust as originally engineered, a trend that will extend the current upgrade cycle in the U.S. HLIT has shipped DWDM products to over 17 customers, although AT&T is the only MSO that has actively deployed the technology. The interest in DWDM solutions is building.
>
> DIVICOM ACQUISITION PROGRESSING - SEC REVIEW COMPLETE, SHOULD CLOSE IN MAY - HLIT's planned acquisition of the Divicom division of C-Cube is progressing, although at a slower rate than originally expected. One of the major hurdles was waiting for SEC comments regarding both C-Cube's spin off its semiconductor business as well as HLIT's previous acquisition of NewMedia. However, all comments have been received and met and the deal is now ready to proceed with shareholder meetings at both companies scheduled for late-April and an expected close scheduled for early May. We view this deal as positive as Divicom's digital encoding technology compliments HLIT's existing product lines. Divicom's products groom the video signal prior to transmission along HLIT's traditional product offerings.

101. On 3/28/00, Cowen issued a report written by Carroll based on a meeting with Ley and Dickson in Cannes, France at the SG Global Tech Conference. The report forecasted 2Q00 EPS of $0.22 and stated:

> Meeting with management at SG Global Tech. Conference finds no major issue... AT&T business [sic] is solid, likely to be down from recent levels but still up 4x. Y/Y; ***visibility is good for the rest of the year***.

102. In truth, by 3/00, Harmonic's orders from AT&T had been drastically reduced. During a Harmonic Buyer/Planning staff meeting, Dennis Beaver ("Beaver"), Harmonic's Director of Purchasing, remarked that AT&T was totally out of funds and that it was "pretty stupid" for Harmonic to have put all of its eggs in the AT&T basket. Sales personnel were ordered to "quickly" get new customers and orders.

103. On 3/30/00, Harmonic filed its 10-K for fiscal year 1999, stating:

> The Company's net sales increased 119% to $184.1 million in 1999, from $83.9 million in 1998. During 1999 domestic sales increased by 172%, principally due to increased shipments to AT&T. AT&T represented 41% of net sales during 1999 compared to 17% of net sales in 1998. During 1998 domestic sales increased by 55%, principally due to increased shipments to AT&T. Due in part to the consolidation of ownership of domestic cable television systems, we expect that sales to AT&T and relatively few other customers will continue to account for a significant percentage of our net sales for the foreseeable future.

104. Throughout the Class Period, and especially concentrated in April, as the C-Cube Defendants exercised most of their stock options and dumped their stock, C-Cube and Harmonic issued a series of highly favorable press releases highlighting DiviCom's successes. The following joint press releases were issued by the two companies:

> DiviCom® Wins Head-End Deployment for First Digital Cable Television System in China 25-Apr-00 Acom Selects Harmonic for Major Launch of Digital Television Service in Brazil 25-Apr-00 Stockholders Approve Harmonic Merger 24-Apr-00 Harmonic Announces First Quarter Results 19-Apr-00 Charter Communications Chooses Harmonic's Advanced Broadband Delivery Solution for Its Launch of Next Generation Services 19-Apr-00 DiviCom Wins Head-End Deployment for Buildup of Digital Television Distribution System in China's Guangdong Province 17-Apr-00 DiviCom and SeaChange Collaborate To Bring Local Advertising Insertion to Digital Cable Television 12-Apr-00 DiviCom Stream Processing Solution Wins Technical Excellence Award at NAB2000 12-Apr-00 DiviCom Revolutionizes Data Broadcasting to Consumers 03-Apr-00 DiviCom Introduces Stream Processing Solution 03-Apr-00 DiviCom and Geocast™ Ally to Enable Broadcasting to PC Users 03-Apr-00 C-Cube Announces Filing of Registration Statement and Joint Proxy Statement for a Special Meeting of Shareholders 27-Mar-00 Harmonic Announces Filing of Registration Statement and Joint Proxy Statement for a Special Meeting of Stockholders 27-Mar-00 DiviCom Wins Head-End Deployment for New Direct-to-Home Digital Satellite Service in Latin America 22-Feb-00 Harmonic Announces Record Fourth Quarter and Year-End Results 19-Jan-00 Telewest Selects Harmonic to Deliver Broadband Access Solutions for VOD Services

None of these press releases noted the problems at DiviCom or Harmonic.

105. On 4/19/00, Harmonic and C-Cube issued a joint press release announcing Harmonic's 1Q00 results in a press release which stated:

> Harmonic Inc. today announced its results for the quarter ended March 31, 2000.
>
> For the first quarter of 2000, Harmonic reported net sales of $62.9 million, up 108% from $30.3 million for the first quarter of 1999. Net income for the first quarter of 2000 was $9.3 million or $0.28 per diluted share on 33,391,000 shares outstanding, compared to net income of $1.3 million or $0.05 per diluted share on 26,692,000 shares outstanding for the same period of 1999.
>
> For the quarter, Harmonic had strong year-over-year growth for its fiber optic and digital products across its worldwide customer base. Domestic sales increased 141% and international sales increased 62% from the first quarter of 1999.
>
> While ***AT&T continued*** to be the Company's largest single customer, Harmonic's shipments to other domestic and international cable operators grew strongly during the quarter. The Company shipped its METROLink DWDM product to several new customers, and saw good growth in its sales of optical node and return-path products. In addition, Harmonic continues to work with AT&T and others to explore a variety of new deep fiber network architectures that enable greater bandwidth, higher reliability and better access to advanced services.
>
> * * *
>
> "***We are very pleased with our sales and profitability in the first quarter***, which is historically our weakest quarter," said Anthony J. Ley, Chairman, President and Chief Executive Officer. "Cable operators continued to upgrade their networks to offer video-on-demand, high-speed Internet access, telephony and other advanced services. As the number of subscribers has grown, we are encouraged that our customers increasingly see our nodes and other fiber optic systems as a fast, flexible and economical way to scale up their networks."

Nothing was said about the slowing orders to AT&T and the charge that sales personnel "quickly" obtain new customers.

106. In addition to glowing about Harmonic's business with AT&T, C-Cube and Harmonic also glowed about the great prospects to be obtained from Harmonic's acquisition of DiviCom. The 4/19/00 joint press release continued:

> "In coming periods, we intend to continue to develop advanced fiber optic and digital systems, expand our worldwide sales and marketing effort, and complete the acquisition and integration of DiviCom. The combination with DiviCom will allow us to offer more complete solutions for cable operators, as well as expand our penetration into telco, satellite, wireless and other emerging broadband markets."
>
> On March 27, 2000, Harmonic announced that it had filed the joint proxy statement for a special meeting of Harmonic stockholders to be held on April 24, 2000. Harmonic's stockholders will vote on the proposed acquisition of the DiviCom business of C-Cube Microsystems, Inc. (Nasdaq: CUBE). If the transaction is approved, the closing is expected in the first week of May. The combination will position Harmonic as a leading supplier of open-system solutions for delivering video, voice and data over a variety of network architectures.

The press release invited inquiries to both Harmonic and C-Cube's DiviCom division press relations officers. Nothing, however, was said about DiviCom's weak sales, as set forth in ¶115 below.

107. On this announcement, Harmonic's shares spiked to the $75 range.

108. On 4/19/00, subsequent to the release of its 1Q00 results, Harmonic held a conference call for analysts, money and portfolio managers, institutional investors and large Harmonic shareholders to discuss Harmonic's 1Q00 results, its business and its prospects. During the call, and in follow-up one-on-one conversations with analysts, Ley and Dickson made the following statements with the intent that they would be repeated and become part of the total mix of information concerning Harmonic stock:

> o The strong results were driven by strength in Harmonic's core fiber optic transport business.
>
> o The Company had shipped its new METROLink product in the quarter and the product was being evaluated by many new customers.
>
> o The Company's CyberStream products were also experiencing strong growth.
>
> o The Cable TV network was upgrading its facilities which was leading to enormous growth opportunities for Harmonic.
>
> o International markets continued to show improvement and would contribute to favorable results going forward.

o Sales to AT&T continued to be strong and demand from AT&T would continue as AT&T upgraded its cable infrastructure requiring more METROLink DWDM and PowerBlazer optical nodes.

o AT&T was planning to use Harmonic's Mux-nodes in additional cities in 2000 which would lead to increased sales to AT&T.

o A pickup in sales to AT&T during 2000 appeared likely.

o Harmonic was on track to report 2000 EPS of $1.19-$1.20 and 2Q00 EPS of $0.29+.

