Exhibit No.:
Issues: Multiple jurisdictional, contractual, and policy related issues (See table of contents)
Witness: Robert Johnson
Type of Exhibit: Direct Testimony
Sponsoring Party: Halo Wireless, Inc.
Case Nos.: TC-2012-0331 and TO-2012-0035

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Halo Wireless, Inc.,	§	
	§	
Complainant,	§	Case No. TC-2012-0331
	§	
v.	§	
	§	
Craw-Kan Telephone Cooperative, Inc., et al.,	§	
	§	
Respondents.	§	
		consolidated with

Alma Communications Company d/b/a Alma Telephone Company, et al.	§	
	§	
	§	Case No. IC-2012-0035
Complainants,	§	
	§	
vs.	§	
Halo Wireless, Inc. and Southwestern Bell Telephone Company, d/b/a AT&T Missouri, Respondents.	§	

PRE-FILED DIRECT TESTIMONY OF ROBERT JOHNSON
ON BEHALF OF HALO WIRELESS, INC.

June 4, 2012

Halo Exhibit No. B
Date 6-26-12 Reporter PF
File No. TC-2012-0331

Halo Exhibit B

AFFIDAVIT OF ROBERT JOHNSON

STATE OF TEXAS §
§
COUNTY OF TARRANT §

I, Robert Johnson, of lawful age, being duly sworn, depose and state:

1. My name is Robert Johnson. I am the President of Ameliowave, Inc., which is a consulting and software development practice that is under contract with Transcom Enhanced Services, Inc. to provide support for managing existing products, developing new products, and architecting the platform and systems that support all products.

2. Attached hereto and made a part hereof for all purposes are my Direct Testimony and true and correct copies of the exhibits thereto.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

ROBERT JOHNSON

SUBSCRIBED and SWORN TO before me, on this the 4 day of June, 2012.

SHEILA O'FLINN
MY COMMISSION EXPIRES
February 27, 2013

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Commission Expires: 2-27-2013

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PRE-FILED DIRECT TESTIMONY OF ROBERT JOHNSON

INTRODUCTION

Q: Please state your name, title and business address.

A: My name is Robert Johnson. I am the President of Ameliowave, Inc. My business address is 307 W. 7th St., Suite 1600, Ft. Worth, TX 76107. Ameliowave is a consulting and software development practice that is under contract with Transcom Enhanced Services, Inc. ("Transcom") to provide support for managing existing products, developing new products, and architecting the platform and systems that support all products.

Q: Please state your educational background and experience.

A: I received a Bachelor's of Science in Electrical Engineering degree with an emphasis on Computer and Network Engineering from the University of Texas in Austin, TX in 1998 and a

Master's of Science in Engineering degree with an emphasis on Telecommunications and Information Systems Engineering from the University of Texas in Austin, TX in 2000. My Master's Report (filed and copyrighted in 2000 at the University of Texas in Austin) was entitled "Implementing Telephony Services on Data Networks."

My prior work experience, from most recent (prior to co-founding MarketEcho in 2005, which was acquired by Ameliowave in 2007): From 2003 to 2005 I was the Director of Regional Product Management for T-Systems North America, the North American subsidiary of T-Systems International, the International arm of Deutsche Telekom. I was responsible for managing the existing telecommunications products and developing the new telecommunications products throughout my region, which included most of the Americas. Between 2002 and 2003 I worked for T-Mobile US, the US subsidiary of T-Mobile International, the mobile telephone division of Deutsche Telekom as an Engineer. As part of those responsibilities, I helped develop their Voice over Asynchronous Transfer Mode (VoATM) and Voice over IP (VoIP) platforms for their 2G and 3G networks. From 2001 to 2002 I was President of Athoia Solutions where I did consulting on product management, new product development, and platform/system architecture. Between 2000 to 2001 I was the Director of Technology for Advent Networks, a start-up developing innovative cable modem technology, for which my team and I were awarded two US and International patents. Prior to that in 2000 I was a Senior Project Manager for Newbridge Networks (prior to and during their acquisition by Alcatel) supporting SBC in the evaluation and ultimate selection of Newbridge's latest ATM switch for use in the core of SBC's Project Pronto. From 1998 to 2000 I was the Senior Product Manager at Broadwing Communications (formerly IXC Communications and now part of Level 3 Communications)

where I was responsible for all Voice over Anything (VoX) product management and development.

Q: Are you an attorney?

A: No.

Q: Do you have personal knowledge of the facts you will relate?

A: Yes.

Q: On whose behalf are you appearing?

A: I am supplying testimony concerning Transcom Enhanced Services, Inc. ("Transcom"), which is a business end user customer that purchases wireless-based telephone exchange service from Halo Wireless, Inc. ("Halo").

Q: Are you the same Robert Johnson who has testified before other state Public Service Commissions ("PSCs") on behalf of Transcom?

A: Yes, the same issues in dispute in Case No. TC-2012-0331 (the "Blocking Proceeding") and Case No. IC-2012-0035 (the "ICA Rejection Proceeding" and collectively with the Blocking Proceeding, the "MOPSC Proceedings") are also in dispute before multiple other state PSCs. I have appeared before the PSCs of Georgia, South Carolina, Wisconsin, and Tennessee in their proceedings and I have prepared written testimony that was filed in those same proceedings.

Q: What is the purpose of this Testimony?

A: I will respond to the positions taken by the opposing parties (the "Opposing Parties") in their respective pleadings filed in the MOPSC Proceedings. I will also provide additional testimony relevant to the facts in this case that is intended to inform the Commission and assist it in ruling on the matters before it in the MO PSC Proceedings.

Q: Have you read the Pleadings filed in the MOPSC Proceedings?

A: Yes.

Q: Did you come to any general conclusions about the positions taken by the Opposing Parties in the MOPSC Proceedings and the relief they request?

A: Yes. Wading through and casting aside all of the unsubstantiated aspersions, innuendo, hyperbole, and other immaterial allegations they included in their various pleadings, I was surprised to discover that the Opposing Parties, Halo, and Transcom agree on many of the underlying, basic facts in this case. The problem the Opposing Parties faced is that the basic facts in this case do not fit their preordained conclusions, so they simply cast aside these "inconvenient truths" and instead apply inferences and conclusions supported by their "judgment" and alleged "industry practices" to replace the basic facts. Thus, the purpose of my testimony will be to help the Commission see through the baseless allegations and faulty rhetoric set forth by the the Opposing Parties and get back to the actual facts of this case and, further, where the Opposing Parties has cast aside those actual facts and replaced them with their "judgment" and "industry standards."

.Q: What are the basic facts that you found in the respective pleadings of the Opposing Parties on which you believe they agree with Halo and Transcom?

A: Although they are deeply buried after a reading, it becomes obvious that they agree to the following basic facts:

1. Transcom's enhanced services change the content of the communications it receives from its customers.

2. The Federal Act makes it clear that providers of Information Services or Enhanced Services ("ESPs") are not Telecommunications Carriers and are, instead, End Users of Telecommunications Services.
3. The FCC's view of the telecommunications world is divided into two camps: the Telecommunications Carriers that provide Telecommunications Services and the End Users who consume them.
4. Under the FCC's view, End Users use Customer Premise Equipment (or CPE) to "originate" Telecommunications to Telecommunications Carriers and Telecommunications Carriers "terminate" Telecommunications to End Users' CPE.
5. Transcom's wireless transmitting and receiving facilities are CPE.

Q: What about the basic facts that they disregard, the inconvenient truths that don't support their preordained conclusions?

A: Since the basic facts do not support their preordained conclusions, the Opposing Parties simply ignore the following inconvenient truths that necessarily result from the basic facts:

1. Because Transcom is not a Common Carrier and its enhanced services change the content of the communications it receives from its customers, those communications ***cannot*** be Telecommunications, those enhanced services ***cannot*** be Telecommunications Services, and Transcom ***cannot*** be a Telecommunications Carrier.
2. Further, Transcom was declared an ESP in four separate Federal court rulings, some of which were the result of actions brought by AT&T and AT&T is therefore bound by those decisions.

3. Because Transcom is an ESP and not a Telecommunications Carrier, under the FCC's view, it ***must*** be an End User that consumes Telecommunications Services provided by Halo.

4. Therefore, Transcom ***originates*** its traffic ***wirelessly*** to Halo using its CPE just like any other End User.

5. Therefore, Halo ***cannot*** be in breach of the following clause by sending Transcom's traffic to AT&T under the ICA:

> "Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before Carrier delivers traffic to AT&T for termination by AT&T or for transit to another network."

Q: How do the Opposing Parties deal with these inconvenient truths?

A: They simply discard them, and in their place they provide invented "facts" that support their preordained positions, but otherwise are utterly unsupportable, such as:

1. They insinuate, erroneously, that Transcom's website represents that Transcom is a Telecommunications Carrier providing Telecommunications Services.

2. They argue, without foundation, that because Transcom has no direct relationship to the "calling party," Transcom cannot be providing an Enhanced Service.

3. They claim, incorrectly, that the FCC has declared Transcom's traffic to be "landline" traffic and therefore not wirelessly-originated for any and all purposes, in contrast with just for the purpose of the application of the "intraMTA rule."

4. They argue, illogically, that this Commission should ignore Federal court rulings that Transcom is an ESP in favor of the Tennessee Regulatory Authority ("TRA") ruling that

Transcom is not an ESP simply because the TRA ruling is newer, instead of holding the Federal rulings in the same or higher dignity.

5. They argue, without support, that Transcom's change of content is not ***enough*** of a change of content to convert a Telecommunications Service that Transcom did not offer in the first place into an Enhanced Service.
6. They argue, incorrectly, that Transcom's technologies are ubiquitous in the industry, but offer no reasoning as to why that prevents them from being used by Transcom in the offering of its enhanced services.
7. They suggest, uncompellingly, that if Transcom is not an ESP then it must be a Telecommunications Carrier.

I will address each of these invented "facts" in my testimony that follows.

TRANSCOM'S ENHANCED SERVICE PLATFORM

Q: Before you address these invented "facts," can you first please explain how Transcom's Enhanced Service Platform works?

A: Yes. First, Transcom's customers enter into an individually-negotiated agreement and then connect to the enhanced service platform. Once connected, the customer must signal over that connection to initiate an enhanced service session. After the enhanced service platform has set up an enhanced service session, the customer can send traffic to that session to be enhanced.

Q: What kind of customers does Transcom serve?

A: Transcom serves a host of different kinds of companies. We have cable company customers, wireless provider customers, and other "VoIP" provider customers.

Q: Does Transcom serve any "ultimate" consumers?

A: No. Our service is "wholesale" in nature. Our customers, or perhaps even customers of our customers, are the ones that provide retail service to the ultimate consumer.

Q: It has been contended that the regulatory classification of Transcom's service must be determined based on what the ultimate consumer perceives, receives or does as part of the ultimate consumers use of the telephony client they are using. Do you agree?

A: Absolutely not. Transcom does not deal with ultimate consumers and does not provide any service to them. Transcom has no relationship with their distant third parties at all. Transcom's product is sold to Transcom's direct customers and used by Transcom's direct customers. Our regulatory classification must be determined based on what it is we sell to our customers.

Q: Why is this important?

A: Assume Transcom made tires, and sold them on a wholesale market to select "middlemen" that then marketed Transcom's tires – and those of other tire makers – to automobile companies. The automobile companies sell finished cars to car dealers throughout the country. The car dealers then sell the cars to ultimate consumers. Assume further that tire makers in Transcom's market are wholly unregulated in terms of the ability to enter the market or in terms of the price to be charged. Finally, assume that car dealers are heavily regulated in that they cannot enter the market without permission by a state agency and the prices they charge to consumers are set by that agency.

Transcom would be a tire maker supplying only one of many inputs ultimately used to create the car that is sold to the car dealer and then to ultimate consumers. But if the test the ILECs try to use were applied, Transcom would be deemed to be a *car dealer* and somehow

required to seek the state agency's permission to sell tires to the car manufacturer and also somehow subject to the state agencies price-setting power.

Transcom is not a car dealer or a carrier. Transcom does not sell cars or phone calls to ultimate consumers. Transcom's product classification is and must be determined based on what Transcom provides to its direct customers, and not based on what is ultimately sold to consumers merely because Transcom's product is one of many different inputs used to create the retail product.

Q: Are the definitions of "telecommunications," "telecommunications service," "enhanced service," and "information service" consistent with your analogy to tires and cars?

