ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	**Chapter 11**
	)	
Telscape International, Inc., et al.,	)	**Case Nos. 01-1561 through 01-1568**
	)	**(JJF)**
Debtors.	)	
	)	**(Jointly Administered)**
	)	**Hearing Date: May 24, 2001 at 11:30 a.m.**
	)	**Objections Due: May 22, 2001 at 12:00 p.m.**

NOTICE OF MOTION AND HEARING

TO: **The United States Trustee for the District, of Delaware,**
All parties requesting notice under Bankruptcy Rule 2002
Twenty Largest Unsecured Creditors
The Debtors' Secured Lender

PLEASE TAKE NOTICE that the Debtors filed the Motion For Entry of An Order:Pursuant to 11 U.S.C. §§ 105, 363, 503, and 507 and Federal Rule of Bankruptcy Procedure 6004 Approving Bidding Procedures Including, Without Limitation, Expense Reimbursement Provisions, and, Approving Form and Manner of Notice of Auction and Sale Hearing, Scheduling a Hearing to Consider Approval of The Sale of Certain of the Debtors' Assets and Establishment of Assumption, Cure and Objection Bar Date of Certain Executory Contracts and Unexpired Leases; and

Pursuant to 11 U.S.C. §§ 105, 363, 365 And 1146(c) and Federal Rules of Bankruptcy Procedure 6004, 6006 And 9014 (A) Approving The Sale Of Certain Of The Debtors' Assets Free And Clear Of Any and All Liens, Claims And Encumbrances , subject to

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agreement entered into by and between Buyer and Debtors on or before May 14, 2001 (3:00 P.M. Eastern Daylight Time) that Buyer will be liable for and pay and assume certain liabilities and costs associated with Asset Purchase Agreement and Assumed Contracts or cure amounts, as required under Section 365 of the Bankruptcy Code, (B) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases In Connection Therewith And (C) Exemption Of Such Sale And Assignment From Stamp Or Similar Taxes in respect of the sale of certain of the Debtor's Assets to TSG Capital, L.L.C. (the "Buyer").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Honorable Joseph J. Farnan, Jr., United States District Judge, in his courtroom located at the United States District Court for the District of Delaware, 844 North King Street, Wilmington, Delaware, 19801 on **May 24, 2001 at 11:30 a.m.**

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must: (a) be in writing; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; (c) be filed with the Clerk of the Bankruptcy Court for the District of Delaware, Fifth Floor, 824 Market Street, Wilmington, Delaware 19801, on or before **May 22, 2001 at 12:00 p.m.**; and (d) be served so as to be received no later than 12:00 p.m. on the same day upon (i) co-counsel to the Debtors,Young Conaway Stargatt & Taylor LLP, 11th Floor, Rodney Square North, P.O. Box 391, Wilmington, Delaware 19899, Attn.: Brendan Linehan Shannon, Esq.; (ii) counsel to Buyer, Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019, Attn: Raniero Daversa, Esq.;and (iii) the Office of the United States Trustee, Curtis Center, Suite 950-W, 601 North Walnut Street, Philadelphia, PA 19106.

Dated: Wilmington, Delaware
May 10, 2001

Dated: Wilmington, Delaware
May 10, 2001

Young Conaway Stargatt & Taylor LLP

Brendan Linehan Shannon Esq. (No. 3136)
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P.O. Box 391
Wilmington, Delaware 19899
Telephone: (302) 571-6696
Facsimile: (302) 571-1253

Co-Counsel for the Debtors and Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Telscape International, Inc., et al.,	)	Case Nos. 01-1561 through 01-1568
	)	(JJF)
Debtors.	)	
		(Jointly Administered)
		Hearing Date: May 24, 2001 at 11:30 a.m.
		Objections Due: May 22, 2001 at 12:00 p.m.