109. Analysts repeated this information to the market in analyst reports which rated Harmonic and forecast the following 2Q00 and 2000 EPS:

Firm	**Analyst**	**2Q**	**2000**	**Rating**
CIBC	Jungjohann	**EPS**	**EPS**	Buy
Josephthal & Co.	Harris	$0.29	$1.19	Buy
("Josephthal")	Catrini	$0.29	$1.20	Strong
Cowen	Spalding	$0.29	$1.20	Buy
Warburg		$0.28	$1.14	Strong
				Buy

110. On 4/20/00, C.E. Unterberg issued a report on Harmonic written by Seth Spalding ("Spalding") based on Spalding's conversations with Ley and Dickson. The report forecasted 2Q00 EPS and FY00 of $0.28 and $1.14, respectively, and stated:

> We believe that AT&T will continue to be Harmonic's largest customer, and we expect AT&T to continue to demand more of the Company's Metrolink DWDM and PowerBlazer optical nodes as AT&T aggressively upgrades its cable infrastructure. We can also look forward to AT&T purchasing more of Harmonic's mux nodes for the Company's LightWire trial, which AT&T plans to deploy in other cities this year.

111. On 4/24/00, while the blizzard of the C-Cube Defendants' insider sales continued, Harmonic's and C-Cube's shareholders voted to approve the acquisition of DiviCom by Harmonic. Simultaneous with reporting the merger/acquisition, the C-Cube Defendants rushed to issue a press release which would continue to support C-Cube's stock without DiviCom, as the deal was set to close on 5/3/00. However, in a cunning and clever move, the C-Cube Defendants issued an earnings report that omitted the entire DiviCom business, thus hiding DiviCom's weak sales. The press release entitled "C-Cube Reports Stockholder Approval of DiviCom-Harmonic Merger, First Quarter Earnings" stated:

> Milpitas, Calif. - April 24, 2000 - C-Cube Microsystems Inc. (Nasdaq:CUBE) today announced the stockholder approval of the merger of C-Cube's DiviCom business with Harmonic, a manufacturer of fiber-

optic solutions for cable television companies, which will be preceded by the spin-off of C-Cube's semiconductor business into a stand-alone company that, following the merger, will continue the C-Cube Microsystems name.

"**We are very pleased to have obtained stockholder approval today**," said Alex Balkanski, president and CEO of C-Cube Microsystems.

Due to the approval of the merger with Harmonic, **we are reporting revenue from our semiconductor division only.** Our reported financials will reflect DiviCom as discontinued operations. Additionally, as a result of the merger, we also incurred extraordinary one-time taxes in the semiconductor division.

Revenue for the first quarter revenues was $61 million. Income from continuing operations (semiconductor division), which included a $3.4 million tax related to extraordinary options exercises as a condition of the merger of DiviCom with Harmonic, for the first quarter was $7.1 million.

Net income for C-Cube Microsystems, Inc. was $1.3 million, or $0.03 diluted earnings per share, which includes the net income from discontinued operations and the loss on disposal of DiviCom, equaling $5.8 million. There were significant expenses related to the transaction included in the sum, such as taxes and consulting.

The DiviCom-Harmonic merger creates a broadband networking company that will provide open solutions for voice, video and data infrastructure. C-Cube Semiconductor, a pure play audio/video company, is expected to build on its strength of designing and manufacturing silicon solutions for DVD and digital VHS players, personal video recorders, digital set-top boxes, video production equipment and television broadcasting systems.*

"**We are excited about the spin-off of the semiconductor business**," said Umesh Padval, who will take over as C-Cube CEO after the merger closes in early May. "We have made significant progress globally with our customers and strategic partners in our expansion platforms: DVD, Set-top box and CODEC."

The C-Cube Defendants had much to be excited about. They were about to successfully dump a troubled business and were able to unload their C-Cube shares at a high price prior to having these shares diluted by Harmonic stock, which would include the troubled DiviCom business. Thus, between 4/5/00 and 4/25/00, the C-Cube Defendants unloaded a staggering 762,776 shares of old C-Cube stock for a total value of $48,874,128.

112. On 4/27/00, Harmonic senior management, including Ley and Dickson, appeared in New York and met with analysts to discuss the Company's business and prospects. The statements made by Ley and Dickson in this meeting were repeated to the market in analyst reports. In response to these positive statements, investors bid-up the price of Harmonic's shares to $79 on the same day.

113. On 4/28/00, Josephthal issued a report on Harmonic written by L.M. Harris ("Harris") entitled "Confident Presentation at Analyst Meeting in New York" repeating Ley and Dickson's statements. The report forecasted 2Q00 and 2000 EPS of $0.29 and $1.20, respectively, and stated:

> The ***senior management of Harmonic delivered a confident presentation*** to analysts in New York on April 27. Our 12-month price objective is $135 per share, over a 60% premium to current levels.
>
> Last fall, AT&T conducted a trial on its fiber-rich LightWire architecture last fall in Salt Lake City. AT&T selected two vendors to supply for both the multiplexing node and mini-node portions of the trials. Harmonic, along with C-COR.net (CCBL-$38 1/8-Buy,a,m), supplied the multiplexing nodes. C-COR and the Broadband Communications division of Motorola (MOT-$116 ½-Hold) were the mini-node vendors.
>
> At the analyst meeting on April 27, Harmonic disclosed that production of mini-nodes will be commencing in the near future and it expects that its mini-node design will be approved by AT&T. ANTEC (ANTC-$52 3/8-Buy,#) and Scientific-Atlanta (SFA-$62 9/16-Buy) have also indicated that they will target the mini-node market. Given that mini-nodes will serve clusters of 50 to 100 homes apiece, mini-node sales could exceed the sale of multiplexing nodes by a factor of ten. Therefore, we believe that the market could support several vendors if the LightWire architecture proves to be popular.
>
> Harmonic's non-AT&T customers have also expressed an interest in the mini-node concept, but are interested in somewhat designs than that which is expected to be approved by AT&T.
>
> Harmonic indicated that it learned several lessons as a result of the trials in Salt Lake City. The company's new nodes will cost less and will feature improved reliability when compared with first generation models. The return path portion of the node will be redesigned. Finally, the mechanical aspects of the node will be changed, including how fibers are handled.
>
> Adding mini-nodes to a cable network should mean increased sales of Harmonic-supplied return transmitters.

> With respect to the forthcoming acquisition of DiviCom, Harmonic expects that the deal will be closed during the week of May 1. The transaction is expected to be ***neutral to slightly accretive*** to Harmonic's earnings per share, before consideration of goodwill. Goodwill will be significant. Harmonic is paying for DiviCom with approximately 26 million shares of stock. Once the transaction is closed, Harmonic will have close to 60 million shares outstanding. The company does not anticipate that analyst estimates will change significantly.
>
> DiviCom's revenues in fiscal 1999 were almost $185 million. DiviCom's gross margins have been about 500 basis points higher than Harmonic's, but R&D has also been higher as a percentage of revenues. DiviCom's operating margins have been in the high teen's.
>
> In the future, Harmonic will report its results in two separate product lines - fiber optics and digital. The digital product line will encompass DiviCom, Harmonic's existing TRANsend headend product line, and the current CyberStream date over satellite products.
>
> At the analyst meeting, ***Harmonic emphasized the synergistic aspects of the merger with DiviCom***, which will marry TRANsend's SONET/IP interfaces, QAM modulation, video on demand gateway, with DiviCom's encoding, ATM interface, and statistical multiplexing capabilities. After the transaction closes, Harmonic will then be able to offer a completed headend solution to its customers.

114. On 5/3/00, the Harmonic Defendants and the C-Cube Defendants issued a joint press release entitled "Harmonic Completes Acquisition of the DiviCom Business of C-Cube Microsystems Inc." The release highlights the acquisition of DiviCom as a great event for Harmonic and Harmonic's great 1999 financial results, stating:

> **SUNNYVALE, CA -- May 3, 2000** --- Harmonic Inc. (Nasdaq: HLIT) announced it has completed its acquisition of the DiviCom business of C-Cube Microsystems Inc. today. This acquisition was effected through the merger of Harmonic with C-Cube Microsystems after the spin off of C-Cube Microsystems' semiconductor business yesterday. Harmonic, including the DiviCom business, will provide open-systems solutions for delivering video, voice and data over cable, satellite, telco and wireless networks.
>
> C-Cube Microsystems stockholders received 0.5427 shares of Harmonic common stock for each share of C-Cube Microsystems common stock they owned as of March 22, 2000. C-Cube Microsystems stockholders also received shares of the semiconductor business in the spin-off effected yesterday.