A: They are. All of the definitions directly speak to what it is that *Transcom* sells to *its customer* and the manufacturing process Transcom uses to create the product sold to *Transcom's customer*. I challenge anyone to read the definition of "enhanced service" at 47 C.F.R. § 64.702(a)[1] or the definition of "information service" in § 153(20)[2] and credibly conclude that Transcom's status is based on anything other than what Transcom's direct subscriber receives, and what the system does with the information Transcom's subscriber provides to Transcom. Similarly, the definition of "telecommunications" in § 153(43)[3] turns on what is done with the information and content supplied by Transcom's user. It defies logic to say that Transcom's

[1] (a) For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

[2] The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

[3] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

status is based on what others may do or receive when Transcom has no relationship with them. The only way one could say this is all driven by what the ultimate consumer does or receives is if you conclude that one can be an ESP only if you are providing a retail service, and an entity that provides wholesale services cannot be an ESP as a matter of law.

Q: How do Transcom's customers connect to the enhanced service platform?

A: Customers can connect to the enhanced service platform either directly using an IP or TDM interface or indirectly over a public IP-based network, such as the Internet, which uses an IP interface. Transcom does not support indirect connections over a public TDM-based network, such as the Public Switched Telephone Network (PSTN). Transcom builds these connections once, when the customer is first established with Transcom, and they remain in place for as long as the customer remains with Transcom.

Q: How do Transcom's customers signal over that connection to access their enhanced service?

A: Each time a customer wants to send traffic to Transcom to be enhanced, they must first signal either an IP session or a TDM call over their connection to Transcom's enhanced service platform.

Q: Does a customer's connection determine the nature of their signaling?

A: Yes. If the customer has an IP connection (either direct or indirect), then the signaling will be for an IP session. If the customer has a TDM connection, then the signaling will be for a TDM call.

Q: What does Transcom's enhanced service platform do with signaling it receives from a customer?

A: Transcom's enhanced service platform extracts the explicit signaling parameters from the IP or TDM signaling and sends that to the policy engine where it's combined with the implicit customer parameters, including the traffic-handling policy. The policy engine uses the traffic-handling policy and the explicit and implicit parameters to determine whether or not to initiate an enhanced service session to handle the traffic.

If the policy engine determines that the traffic is authorized, then it establishes an enhanced service session to handle the traffic, adds the customer-initiated IP session or TDM call as a "leg" onto the enhanced service session, and signals back over that leg to the customer that the enhanced service session is in progress.

If the policy engine determines that the traffic is not authorized, then the enhanced service platform discards the parameters and it may or may not signal back to the customer that the effort to initiate an enhanced service session has failed. If the platform does signal back to the customer it will likely indicate why the effort failed.

Q: In what cases might the traffic not be authorized?

A: The most obvious case is traffic from a source other than a Transcom customer attempting to use the connection, but there are many other reasons why Transcom would not authorize the traffic. Transcom routinely blocks customer traffic based on the number of attempts if they exceed the contracted amount of simultaneous sessions.[4]

[4] This is not to say that once a call is allowed to enter our platform we will "block" creation of an egress leg to a particular number merely because of the usurious rate the terminating carrier may demand. If we can create a route, we will. Our customer will, however, pay us for the higher cost we incur.

Q: What is an "enhanced service session" as you used the term?

A: An enhanced service session is a temporary allocation of computing resources, such as processor, memory, and storage, also known as the "hardware," from the pool of computing resources run by the enhanced service platform that runs a proprietary set of algorithms to enhance the traffic, also known as the "software."

Q: What is a "leg" as you used the term?

A: The enhanced service session by itself is just hardware and software, it has nothing to enhance, so it needs pathways to send and receive traffic, which are its "legs." Each leg can be either an IP session or a TDM call. The first leg is the IP session or TDM call signaled by the customer to initiate the enhanced service session, which we call the ingress leg.

If the enhanced service session had only the ingress leg, then the traffic received from the customer could only be sent back to the customer after being enhanced by the enhanced service platform, so in all cases the enhanced service platform signals a second leg to one of Transcom's vendors, which we call an egress leg. There can be more than one egress leg in the enhanced service session. The traffic-handling policy determines how many egress legs are required for the enhanced service session.

Q: You mentioned that there may be more than one additional egress leg. Is that common?

A: It is not rare and it is increasing. There are many reasons why there would be more than one egress leg, such as employing "simultaneous ring" to signal multiple edge devices (for example a legacy PSTN telephone, a cell phone, or a Skype or GoogleVoice number).

Q: How does the enhanced service platform add egress legs?

A: The policy engine utilizes the traffic-handling policy to determine how many egress legs are required for the enhanced service session, then passes that information to the routing engine to determine which vendors could best serve the egress leg. Once the vendor (or vendors) have been identified, the enhanced service platform originates a further communication by signaling an IP session or TDM call to the vendor for each egress leg. If the signaling fails for any reason, the enhanced service platform may attempt another vendor for each leg that failed, within the parameters determined in the initial step of the process.

Q: What is a "vendor" as you used the term?

A: Transcom's vendors provide routes for the enhanced service platform to create egress legs for the enhanced service session.

Q: How do vendors connect to the enhanced service platform?

A: Transcom's vendors are connected to the enhanced service platform just like its customers are connected, either directly using an IP or TDM interface or indirectly over a public IP-based network, such as the Internet, which uses an IP interface. Transcom does not support indirect connections over a public TDM-based network, such as the PSTN. Transcom builds these connections once, when the vendor is first established with Transcom, and they remain in place for as long as the vendor remains with Transcom.

Q: Does a vendor's connection determine the nature of their signaling?

A: Yes. If the vendor has an IP connection (either direct or indirect), then the signaling will be for an IP session. If the vendor has a TDM connection, then the signaling will be for a TDM call.

Q: Can an enhanced service session have both IP sessions and TDM calls as legs?

A: Yes. The type of each leg is determined by the connection to the customer or vendor, but each leg is terminated in the enhanced service session on the enhanced service platform so a combination of IP sessions and TDM calls is not only possible, but just as likely as an enhanced service session consisting exclusively of IP sessions or TDM calls.

Q: What happens after all the necessary egress leg routes are established?

A: The enhanced service platform joins them to the enhanced service session. Then the platform signals back to the customer and vendors that the enhanced service session is complete and available to use and traffic can flow on the legs and into the enhanced service session.

Q: What do you mean by "traffic"?

A: The traffic is the information received by the enhanced service platform from each leg of the enhanced service session. Each leg can (and typically does) send information into the enhanced service session to be enhanced. For example, if the leg is a TDM call terminating on a voice telephony system, such as a legacy PSTN telephone, that telephone is constantly capturing acoustical audio information, or sounds, while the call is up. Those sounds are the information sent by that voice telephony system on that leg to the enhanced service session.

Those sounds are not just "words" or "voice," but all sounds in the area where the voice telephony system is capturing, such as a door squeaking or a vacuum cleaner running in the background. This is all part of "the content of the information" that is "sent." Indeed, even "silence" supplied by the customer when he or she has chosen to not make any noise can be content and have meaning in many contexts – as many married individuals will attest.

Q: What does Transcom do with the information flowing in the enhanced service session?

A: The enhanced service session collects the information from each leg and utilizes a specific set of unique, proprietary algorithms to enhance the information that, in the process, also changes the content of the information. Many of these algorithms belong to broad classes of algorithms that are common in VoIP telephony systems, such as Voice Activity Detection ("VAD"),[5] and Comfort Noise Generation ("CNG").[6] However, while those VoIP telephony systems use these algorithms to squeeze the information down into a smaller "pipe" – repeating the mistakes made by AT&T in 1932. Transcom's proprietary algorithms turn that model on its ear putting new and better information into the same sized "pipe" as the original information would have needed.

The precise handling is determined by the customer-specific traffic-handling policy, but generally speaking the platform uses VAD to identify the "voice" information within the information received on each leg of the enhanced service session. It then isolates the voice information and discards the non-voice information such as background noise and silence that was received. The platform analyzes the voice information in order to make a recreation of the original captured audio before the filtering and other detrimental effects were applied to it. By combing the VAD analysis with CNG during periods when VAD does not identify voice activity, based on parameters VAD determines from the information flowing in the session, the enhanced service platform creates new information with new content to send out on the other legs of the enhanced service session.

[5] For an explanation and analysis of VAD see M.Y. Appiah, M. Sasikath, R. Makrickaite, M. Gusaite, "Robust Voice Activity Detection and Noise Reduction Mechanism" (PDF), Institute of Electronics Systems, Aalborg University (2005), available at http://kom.aau.dk/~myap04/pjts/final_report_8th.pdf.

[6] http://en.wikipedia.org/wiki/Comfort_noise. Wikipedia® Text available under GNU Free Documentation License.

The "voice" information is enhanced in several ways. The audio level is increased in relation to other sounds and made clearer and more understandable than was the case with the original. Thus, Transcom's platform actively removes information that was supplied by the customer, adds information that was not supplied by the customer and changes some of the information that was supplied. All of this new content contains a kind of recreation of the voice information using proprietary algorithms and some new noise to play between the gaps in the voice information.

Q: What does Transcom do with non-voice information contained in the content it receives on a leg of the enhanced service session?

A: During the content processing, in addition to looking for voice information, the enhanced service platform is also looking for certain non-voice information that might be contained in the content. The primary forms of non-voice information the enhanced service platform is set to identify for special treatment are: FAX signals, modem signals, and Dual-Tone Multi-Frequency ("DTMF") tones.

When the enhanced service platform identifies FAX and modem signals, the platform applies another policy and uses modified algorithms for the extraction of the non-voice information and the generation of new content containing the extracted non-voice information. Transcom's platform, unlike some of its competitors' systems, does support FAX.

When the enhanced service platform identifies DTMF tones in the content, it applies algorithms similar to those it applies to fax and modem signals with the additional benefit that the platform can use DTMF tones as triggers to other actions.

Q: How do enhanced service sessions end?

A: The enhanced service platform uses the explicit and implicit parameters mentioned previously to determine when to end the enhanced service session. Typically the platform will receive new explicit signaling parameters on one or more of the legs of the enhanced service session indicating that that leg is being torn down, which will trigger the traffic-handling policy to determine if the enhanced service session should also be torn down. If so, it will tear down each of the legs, write an enhanced service session detail record, and end the enhanced service session.

Q: Your answers rely on a very technical understanding of Transcom's service. Is there another way of describing this, by way of analogy, that would be more accessible to folks less technical than yourself?

A: Yes. Let's use shipping produce as an analogy for the "end-to-end" model favored by the ILECs. When produce is shipped from the farm to the store, it is boxed up at the farm and shipped to an intermediate facility, where it is likely loaded with other produce from other farms and shipped to another intermediate facility, and so on. The only action taken at the intermediate facility is to open and inspect and repackage the produce. This process is an inherently lossy one, where produce gets bumped and bruised, ripens and sometimes rots, and is occasionally destroyed by bugs or other pestilence (including hungry produce handlers). The goal is to get the produce from farm to store with as little loss as possible.

Now we add Transcom into the process as a new kind of intermediate facility, one that does more than just open the box of produce and inspect it. Using a box of bananas as an example, Transcom would analyze the bananas, looking through the damage done to them already, to determine what bananas the farm *intended* to ship. Since the bananas are already

damaged and the analysis damages them further, Transcom throws the original box of bananas away and uses the information from the analysis to create an entirely new box of bananas that better represents the intention of the farmer than the damaged original box. It would have the same number of bananas in it, each the same size as before, but they would be entirely new bananas without the defects introduced by the shipping process thus far.

Of course it's tough to imagine Transcom creating entirely new bananas because that's not a tool that science has given us, but science has given us the tools to analyze old digital content and create new digital content based on that analysis, which is exactly what Transcom does to the content it receives on the legs of an enhanced session. Transcom opens and inspects each "box of bananas" it receives on the ingress leg of an enhanced session. Transcom then creates an entirely new box with new produce – indeed improved produce that does not have any defects that existed on ingress – on the egress leg(s) for delivery to the vendor or vendors.

Q: Can the enhanced service session participants tell the difference?

A: Any contention that the enhanced service session participants that are on the PSTN cannot observe the difference would be incorrect. I would analogize the effect to what happens when an HD capable video receiver upconverts NTSC (analog) TV signals to High Definition TV (HDTV) for display on a new TV. The result is an improvement from the original and the participants would clearly notice the difference *if they could compare it to the original.*

Q: The Opposing Parties contend that Transcom's change of content is not sufficient to turn a telecommunications service into an enhanced service, and so your product is "still" a telecommunications service. What is your response?

