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## Former Enron broadband CFO pleads out in Houston court

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Kevin Howard, a former chief financial officer for Enron Broadband Services, entered into a plea deal with federal prosecutors today to avoid a third trial. He will serve four to 12 months of either probation or home confinement but will not go to prison.

The former finance chief for Enron's broadband division has pleaded guilty to one charge of falsifying books and records, rather than gamble on a jury for the third time.

As part of a plea agreement, Howard will serve four to 12 months of probation or home

confinement, or a combination of both. U.S. District Judge Vanessa Gilmore accepted the deal and will formally sentence Howard this fall.

Kevin Howard had been slated to go to trial today on fraud and conspiracy charges similar to those he faced when first indicted in early 2003.

He's been there twice before. His first trial ended with jurors hung on counts against him, and the second ended with convictions later thrown out.

This time, he cut a deal rather than take another chance.

Howard first went to trial alongside four other ex-broadband executives in 2005 in a three-month case that ended with a handful of acquittals, no convictions and jurors hung on dozens of other counts — including all pending against him.

Two other broadband executives — former co-CEO Kenneth Rice and former chief operating officer Kevin Hannon — each pleaded guilty to crimes in 2004. Both finished prison terms earlier this year.

Most of the 2005 trial involved tedious, technology jargon-filled testimony regarding three defendants accused of overstating the division's capabilities so they could pocket millions from selling company stock inflated by the hype.

The case against Howard and former in-house accountant Michael Krautz involved allegations that they manufactured earnings by selling

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future revenues in a video-on-demand venture that failed.

Unable to win convictions in the first trial, prosecutors split the defendants among three separate, pared-down cases. In their second round before a jury in 2006, Krautz was acquitted while Howard was convicted of conspiracy, wire fraud and falsifying books and records.

Gilmore tossed out Howard's convictions in 2007, ruling that prosecutors prevailed by flawed means.

Gilmore based her ruling on a 5th U.S. Circuit Court of Appeals decision that wiped out most convictions in another Enron case because prosecutors wrongly presented a theory of guilt that was also used in Howard's case.

That theory held that the defendants robbed Enron of their "honest services" by helping cook Enron's books. However, the 5th Circuit ruled that the theory didn't apply because the defendants didn't steal, take a bribe or otherwise rob Enron of money or property.

In Howard's case, the government conceded that four of his five convictions would be tossed out on appeal, but Gilmore threw out all five. The 5th Circuit upheld her decision, so prosecutors moved to try Howard a third time. As part of today's deal, prosecutors stipulated Howard did not personally benefit from any fraud at Enron.

The honest services issue is central to former Enron CEO Jeff Skilling's appeal as well.

Like Howard and the defendants in the other Enron case, Skilling didn't take money or property. But the 5th Circuit ruled earlier this year that as a CEO, he set the fraudulent agenda rather than carry out orders from above, and upheld all 19 of his convictions. Skilling is seeking a review by the U.S. Supreme Court.

Of the other three broadband defendants, former co-CEO Joseph Hirko pleaded guilty to wire fraud last year and faces a 16-month prison term after he is sentenced in September.

The other two — former top strategist Scott Yeager and software executive Rex Shelby — are still fighting and have yet to be tried a second time.

The Supreme Court heard Yeager's appeal earlier this year that the government should drop insider trading and money laundering charges against him because the 2005 jury acquitted him of underlying fraud and conspiracy charges. Shelby's retrial is on hold pending the outcome of Yeager's appeal.

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