> "**Harmonic is strongly positioned** to enable broadband communications over any network," said Anthony Ley, Harmonic's Chairman, President and Chief Executive Officer. "We are now offering the most advanced fiber optic, digital video, and IP data delivery solutions available in the market. With a strong commitment to innovation and open-standard system solutions, **Harmonic will be a key force** in bringing about a new era in interactive communications."
>
> **About Harmonic Inc.**
>
> Harmonic is a leading provider of innovative broadband solutions that deliver video, voice and data to communications providers around the world. Harmonic's technically advanced fiber optic, digital video and IP data delivery systems enable network operators to provide a range of interactive and advanced digital services that include high-speed Internet access, telephony, digital video, HDTV, video & audio streaming, and video-on-demand.
>
> Headquartered in Sunnyvale, Calif., Harmonic employs approximately 950 people and operates more than 15 R&D and sales & system integration centers globally. **Harmonic had revenues of approximately $370 million in 1999 (on a proforma basis) to a customer base that includes the world's largest communications providers.**

No mention is made of the problems at either company, including DiviCom's weakening sales or Harmonic's loss of AT&T's business.

115. In fact, defendants knew that Harmonic's results would not be nearly as favorable as represented during the Class Period. The Harmonic Defendants knew from their communications with AT&T that AT&T had excessive inventories of Harmonic's products caused by AT&T's aggressive purchases in 1999. As AT&T worked down this inventory, Harmonic would suffer a significant decline in demand from AT&T. Moreover, by the date of the merger, defendants knew or recklessly disregarded that DiviCom sales had significantly stagnated, and the acquisition would not be accretive in 2Q00 as had been represented, as DiviCom's satellite customers, which comprised of 80% of its sales, were increasingly voicing their concern about DiviCom's commitment to the satellite business now that it was merging with a cable company. In fact, in response to the merger announcement, satellite companies immediately withdrew purchase orders from DiviCom and placed orders with DiviCom's direct competitors. DiviCom sales were so weak that during one of the Harmonic Purchase/Planning staff meetings prior to the consummation of the merger, Beaver, Harmonic's Director of Purchasing, told the attendees that in light of DiviCom's poor sales, Harmonic's purchase of the company was "ludicrous." Despite defendants' knowledge or reckless disregard of these facts, they were determined to conceal that DiviCom's 1Q00 revenues had been extremely disappointing until the Company filed its 1Q00 Form 10-Q in mid-May 2000, so that the transaction would be consummated.

116. Additionally, throughout 1Q00, Harmonic's non-AT&T sales were slowing so much so that Harmonic's sales staff had been directed by senior management to develop new business quickly otherwise Harmonic would be "screwed," according to a former Harmonic senior buyer.

117. On 5/4/00, Cowen issued a report on Harmonic written by Carroll based on Carroll's conversations with Harmonic management, including Ley and Dickson. The report forecasted a 40% growth rate, 2Q00 and 2000 EPS of $0.29 and $1.20, respectively, and stated:

> HLIT CLOSES DIVICOM ACQUISITION - HLIT announced last night that it has completed its acquisition of the Divicom business of C-Cube Microsystems (CUBE) for $1.9B in stock (based on HLIT's close of $72 on 5/3), or roughly 8X estimated 2000 revenue. Under terms of the agreement, shareholders of CUBE will receive .5427 shares of HLIT stock for each share of C-Cube. Divicom is a leading provider of standards-based MPEG-2 encoding products that are used in digital video products. Its revenues are derived from satellite customers (40% of revenue) such as DirecTV and EchoStar, terrestrial cable customers (20%) such as Telia and NTL in Europe and Time Warner and MediOne in the U.S., telco customers (USW, GTE) for both overbuild and MMDS systems and broadcast customers (20%).
>
> ... ***Management has stated in the past that the assumed revenue growth rate for DiviCom is somewhere between 25-35%***. Over the past 2 years, DiviCom's growth rate has accelerated from 20% in 1998 to 30% in 1999. Management's recent comments regarding the deal is [sic] that it likely will have ***little to no impact to the cash EPS of HLIT, with the deal being characterized as neutral to accretive by upwards of a nickel.*** As we stated when the deal was announced, the financial models of the two companies are very similar with DiviCom carrying higher gross margins, but also higher operating expenses. Below, we have outlined what we feel the financial impact of the new HLIT will be based [on] three different growth rates for DiviCom (25%, 30%, 35%) while maintaining our EPS estimates of $1.20 and $1.65 in 2000 and 2001, respectively. Although the inclusion of DiviCom tempers HLIT's revenue growth slightly, ***we feel that at a blended growth rate of roughly 40% in 2000 and the mid-30% level in 2001 is still compelling.***
>
> * * *
>
> We view this deal as positive for a number of reasons. First, DiviCom's digital encoding technology compliments HLIT's existing product lines. The Divicom products groom the video signal prior to transmission, either wired or wireless, by encoding (changing the signal from analog to digital), compressing (packing more channels per given amount of

bandwidth) and in some instances, encrypting the video. These tasks are similar, although somewhat more detailed, to the functions performed by HLIT's TranSend product (digital headend equipment). Second, DiviCom expands HLIT's addressable market to include satellite, the international DVB market (international standard for encryption) and the domestic digital market, especially once open cable is available. It is worth noting that a couple of operators (MediaOne, Time Warner and Cablevision) are already developing plans for open cable in certain markets.

MAINTAIN STRONG BUY RATING - We are making no change to our estimates at this time pending better guidance from management regarding the one time write-off, DiviCom growth rates, potential revenue synergies and cost eliminations. However, as we mentioned above, we expect that the financial model will remain compelling and is likely to have little impact on cash EPS. With the strong growth prospects continuing in the CATV area and the company's strong position in the market, we would encourage investors to continue to view HLIT as a core holding in the CATV equipment space. As such, we re-iterate our Strong Buy (1).

118. On 5/8/00-5/10/00, Harmonic senior management, including Ley and Dickson, appeared at the National Cable Television Show in New Orleans and spoke to analysts and other participants about Harmonic's business and prospects. These statements were repeated in analyst reports in the days that followed.

119. On 5/9/00, Cowen issued a report on Harmonic written by Carroll which was based on statements made to Carroll by Harmonic management, including Ley and Dickson. The report stated:

HLIT (Strong Buy) - We had the chance to spend some time with senior management of HLIT and the strong trends that have been experienced over the past several quarters are continuing. The company continues to see strong demand from key cable operators such as RCN, Charter, COX, and Time Warner, to name a few. We walked away with two key points from our meeting. First, the business with AT&T continues to be strong, although below recent levels as AT&T evaluates what technology to deploy in which markets. At issue is how far AT&T drives fiber into its network. The deeper the fiber, the fewer homes per node and more optical nodes needed in the network. This is the Lightwire architecture that AT&T has 'trialed' in Salt Lake City. We feel that AT&T is likely to deploy Lightwire in certain major markets and varying network designs in other markets. In either case, we feel that HLIT is well positioned with AT&T to supply it with optical nodes, as well as optical transmission equipment. Management mentioned that the activity with AT&T is picking up once again and that network designs could be better defined during 2H00. Secondly, the integration of Divicom has begun in earnest. Integration plans range from better utilization of the sales and R&D organizations, to

> mundane tasks such as implementing a joint IT, phone and e-mail system. We feel the benefits of this acquisition will be combining HLIT's expertise in the CATV industry with Divicom's expertise in content grooming.

120. On 5/10/00, DLJ Securities ("DLJ") issued a report "initiating coverage" on Harmonic written by Imam Hasan ("Hasan"). Because this was DLJ's first report on Harmonic, it was written only after Hasan had detailed conversations with Harmonic's senior management, including Ley and Dickson, and after Harmonic's management had reviewed the information in Hasan's report. The report rated Harmonic a buy, forecast 2Q00 and 2000 EPS of $0.29 and $1.19, respectively, and stated:

> We are initiating coverage of Harmonic Inc. with a Buy rating and a price target of $90. We find Harmonic particularly attractive because the company: 1) is a leader in optical networking equipment for cable and access networks, 2) has adopted a new business model that allows 100% focus on its core competence, 3) is now strongly positioned, through its Divicom merger, to deliver next-generation broadband services, including video-on-demand, through cable networks, 4) enjoys a strong presence in high-growth international markets, and 5) has a reputation for timely execution.
>
> The recent decline in the Harmonic stock price has created a buying opportunity. Our target price of $90, based on a 10-year Discounted Cash Flow model that incorporates our secular bullish outlook on the optical networking industry and accounts for Harmonic's leadership position in it, presents the investor with an upside potential of 40%.
>
> * * *
>
> 2. Customer base diversifying. One investor concern has been Harmonic's customer concentration. AT&T drove much of the revenue acceleration for the company in fiscal 1999 and continued to be a 28% customer in Q1 of fiscal 2000. But this revenue concentration is changing for the better due to two factors. First is the Divicom merger: the ***merger has doubled the revenue base of Harmonic without any additional contribution from AT&T, since AT&T is not a Divicom customer***. Second, Harmonic's non-AT&T customers continued to accelerate spending on Harmonic products; spending from Charter and RCN, for example, was up 18% sequentially in Q1 of 2000. In addition to the reduced customer concentration, the +20 new customers that Divicom brings to Harmonic will create ***cross-selling*** opportunities for ***both*** halves of the combined entity.
>
> * * *
>
> 4. Divicom merger broadens product line, positions Harmonic to deliver next-generation video services. One of the key themes behind our bullish

> outlook on the optical equipment and components industry is that demand for next-generation services, including video-on-demand, will ultimately drive demand for the equipment and components industry. While the Divicom merger dilutes Harmonic's optical networking focus from a revenue-by-product-line perspective, we believe that the merger strengthens the company's position as an enabler of next-generation content-on-demand services. Divicom gives Harmonic cutting edge video compression capability, bandwidth management expertise, interactive set-top box control technology, encoders, and powerful system integration capabilities. In our opinion, this nicely complements Harmonic's core focus on enabling high bandwidth services over optical access networks.