A: They have it exactly backwards. We are not trying to turn a telecommunications service into an enhanced service. There was never a Transcom supplied "telecommunications service" to

begin with. Transcom never supplied "telecommunications" at all, because there is a change of content. Transcom is not a carrier so it cannot be a telecommunications service anyway. The ILECs are trying to turn Transcom's enhanced/information service into a telecommunications service by simply denying reality. They are deeming, not finding facts.

NATURE OF TRANSCOM'S TRAFFIC

Q: Does customer's connection determine the nature of the traffic?

A: No. Unlike signaling, the nature of which is determined by the connection the customer is using, the nature of the customer's traffic is not determined by the connection they are using. While it is more likely that traffic that was captured by a VoIP telephony system and transmitted over an IP-based information service, or "IP-originated" traffic, will be delivered to Transcom over an IP connection, mere use of an IP connection does not guarantee that the traffic was IP-originated traffic. Conversely, use of a TDM connection does not preclude that the delivered over it is not IP-originated traffic.

Q: How does Transcom know what traffic is IP-originated traffic?

A: Transcom only knows if traffic is IP-originated traffic if the customer certifies that the traffic is IP-originated traffic. If all of a customer's traffic is IP-originated traffic, then the customer can certify that in writing to Transcom and Transcom will treat all of the traffic delivered to the platform by the customer over that connection as IP-originated traffic, regardless of the type of connection the customer uses. If the customer has some IP-originated traffic and some traffic that is not IP-originated traffic, they can separate their traffic and deliver it over separate connections, only one of which they would certify as carrying IP-originated traffic. In many cases, however, the customer does not certify their IP-originated traffic or separate it from

their traffic that is not IP-originated traffic, leaving IP-originated traffic to be treated as if it were not IP-originated traffic.

Q: Is Transcom's service "telephone toll service"?

A: That is largely a legal question, but based on the fact that Transcom's enhanced voice service is an enhanced service, I am advised by counsel that is not "telephone toll service" because one must be providing telecommunications as a carrier in order to be supplying that product.

TRANSCOM'S ESP STATUS

Q: Is Transcom a telecommunications carrier?

A: That is largely a legal question. But I am informed by counsel that the law requires consideration of certain facts, which I will supply. Counsel advises that the Telecommunications Act has a definition of "telecommunications carrier."[7] Counsel states that the statutory definition requires two things. The provider must (1) be a "common carrier"[8] and (2) offer telecommunications"[9] to the public for a fee. Counsel explains that it is the attribute of an entity being a common carrier that turns "telecommunications" into a "telecommunications service."[10] I

[7] *See* 47 U.S.C. § 153 (44) TELECOMMUNICATIONS CARRIER.--The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

[8] *See* 47 U.S.C. § 153 (10) COMMON CARRIER.--The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

[9] *See* 47 U.S.C. § 153(43) TELECOMMUNICATIONS.--The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

[10] *See* 47 U.S.C. § 153(46) TELECOMMUNICATIONS SERVICE.--The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

am also informed that some ILECs have asserted that Transcom is a specific species of carrier, *i.e.*, an "interexchange carrier" ("IXC")[11] that provides "telephone toll service."[12] I further understand that one issue in this case is whether "exchange access"[13] charges are due for Transcom's traffic. I am told that this must be the claim because only IXCs are subject to "exchange access service" charges, and access applies only with regard to their "telephone toll service," under 47 C.F.R. § 69.5(b), whereas end user traffic associated with a telephone exchange service is not subject to switched exchange access charges.

Counsel advises that the courts have fashioned the following two-part test for common carriage:

> The primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently. This does not mean that the particular services offered must practically be available to the entire public; a specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he *holds himself out to serve indifferently all potential users.*
>
> * * *
>
> A second prerequisite to common carrier status [is] ... that the system be such that customers transmit intelligence of their own design and choosing.[14]

Counsel states that these are *conjunctive* requirements; both must be met before common carrier status is established. I am not a lawyer, but I am aware of the facts that will be used to perform the legal analysis stated above.

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[11] "Interexchange carrier" is not defined in the statute. Section 254(g) speaks to "providers of interexchange telecommunications services" and § 153 has a definition of "telephone toll service." The FCC has equated "IXC" with "provider of interexchange telecommunications service." *See* Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, FCC 96-331, 11 FCC Rcd 9564 (rel. Aug. 1996).

[12] *See* 47 U.S.C. § 153 (48) TELEPHONE TOLL SERVICE.--The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

[13] (16) EXCHANGE ACCESS.--The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

[14] *National Ass'n of Regulatory Util. Comm'rs v. FCC,* 174 U.S. App. D.C. 374, 533 F.2d 601, 608-09 (D.C. Cir. 1976) ("*NARUC II*")(internal quotes and footnotes omitted) (emphasis added).

Q: What are the facts that plug into the above-stated legal analysis?

1. Transcom provides wholesale services to other entities that provide service to others such that Transcom has no sales "at retail."
2. Transcom purchases services from third parties for the transport of information, and then networks its enhanced service platform components on top of the transport that it obtains from others to provide its services.
3. Transcom is not registered as a carrier or interexchange carrier with the FCC and does not access the PSTN via exchange access services as I understand is required for carriers or interexchange carriers. Instead, Transcom purchases end user services (telephone exchange services) from its common carrier vendors.
4. Transcom does not have any "carrier codes" such as a CIC or OCN.
5. Transcom does not hold itself out as a carrier or interexchange carrier, and has not represented that is it a carrier. To the contrary, Transcom has consistently denied carrier status and aggressively asserts end user status.
6. Transcom does not undertake to provide service to all potential customers indifferently. On the contrary, Transcom negotiates private contracts on a case-by-case basis, with rates and other terms varying considerably among its customers.
7. Transcom's rates are not nationwide averaged and differ between localities and within and between states.
8. Transcom's system *intentionally* and *pervasively* changes the content of the information supplied by Transcom's customer and any other persons engaged in any call session. Transcom often also performs a net change of form. Transcom therefore does not offer or provide services for the 'transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.' I will further address this below.
9. Transcom has obtained multiple rulings from a court of competent jurisdiction finding that (a) Transcom is an enhanced service provider ("ESP"), (b) Transcom is not obligated to pay exchange access charges to anyone, but rather is an end user that pays end user charges, and (c) the service provided by Transcom is different from the service addressed by the FCC in the AT&T Order,[15] and therefore the AT&T Order is not applicable to Transcom.

[15] Order, *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, FCC 04-97, 19 FCC Rcd 7457 (rel. April 21, 2004) (the "*AT&T Order*").

Q: You say that Transcom does not provide telecommunications or telecommunications service. Given that Transcom is a communications intensive business, how does it obtain the telecommunications service that it needs to perform its enhanced/information service functions?

A: Transcom buys telecommunications service from carriers, usually from exchange carriers like a CLEC or – as in this case – from a CMRS provider. Specifically, Transcom purchases telephone exchange service as an end user.

Q: Does Transcom hold itself out as an Enhanced Service Provider or ESP?

A: Yes, Transcom holds itself out as an ESP.

Q: What is Transcom's basis for this?

A: Transcom has purposefully arranged its operations to meet the test for ESP status and to not meet the test of being a common carrier or provider of telecommunications service. Transcom has defended that status at all times, including in litigation. Indeed, there are four court rulings, which I discuss below, saying that Transcom is an ESP and is not a carrier. Based on advice of counsel, my understanding of these decisions is that they establish Transcom as an ESP, and that, as such, Transcom is an "end user" purchaser of Halo's common carrier telecommunication services. Furthermore, my understanding from these decisions and counsel is that when ESPs purchase services from a common carrier like Halo, access charges are not due on their traffic. Instead, the ESP purchases "telephone exchange service."

FEDERAL COURT RULINGS

Q: You mentioned that there are four Federal court rulings finding that Transcom is an ESP. Can you identify and explain your understanding of those rulings?

A: In *In re Transcom Enhanced Services, LLC* (the "Hale Opinion"), (Exhibit 1), the court held that Transcom does not provide telecommunications, and is an ESP. The Hale Opinion concluded that "a service that routinely changes either the form or the content of the transmission would fall outside of the definition of 'telecommunications' and therefore would not constitute a 'telecommunications service.'" See Exhibit 1, pg. 6. On the basis that Transcom's operations necessarily result in a change in content and often a net change in form, the Hale Opinion concluded that Transcom is an ESP. The Hale Opinion further posited that Transcom has never held itself out as a common carrier and there is no legal compulsion that Transcom operate or hold out as a common carrier.

Transcom's understanding of the Hale Opinion is that AT&T and SBC contended that Transcom's service was similar to the service addressed by the FCC in the "IP-in-the-Middle" decision. However, Transcom's understanding of the Hale Opinion is that it rejected that argument and held that the service provided by Transcom is "distinguishable from AT&T's specific service in a number of material ways," and it goes on to list some of the distinctions.

Transcom's understanding is that the Hale Opinion went on to hold that Transcom's service "fits squarely within the definitions of 'enhanced service' and 'information service' . . . and falls outside of the definition of 'telecommunications service' because [Transcom's] system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication." Transcom's understanding of the Hale Opinion is that it further held that

Transcom's service "is not a 'telecommunications service' subject to access charges, but rather is an information service and an enhanced service and that Transcom must pay end user charges."

It is my understanding, based on advice of counsel, that the Hale Opinion was later vacated on grounds of mootness, but Judge Hale entered similar findings and rulings in the final Confirmation Order of Transcom's bankruptcy proceedings (Exhibit 2). See paragraph 4. Also, I understand that Judge Hale entered summary judgment in Transcom's favor in an adversary proceeding, and that summary judgment reiterated all of the findings made in the Hale Opinion (Exhibit 3). In addition, I understand that Transcom started its operations by purchasing the assets of a company called DataVon out of DataVon's bankruptcy, and the bankruptcy judge in that matter, Judge Felsenthal, made similar findings about the service provided by DataVon that Transcom was purchasing (Exhibit 4). It is my understanding, based on advice of counsel, that that these rulings are binding on AT&T.

TRANSCOM AS A CUSTOMER OF HALO

Q: Does Transcom buy telecommunications service from Halo?

A: Yes. Transcom purchases end user telephone exchange service from Halo in numerous locations throughout the country.

Q: How does Transcom connect to Halo?

A: Transcom leases wireless equipment that can authenticate on and communicate with Halo's base station in an MTA when proximate thereto.

Q: Do TDM calls that Transcom originates from its enhanced service platform get set up through the wireless equipment in an MTA?

A: Yes. When the routing engine in the enhanced service platform determines that Halo is the best vendor to establish an egress leg for the enhanced service session, the platform originates a TDM call using Transcom's wireless Customer Premises Equipment ("CPE") in the Metropolitan Trading Area ("MTA") that contains the rate center with which the desired terminating number is associated.

Q: So in every case where AT&T receives a call from Halo that was originated by Transcom it will have originated from wireless CPE in the same MTA?

A: Yes.

Q: Does Transcom receive Halo-assigned numbers?

A: Yes. Halo has assigned Transcom at least one number per LATA. It serves as the billing telephone number.

Q: Do calls addressed to a Transcom number go to Transcom?

A: Yes, these are active numbers. If a user on the PSTN makes a call to that number it comes to Transcom and is answered.

Q: What happens today with such calls?

A: Transcom has an outgoing message indicating that the number is presently an administrative number and is not monitored.

Q: Does Transcom plan to more actively use this incoming capability in the future?

A: Yes. Transcom is actively developing new products that will rely on local dial-in capability. The uncertainty and distraction caused by all of the litigation has delayed its roll-out. When Transcom does deploy these services it will require more than one number per LATA.

Q: You have said several times that Transcom "originates" the call using Halo's service. How does Transcom's service originate further communications as opposed to "re-originating" them?

A: Transcom is an end user. End users use customer premises equipment ("CPE"). End users originate calls using CPE. Calls terminate to end user premises using CPE. End user CPE can also perform routing functions associated with origination or termination. *See* § 153(14)[16] End user CPE is an end-point. The equipment that Transcom leases to connect to Halo are registered Part 90 stations designed for end user operation while connected to a Halo-operated base station. This is CPE, in contrast to "telecommunications equipment"[17] which is what carriers use.

When AT&T and TDS say that there can be only one "origination" and it is determined on using the "end-to-end" concept, they seem to be implying that if an entity is "in-the-middle" it must be a carrier and cannot be an end user. I will let the lawyers debate this from a legal perspective, but in my experience that is simply not the case from an operational and functional viewpoint. ESPs have always been "in-the-middle" if a communication is viewed "end-to-end" and there are multiple legs. Yet ESPs have always been treated as end users, and have always been allowed to purchase telephone exchange service instead of exchange access service. ESPs have always been considered an end-point, for both origination and termination.