MOTION FOR ENTRY OF AN ORDER: (I) PURSUANT TO 11 U.S.C. § 105, 363, 503 AND 507 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004 APPROVING BIDDING PROCEDURES INCLUDING, WITHOUT LIMITATION, EXPENSE REIMBURSEMENT FEE PROVISIONS, AND APPROVING FORM AND MANNER OF NOTICE OF AUCTION AND SALE HEARING, SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE OF CERTAIN OF THE DEBTORS' ASSETS AND ESTABLISHMENT OF ASSUMPTION, CURE AND OBJECTION BAR DATE OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (II) PURSUANT TO 11 U.S.C. §§ 105, 363, 365 AND 1146(C) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004, 6006 AND 9014(A) APPROVING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND (C) EXEMPTION OF SUCH SALE AND ASSIGNMENT FROM STAMP OR SIMILAR TAXES

By this motion (the "Motion"), Telscape International, Inc. ("Telscape") for itself and on behalf of those subsidiaries and affiliates set forth on **Exhibit "A"** attached hereto (such subsidiaries and affiliates together with Telscape are collectively referred to herein as the "Debtors" and/or "Debtors in Possession"), by and through their co-counsel and Young Conaway Stargatt & Taylor LLP, hereby move this Court:

Pursuant to §§ 105(a), 363(b), 503(b)(1)(A) and 507(a)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Fed. R. Bankr. P. 6004 for an order, substantially in the form of Exhibit "B" attached hereto, (a) approving (i) bidding procedures (the "Bidding Procedures") with respect to the proposed sale of certain of the Debtors' assets used by the Debtors in connection with their competitive local exchange carrier telecom business services unit (the "CLEC Unit") that services the California and Florida markets to TSG Capital Group, L.L.C. and/or its designee (the "Buyer") subject to higher or better offers at the Auction (as hereinafter defined), and (ii) the payment of an expense reimbursement fee (the "Expense Reimbursement Fee") to the Buyer, (b) approving the form and manner of notice of the Auction (as hereinafter defined), the Bidding Procedures and the Sale Hearing (as hereinafter defined), (c) scheduling a hearing (the "Sale Hearing") and objection deadline with respect to the asset sale and (d) establishment of assumption, cure and objection bar date of certain executory contracts and unexpired leases; and

Pursuant to §§ 105, 363, 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 6004 and 6006 for an order (the "Approval Order") substantially in the form of

Exhibit "C" attached hereto, (a) approving the terms of the sale of all right, title and interest of the Debtors in and to substantially all of the tangible and intangible assets used by the Debtors in connection with the CLEC Unit pursuant to and as more fully described in the Term Sheet (as defined herein) (collectively, the "Assets") free and clear of any and all liens, claims and encumbrances, (b) authorizing the assignment of certain executory contracts and unexpired leases which are included as part of the Assets (collectively, the "Assumed Contracts") pursuant to section 365 of the Bankruptcy Code, to the Buyer pursuant to and in accordance with the terms of a certain asset purchase term sheet among the Debtors and the Buyer dated as of May 7, 2001 (the "Term Sheet") attached hereto as **Exhibit "D"** for the sum of $13,000,000 subject to certain adjustments and holdbacks as set forth in the Term Sheet (the "Purchase Price"), subject to higher or better offers as more fully set forth herein, (the sale of the Assets and the assumption of the Assumed Contracts are hereinafter collectively referred to as the "Asset Sale"), (c) exemption of the Asset Sale from stamp or similar taxes pursuant to § 1146(c) of the Bankruptcy Code, and (d) granting such other and further relief as the Court may deem just and proper.

BACKGROUND

1. On April 27, 2001 (the "Commencement Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtors have continued in the management and operation of their business and properties as Debtors in Possession pursuant to §§1107 and 1108 of the Bankruptcy Code. No trustee or examiner or Official Committee of Unsecured Creditors have been appointed.

2. The Debtors are leading integrated communication providers that serve the Hispanic market in the United States, Mexico and Central America. The Debtors offer local and

long distance telephone, Internet, and pre-paid Calling Card services. The Debtors' principal offices are located at 1325 Northmeadow Parkway, Rosewell, GA 30076. As of the Commencement Date, the Debtors employed approximately 600 employees.

3. The common stock of Telscape is registered under §12 of the Securities Exchange Act of 1934, as amended. The SEC file number is 0-24622. As of April 2, 2001, there were 20,819,444 shares of Telscape common stock outstanding and as of March 25, 2001, there were 260 record holders. In addition, Telscape has 12,222 shares of Series D Preferred Stock outstanding held by 12 entities; 8,177 shares of Series E Preferred Stock outstanding held by 8 entities; 338,496 shares of Series F Preferred Stock outstanding held by 339 entities; 95,050 shares of Series G Preferred Stock outstanding held by 11 entities and 3,250 shares of Series H Preferred Stock outstanding held by 1 entity.

4. Telscape owns 100% of the outstanding voting securities or interests of Debtors Telscape U.S.A., Inc. and Pointe Communications Corp., and non-debtor Telereunion. Inc.