121. On 5/10/00, CIBC issued a report on Harmonic based on a visit with Dickson:

> "[A]ll is well" in the Tampa service trial as well as their RF amplifier sales. We had lunch with Robin Dixon, CFO of Harmonic (HLIT-Buy) where we chatted regarding the strength in sales from overbuilder such as RCN Corp. (RCNC-Not Rated) and the addition of the recently closed Divicom acquisition. We expect to visit the newly added company shortly and will give a full update then. In addition, the company has its new mini node at AT&T (T-Hold) available for testing and expect news in the coming months.

Defendants Begin to Reveal DiviCom's Problems

122. On 5/15/00, without warning, both C-Cube and Harmonic simultaneously, and without fanfare or press releases, filed their results for their respective 1Q99 ending March 31, 2000. While each had issued press releases in April before or along with the shareholder vote approving the DiviCom acquisition, each had conveniently omitted DiviCom's results. Now, in the solitude of an SEC filing, they slipped in the results, and the impact on the market, as it slowly figured it out, was devastating. The Harmonic 10-Q neatly tries to tuck away in a footnote, apart from the all important Management's Discussion and Analysis ("MD&A"), the fact that DiviCom's sales had quit growing and that its profitability had decreased by more than 50%:

> NOTE 6 - SUBSEQUENT EVENT On May 3, 2000, the Company completed its merger with C-Cube Microsystems Inc. ("C-Cube") pursuant to the terms of an Agreement and Plan of Merger and Reorganization (the "Merger Agreement") dated October 27, 1999. Under the terms of the Merger Agreement, C-Cube spun off its semiconductor business as a separate publicly traded company prior to the closing. C-Cube then merged into Harmonic and Harmonic therefore acquired C-Cube's DiviCom business, which provides MPEG-2 encoding products and systems for digital video. DiviCom had unaudited net sales of $185.5 million and unaudited net income of $20.6 million for the year ended December 31, 1999. For the quarter ended March 31, 2000 DiviCom had

> unaudited **net sales of $39.4 million and unaudited net income of $1.6 million compared to unaudited net sales of $38.2 million and unaudited net income of $3.2 million for the quarter ended March 31, 1999.**

Similarly, C-Cube tucked away in footnote 2 of it's 10-Q:

> 2. Merger/spin-off C-Cube entered into an Amended and Restated Agreement and Plan of Merger and Reorganization with Harmonic Inc. on December 9, 1999. In accordance with this agreement, on May 2, 2000 C-Cube's semiconductor division was spun-off into an independent company, and on May 3, 2000 C-Cube's DiviCom division was merged with and into Harmonic Inc. Accordingly, as required by Accounting Principals Board Opinion No. 30 and Emerging Issues Task Force Abstract No. 95-18, the results of operations of the Semiconductor division (the continuing entity) are reported separately from the results of operations of the DiviCom division (the discontinued entity).
>
> The results of operations in prior periods have been restated and certain prior period amounts have been reclassified to conform to the current period presentation. These restatements and reclassifications had no effect on net income or stockholders' equity. The results of discontinued operations are broken out into two line items on the face of the Condensed Consolidated Statements of Income included herein. Income from operations of DiviCom represents the **net income of DiviCom operations for the quarters ended March 31, 2000 and 1999, and includes revenues of $39.4 million and $38.2 million and taxes of $0.8 million and $1.6 million, respectively.** Loss on disposal of DiviCom includes direct costs associated with the merger/spin-off transaction which were incurred by the Company, plus a provision of $8.6 million for estimated operating losses of DiviCom during the phase-out period, less a $3.0 million tax benefit.

Thus, these 10-Qs revealed that DiviCom's revenues grew only 3% year over year, well below Harmonic's 25%-35% guidance. Harmonic tried to gloss over this by highlighting a purported growth in business to AT&T in its MD&A in its 10-Q:

> The Company's **net sales increased 108%** from $30.3 million in the first quarter of 1999 to $62.9 million in the first quarter of 2000. The increase in net sales was due primarily to higher cable industry spending and increasing customer acceptance of the Company's products, particularly METROLink DWDM systems, PWRBlazer Scaleable Nodes and TRANsend and Cyberstream digital products. **Domestic sales increased 141% during the first quarter of 2000 due principally to increased sales to AT&T and RCN, which represented approximately 28% and 15% of sales, respectively, compared to 22% and less than 10%,**

> **respectively, in the first quarter of 1999.** International sales increased 62% in the first quarter of 2000 due primarily to higher shipments to the United Kingdom, Israel and Korea. International sales represented 33% of net sales in the first quarter of 2000 compared to 42% in the first quarter of 1999.

While DiviCom's problems were now beginning to surface, little was known about the truth with respect to AT&T and the Harmonic Defendants' attempts to get sales at all cost.

123. On 5/16/00, as the analysts started scrambling for answers, Harmonic's stock plummeted from $65-3/4 to $54-7/8 and continued to slide to $38 per share over the next ten days to 5/26/00.

124. Immediately, analysts began to call the Harmonic Defendants and demand an explanation. On 5/16/00, CIBC issued a report reiterating its buy rating on Harmonic despite DiviCom's poor results stating:

> ***Management indicated*** that the DiviCom business was slow in the first quarter driven by the general nature of large contracts from customers which in turn causes quarter to quarter "lumpiness." ***Overall the company remains bullish on its recent acquisition and on their ability to achieve 30% to 40% top line growth in 2000.***

125. On 5/16/00, Dickson was interviewed on RadioWallStreet.com. about the decline and stated:

> I think what we've seen today is clearly a resurgence of some of the investor fear and uncertainty over our DiviCom acquisition. This happened back in October - the end of October - last year when we first announced the acquisition the same thing happened. And I think as we got the message out to the street that the DiviCom business and the Harmonic business in our view have pretty consistent growth rates over time, we allayed a lot of those fears and people began to feel more comfortable with the story. I think what we have today is the result of our filing of our 10Q in which we put some first quarter proforma information. There has been a renewal of fears about growth.

* * *

> We've seen 55% growth rates in the conversion systems on a proforma basis that's the digital head end business, and we've seen 45% growth rates over the last few years in the fiber optics business. And while I can't pretend that we can necessarily continue at that rate, ***we're still very comfortable with growth rates in the 35-40% rate which is what we have been seeing all along with respect to the combined company.***

* * *

> We've been working very hard on some integration issues to make sure the company gets off to a fast start as we finally completed it in early May. ***Now, it's very clear that our job is to get back out and reconfirm to investors the story is completely intact but that any rumors to the contrary are unfounded***.

* * *

> ***I wouldn't say anything different from six months ago. That the growth story remains unchanged, that the operating model is essentially unchanged, and that the company's balance sheet is stronger than ever. So, I really would not change the story.***

126. On 5/17/00, UBS Warburg ("UBS") issued a report on Harmonic, written by Anton Wahlman ("Wahlman"), with a buy rating. Warburg was embarrassed by Harmonic's recent decline as they had served as Harmonic's financial advisor in connection with the DiviCom transaction and had just pocketed a $7 million fee for endorsing the "fairness" of the transaction. UBS sought assurances from the defendants that the projections defendants had made just prior to the transaction were in fact accurate. The report was based on statements made to Wahlman by Harmonic management, including Ley and Dickson. The report forecast 2Q00 and 2000 EPS of $0.31 and $1.25, respectively, and stated:

> In this note we comment on our new model for Harmonic, and outline our valuation thesis. Despite a superior projected growth rate and profit prospects in the peer group, Harmonic now trades on par or at a discount to its comparables. Lingering doubts about the recently acquired DiviCom business are the likely reason. We believe the story will "prove itself" as the new entity reports a good quarter or two out of the box, and we therefore have confidence in our $100 price target which is 46x our 2002 EPS estimate of $2.18. Our model is conservative, in our view, and has upside potential.
>
> HIGHLIGHTS
> * We are hereby publishing our long-awaited new model on Harmonic, which given the recently completed (May 3) acquisition of DiviCom warrants special comment. The initial approach we take is to create an income statement which has no historical apples-to-apples comparison as far as the whole income statement is concerned. Such an apples-to-apples comparison, however, is made in a separate revenue breakdown. We believe this presents both an accurate, but yet valuable, presentation of Harmonic's performance given the data which exists at this point.