[16] (14) CUSTOMER PREMISES EQUIPMENT.--The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

[17] (45) TELECOMMUNICATIONS EQUIPMENT.--The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

FCC ORDER

Q: In their Pleadings, the Opposing Parties claim that, in their USF and ICC Reform Order, that the FCC "rejected" Halo's argument that Transcom's traffic is "originated" to Halo. Do you agree with their reading of the FCC's Order?

A: No. The Opposing Parties appear to misunderstand or misinterpret ¶1005, which is merely an explanatory paragraph and not part of the FCC's ruling, which is contained, in its entirety, in ¶1006:

> 1006. We clarify that a call is considered to be originated by a CMRS provider ***for purposes of the intraMTA rule*** only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call ***for purposes of reciprocal compensation*** and we disagree with Halo's contrary position. (Emphasis added, footnotes omitted).

The Opposing Parties misinterpret the FCC's ruling to mean that Transcom does not originate further communications to Halo, so the traffic Transcom is sending to Halo must be originated somewhere else. However, the FCC's ruling applies only "for purposes of the intraMTA rule" and "for purposes of reciprocal compensation," which are two ways of saying the same thing. This understanding was so important to the FCC's ruling, it's stated ***twice!*** Transcom's position that, as an ESP, it originates a further communication to Halo using its wireless CPE and, thus, that traffic was before the ruling and still is "wireless-originated" for purposes of the contract provision is both consistent with, and supported by the FCC's ruling.

USE OF CPE

Q: Does Transcom use CPE?

A: Yes. As noted above I have consistently observed that Transcom uses CPE and that end users employ CPE while carriers employ telecommunications equipment. The FCC uses this very distinction in part 7 of its rules. FCC rule 7.3(c) defines CPE: "(c) The term customer premises equipment shall mean equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications." As you can see, CPE is used by "persons" "other than a carrier." On the other hand, rule 7.3(j) says that "The term telecommunications equipment shall mean equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)." Rule 7.3(k) defines "telecommunications service" consistent with the Act definition, and clearly can be provided only by a common carrier. I would also direct the Commission's attention to FCC rule 73.900(e) and (r). My understanding is that loops provided by ILECs to ESPs are counted as "end user" business lines for purposes of FCC rule 51.5, and then applied for UNE purposes. So this concept is not limited to "application of the access charge rules."

I continue to believe Transcom is an ESP. But even if Transcom is not an ESP it is still an end user employing CPE to originate communications in the MTA.

TRANSCOM IS AN END USER AND NOT A CARRIER

Q: Please set aside the question of whether Transcom is an ESP. In other words, please assume for a moment that Transcom has not claimed ESP status. Would elimination of the "ESP issue" from the case necessarily mean that AT&T's arguments win the day?

A: While Transcom continues to insist it is an ESP, resolution of that issue against Transcom would not end the inquiry. Since Transcom is not a Common Carrier it must be an End User. Transcom is merely a communications-intensive business End User. End Users originate communications. End Users are end points, represented by the CPE. End User CPE originates outbound calls and calls going to End Users terminate with the End User's CPE.

Q: If Transcom could be an End User consumer of telecommunications services, why did Transcom develop an enhanced services platform and why does it offer these enhanced services?

A: Exclusively for the benefit of its customers.

Q: What public stance has AT&T taken most recently on this topic?

A: Interestingly, in Reply Comments to the FCC on the Further Notice of Proposed Rulemaking ("FNRPM") that was part of the Order, AT&T (in response to comments from Google) had this to say:

> An entity is a "telecommunications carrier" only insofar as it is providing "telecommunications services," and the Act affirmatively prohibits the Commission from subjecting any network to common carrier regulation when it is *not* providing those services. 47 U.S.C. § 153(51).

AT&T's argument tracks very well with my testimony that Transcom can only be a "telecommunications carrier" if it provides "telecommunications services," which it does not. Further, if Transcom is not a "common carrier," (which it is not) then "the Act affirmatively

prohibits the Commission from subjecting [it] to common carrier it is not providing those services." It seems Transcom and AT&T are in 100% agreement on this statement.

Q: Does this conclude your testimony?

A: Yes.[18]

[18] I reserve the right to make corrections of any errors I may discover by submitting an *erratum*.

427 B.R. 585
(Cite as: 427 B.R. 585)

C

United States Bankruptcy Court,
N.D. Texas,
Dallas Division.
In re TRANSCOM ENHANCED SERVICES, LLC,
Debtor.

No. 05–31929–HDH–11.
April 29, 2005.

Background: Bankrupt telecommunications provider that had filed for Chapter 11 relief moved for leave to assume master agreement between itself and telephone company.

Holdings: The Bankruptcy Court, Harlin D. Hale, J., held that:
(1) bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, and
(2) debtor fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment.

So ordered.

West Headnotes

[1] Bankruptcy 51 ⇐2048.2

51 Bankruptcy
51I In General
51I(C) Jurisdiction
51k2048 Actions or Proceedings by Trustee or Debtor
51k2048.2 k. Core or related proceedings. Most Cited Cases

Bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, where debtor's status as ESP bore directly upon whether it could satisfy terms of master agreement and whether its decision to assume this agreement was proper exercise of its business judgment; forum selection clause in master agreement, while it might have validity in other contexts and require that any litigation over debtor's status as ESP take place in New York, did not deprive court of jurisdiction to decide issue bearing directly on propriety of allowing debtor to assume master agreement. 11 U.S.C.A. § 365.

[2] Bankruptcy 51 ⇐3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

In deciding whether to grant debtor's motion to assume executory contract, bankruptcy court must ascertain whether or not debtor is exercising proper business judgment. 11 U.S.C.A. § 365.

[3] Bankruptcy 51 ⇐3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

Telecommunications 372 ⇐866

372 Telecommunications

372III Telephones
372III(F) Telephone Service
372k854 Competition, Agreements and Connections Between Companies
372k866 k. Pricing, rates and access charges. Most Cited Cases

Bankrupt telecommunications provider whose communications system resulted in non-trivial changes to user-supplied information for every communication processed fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment. 11 U.S.C.A. § 365; Communications Act of 1934, § 3 (43, 46), 47 U.S.C.A. § 153(43, 46); 47 C.F.R. § 64.702(a), 69.5.

*585 *MEMORANDUM OPINION*

HARLIN D. HALE, Bankruptcy Judge.

On April 14, 2005, this Court considered Transcom Enhanced Services, LLC's (the "Debtor's") Motion To Assume AT & T *586 Master Agreement MA Reference No. 120783 Pursuant To 11 U.S.C. § 365 ("Motion").[FN1] At the hearing, the Debtor, AT & T, and Southwestern Bell Telephone, L.P., et al ("SBC Telcos") appeared, offered evidence, and argued. These parties also submitted post-hearing briefs and proposed findings of fact and conclusions of law supporting their positions. This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 151, and the standing order of reference in this district. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) & (O).

FN1. Debtor's Exhibit 1, admitted during the hearing, is a true, correct and complete copy of the Master Agreement between Debtor and AT & T.

I. Background Facts

This case was commenced by the filing of a voluntary Bankruptcy Petition for relief under Chapter 11 of the Bankruptcy Code on February 18, 2005. The Debtor is a wholesale provider of transmission services providing its customers an Internet Protocol ("IP") based network to transmit long-distance calls for its customers, most of which are long-distance carriers of voice and data.

In 2002, a company called DataVoN, Inc. invested in technology from Veraz Networks designed to modify the aural signal of telephone calls and thereby make available a wide variety of potential new services to consumers in the area of VoIP. The FCC had long supported such new technologies, and the opportunity to change the form and content of the telephone calls made it possible for DataVoN to take advantage of the FCC's exemption provided for Enhanced Service Providers ("ESP's"), significantly reducing DataVoN's cost of telecommunications service.

On September 20, 2002, DataVoN and its affiliated companies filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, before Judge Steven A. Felsenthal. Southwestern Bell was a claimant in the DataVoN bankruptcy case. On May 19, 2003, the Debtor was formed for purposes of acquiring the operating assets of DataVoN. The Debtor was the winning bidder for the assets of DataVoN and on May 28, 2003, the bankruptcy court approved the sale of substantially all of the assets of DataVoN to the Debtor. Included in the order approving the sale, were findings by Judge Felsenthal that DataVoN provided "enhanced information services".

On July 11, 2003, AT & T and the Debtor entered into the AT & T Master Agreement MA Reference No. 120783 (the "Master Agreement"). In an addendum to the Master Agreement, executed on the same date, the Debtor states that it is an "enhanced information services" provider, providing data communications services over private IP networks (VoIP), such VoIP services are exempt from the access charges applicable to circuit switched interexchange calls, and such services would be provided over end user local services (such as the SBC Telcos).

AT & T is both a local-exchange carrier and a long-distance carrier of voice and data. The SBC Telcos are local exchange carriers that both originate and terminate long distance voice calls for carriers that do not have their own direct, "last mile" connections to end users. For this service, SBC Telcos charge an access charge. Enhanced service providers ("ESP's")

are exempt from paying these access charges, and the SBC Telcos had been in litigation *587 with DataVoN during its bankruptcy, and has recently been in litigation with the Debtor, AT & T and others over whether certain services they provide are entitled to this exemption to access charges.

On April 21, 2004, the FCC released an order in a declaratory proceeding between AT & T and SBC (the "AT & T Order") that found that a certain type of telephone service provided by AT & T using IP technology was not an enhanced service and was therefore not exempt from the payment of access charges. Based on the AT & T Order, before the instant bankruptcy case was filed, AT & T suspended Debtor's services under the Master Agreement on the grounds that the Debtor was in default under the Master Agreement. Importantly, the alleged default of the Debtor is not a payment default, but rather pursuant to Section 3.2 of the Master Agreement, which, according to AT & T, gives AT & T the right to immediately terminate any service that AT & T has reason to believe is being used in violation of laws or regulations.

AT & T asserts that the services that the Debtor provides over its IP network are substantially the same as were being provided by AT & T, and therefore, the Debtor is also not exempt from paying these access charges. At the point that the bankruptcy case was filed, service had been suspended by AT & T pending a determination that the Debtor is an ESP, but AT & T had not yet assessed the access charges that it asserts are owed by the Debtor.

II. Issues

The issues before the Court are:

(1) Whether the Debtor has met the requirements of § 365 in order to assume the Master Agreement; and

(2) Whether the Debtor is an enhanced service provider ("ESP"), and is thus exempt from the payment of certain access charges in compliance with the Master Agreement.[FN2]

> FN2. AT & T has stated in its Objection to the Motion that since it does not object to the Debtor's assumption of the Master Agreement provided the amount of the cure payment can be worked out, the Court need not reach the issue of whether the Debtor is an ESP. However, this argument appears disingenuous to the Court. AT & T argues that the entire argument over cure amounts is a difference of about $28,000.00 that AT & T is willing to forgo for now. However, AT & T later states in its objection (and argued at the hearing):
>
> "To be sure, this is not the total which ultimately Transcom may owe. It is also possible that ... Transcom will owe additional amounts if it is determined that it should have been paying access charges. But at this point, AT & T has not billed for the access charges, so under the terms of the Addendum, they are not currently due.... AT & T is not requiring Transcom to provide adequate assurance of its ability to pay those charges should they be assessed, but will rely on the fact that post-assumption, these charges will be administrative claims.... Although Transcom's failure to pay access charges with respect to prepetition traffic was a breach, the Addendum requires, as a matter of contract, that those pre-petition charges be paid when billed. This contractual provision will be binding on Transcom post-assumption, and accordingly, is not the subject of a damage award now."
>
> AT & T Objection p. 3–4. As will be discussed below, in evaluating the Debtor's business judgment in approving its assumption Motion, the Court must determine whether or not its approval of the Motion will result in a potentially large administrative expense to be borne by the estate.
>
> AT & T argues against the Court's jurisdiction to determine this question as part of an assumption motion. However, the Court wonders if AT & T will make the same argument with regard to its post-assumption administrative claims it plans on asserting for past and future access charges that it states it will rely on for payment instead of asking for them to be included as cure payments under the pre-

sent Motion.

***588 III. Analysis**

Under § 365(b)(1), a debtor-in-possession that has previously defaulted on an executory contract [FN3] may not assume that contract unless it: (A) cures, or provides adequate assurance that it will promptly cure, the default; (B) compensates the non-debtor party for any actual pecuniary loss resulting from the default; and (C) provides adequate assurance of future performance under such contract. *See* 11 U.S.C. § 365(b)(1).