5. Pointe Communications Corp. owns 20% or more of the outstanding voting securities or interests of the following Debtors and non-debtor companies:

	Ownership Interest
PointeCom, Inc.	100%
Pointe Local Exchange Company	100%

Overlook Communications International, Inc.	100%
Rent-A-Line Telephone Company, LLC	100%
International Interlink Communications, Inc.	100%
Charter Comunicaciones Internacionales Group, S.A. (Panama)	100%
Phoenix Datanet de Panama, S.A.	100%
Charter Comunications International de Venezuela, C.A.	100%
Charter Comunicaciones Internacionales, S.A. de C.V. (Honduras)	99%
Charter Comunicaciones de Nicaragua	49%
U.S. Charter de Mexico S.A. de C.V.	49%
Charter de Aruba	100%
C-Com Comunicaciones Internacionales de Costa Rica, S.A.	100%

Charter Comunicaciones de El Salvador	80%
Pointe Communications de Columbia, S.A.	99%
Pointe Communications de Peru, S.A.	100%

6. The petitions filed by the Debtors have annexed thereto a consolidated "Exhibit A" which reflects that on a consolidated basis, the Debtors have assets of approximately $241,500,000 and liabilities of approximately $188,000,000[1]. The Debtors' assets consist primarily of their telecommunications networks serving their subscribers, and their liabilities include primarily bank secured debt of approximately $82,500,000[2], capital lease claims of approximately $9,800,000[3], priority tax claims of approximately $25,700,000[4], and unsecured trade liabilities of approximately $70,000,000[5].

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1 Total assets and total liabilities are set forth on a consolidated basis and are derived from the financial records of the Debtors. The assets and liabilities reflect non-debtor foreign entities in which one or more of the Debtors maintain a direct or indirect interest. Asset values do not necessarily reflect market values. The amounts set forth for secured and unsecured debt are also listed on a consolidated basis.

2 Consists of notes and long-term debt, including secured claims of General Electric Capital Corporation pursuant to a credit agreement providing for up to $60 million in financing under long-term repayment terms.

3 Consists of other secured obligations of Debtors under or related to leasing telephone switches, other telecom equipment and other miscellaneous leases.

4 Consists of excise, payroll, corporate, value added and foreign taxes payable.

5 Consists of, among other things, accounts payable, accrued liabilities, customer deposits and unearned income.

7. The instant filing is occasioned by the Debtors' continued need for substantial capital and, in their existing condition, their inability to obtain additional public or private debt and/or equity financing.

8. On April 27, 2001, the Bankruptcy Court signed an order procedurally consolidating the Chapter 11 cases of Telscape and the other Debtors.

JURISDICTION

9. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C.§ 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

SALE AND PURCHASE

10. The Buyer will purchase from the Debtors, all right, title and interest of the Debtors in and to the Assets. The Debtors propose to sell the Assets pursuant to the terms of the Term Sheet which provides for certain conditions precedent to each party's obligation thereunder, including a limited due diligence period. As contemplated by the Term Sheet, the Debtors and the Buyer shall enter into a definitive asset purchase agreement (hereinafter the "Asset Purchase Agreement"), which shall be filed with the Court prior to the Sale Hearing.

EVENTS SINCE THE PETITION DATE

11. Since the Commencement Date, the Debtors and their management team have identified and implemented numerous restructuring initiatives in an effort to stabilize the business, improve sales, reduce costs and maximize and protect the value of the assets of the estates. For example, in the first days of the cases, the Debtors sought and received Bankruptcy Court authority, among other matters, to (i) use cash collateral of their secured creditors and, (ii)

maintain bank accounts, business forms and cash management system. At the same time, the Debtors embarked on a dramatic cost-cutting program.

12. While undertaking the above described initiatives, the Debtors also expended significant effort analyzing various bankruptcy alternatives with the goal of maximizing and protecting the value of the Debtors' assets for the benefit of creditors. The Debtors believe that a liquidation of certain non-essential assets and a stand alone plan of reorganization supported by the operation of their core business will maximize the return to the creditors

13. The Debtors have worked tirelessly to identify potential strategic and financial buyers and investors. While other parties expressed interest in acquiring the Assets, the Debtors concluded that the present bid submitted by the Buyer represents the best and most certain opportunity to sell the Assets. The Debtors have engaged in negotiations with the Buyer regarding the terms and conditions of the Asset Sale. Those negotiations culminated with the execution, subject to Bankruptcy Court approval, of the Term Sheet. The Debtors believe that the consummation of the transaction contemplated by the Term Sheet will yield the best and most certain recovery for the Debtors' creditor constituents with respect to the sale of the CLEC Unit.