127. On 5/17/00, Cowen issued a report on Harmonic based on Carroll's conversations with Harmonic's management. The report forecast 2000 EPS of $1.22 for Harmonic and stated:

> DIVICOM SALES DISAPPOINTING - As we mentioned yesterday, we were disappointed regarding the lighter than expected revenue growth at Divicom (HLIT's $1.9B acquisition which closed on 5/4) which was released in HLIT's 10-Q on Monday night. ***Specifically, the sales growth of 3% Y/Y for Divicom's Q1 was far below the expected range of 25-35%, and the recent thinking of 30% per year.*** Based on our sensitivity analysis on the day the deal closed (see our note of 5/5/00), we surmised that if Divicom was a 30% grower this year, that this would imply that the 'New HLIT' revenue growth would be 40%. However, in light of the weaker than expected results for Q1, ***we are now projecting that the 'New HLIT'***, on a proforma basis (remember, under purchase accounting, previous numbers are not restated), will grow it revenue ***around 33-34%***. We feel, ***after discussing the issues with management,*** that the shortfall in Q1 was likely due to merger-related disruptions and is not indicative of a cyclical or secular issue within Divicom's business. We are hopeful that with the ongoing rebound in the international market, the upgrade in the U.S. market as DBS providers begin to offer local programming withing local markets and the advent of open cable standards in the U.S. markets, that Divicom will return to the 30% growth rate that it exhibited during 1999.
>
> * * *
>
> SELL-OFF & GROWTH RATES VS. VALUATION MAKE HLIT MORE APPEALING - We continue to be upbeat regarding the upgrade of the CATV industry in the U.S. and the early signs of a rebound in the international markets. Although we feel that there remains some concern regarding the integration of DiviCom into HLIT's business, with the stock currently trading at 33X CY01 EPS of $1.65 and a projected growth rate of 35%, we feel that HLIT represents an attractive investment for investors that are looking for a way to benefit from the strong growth trends in the CATV equipment market. As such, we continue to rate the shares a Strong Buy (1).

128. In fact, Harmonic's management had known for weeks that DiviCom's 1Q00 revenues were below expectations but had failed to reveal this information so soon after the $1.7 billion merger. Harmonic also concealed that DiviCom's 2Q00 results continued to be poor.

129. Moreover, Harmonic intentionally concealed from the market that shortly after the merger on 5/3/00, Harmonic management fired Lookabaugh, co-founder and President of DiviCom. Ley and Dickson specifically conveyed to staff members that information

regarding Lookabaugh's termination was to be withheld from the public because it would adversely affect Harmonic's stock price. Harmonic subsequently put Nazerathy, Harmonic's Senior Vice President, Research and Development, in charge of DiviCom's day-to-day operations. Nazerathy, plaintiffs are informed, had no relevant experience overseeing business operations.

130. Harmonic also concealed that it had fired DiviCom's Director of Product Marketing, Eric Norton ("Norton") whose responsibilities included interfacing with DiviCom's customers and evaluating specific business needs.

131. On 5/17/00, C-Cube issued a surprisingly terse press release announcing the replacement of Walczykowski as CFO:

> Milpitas, Calif. - May 17, 2000 - C-Cube Microsystems (Nasdaq: CUBED), announced today that Howard Bailey has joined the company as its new Chief Financial Officer. Bailey will manage C-Cube's financial and administrative operations and serve as a corporate officer.
>
> "I am extremely pleased with the addition of Howard to our senior management team," said Umesh Padval, C-Cube President and CEO....
>
> Walt Walczykowski, C-Cube's former CFO, left C-Cube to pursue a career in teaching.

No other explanation was given. Between 4/6 and 4/25, Walcykowski dumped 81,171 shares of C-Cube stock for proceeds of $5,678,794.

132. As late as 5/22/00, analysts were still issuing reports on the debacle, trying to gauge management's credibility, revealing more facts, causing Harmonic's plummet to continue. Josephthal issued a report on Harmonic by Harris based on Harris' conversations with Harmonic's senior management regarding the disclosures in Harmonic's 10-Q and regarding the Company's prospects. The report forecast 2Q00 and 2000 EPS of $0.29 and $1.20, respectively, and stated:

> The recent decline in Harmonic's share price has probably created an interesting opportunity for patient investors. We believe that the decline is tied to the overall weakness of the NASDAQ market and high P/E multiple issues, as well as the disclosure in Harmonic's first quarter 10-Q of softer-than-anticipated sales and earnings at the company's recently acquired DiviCom unit. The softness occurred during the March 2000 quarter, prior to Harmonic's acquisition on May 3. There are some signs that the softness has been reversed. Therefore, we are continuing with our EPS estimates of $1.20 and $1.55 for 2000 and 2001, respectively. These estimates translate into earnings growth of over 90% in 2000 and 29% in 2001.

* * *

> Given DiviCom's strong results over the past five years, many investors were disappointed with the disclosure in the 10-Q. By our calculation, DiviCom's revenues increased at a compound annual growth rate of 47.5% from 1995 to 1999. ***In 1999, DiviCom's sales rose by 30% to $185.5 million. In the first quarter of 2000, DiviCom's sales rose by just 3.1% year over year, from $38.2 million to $39.4 million, while net income dropped from $3.2 million to $1.6 million.*** The closing of the deal took one to two months longer than originally anticipated. ***Apparently some employees departed during this time, although key management people stayed.*** In addition, certain project-related sales were not recognized in the March quarter, but are likely to be recognized in the June quarter. Net income was affected not only by the lower revenues, but also by a series of nonrecurring expenses, including payroll and social security taxes.
>
> Harmonic appears confident regarding the post-acquisition outlook. Because DiviCom has historically enjoyed gross margins of close to 50%, we now expect that consolidated gross margins will move from the 47.4% earned in the first quarter of 2000 to the 48% to 49% range. R&D expense is likely to remain 11% to 12% of sales. With the cash infusion of $60 million, interest income is likely to rise by at least $500,000 per quarter. Because of DiviCom's lower tax rate, Harmonic's tax rate is expected to move from 38% in the first quarter to 35% in subsequent quarters. As a result, the current consensus EPS estimate of $1.14 for 2000 appears too low. Furthermore, we expect that Harmonic will be able to exceed the June quarter consensus estimate of $0.28. Our estimate is $0.29, but earnings could be as high as $0.30, well above 1999's results.

133. On 5/26/00, as Harmonic's stock settled to $38 per share, Yost, Harmonic's Vice President, Operations, who was familiar with the current demand of the Company's customers, unloaded 30,000 shares of Harmonic stock, 64% of his ownership, for a value of more that $1.1 million.

Defendants Selectively Disclose Some of the AT&T Problems In an Attempt to Bring Market Down Slowly

134. Harmonic's management still knew that 2Q00 results would be catastrophic. Already expecting poor AT&T sales, management also knew that DiviCom's sales were deteriorating as well. In an effort to have a "soft landing" for the Company's stock price, Harmonic management told select participants at a CIBC Communications "Food Chain" Conference on 6/12/00 that AT&T sales "lacked visibility." However, management represented that short-term targets (2Q00) were still on track.

135. On 6/2/00, Flatow disposed of 5,100 Harmonic shares, which represented 100% of his Black-Sholes adjust available Harmonic holdings, for a total value of $288,660.