FN3. The parties agree that the Master Agreement is an executory contract.

In its objection, briefing and arguments made at the hearing, AT & T does not object to the Debtor's assumption of the Master Agreement, provided the Debtor pays the cure amount, as determined by the Court. It does not expect the Debtor to cure any non-monetary defaults, including payment or proof of the ability to pay the access charges that have been incurred, as alleged by the SBC Telcos, as a prerequisite to assumption. *See In re BankVest Capital Corp.*, 360 F.3d 291, 300–301 (1st Cir.2004), *cert. denied*, 542 U.S. 919, 124 S.Ct. 2874, 159 L.Ed.2d 776 (2004) ("Congress meant § 365(b)(2)(D) to excuse debtors from the obligation to cure nonmonetary defaults as a condition of assumption.").

Only the Debtor offered evidence of the cure amounts due at the hearing totaling $103,262.55. Therefore, based on this record, the current outstanding balance due from Debtor to AT & T is $103,262.55 (the "Cure Amount"). Thus, upon payment of the Cure Amount Debtor's Motion should be approved by the Court, provided the Debtor can show adequate assurance of future performance.

[1][2] AT & T argues that this is where the Court's inquiry should cease. Since AT & T has suspended service under the Master Agreement, whether or not the Debtor is an ESP, and thus exempt from payment of the disputed access charges is irrelevant, because no future charges will be incurred, access or otherwise. This is because no service will be given by AT & T until the proper court makes a determination as to the Debtor's ESP status. However, in its argument, AT & T ignores the fact that part of the Court's necessary determination in approving the Debtor's motion to assume the Master Agreement is to ascertain whether or not the Debtor is exercising proper business judgment. *See In re Liljeberg Enter., Inc.*, 304 F.3d 410, 438 (5th Cir.2002); *In re Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir.1985).

If by assuming the Master Agreement the Debtor would be liable for the large potential administrative claim, to which AT & T argues that it will be entitled,[FN4] or if the Debtor cannot show that it can perform under the Master Agreement, which states that the Debtor is an enhanced information services provider exempt from the access charges applicable to circuit switched interexchange calls, and the Debtor would loose money going forward under the Master Agreement should it be determined that the Debtor is not an ESP, then the Court should deny the Motion. On this record, the Debtor has established that it cannot perform under the Master Agreement, and indeed cannot continue its day-to-day operations or successfully reorganize, unless it qualifies as an Enhanced Service Provider.

FN4. See n.2 above.

AT & T and SBC Telcos argue that a forum selection clause in the Master Agreement should be enforced and that any determination as to whether the Debtor***589** is an ESP, and thus exempt from access charges, must be tried in New York. While this argument may have validity in other contexts, the Court concludes that it has jurisdiction to decide this issue as it arises in the context of a motion to assume under § 365. *See In re Mirant Corp.*, 378 F.3d 511, 518 (5th Cir.2004) (finding that district court may authorize the rejection of an executory contract for the purchase of electricity as part of a bankruptcy reorganization and that the Federal Energy Regulatory Commission did not have exclusive jurisdiction in this context); *see also, Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056 (5th Cir.1997) (Bankruptcy Court possessed discretion to refuse to enforce an otherwise applicable arbitration provision where enforcement would conflict with the purpose or provisions of the Bankruptcy Code).

In re Orion, which is heavily relied upon by AT & T, is inapplicable in this proceeding. *See In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir.1993). On its face, *Orion* is distinguishable from this case in that in

Orion, the debtor sought damages in an adversary proceeding at the same time it was seeking to assume the contract in question under Section 365. The bankruptcy court decided the Debtor's request for damages as a part of the assumption proceedings awarding the Debtor substantial damages. Here, the Debtor is not seeking a recovery from AT & T under the contract which would augment the estate. Rather the Debtor is only seeking to assume the contract within the parameters of Section 365. Similar issues to the one before this Court have been advanced by another bankruptcy court in this district.

The court in *In re Lorax Corp.*, 307 B.R. 560 (Bankr.N.D.Tex.2004), succinctly pointed out that a broad reading of the Orion opinion runs counter to the statutory scheme designed by Congress. *Lorax*, 307 B.R. at 566 n. 13. The *Lorax* court noted that *Orion* should not be read to limit a bankruptcy court's authority to decide a disputed contract issue as part of hearing an assumption motion. *Id.* To hold otherwise would severely limit a bankruptcy court's inherent equitable power to oversee the debtor's attempt at reorganization and would diffuse the bankruptcy court's power among a number of courts. The *Lorax* court found such a result to be at odds with the Supreme Court's command that reorganization proceed efficiently and expeditiously. *Id.* at 567 (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 376, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988)). This Court agrees. The determination of the Debtors status as an ESP is an important part of the assumption motion.

Since the Second Circuit's 1993 *Orion* opinion, the Second Circuit has further distinguished non-core and core jurisdiction proceedings involving contract disputes. In particular, if a contract dispute would have a "much more direct impact on the core administrative functions of the bankruptcy court" versus a dispute that would merely involve "augmentation of the estate," it is a core proceeding. *In re United States Lines, Inc.*, 197 F.3d 631, 638 (2d Cir.1999) (allowing the bankruptcy court to resolve disputes over major insurance policies, and recognizing that the debtor's indemnity contracts could be the most important asset of the estate). Accordingly, the Second Circuit would reach the same conclusion of core jurisdiction here since the dispute addressed by the Motion "directly affect[s]" the bankruptcy court's "core administrative function." *United States Lines*, at 639 (citations omitted).

Determination, for purposes of the motion to assume, of whether the Debtor ***590** qualifies as an ESP and is exempt from paying access charges (the "ESP Issue") requires the Court to examine and take into account certain definitions under the Telecommunications Act of 1996 (the "Telecom Act"), and certain regulations and rulings of the Federal Communications Commission ("FCC"). None of the parties have demonstrated, however, that this is a matter of first impression or that any conflict exists between the Bankruptcy Code and non-Code cases. Thus, the Court may decide the ESP issues for purposes of the motion to assume.

[3] Several witnesses testified on the issues before the Court. Mr. Birdwell and the other representatives of the Debtor were credible in their testimony about the Debtor's business operations and services. **The record establishes by a preponderance of the evidence that the service provided by Debtor is distinguishable from AT & T's specific service in a number of material ways, including, but not limited to, the following:**

(a) Debtor is not an interexchange (long-distance) carrier.

(b) Debtor does not hold itself out as a long-distance carrier.

(c) Debtor has no retail long-distance customers.

(d) The efficiencies of Debtor's network result in reduced rates for its customers.

(e) Debtor's system provides its customers with enhanced capabilities.

(f) Debtor's system changes the content of every call that passes through it.

On its face, the AT & T Order is limited to AT & T and its specific services. This Court holds, therefore, that the AT & T Order does not control the determination of the ESP Issue in this case.

The term "enhanced service" is defined at 47 CFR § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Dr. Bernard Ku, who testified for SBC was a knowledgeable and impressive witness. However, during cross examination, he agreed that he was not familiar with the legal definition for enhanced service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non–Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications*591 service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services*, (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the evidence and testimony presented at the hearing, the Court finds, for purposes of the § 365 motion before it, that the Debtor's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Debtor's system falls outside of the definition of "telecommunications service" because Debtor's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Debtor's service is not a "telecommunications service" subject to access charges, but rather

is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to the Debtor, that DataVoN provided "enhanced information services". *See* Order Granting Motion to Sell, 02–38600–SAF–11, no. 465, entered May 29, 2003. The Debtor now uses DataVoN's assets in its business.

Because the Court has determined that the Debtor's service is an "enhanced service" not subject to the payment of access charges, the Debtor has met its burden of demonstrating adequate assurance of future performance under the Master Agreement. The Debtor has demonstrated that it is within Debtor's reasonable business judgment to assume the Master Agreement.

Regardless of the ability of the Debtor to assume this agreement, the Court cannot go further in its ruling, as the Debtor has requested to order AT & T to resume *592 providing service to the Debtor under the Master Agreement. The Court has reached the conclusions stated herein in the context of the § 365 motion before it and on the record made at the hearing. An injunction against AT & T would require an adversary proceeding, a lawsuit. Both the Debtor and AT & T are still bound by the exclusive jurisdiction provision in § 13.6 of the Master Agreement, as found by the United States District Court for the Northern District of Texas, Hon. Terry R. Means. As Judge Means ruled, any suit brought to enforce the provisions of the Master Agreement must be brought in New York.

IV. Conclusion

In conclusion, the Court finds that the provisions of 11 U.S.C. § 365 have been met in this case. Because the Court finds that the Debtor's service is an enhanced service, not subject to payment of access charges, it is therefore within Debtor's reasonable business judgment to assume the Master Agreement with AT & T.

Only the Debtor offered evidence of the cure amounts at the hearing. Based on the record at the hearing, the current outstanding balance due from Debtor to AT & T is $103,262.55. To assume the Master Agreement, the Debtor must pay this Cure Amount to AT & T within ten (10) days of the entry of the Court's order on this opinion.

A separate order will be entered consistent with this memorandum opinion.

Bkrtcy.N.D.Tex.,2005.
In re Transcom Enhanced Services, LLC
427 B.R. 585

END OF DOCUMENT

EXHIBIT 2

The following constitutes the order of the Court.

Signed May 16, 2006

Harlin DeWayne Hale
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CHAPTER 11**
	§	
	§	**CONFIRMATION HEARING:**
DEBTOR.	§	**MAY 16, 2006 @ 10:00 a.m.**

ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED

Came on for consideration on May 16, 2006 the Original Joint Plan of Reorganization Proposed by Transcom Enhanced Services, LLC (the "Debtor") and First Capital Group of Texas III, L.P. ("First Capital") filed on March 31, 2006 (the "Plan"). The Debtor and First Capital are collectively referred to herein as the "Proponents." All capitalized terms not defined herein have the meanings ascribed to them in the Plan. Just prior to the confirmation hearing, the Proponents filed their Modifications to Plan which relate to the Objections to Confirmation filed by Carrollton-Farmers Branch, Dallas County, Tarrant County and Arlington ISD, as well as the

comments of the United States Trustee and the Objection to Cure Amount in Plan filed by Riverrock Systems, Ltd. ("Riverrock"). The modifications comport with Bankruptcy Code 1127. In addition to the above objections, Broadwing Communications LLC ("Broadwing") and Broadwing Communications Corporation ("BCC") (collectively "Broadwing") filed its Objection to Final Approval of Disclosure Statement and Confirmation of Plan on May 11, 2006. Similar to the objections of Riverrock and the taxing authorities, and based upon an agreement reached between the Debtor and Broadwing, Broadwing withdrew its objection and amended its ballots to accept the Plan at the confirmation hearing. The Bankruptcy Court, having considered the Disclosure Statement, the Plan, the statements of counsel, the evidence presented or proffered, the pleadings, the record in this case, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

Findings of Fact

1. On February 18, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as debtor in possession.

2. The Debtor was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, the Debtor has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

EXHIBIT 2

3. The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

4. Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications). The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. In contested hearings held on or about April 14, 2005, the Debtor established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, Debtor's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.

5. On March 31, 2006, the Proponents filed their Original Plan of Reorganization (the "Plan") and Disclosure Statement for Plan (the "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement (the

EXHIBIT 2

"Motion for Conditional Approval"). On April 12, 2006, and over the objections of Broadwing and EDS Information Services, L.L.C. ("EDIS"), the Court entered its order granting the Motion for Conditional Approval and conditionally approving the Disclosure Statement (the "Conditional Approval Order"). Under the Conditional Approval Order, a final hearing to consider approval of the Disclosure Statement was combined with the confirmation hearing of the Plan, which hearings were set for May 16, 2006 at 10:00 a.m. (the "Combined Hearing"). Thereafter, and in accordance with the Conditional Approval Order, the Disclosure Statement was supplemented to address the concerns raised in the objections of both Broadwing and EDIS, the Plan and Disclosure Statement was distributed to creditors, interest-holders, and other parties-in-interest.

6. On or about April 10, 2006 and May 15, 2006, the Proponents filed non-material Modifications to the Plan pursuant to Bankruptcy Code § 1127 ("Plan Modifications").

7. The objections filed by Dallas County, Tarrant County, Carrollton-Farmers Branch ISD, Arlington ISD, Riverrock and Broadwing have been withdrawn.

8. The Proponents have provided appropriate, due and adequate notice of the Combined Hearing, the Disclosure Statement and Plan Supplements and the Plan Modifications, and such notice is in compliance with Bankruptcy Code § 1127 and Bankruptcy Rules 2002, 3019, 6006 and 9014. Without limiting the foregoing, as evidenced by certificates of service related thereto on file with the Court, and based upon statements of counsel, the Proponents have complied with the notice and solicitation procedures set forth in the April 12, 2006 Conditional Approval Order. No further notice of the May 16, 2006 Combined Hearing, the Plan, the Disclosure Statement or the Plan Modifications is necessary or required.

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9. Class 1, consisting of the Pre-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

10. Class 2, consisting of the Post-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

11. Class 3, consisting of the Secured Claim on Redwing Equipment Partners Limited as successor-in-interest to Veraz Networks, Inc. ("Redwing"), is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

12. Class 4, consisting of the Secured Tax Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

13. Class 5, consisting of General Unsecured Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

14. Classes 6 and 7 of the Plan shall receive nothing under the Plan, and are deemed to reject the Plan.

15. Confirmation of the Plan is in the best interest of the Debtor, the Debtor's Estate, the Creditors of the Estate and other parties in interest.

16. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the assumption of the executory contracts and unexpired leases specifically identified in Article X of the Plan, including the Debtor's Customer Contracts under Plan Section 10.01 and Vendor Agreements under Plan Section 10.02 and specifically listed on Exhibit 1-B of the Plan. No cure payments are owed with respect to the Debtor's Customer Contracts; and the only cure payments owed with respect to the Vendor Agreements are specifically identified in

Exhibit 1-B of the Plan. No other arrearages are owed with respect to the Vendor Agreements. Unless otherwise provided in the Plan Modifications, the proposed cure amounts set forth in Section 10.02 satisfies, in all respects, Bankruptcy Code § 365. Furthermore, the Court finds that the Debtor has articulated good and sufficient business reasons justifying the rejection of all other executory contracts and unexpired leases of the Debtor.

17. The Proponents have solicited the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

Conclusions of Law

18. The Court has jurisdiction over this Chapter 11 Case and of the property of the Debtor and its Estate under 28 U.S.C. §§ 157 and 1334.

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

20. Good and sufficient notice of the Disclosure Statement, the Plan, solicitation thereof, the May 16, 2006 Combined Hearing and the Plan Modifications have been given in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Northern District of Texas and the April 12, 2006 Conditional Approval Order. The Plan Modifications that were filed with the Bankruptcy Court are non-material and do not require additional disclosure or re-solicitation of Plan acceptances and/or rejections.

21. Adequate and sufficient notice of the Plan Modifications has been provided to the appropriate parties which have agreed to the modifications. Pursuant to Bankruptcy Rule 3019, the Bankruptcy Court finds that the Plan Modifications do not adversely change the treatment of the holder of any Claim under the Plan, who has not accepted in writing the Plan Modifications.

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All Creditors who have accepted the Plan without the Plan Modifications, are deemed to accept the Plan with the Plan Modifications.

22. The Plan complies with all applicable requirements of Bankruptcy Code §§ 1122 and 1123. Furthermore, the Plan complies with the applicable requirements of Bankruptcy Code §§ 1129(a) and (b), including, but not limited to the following:

a. the Plan complies with all applicable provisions of the Bankruptcy Code;

b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;

c. the Plan has been proposed in good faith and not by any means forbidden by law;

d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;

e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;

f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;

g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;

h. the Plan does not unfairly discriminate against dissenting classes;

i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;

j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;

k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;

m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;

n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

23. All requirements of Bankruptcy Code § 365 relating to the assumption, rejection, and/or assumption and assignment of executory contracts and unexpired leases of the Debtor have been satisfied. The Debtor has demonstrated adequate assurance of future performance with regard to the assumed executory contracts and unexpired leases of the Debtor.

24. The Redwing Settlement Agreement attached as Exhibit 1-A to the Plan is fair and equitable, and approval of the Redwing Settlement Agreement is in the best interests of the Debtor and its Estate.

25. All releases of claims and causes of action against non-debtor persons or entities that are embodied within Section 15.04 of the Plan are fair, equitable, and in the best interest of the Debtor and its Estate.

26. The Proponents and their members, officers, directors, employees, agents and professionals who participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be deemed to have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect thereto and are entitled to the rights, benefits and protections of Bankruptcy Code §§ 1125(d) and (e).

27. The Disclosure Statement contains "adequate information" as defined in 11 U.S.C. § 1125. All creditors, equity interest holders and other parties in interest have received appropriate notice and an opportunity for a hearing of the Plan and the Disclosure Statement.

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28. The Plan and Disclosure Statement have been transmitted to all creditors, equity interest holders and parties in interest. Notice and opportunity for hearing have been given.

29. The requirements of §1129 (a) and (b) have been met.

30. The Plan as proposed is feasible.

31. All conclusions of law made or announced by the Court on the record in connection with the May 16, 2006 Combined Hearing are incorporated herein.

32. All conclusions of law which are findings of fact shall be deemed to be findings of fact and vice versa.

It is therefore,

ORDERED that the Disclosure Statement for Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, is hereby APPROVED; it is further

ORDERED that the Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, as modified, is hereby CONFIRMED; it is further

ORDERED that the Debtor and First Capital are authorized to execute any and all documents necessary to effect and consummate the Plan; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Customer Contracts, as specifically defined in Section 10.01 of the Plan, is hereby approved; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Vendor Agreements, as specifically defined in Section 10.02 of the Plan, is hereby approved; it is further

ORDERED that unless otherwise agreed to in writing by the Reorganized Debtor and the counter-party to the Vendor Agreement, the Reorganized Debtor shall cure the arrears

specifically listed in Exhibit 1-B of the Plan by tendering six (6) equal consecutive monthly payments to the Vendor Agreement counter-party until the arrears are paid in full; it is further

ORDERED that, except for the Customer Contracts, Vendor Agreements, and executory contracts or leases that were expressly assumed by a separate order, all pre-petition executory contracts and unexpired leases to which the Debtor was a party are hereby REJECTED effective as of the Petition Date; it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the Redwing Settlement Agreement is hereby APPROVED, and the Debtor may execute any and all documents required to carry out the Redwing Settlement, including, but not limited to the Redwing Settlement Agreement, and such agreement shall be in full force and effect; it is further

ORDERED that nothing contained in this Order or the Plan shall effect or control or be deemed to prejudice or impair the rights of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. or Redwing with respect to the dispute over the validity or extent of any license claimed by the Debtor in 15,000 ICE or logical ports currently utilized by the Debtor in connection with the operation of its network and each of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. and Redwing reserve all of their rights with respect to such issue; it is further

ORDERED that except as otherwise provided in Plan Section 15.03, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or

EXHIBIT 2

omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor's Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

*** END OF ORDER ***

PREPARED BY:

By /s/ David L. Woods (5.16.06)
J. Mark Chevallier
State Bar No. 04189170
David L. Woods
State Bar No. 24004167
MCGUIRE, CRADDOCK & STROTHER, P.C.
ATTORNEYS FOR DEBTOR and
DEBTOR-IN-POSSESSION

EXHIBIT 3

The following constitutes the ruling of the court and has the force and effect therein described.

Harlin DeWayne Hale

Signed September 20, 2007 **United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CASE NO. 05-31929-HDH-11**
	§	
DEBTOR.	§	
	§	
TRANSCOM ENHANCED SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§	**ADVERSARY NO. 06-03477-HDH**
	§	
Defendants.	§	
	§	

EXHIBIT 3

GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§
Third Party Plaintiffs,	§
v.	§
TRANSCOM ENHANCED SERVICES, LLC and TRANSCOM COMMUNICATIONS, INC.,	§
Third Party Defendants.	§

ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER

On this date, came on for consideration the Motion For Partial Summary Judgment On Counterplaintiffs' Sole Remaining Counterclaim Based On The Affirmative Defense That Transcom Qualifies As An Enhanced Service Provider (the "Motion") filed by Transcom Enhanced Services, Inc. ("Transcom" or "Counterdefendant"), in which Transcom seeks summary judgment on the sole remaining counterclaim (the "Counterclaim") asserted by Counterplaintiffs' Global Crossing Bandwidth, Inc. ("GX Bandwidth") and Global Crossing Telecommunications, Inc. ("GX Telecommunications") (collectively, "GX Entities" or "Counterplaintiffs") based on the affirmative defense that Transcom qualifies as an enhanced service provider.

Twice previously, this Court has ruled that Transcom qualifies as an enhanced service provider, and therefore is not obligated to pay access charges, but rather must pay end user charges. In filing the motion, Transcom relied heavily on the evidence previously presented to this Court in contested hearings (the "ESP Hearings") involving the SBC Telcos (collectively, "SBC") and AT&T

Corp. ("AT&T") along with Affidavits from a principal of Transcom and one of Transcom's expert witnesses establishing that Transcom's system has not changed since the time of the ESP Hearings, that the services provided to the GX Entities by Transcom are the same as the services provided to all other Transcom customers, and that Transcom's expert witness is still of the opinion that Transcom's business operations fall within the definitions of "enhanced service provider" and "information service."

In response to the Motion, Counterplaintiffs have asserted that they neither oppose nor consent to the relief sought in the Motion. In their responses to Transcom's interrogatories, however, Counterplaintiffs asserted that Transcom did not qualify as an enhanced service provider because its service is merely an "IP-in-the-middle" service, which Transcom asserts is a reference to the FCC's Order, *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges,* 19 FCC Rcd 7457, Release Number FCC 04-97, released April 21, 2004 (the "AT&T Order").

During the ESP Hearings, a number of witnesses testified on the issue of whether Transcom is an enhanced service provider and therefore exempt from payment of access charges. The transcripts and exhibits from those hearings have been introduced as summary judgment evidence in support of the Motion. That record establishes by a preponderance of the evidence that the service provided by Transcom is distinguishable from AT&T's specific service (as described in the AT&T Order) in a number of material ways, including, but not limited to, the following:

(a) Transcom is not an interexchange (long distance) carrier.

(b) Transcom does not hold itself out as a long distance carrier.

(c) Transcom has no retail long distance customers.

(d) The efficiencies of Transcom's network result in reduced rates for its customers.

(e) Transcom's system provides its customers with enhanced capabilities.

(f) Transcom's system changes the content of every call that passes through it.

On its face, the AT&T Order is limited to AT&T and its specific services. This Court therefore holds again, as it did at the conclusion of the ESP hearings, that the AT&T Order does not control the determination of whether Transcom qualifies as an enhanced service provider.

The term "enhanced service" is defined at 47 C.F.R. § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services.* (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the summary judgment evidence, the Court finds that Transcom's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Transcom's system falls outside of the definition of "telecommunications service" because Transcom's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not

necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Transcom's service is not a "telecommunications service" subject to access charges, but rather is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to Transcom, that DataVoN provided "enhanced information services." *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. Transcom now uses DataVoN's assets in its business.

In the Counterclaim, paragraph 94 makes the following assertion:

> Under the Communications Agreement, the Debtor asserted that it was an enhanced service provider. Not only did the Debtor make this assertion, it agreed to indemnify GX Telecommunications in the event that assertion proved untrue.

The Counterclaim goes on to allege that Transcom failed to pay access charges, and that Transcom is therefore liable under the indemnification provision in the governing agreement to the extent that it does not qualify as an enhanced service provider. In response to the Counterclaim, Transcom asserted the affirmative defense that it does indeed qualify as an enhanced service provider, and therefore has no liability under the indemnification provision. The Motion seeks summary judgment on that specific affirmative defense.

The Court has previously ruled, and rules again today, that Transcom qualifies as an enhanced service provider. As such, it is the opinion of the Court that the Motion should be granted.

It is therefore ORDERED that the Motion is GRANTED, and Transcom is awarded summary judgment that the GX Entities take nothing by their Counterclaim.

###END OF ORDER###

EXHIBIT 3

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EXHIBIT 4

The following constitutes the order of the Court.

Signed May 28, 2003.