136. Based on these statements, on 6/13/00, Cowen issued a report on Harmonic which continued to forecast 2Q00 and 2000 EPS of $0.29 and $1.22, respectively, and stated:

> The strong domestic trends in the CATV industry have propelled HLIT's financial performance over the past several quarters, however, a slight pause at AT&T as it evaluates its network architecture and some risk pertaining to the integration of DiviCom leads us to rate the shares a Long Term Buy (2).
>
> DOWNGRADE RESULTS FROM AT&T SOFTNESS AND INTEGRATION ISSUES - Although we continue to believe that the overall trends in the CATV industry remain strong as cable operators upgrade their networks to offer advanced services, we are downgrading HLIT to a Buy (2). The key issue, which was highlighted yesterday as management presented at an investor conference, is regarding the lack of visibility with AT&T, HLIT's largest customer at 28% of revenue last quarter. Our estimates had implicit in them the assumption that T would begin to increase spending again with HLIT. This does not appear to be occurring just yet as T's rollout of advanced services may not be progressing as quickly as originally anticipated, slowing demand for optical infrastructure. Related to this is T's ongoing evaluation of the appropriate architecture to use in its network buildout. That is, T has been holding much publicized trials in Salt Lake City, testing very small node sizes and the "mini-mux" node architecture. While we believe AT&T is still in favor of smaller node sizes in concept (which benefits HLIT significantly), it also appears that T is still undecided on the exact architecture and may only use the "mini-mux" node architecture in selected cities as it evaluates alternatives. The other issue, which we have previously discussed, is the ongoing challenge of integrating recently acquired Divicom into HLIT.
>
> NO CHANGE TO ESTIMATES, BUT SOME NEAR TERM CAUTION WARRANTED - HLIT is fighting two near term issues now: regaining momentum at AT&T (not necessarily under HLIT control) and successfully integrating Divicom and accelerating its growth rate to the original 30-35% estimate (much more under HLIT control). The combination may easily take a few quarters to work themselves out, forcing investors to worry about each quarter-end. Consequently, we are reducing our rating to a 2. It should be noted that each $5MM in revenue equates to approximately $0.015 and each point of gross margin equates to approximately $0.02/share. Longer term we continue to be upbeat regarding the upgrade of the CATV industry in the U.S. and the early signs of rebound in the international markets, still leaving HLIT an attractive stock for those investors with a longer time horizon, particularly when considering its attractive valuation on even conservative estimates.

137. On 6/13/00, CIBC issued a report based on defendants' statements which forecast 2000 EPS of $1.19 and stated:

> Current valuation looks compelling and we encourage patient investors to consider establishing or adding to positions. We institute a new $90 price target, down from $150 to reflect a slightly higher risk profile as the company digests the recent acquisition and changes at AT&T. Although management did not guide lower, we are conservatively lowering our 2Q EPS estimates from $0.29 to $0.27, to reflect a heightened near-term risk/reward profile with respect to Metrolink pricing pressures and a disruption in fiber node sales to AT&T.
>
> Division sales in upcoming 2Q is showing marked improvement.
>
> The company's core cable tv equipment business looks strong for the remainder of this year with potential upside to our estimates arising from (1) accelerating sales to AT&T's next generation architecture design, (2) higher than anticipated accretion from Divicom, (3) increased sales to others customers such as charter and RCN, and (4) increased international sales which has shown recent signs of life.

138. Harmonic had scheduled an analyst meeting for 6/27/00 at the Company's headquarters. However, prior to the meeting, Harmonic belatedly announced its horrible 2Q00 results. After the close of trading on 6/26/00, Harmonic shocked the markets when it released the following:

> Harmonic Inc. (Nasdaq:HLIT) today announced preliminary results for the quarter ending June 30, 2000. The Company expects to report revenue of $74 million to $82 million for the second quarter. Excluding the effects of customary purchase accounting adjustments for such items as amortization of goodwill and other intangibles from the acquisition of the DiviCom division of C-Cube Microsystems Inc., which closed on May 3, 2000, the Company expects earnings per diluted share will range from $0.12 to $0.16 for the quarter.
>
> * * *
>
> Following the acquisition, the Company organized its operations into two product divisions, Broadband Access Networks (BAN) and Convergent Systems (CS), and a Worldwide Sales and Service division. The BAN division designs, manufactures and markets the Company's fiber optic products which are used extensively in hybrid-fiber coax and other broadband networks. The CS division designs, manufactures and markets digital headend systems, including substantially all of the products of the DiviCom business as well as the TRANsend (TM) and CyberStream (TM) product lines. The Worldwide Sales and Services division combines all of

> the Company's sales and customer service organizations and also includes DiviCom's system integration capability.
>
> The Company anticipates that the BAN division will achieve revenue of $54 million to $58 million, compared to pro forma divisional revenue of $36.4 million in the second quarter of 1999. The BAN division's expected revenue for the second quarter of 2000 reflects reduced sales to AT&T, which have continued to decline from record levels in the third quarter of 1999. AT&T remains a major customer for the BAN division, and sales to BAN's other cable customers are expected to continue to increase in the second quarter from levels in the previous quarter.

139. Thus, Harmonic's 2Q00 earnings were approximately half the amount previously represented by defendants. Analysts were shocked and immediately cut their 2000 EPS forecasts for Harmonic: UBS (from $1.25 to $0.74), CIBC (from $1.19 to $0.60), Cowen (from $1.22 to $0.75) and DLJ (from $1.19 to $0.95). Upon these revelations, Harmonic's stock collapsed to a low of $22-11/16 on 6/27/00, some 77% below the Class Period-high of $102, on huge volume of 21.9 million shares, inflicting hundreds of millions of dollars of damages on plaintiffs and the Class. In fact, the Company's stock price dropped from $40-13/16 to $23-5/16 upon the announcement, a one- day drop of ***43.7%***.

POST-CLASS PERIOD REVELATIONS

140. Harmonic has not rebounded from its 2Q00 results. Sales to its largest customer, AT&T, have remained weak, and the Convergent Systems division, which is comprised of Harmonic digital products and DiviCom, also continues to be slow. The Company cites slower-than-anticipated network deployments by most of its customers as the reason for its slow sales. Management now admits that reduced spending by satellite customers and merger-related difficulties are responsible for the slowdown in DiviCom's product line.

141. On 10/4/00, Harmonic preannounced that it expected to report a 3Q00 net loss of $0.06-$0.09 per share. Analysts had been projecting profits of $0.12 per share. On that announcement, the price of Harmonic stock dropped on 19,318,000 volume trading. Management attributed the decrease in revenue to slowing sales in its Broadband Access Network division and also stated that the Company expects to report net losses in 4Q00.

142. On 10/31/00, Harmonic announced that AT&T Broadband will buy optical nodes and DWDM transmission platforms from Harmonic for use in its cable plant upgrades. It also announced that AT&T will use its METROLink DWDM system, PWBRBlazer nodes and digital DWDM return transmitters for its upgrades, essentially the same product that AT&T had been purchasing from the Company in 1999. On those announcements, Harmonic stock price spiked 46%.

143. On 11/13/00, Harmonic announced that it had restated its 3Q00 earnings to reflect a larger loss than originally reported in its Form 10-Q. The Company explained that one of

its domestic customers decided to significantly reduce the scope and delay the timing of certain network construction projects and therefore returned $4.1 million in product. As a result, the Company reported a net loss of $0.10 per share rather than the earlier-reported $0.08 per share. The market responded as it has over the last several months upon the Company's revelation of bad news as the stock price collapsed 19%. As of 11/21/00, Harmonic stock sells for $11.00 per share.

SCIENTER

Actual Knowledge of AT&T Slowdown

144. In 4Q99, Harmonic benefitted from large shipments ***of custom built components*** to AT&T which allowed Harmonic to report very favorable results. Harmonic failed to relate to the market that AT&T had been canceling and pushing out orders for the entire year and that 4Q99 and 1Q00 shipments to AT&T were due primarily to AT&T's obligation to remit payment and accept delivery of "huge quantities" of custom built product that it could not cancel.

145. The Harmonic Defendants monitored AT&T's inventory and AT&T's use of Harmonic's products. AT&T provided Harmonic's Director of Materials, Jim Wedell, and Vice President, Operations, Yost with weekly order forecasts which projected AT&T orders for the upcoming nine months. Harmonic used the weekly forecasts from AT&T to update its material requirements plan ("MRP") schedule. Harmonic's former employees have informed plaintiffs that Harmonic's MRP schedule was "closely tied to" if not "the same" as the Company's sales forecasts. Therefore, as a result of the Harmonic Defendants' monitoring of AT&T, each such defendant was aware that AT&T had been canceling and pushing out the scheduling of orders all throughout 1999 and that the record sales that Harmonic recorded in 4Q99 were related to AT&T's acceptance of product due to a contractual obligation and not due to increased demand. In early 2000, because of excessive inventory and backlog from its late 1999 purchases, AT&T had drastically reduced its orders with Harmonic. Thus, the Harmonic Defendants knew that Harmonic would be unable to continue to ship large amounts of product to AT&T, and the severe decline in orders would continue. Therefore, future earnings would not be attainable. In fact, by 3/00, Beaver, Harmonic's Director of Purchasing, remarked in a Buyer/Planner staff meeting that AT&T was having serious financial problems, that it was totally out of funds and that it was "pretty stupid" for Harmonic to have put all of its proverbial eggs in the AT&T basket. He further stated that Harmonic's sales staff had been directed to develop new business and to do so "very quickly" as it had become well known by this time that if AT&T did not come through quickly, Harmonic would be "screwed."