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 02-38600-SAF-11**
	§	**(Jointly Administered)**
DATAVON, INC., et al.,	§	**CHAPTER 11**
	§	
DEBTORS.	§	
	§	

ORDER GRANTING MOTION FOR ENTRY OF ORDERS (i) AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, INTERESTS AND EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX; (ii) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (iii) ESTABLISHING AUCTION DATE, RELATED DEADLINES AND BID PROCEDURES; (iv) APPROVING THE FORM AND MANNER OF SALE NOTICES; AND (v) APPROVING BREAK-UP FEES IN CONNECTION WITH THE SOLICITATION OF HIGHER OR BETTER OFFERS

Upon the motion of DataVoN, Inc. ("DataVoN"), DTVN Holdings, Inc. ("DTVN"), Zydeco Exploration, Inc. ("Zydeco"), and Video Intelligence, Inc. ("VI") (collectively, the "Debtors") dated December 31, 2002, for, among other things, entry of an order under 11 U.S.C. §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 (i) authorizing

and approving the sale of substantially all of the assets of the estate free and clear of liens, claims, encumbrances, interests and exempt from any stamp, transfer, recording or similar tax; (ii) authorizing the assumption and assignment of various executory contracts and unexpired leases; (iii) establishing an auction date, related deadlines and bid procedures in connection with the asset sale; (iv) approving the form and manner of sale notices to be sent to potential bidders, creditors and parties-in-interest; and (v) approving certain break-up fees in connection with the solicitation of higher or better offers for the assets (the "Sales Motion");[1] and the Court having entered on February 20, 2003 an order with respect to the Sale (i) Establishing Auction Date, Related Deadlines and Bid Procedures; (ii) Approving the Form and Manner of Sales Notices; and (iii) Approving Break-up Fees in Connection with the Solicitation of Higher or Better Offers (the "Bid Procedures Order"), that scheduled a hearing on the Sale Motion (the "Sale Hearing") and set an objection deadline with respect to the Sale; and the Sale Hearing having been commenced on April 1, 2003; and the Court having reviewed and considered the Sales Motion, the objections thereto, if any, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sales Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the record of the Sale Hearing and in this case; and after due deliberation thereon; and good cause appearing therefore; it is hereby

FOUND AND DETERMINED THAT:[2]

1. The Court has jurisdiction over the Sales Motion pursuant to 28 U.S.C. § 1334.

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[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Sales Motion.

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

EXHIBIT 4

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in the Sales Motion are §§ 105(a), 363(b), (f), (m), and (n), 365, and 1146(c) of the United States Bankruptcy Code (11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code")) and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014.

3. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sales Motion, the Sale Hearing, and the Sale has been provided in accordance with Bankruptcy Code §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 and in compliance with the Bidding Procedures Order; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Sales Motion, the Sale Hearing, or the Sale is or shall be required.

4. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the assumption and assignment of the Assumed Contracts and the cure payments to be made therefore has been provided in accordance with Bankruptcy Code §§ 105(a) and 365 and Fed.R.Bankr.P. 9014; (ii) such notice was good and sufficient; and (iii) no other or further notice of the assumption and assignment of the Assumed Contracts is or shall be required.

5. As demonstrated by: (i) the testimony and other evidence proffered or adduced at

the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and the Bid Selection Committee marketed the Assets and conducted the Sale process in compliance with the Bidding Procedures Order.

6. The Debtors: (i) have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Assets by the Debtors has been duly and validly authorized by all necessary corporate action of the Debtors; (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement; and (iii) have taken all corporate action necessary to authorize and approve the Agreement and the consummation by the Debtors of the transactions contemplated thereby. No consents or approvals other than those expressly provided for in the Agreement are required for the Debtors to consummate such transactions.

7. Approval of the Agreement and consummation of the Sale at this time are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

8. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to Bankruptcy Code § 363(b) prior to, and outside of, a plan of reorganization in that, among other things:

a. The Debtors and the Bid Selection Committee diligently and in good faith marketed the Assets to secure the highest and best offer therefore. Further, the Debtors and the Bid Selection Committee published a notice substantially in the form of the Sale Notice in *The Wall Street Journal.* The terms and conditions set forth in the Agreement, and the transfer to Purchaser of the Assets pursuant thereto, represent a fair and reasonable purchase price and constitute the highest and best offer obtainable for the Assets.

b. A sale of the Assets at this time to Purchaser pursuant to Bankruptcy Code § 363(b) is the only viable alternative to preserve the value of the Assets and to maximize the Debtors' estates for the benefit of all constituencies. Delaying approval of the Sale may result in Purchaser's termination of the Agreement and result in an alternative

outcome that will achieve far less value for creditors.

c. Except as otherwise provided in this Sale Order, the cash proceeds of the Sale will be distributed to the Debtors' administrative and pre-petition creditors under the terms of a confirmed liquidating Chapter 11 plan.

d. The highest and best offer received for the purchase of the Assets came from Transcom Communications, Inc. ("Transcom" or "Purchaser").

9. On March 3, 2003, the Debtors filed their Notice of Cure Amounts Under Contracts and Leases that may be Assumed and Assigned to Purchaser of Substantially All of Debtors' Assets, detailing the executory contracts that may be assumed and assigned to the successful purchaser of the Debtors' assets (the "Assumed Contracts"). The Cure Notice not only fixed the Cure Amount for each contract for any non-objecting party, but also constituted a waiver by any non-objecting party to the assumption and assignment of the various contracts to the Purchaser. The Assumed Contracts are unexpired and executory contracts within the meaning of the Bankruptcy Code. Pursuant to the Agreement, the Purchaser shall cure all monetary defaults under the Assumed Contracts as provided for in the Notice or as agreed between the parties to any Assumed Contract. There are no non-monetary defaults requiring cure. The Sale satisfies the requirements of Bankruptcy Code § 365(b). The Debtors are not required to cure any defaults of the kind described in Bankruptcy Code § 365(b)(2). The Purchaser's excellent financial health and own expertise in the telecommunications industry provide adequate assurance of future performance to all non-debtor parties to Assumed Contracts. Pursuant to Bankruptcy Code § 365(f), all restrictions on assignment in any of the Assumed Contracts are unenforceable against the Debtors and all Assumed Contracts may lawfully be assigned to the Purchaser.

10. A reasonable opportunity to object or be heard with respect to the Sale Motion

and the relief requested therein has been afforded to all interested persons and entities, including: (i) each and every holder of a "claim" (as defined in Bankruptcy Code § 101(5)) against the Debtors; (ii) each and every holder of an equity or other interest in the Debtors; (iii) each and every contractor and subcontractor that has performed any services or otherwise dealt with any of the Assets; (iv) each and every Governmental Entity with jurisdiction over the Debtors or any of the Assets; (v) each and every holder of an Encumbrance on any of the Assets; (vi) the Office of the United States Trustee for the Northern District of Texas; (vii) the Official Committee of Unsecured Creditors appointed in the Debtors' cases under the Bankruptcy Code, if any; (viii) any and all other persons and entities upon whom the Debtors are required (pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any order of the Court) to serve notice; (ix) any and all other persons and entities upon whom Purchaser instructed Seller to serve notice; and (x) any parties who are on the list of prospective purchasers maintained by CRP.

11. The Agreement was negotiated, proposed, and entered into by the Debtors, CRP, members of the Bid Selection Committee, and Purchaser without collusion, in good faith, and from arm's-length bargaining positions. None of the Debtors, CRP, members of the Bid Selection Committee, and the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code § 363(n).

12. Purchaser is a good faith purchaser under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. Purchaser will be acting in good faith within the meaning of Bankruptcy Code § 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Sale Order.

13. The consideration provided by Purchaser for the Assets pursuant to the

Agreement: (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical, available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code.

14. The Sale must be approved promptly in order to preserve the value of the Assets.

15. The transfer of the Assets to Purchaser will be a legal, valid, and effective transfer of such Assets, and will vest Purchaser with all right, title, and interest of the Debtors to such Assets free and clear of all Interests, including those: (i) that purport to give any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or Purchaser's interest in such Assets, or any similar rights, or (ii) relating to taxes arising under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the date (the "Closing Date") of the consummation of the Agreement (the "Closing").

16. Purchaser would not have entered into the Agreement, and would not have been willing to consummate the transactions contemplated thereby, if the sale of the Assets to Purchaser were not free and clear of all Interests, or if Purchaser would, or in the future could, be liable for any of the Interests. Thus, any ruling that the sale of Assets was not free and clear of all Interests, or that Purchaser would, or in the future could, be liable for any Interests would adversely affect the Debtors, their estates, and their creditors.

17. The Debtors may sell the Assets free and clear of all Interests because, in each case, one or more of the standards set forth in Bankruptcy Code §§ 363(f)(1)-(5) has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Sale or the Sales Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2).

Those holders of Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale.

18. Except with respect to the payment of the Cure Amounts and the Assumed Liabilities, the transfer of the Assets to Purchaser will not subject Purchaser, prior to the Closing Date, to any liability whatsoever with respect to the operation of the Debtors' business or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability.

19. The valuations placed by the Bid Selection Committee on the Purchaser's bid are fair and reasonable and reflect fair and reasonable consideration for the sale of the Assets.

20. Through DataVoN, the primary operating subsidiary, the Debtors provide enhanced information services, including toll-quality voice and data services utilizing converged, Internet protocol (IP) transmitted over private IP networks. DataVoN, Inc., the primary operating subsidiary of the Debtors is a provider of wholesale enhanced information services. DataVoN provides toll quality voice and data communications services over private IP networks (VoIP) to carrier and enterprise customers. Companies who deploy soft switch equipment on an IP network can provide high quality video, voice, and data services while retaining flexibility, scalability, and cost efficiencies. DTVN is a holding company with no operations of its own. DataVoN's information services include voice origination, voice termination, 8xx origination and termination, utilizing voice over IP technology. VI formerly provided video services. That

line of business has been withdrawn. Zydeco, once the manager of DTVN's corporate oil and gas holdings, sold most of its assets in the third quarter of 2001 and retains only nominal activity.

21. Objections to the Sales Motion were filed by Cisco Systems, Inc. and Unipoint Holdings, Inc. with respect to certain aspects of the Sales Motion. Those objections were resolved by settlement terms announced on the record as follows: (1) the "Transcom Note" as set forth in section 9.32(g) of the Agreement shall be modified to provide that the original principal amount of the note may not be less than $1,282,539 and that such principal and accrued interest, if any, may be offset only by an allowed secured claim of Transcom as set forth in a final order; (2) the interest accuring on any allowed secured claim of Transcom, if any, will be equal to and shall not exceed an offsetting interest under the Transcom Note; (3) on the Closing Date of the Sale, Transcom shall wire transfer the sum of $100,000 to Unipoint, per Unipoint's instructions, in connection with that certain Reimbursement Agreement executed by and between Unipoint and Transcom; (4) Transcom will, at Closing, pay $440,000.00, to Hughes & Luce, LLC, to be held in Hughes & Luce, L.L.P.'s IOLTA Trust Account, in trust for the payment of Cisco's administrative claim in this case in accordance with the Term Sheet by and between Cisco and the Debtors as approved by the Court in its Order dated March 26, 2003, with such funds to be wire transferred by Hughes & Luce, L.L.P., pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale; and (5) Transcom shall amend the Agreement to reflect that Transcom is not acquiring net operating losses of the Debtors. Each of the foregoing terms shall be collectively referred to hereafter as the "Settlement Terms."

22. All cash consideration paid on the date of Closing of the Sale ("Sale Proceeds") shall be delivered to Hughes & Luce, L.L.P. ("H&L") and shall be placed in H&L's IOLTA

EXHIBIT 4

Trust Account. In addition to the Sale Proceeds, pursuant to the Settlement Terms, $440,000.00 shall be delivered to H&L, to be disbursed to Cisco pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale. Pursuant to the terms of that certain Order approving employee stay put bonuses, $344,860.54 of the Sale Proceeds, if delivered to H&L, shall be disbursed to the DataVoN, Inc. payroll account pursuant to written instructions from DataVoN, Inc., for the purpose of funding the employee stay put bonuses. After the aforesaid disbursements to Cisco and for the employee stay put bonuses, all remaining Sale Proceeds delivered to H&L shall be held in H&L's IOLTA Trust Account until the earlier to occur of (i) Confirmation of the Plan and creation of the Liquidating Trust, at which time H&L shall transfer such remaining Sale Proceeds to the Liquidating Trust by wire transfer, pursuant to the written instructions of the Liquidating Trustee, (ii) receipt by H&L of written Order of the Court ordering disbursement of the Sale Proceeds if the Plan is not Confirmed, or (iii) June 30, 2003, and petition by H&L to the Court requesting further direction of the Court regarding disbursement of remaining Sale Proceeds.