146. Former employees interviewed by plaintiffs also acknowledged that it was well known within the Company that, prior to the Class Period, Harmonic's account specialist with responsibility for the AT&T account had been asked on several occasions by senior management at the Company's Sunnyvale headquarters to request that AT&T accept shipment on Harmonic products scheduled for delivery in later quarters, so that the

Company could recognize revenue within that particular quarter. These amounts were estimated to be in the millions. Although there is technically nothing wrong with this procedure, once orders are pre-shipped, the Harmonic Defendants would then have knowledge that the results of that quarter were not expected to be repeated in future quarters. In this instance, however, not only did the Harmonic Defendants fail to advise the investing public that in prior quarters orders had been pre-shipped before AT&T needed the products, thereby reducing future orders by AT&T.

Actual Knowledge of Problems at DiviCom

147. Well before the filing of their 5/15/00 Form 10-Qs, defendants knew or recklessly disregarded that DiviCom's sales were far below market expectations, and the merger would not be synergistic, nor would it be accretive to its 2Q00 earnings, as had been publicly reported.

<u>Reduction in DiviCom's Sales</u>

148. Shortly after the announcement in 10/99 that DiviCom would merge with Harmonic, product orders at DiviCom suffered an immediate and precipitous decline. Immediately upon learning of the Merger Agreement, DiviCom's largest satellite customers - which made up 80% of its sales, including DirecTV, LookTV and EchoStar - openly expressed serious concern that DiviCom's acquisition by a cable company would draw the company's focus and development efforts away from the satellite products in favor of its cable products. Consequently, during 1Q00, these same customers withdrew their orders from DiviCom and placed them with DiviCom's competitors. The result was a serious weakness in orders, which severely reduced morale at DiviCom, followed by massive attrition in DiviCom's sales department. Harmonic failed, however, to disclose DiviCom's poor order performance to the market, despite the fact that, according to a former Harmonic employee, DiviCom's sales weakness had become "common knowledge" among Harmonic management and employees well before the merger - so much so that Beaver, Harmonic's Director of Purchasing, told attendees during a Purchase/Planning staff meeting that, in light of DiviCom's poor sales, Harmonic's purchase of the company was "ludicrous." To be sure, even C-Cube's co-founder, Balkanski, who also assembled the DiviCom management team and engineered the Merger Agreement, internally predicted shortly after the announcement in 10/99 that the merger would "never work."

149. As shown below, during this period before the merger, the C-Cube Defendants dumped their stock.

<u>Terminations of DiviCom's Executives</u>

150. Prior to and after the merger, the perception was widespread among DiviCom's employees that Harmonic did not value its employees and would not match offers obtained by DiviCom's employees from other companies. Beaver, Harmonic's Director of Purchasing, in 3/00, told attendees at another Buyer/Planner meeting that, once the

merger was complete, there would be a reorganization of DiviCom's upper management, which would result in significant job losses.

151. Moreover, in early 5/00, immediately after the merger, Harmonic secretly fired Lookabaugh, co-founder and President of DiviCom. Ley and Dickson specifically conveyed to Harmonic's public relations staff that Lookabaugh's termination was to be withheld from the public because it would adversely affect Harmonic's stock price. Harmonic subsequently put Nazerathy, Harmonic's Senior Vice President, Research and Development, in charge of DiviCom's day-to-day operations. Nazerathy had no experience overseeing business operations. Harmonic's management also quietly fired Norton, DiviCom's Director of Product Marketing, whose responsibilities included interfacing with DiviCom's customers and evaluating specific business needs. The termination of key DiviCom employees hindered ability to secure satellite business.

<u>Concealment of DiviCom's 1Q00 Results From C-Cube's or Harmonic's Earnings Release</u>

152. Scienter can be shown by proximity of the revelation to the event or by the fact that the knowledge was always there. Harmonic's and C-Cube's coordinated failure to report DiviCom's financial results in C-Cube's earnings release of 4/24/00, the day of the merger approval, is just such a showing.

153. On 4/19/00, Harmonic issued a press release setting forth its 1Q00 results without DiviCom, so the financial results of DiviCom's business was not reported.

154. C-Cube's 1Q00 results for the period ending 3/30/00 were first reported by C-Cube on 4/24/00, immediately after shareholder approval of the merger of C-Cube's DiviCom division with Harmonic. In a press release dated 4/24/00 entitled "C-Cube Reports Stockholder Approval of DiviCom-Harmonic Merger, First Quarter Earnings," issued by C-Cube and quoting Balkanski and Padval, C-Cube states:

> Due to approval of the merger with Harmonic, we are reporting revenue ***from our semiconductor division only.*** Our reported financials will reflect DiviCom as discontinued operations.

155. Only three weeks later, on 5/15/00, after the 5/3/00 close of the Harmonic/DiviCom merger, C-Cube and Harmonic came clean. On that date, both C-Cube and Harmonic filed their quarterly reports on Form 10-Q for the quarter ending 3/31/00. Each Form 10-Q identifies, for the first time, that DiviCom's business was flat. The Harmonic Form 10-Q reveals for the first time:

> For the quarter ended March 31, 2000, DiviCom had unaudited net sales of $39.4 million and unaudited net income of $1.6 million compared to unaudited net sales of $38.2 million and unaudited net income of $3.2 million for the quarter ended March 31, 1999.

C-Cube reported the same information in its Form 10-Q. These results represented a 3% growth rate, far below management's guidance of 25%-35%.

156. In one-on-one meetings with analysts or a telephonic conference call, CIBC reported that "management indicated that the DiviCom business ***was slow*** in the first quarter driven by the general nature of large contracts from customers which in turn cause quarter-to-quarter lumpiness." Thus, management admitted its knowledge and the fact that it was not the result of a surprise.

157. On 5/16/00, Harmonic's shares declined over 20% due to these revelations. It continued to slide to $38 per share by 5/26/00, as the market digested the news, representing a 42% decline in share value. On the other hand, C-Cube, which had just jettisoned DiviCom, saw its shares remain firm at $19-3/8.

Motive and Opportunity - Insider Selling

158. Defendants' knowledge of the adverse information affecting Harmonic and DiviCom is also demonstrated by their unusually large stock sales of Harmonic and C-Cube stock, as set forth below:

CLASS PERIOD STOCK SALES

Harmonic Defendants	**Date**	**Shares**	**Price**	**Proceeds**	**% Sold of Black-Scholes Adjusted Available Holdings**
Flatow	6/2/00	4600	$56.750	$261,050	100%
	6/2/00	500	$58.810	28,405	
TOTAL		5100		$289,455	
Yost	5/26/00	30,000	$38.080	$1,142,400	73.38%
TOTAL		30,000		$1,142,400	
C-Cube Defendants					
Brown	4/7/00	15,000	$70.500	$1,057,500	
	4/13/00	14,167	$58.090	$822,961	
	4/17/00	4,534	$46.060	$208,836	
	4/17/00	5,466	$46.060	$251,764	
	4/18/00	9,951	$57.000	$567,207	
	4/18/00	10,049	$57.000	$572,793	

	Date	Shares	Price	Proceeds	% Sold of Black-Scholes Adjusted Available Holdings
	4/18/00	20,000	$55.000	$1,100,000	
	4/20/00	10,000	$60.000	$600,000	

	Date	**Shares**	**Price**	**Proceeds**	**% Sold of Black-Scholes Adjusted Available Holdings**
	4/24/00	20,000	$54.250	$1,085,000	
	4/24/00	10,000	$54.500	$545,000	
	4/25/00	2,959	$57,500	$170,143	
	4/25/00	3,459	$57.380	$198,477	
	4/25/00	4,041	$57.380	$231,873	
	4/25/00	8,291	$57.500	$476,733	
	4/25/00	4,541	$57.500	$261,108	
	4/25/00	10,000	$57.380	$573,800	
	4/25/00	15,504	$54.070	$838,146	
	4/25/00	4,496	$54.060	$243,054	
TOTAL		172,458		$9,804,395	94.11%
Foreman	4/17/00	30,000	$53.380	$1,601,400	
	4/19/00	12,296	$61.560	$756,942	
	4/20/00	7,000	$64.000	$448,000	
	4/24/00	20,000	$53.750	$1,075,000	
TOTAL		69,296		$3,881,340	41.24%
Futa	4/25/00	28,000	$57.350	$1,605,800	
	4/25/00	20,000	$57.350	$1,147,000	
TOTAL		48,000		$2,752,800	67.96%
Lookabaugh	4/5/00	67,335	$63.990	$4,308,767	
	4/6/00	78,182	$66.560	$5,203,794	
	4/6/00	21,818	$66.560	$1,452,206	
	4/7/00	13,599	$70.160	$954,106	
	4/7/00	30,000	$70.160	$2,104,800	
	4/7/00	25,000	$70.160	$1,754,000	
	4/7/00	847	$70.160	$59,426	
TOTAL		236,781		$15,837,099	77.74%

	Date	Shares	Price	Proceeds	% Sold of Black-Scholes Adjusted Available Holdings
McKinney	4/19/00	38,749	$50.970	$1,974,037	
	4/25/00	1,251	$56.100	$70,181	
	4/25/00	20,000	$56.100	$1,122,000	
TOTAL		60,000		3,167,218	54.55%
Padval	4/4/00	5,000	$54.500	$272,500	
	4/7/00	15,000	$65.000	$650,000	
	4/7/00	5,000	$71.000	$355,000	
	4/11/00	10,000	$65.000	$650,000	
	4/11/00	15,000	$65,250	$978,750	
	4/25/00	25,000	$57.190	$1,429,750	
TOTAL		75,000		$4,751,000	
Reyes	4/25/00	20,000	$58.750	$1,175,000	
TOTAL		20,000		$1,175,000	50.04%
Valentine	2/16/00	250,000	85.9375	21,484,345	
	2/17/00	50,000	87.0750	4,353,750	
	2/17/00	50,000	87.000	4,350,000	
	2/18/00	50,000	85.050	4,252,500	
	2/22/00	50,000	85.8375	4,291,875	
	2/23/00	100,000	88,000	8,800,000	
	2/24/00	77,345	88.54375	6,848,416	
	2/28/00	11,000	88.8750	977,625	
	2/29/00	11,970	89.875	1,075,803	
	4/20/00	9,792	$60.800	$595,354	
	4/20/00	2,292	$60.800	$139,354	
	4/20/00	7,292	$60.800	$443,354	
	4/20/00	4,792	$60.800	$291,354	
	4/20/00	20,000	$60.800	$1,216,000	
	4/25/00	10,000	$60.400	$604,000	

	4/25/00	5,208	$56.030	$291,804	
	4/25/00	2,708	$56.030	$151,729	
	4/25/00	7,708	$56.030	$431,879	
	4/25/00	208	$56.030	$11,654	
TOTAL		720,315		$60,610,796	63.8%
Walczykowski	4/6/00	30,000	$70.000	$2,100,000	
	4/7/00	7,500	$70.290	$527,175	
	4/7/00	25,000	$70.290	$1,757,250	
	4/7/00	8,554	$70.290	$601,261	
	4/7/00	2,742	$70.290	$192,735	
	4/7/00	4,427	$70.290	$311,174	
	4/7/00	1,560	$70.290	$109,652	
	4/25/00	138	$57.310	$7,909	
	4/25/00	1,250	$57.310	$71,638	
TOTAL		81,171		$5,678,794	98.12%

	Date	**Shares**	**Price**	**Proceeds**	**% Sold of Black-Scholes Adjusted Available Holdings**
TOTAL FOR ALL		________		__________	
C-Cube Defendants		1,112,952		$106,483,442	
TOTAL ALL DEFENDANTS		1,148,052		$109,063,349	

The following charts show the unusual and suspicious trading patterns of certain defendants'

stocks and shares:

Black-Scholes Options Valuation as Evidence of Scienter

159. An analysis of the timing of these insiders' exercising of stock options and sale of the underlying shares demonstrates that these transactions were either based on non-public information or, in the alternative, simply irrational. Executives will not, irrationally and needlessly, waste large amounts of their wealth absent information that the asset they hold is about to radically decline in value.

160. Options are valuable rights because an option allows its owner to preserve the opportunity for upside gain without any capital commitment and without any risk of loss. The universally accepted method for calculating the value of stock options is named for its authors, Black and Scholes, who earned the Nobel Prize for this now well-known formula. The Black-Scholes formula calculates the expected market value of any option based on several factors: stock price, exercise price of the option, expiration date of the option, volatility of the stock and the risk-free rate of return. At any time prior to its expiration date the market value of an option has two components: (a) "intrinsic value," the amount of money that one could obtain by exercising the option as of today (stock price less the strike or exercise price of the option); and (b) "time value," the value from any potential increase in the stock price during the term of the option. The formula demonstrates that a rational investor in an environment of efficient markets, relying solely upon public information, will be hesitant to exercise an option prior to the expiration date of the option. The reason for this conclusion is that an early option exercise forfeits the time value of the option.

161. Applying the Black-Scholes equation here shows why certain defendants did not exercise all their vested stock options. During the Class Period, Ley chose ***not*** to exercise options for 12,500 shares with strike prices of $25-1/2. The fact that he chose ***not*** to exercise these options in no way defeats scienter in this case. To the contrary, the market valuation of these options on the last day of the Class Period, 6/26/00, was $494,520. ***However, had Ley exercised and sold these options he would have obtained only***

$191,406, a loss of more than $300,000, or 61.29%, in the value of these options. No rational investor would have sold these options in this case. Ley's decision ***not*** to exercise these options makes sense ***even if he had based his decision on insider information as the value of these options on 6/27/00 after the bad news was revealed was still $287,114 or almost $100,000 more than he would have obtained by early exercise prior to the release of the bad news.*** Because no executive would ever exercise such an option under these circumstances, this option is not in any way informative of Ley's holdings available for sale and should not be considered as such by this Court.

162. Analyzing the remaining options held by defendants demonstrates that the following options should not be considered as "available holdings" for purposes of analyzing defendants' stock sales:

No. of Options	**Pre-Crash Option Value**	**Proceeds by Class Period Exercise**	**Wealth Lost if Exercised**	**Penny Per Dollar Loss if Exercised**
Yost:				
15,438	$610,036	$468,891	$141,146	23.1¢
5,394	$215,603	$177,999	$37,604	17.4¢
4,356	$174,113	$143,746	$30,367	17.4¢
1,546	$61,162	$61,162	$61,162	61.3¢
8,954	$354,234	$354,234	$354,234	61.3¢
Flatow:				
47,134	$1,868,850	$1,534,801	$334,049	17.9¢
5,000	$197,656	$76,563	$121,094	61.3¢

As such, failure to sell these options does not defeat scienter, for no lawful executive would ever have sold these options.

163. Removing these options from defendants' available holdings produces the following results for:

Defendant	**Excludable Options**	**Original of Sales as a % of holdings**	**Corrected % of Sales**
Yost	35,688	64.6%	73.7%
Flatow	52,134	9.8%	100%

164. As a result, the percentage sold of available holding are quite substantial:

PROCEEDS FROM INSIDER SELLING

C-Cube Defendants	**Available Holdings**	**Class Period**	**Class Period Proceeds From**	**% of Holdings**

		Shares Sold	Sales	
Brown	298,087	172,458	$9,804,395	57.85%
Foreman	227,967	69,296	$3,881,342	30.40%
Futa	103,000	48,000	$2,752,800	46.60%
Lookabaugh	550,604	236,781	$15,837,099	43.0%
McKinney	110,000	60,000	$3,167,218	54.44%
Reyes	84,858	20,000	$1,175,000	23.57%
Umesh	244,287	75,000	$4,751,000	30.70%
Walczykowski	161,148	81,171	$5,678,794	50.37%
Valentine	1,179,083	720,315	$60,610,796	63.8%
Subtotal	1,779,951	762,706	$47,047,648	42.8%
Harmonic Defendants				
Yost	40,714	30,000	$1,142,400	73.7%
Flatow	5,100	5,100	$289,455	100%
Subtotal	45,814	35,100	$1,431.855	76.6%
TOTAL	1,825,765	797,806	$109,090,299	43.7%

165. The timing of defendants' sales is also per se unusual as demonstrated by the following chart

UNUSUAL SALES BY DEFENDANTS

C-Cube Defendants	8/13/99-1/19/00 Shares Sold During 169 Days Immediately Before Class Period	1/19/00-6/26/00 169-Day Class Period Shares Sold
Brown	0	172,458
Foreman	0	69,296
Futa	0	48,000
Lookabaugh	0	236,781
McKinney	0	60,000
Reyes	0	20,000
Pavdal	0	75,000
Walczykowski	0	81,171
Valentine	0	720,315
Harmonic Defendants		
Yost	0	30,000
Flatow	0	5,100

PRAYER

WHEREFORE, plaintiffs pray for judgment as follows: declaring this action to be a proper class action; awarding damages, including interest and such other equitable/injunctive relief as the Court may deem proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: December 7, 2000

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DECLARATION OF SERVICE BY MAIL

PURSUANT TO NORTHERN DISTRICT LOCAL RULE 23-2(c)(2)

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the County of San Francisco, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 100 Pine Street, 26th Floor, San Francisco, California 94111.

2. That on **December 7, 2000**, declarant served the **[CORRECTED] CONSOLIDATED AMENDED COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS** by depositing a true copy thereof in a United States mailbox at San Francisco, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List and that this document was forwarded to the following designated Internet site at:

http://securities.milberg.com

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of December, 2000, at San Francisco, California.

____

MARCY MEDEIROS