NOW THEREFORE, IT IS HEREBY:

General Provisions

ORDERED that the Sales Motion is granted, as further described herein; it is further

ORDERED that all objections to the Sales Motion or to the relief requested therein that have not been withdrawn, waived, or settled and all reservations of rights included in any objection to the Sales Motion are hereby overruled on the merits; it is further

ORDERED that the Court's findings and conclusions stated at the Sale Hearing are incorporated herein; it is further

EXHIBIT 4

Approval of the Agreement

ORDERED that the Agreement as modified by the Settlement Terms, and all of the terms and conditions thereof, are hereby approved; it is further

ORDERED that pursuant to Bankruptcy Code § 363(b), the Debtors are authorized and directed to consummate the Sale as modified by the Settlement Terms, pursuant to and in accordance with the terms and conditions of the Agreement as modified by the Settlement Terms; it is further

ORDERED that the Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Agreement as modified by the Settlement Terms, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement as modified by the Settlement Terms, and to take all further actions as may be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring the Assets to Purchaser or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement as modified by the Settlement Terms; it is further

ORDERED that on the Closing Date of the Sale, the Debtors and Hughes & Luce, L.L.P. ("H&L") shall (i) refund the $50,000 deposit paid by Unipoint Holdings, Inc. ("Unipoint") and held by H&L in its IOLTA trust account by wire transfer per written instructions from Unipoint, (ii) refund the $50,000 deposit paid by CNM Network Inc. ("CNM") and held by H&L in its IOLTA trust account by wire transfer per written instructions from CNM, and (iii) provided Transcom substitutes the equivalent sum on the Closing Date of the Sale, refund the $50,000

deposit paid by Transcom and Sowell and held by H&L in its IOLTA trust account by wire transfer per written instructions from Transcom; it is further

Assignment and Assumption of Assumed Contracts

ORDERED that the Debtors are hereby authorized and directed, in accordance with § 365(b) of the Bankruptcy Code: (i) to assume and assign to the Purchaser the Assumed Contracts, with the Purchaser being responsible for the cure amounts specified in Exhibit "A" attached hereto (the "Cure Amounts") and (ii) to execute and deliver to the Purchaser such assignment documents as may be necessary to sell, assign, and transfer the Assumed Contracts. The Purchaser shall provide no adequate assurance of future performance under the Assumed Contracts, other than its promise to perform pursuant to the terms and conditions of the Assumed Contracts. Pursuant to Bankruptcy Code §§ 365(a), (b), (c) and (f), the Purchaser is directed to pay the Cure Amounts on the Closing Date, within a reasonable period of time thereafter, or as agreed by the Purchaser with the non-debtor party or parties to any Assumed Contract; it is further

ORDERED that upon the closing of the Agreement in accordance with this Order, any and all defaults under the Assumed Contracts shall be deemed cured in all respects; it is further

ORDERED that all provisions limiting the assumption and/or assignment of any of the Assumed Contracts are invalid and unenforceable pursuant to Bankruptcy Code § 365(f); it is further

Transfer of Assets

ORDERED that pursuant to Bankruptcy Code §§ 105(a) and 363(f), all Assets shall be transferred to Purchaser as of the Closing Date, and all Assets shall be free and clear of all

Interests, with all such Interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Assets, subject to any claims and defenses the Debtors may possess with respect thereto; it is further

ORDERED that except as expressly permitted or otherwise specifically provided by the Agreement as modified by the Settlement Terms or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests against or in the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under, out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Assets to Purchaser, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser or its successors or assigns, their property, or the Assets, such persons' or entities' Interests; it is further

ORDERED that the transfer of the Assets to Purchaser pursuant to the Agreement as modified by the Settlement Terms constitutes a legal, valid, and effective transfer of the Assets and shall vest Purchaser with all right, title, and interest of the Debtors in and to all Assets free and clear of all Interests; it is further

Additional Provisions

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, or the District of Columbia; it is further

EXHIBIT 4

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms is fair and reasonable and may not be avoided under Bankruptcy Code § 363(n); it is further

ORDERED that on the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist; it is further

ORDERED that this Sale Order (a) shall be effective as a determination that, on the Closing Date, all Interests existing as to the Debtors or the Assets prior to the Closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; it is further

ORDERED that each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement; it is further

EXHIBIT 4

ORDERED that if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests in the Debtors or the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the person or entity has with respect to the Debtors or the Assets or otherwise, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever; it is further

ORDERED that Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets, other than payment of the Cure Amounts, the amounts specified in the Settlement Terms and the Assumed Liabilities and its obligations to perform under the Assumed Contracts after the Closing Date. Without limiting the generality of the foregoing, Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and Purchaser shall not have any successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date except as specified in the Settlement Terms; it is further

EXHIBIT 4

ORDERED that under no circumstances shall Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Assets of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors. All persons holding Interests against or in the Debtors or the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests against Purchaser, its successors and assigns, its properties, or the Assets with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Assets. Following the Closing Date no holder of an Interest in the Debtors shall interfere with Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtors may take in its chapter 11 case; it is further

ORDERED that subject to, and except as otherwise provided in, the Bidding Procedures Order, any amounts that become payable by the Debtors pursuant to the Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Agreement shall (a) constitute administrative expenses of the Debtors' estate and (b) be paid by the Debtors in the time and manner as provided in the Agreement without further order of this Court; it is further

ORDERED that this Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, the Settlement Terms, and all amendments thereto, any waivers and consents thereunder, and of each of the documents executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets

to Purchaser, (b) resolve any disputes arising under or related to the Agreement except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Sale Order, and (d) protect Purchaser against any Interests in the Debtors or the Assets; it is further

ORDERED that nothing contained in any plan of liquidation confirmed in these cases or in any final order of this Court confirming such plan shall conflict with or derogate from the provisions of the Agreement, the Settlement Terms, or the terms of this Sale Order; it is further

ORDERED that the transfer of the Assets pursuant to the Sale shall not subject Purchaser to any liability with respect to the operation of the Debtors' business prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability; it is further

ORDERED that the transactions contemplated by the Agreement as modified by the Settlement Terms are undertaken by Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by Bankruptcy Code § 363(m); it is further

ORDERED that the terms and provisions of the Agreement, the Settlement Terms and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, Purchaser, and their respective affiliates, successors

and assigns, and any affected third parties including, but not limited to, all persons asserting Interests in the Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code. The terms and provisions of the Agreement and of this Sale Order likewise shall be binding on any such trustee(s); it is further

ORDERED that the failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement as modified by the Settlement Terms be authorized and approved in its entirety; it is further

ORDERED that the Agreement and related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or impair the Settlement Terms; it is further

ORDERED that the transfer of the Assets pursuant to the Sale is a transfer pursuant to Bankruptcy Code § 1146(c), and accordingly shall not be taxed under any law imposing a stamp tax or a sale, transfer, or any other similar tax; it is further

ORDERED that as provided by Fed.R.Bankr.P. 6004(g), this Sale Order shall not be stayed for 10 days after the entry of the Sale Order and shall be effective and enforceable immediately upon entry; it is further

ORDERED that the provisions of this Sale Order and the Settlement Terms recited herein are non-severable and mutually dependent; and it is further

EXHIBIT 4

ORDERED that in the event that Purchaser fails to close the Sale Agreement as modified by the Settlement Terms on or before June 2, 2003, the Debtors shall close under the next highest bid from Unipoint Holdings, Inc. reflected in its Asset Purchase Agreement of April 25, 2003 (the "Unipoint APA"). In such event, this Order and all of its findings shall be automatically effective as to Unipoint Holdings, Inc. as "Purchaser" and the Unipoint APA as the "Sale Agreement" without further hearing or order of this Court.

END OF ORDER # #

EXHIBIT 4
EXHIBIT A TO SALE ORDER

Non-Debtor Contract Party	Agreement Name/Description	Proposed Cure Amount (as of April 4, 2003)	
Broadwing Communication Services, Inc.	Master Service Agreement dated February 28, 2001 as amended and supplemented; Settlement Agreement as approved by Bankruptcy Court Order dated January 28, 2003	$	60,000.00
Campbell Road Village (Ippolito)	Gross Standard Shopping Center Lease dated May 19, 2000	$	1,455.17
Dell Financial Services	Lease dated August 1, 2001	$	10,238.32
Electronic Data Systems Corporation (EDS)	Sublease Agreement September 27, 2002	$	-
Gulfcoast Workstation Corp	Equipment Lease Agreement dated February 2, 2002	$	20,000.00
Illuminet, Inc.	Connectivity Service Agreement dated October 4, 2000	$	18,116.95
IpVerse/Nexverse	Software Licenses Agreement dated April 11, 2001	$	746,144.25
IX-2 Networks	License Agreement for Use of Collocation Space dated March 28, 2000	$	-
Looking Glass Networks	Looking Glass Service Agreement dated December 2001	$	1,062.00
OneStar Long Distance	Wholesale Service Agreement dated November 12, 2002	$	-
Pae Tec Communications, Inc.	Wholesale Local Service Agreement dated July 2002	$	27,289.38
RiverRock Systems, Ltd.	Application Service Provider Agreement date May 1, 2001	$	86,029.48
Sun Microsystems, Inc.	Sun Microsystems, Inc. Customer Agreement dated March 28, 2001	$	27,687.33
The CIT Group	Lease Agreement dated October 16, 2001	$	1,076.50

EXHIBIT 4
EXHIBIT A TO SALE ORDER

Focal Communications Corporation	Master Service Agreement dated June 14, 2001, as amended	As Agreed	
Transcom Communication Corporation	Master Service Agreement dated August 15, 2001, as supplemented	$	1,192,229.61
Barr Tel/ColoCentral	Master Services Agreement	$	-
C2C Fiber, Inc. n/k/a Capital Telecommunications, Inc.	Master Services Agreement dated August 31, 2001	$	-
Cytus Communication	Master Services Agreement dated December 20, 2002	$	-
ePhone Telecom, Inc.	Master Services Agreement dated April 3, 2002	$	-
Excel Telecommunications, Inc.	Master Services Agreement dated January 19, 2001	$	-
Florida Digital Network	Master Services Agreement dated September 7, 2001	$	-
Go-Comm, Inc.	Master Services Agreement dated April 1, 2002	$	-
Grande Communications Networks, Inc.	Master Services Agreement dated April 13, 2001	$	-
IDT Telecom LLC	Master Services Agreement dated February 12, 2002	$	-
IONEX Telecommunications, Inc.	Master Services Agreement dated October 28, 2002	$	-
ITC DeltaCom Communications, Inc.	Master Services Agreement dated September 25, 2002	$	-
ITXC Corporation	Master Services Agreement dated September 31, 2002	$	-
Linx Communications, Inc.	Master Services Agreement dated June 5, 2002	$	-
Macro Communications, Inc.	Master Services Agreement dated December 3, 2002	$	-

EXHIBIT 4
EXHIBIT A TO SALE ORDER

Novatel, Inc.	Reciprocal Services Agreement dated January 18, 2002	$	-
Novolink Communications, Inc.	Reciprocal Services Agreement dated January 10, 2002	$	-
Orion Telecommunications Corporation	Master Services Agreement dated August 13, 2001	$	-
TCAST Communications, Inc.	Master Services Agreement dated July 10, 2002	$	-
Telic Communications, Inc.	Master Services Agreement dated September 21, 2001	$	-
Transcom Communications, Inc.	Master Services Agreement dated February 16, 2001	$	-
TXU Communications Telecom Services Company	Master Services Agreement dated April 9, 2002	$	-
Voice Exchange, Inc.	Master Services Agreement dated May 2, 2002	$	-
Webtel Wireless, Inc.	Master Services Agreement dated July 19, 2002	$	-
WorldxChange Corporation	Master Services Agreement dated August 15, 2002	$	-
World Link Telecom, Inc.	Master Services Agreement dated October 9, 2002	$	-
XTEL	Master Services Agreement	$	-
TRC Telecom, Inc.	Master Services Agreement dated December 20, 2001	$	-
Capital Telecommunications, Inc.	Master Services Agreement dated March 19, 2001	$	-
SafeTel, Inc.	Master Services Agreement dated June 27, 2002	$	-
CT Cube LP	Master Services Agreement dated September 25, 2002	$	-

EXHIBIT 4
EXHIBIT A TO SALE ORDER

CGKC&H Rural Cellular #2	Master Services Agreement dated September 25, 2002	$	-
Dollar Phone Corporation	Master Services Agreement dated February 4, 2003	$	-
Pae Tec Communications, Inc.	Reciprocal Services Agreement dated July 15, 2002	$	-
MCI Worldcom Network Services, Inc.	Termination Services Agreement dated July 31, 2001	$	-
McGregor Bay Communications, Inc.	Agency Agreement dated March 18, 2002	$	-
Chip Greenberg Studios, Inc.	Agency Agreement dated July 25, 2002	$	-
CallNet, L.L.C.	Agency Agreement dated June 27, 2001	$	-
Barry L. Greenspan	Agency Agreement dated January 10, 2002	$	-
Brandon J. Becicka	Agency Agreement dated May 9, 2002	$	-
		$	2,191,328.99