BIDDING PROCEDURES

14. By this Motion, the Debtors seek one or more orders under §§ 105, 363, 503 and 507 of the Bankruptcy Code and Bankruptcy Rule 6004 (a) approving (i) the Bidding Procedures with respect to the Auction, and (ii) the payment of the Expense Reimbursement Fee to the Buyer, and (b) approving the form and manner of notice of the Auction (as hereinafter

defined), the Bidding Procedures and the Sale Hearing, and (c) scheduling the Sale Hearing and objection deadline with respect to the Asset Sale (the "Bidding Procedures Order").

15. The proposed Bidding Procedures carefully balance the Debtors' interests in inducing the Buyer to commit to purchase the Assets, preserving the opportunity to attract higher or better offers, and expediting the sale process.

16. The following is a summary of the Bidding Procedures:

a. Initial Requirements. Unless otherwise ordered by the Court for cause shown, to participate in the bidding process, each person (a "Potential Bidder") other than the Buyer must deliver it's bid (the "Bid") (unless previously delivered) to co-counsel to the Debtors, Young Conaway Stargatt & Taylor LLP, 11th Floor, Rodney Square North, P.O. Box 391, Wilmington, Delaware 19899, Attn.: Brendan Linehan Shannon, Esq. no later than May 22, 2001 at 12:00 p.m along with current audited financial statements of the Potential Bidder or other compelling evidence of its ability to consummate the purchase of the Assets. A "Qualified Bidder" is a Potential Bidder that delivers the Bid and documents described above and whose financial information demonstrates, in Debtors' judgment with the advice of Impala Group, LLC, the Debtors' financial advisors, the financial capability of the Potential Bidder to consummate the purchase of the Assets. Buyer, having previously been subject to scrutiny by the Debtors, has already been pre-qualified and is exempt from such procedures.

b. Notification of Qualified Bidders. Debtors shall promptly notify a Potential Bidder whether the Potential Bidder is a Qualified Bidder and may submit it's Bid at the Auction (hereinafter defined). The Buyer is deemed to be a Qualified Bidder.

c. Information and Due Diligence. Debtors shall provide reasonable access to information and due diligence to all interested parties; provided, that, to obtain due diligence access or additional information from the Debtors, an interested party (other than the Buyer) must first provide Debtors (1) an executed confidentiality agreement in form and substance satisfactory to the Debtors, if it has not already done so, and (2) a written preliminary (non-binding) proposal setting forth (a) its proposed transaction in sufficient detail to enable Debtors to evaluate whether, if consummated, such transaction would be a higher or better offer and the closing date for the proposed transaction and (b) the nature and extent of additional due diligence it may wish to conduct. If, based on the preliminary proposal and such additional factors as the Debtors determine are relevant, the Debtors, in their business judgment, determine that the preliminary proposal is reasonably likely to result in a bona fide and higher or better offer for the Assets or will ultimately produce greater value to the Debtors, the Debtors shall afford such interested party additional due diligence access to the Debtors until the Bid Deadline (as hereinafter defined).

d. Bid Deadline and Bid Requirements. All Bids must be submitted to the undersigned counsel for the Debtors not later than 12:00 p.m. on May 22, 2001 (the "Bid Deadline").

e. Qualified Bids. A "Qualified Bid" is a legally binding offer from a Qualified Bidder not subject to financing contingencies or other material conditions other than those set forth in the Term Sheet. For purposes hereof, the Term Sheet shall constitute a Qualified Bid.

f. Deposit. A Qualified Bidder (other than the Buyer) must tender to the Debtors' counsel, Young Conaway Stargatt & Taylor, LLP, on or before the Bid Deadline, a bank check, teller's check or wire transfer payable to the Debtors' counsel, as escrow agent, in a sum not less than $100,000.00 (the "Deposit") to be held until closing of the Asset Sale (at which time such payment shall be credited against the purchase price if such offer is accepted), or until the conclusion of the Sale Hearing (at which time the Deposit shall be returned after the conclusion of the Sale Hearing if such offer is rejected). The Deposit shall be held by the Debtors' counsel in an escrow account pursuant to the terms of an escrow agreement to be provided to and executed by all Qualified Bidders. In the event that the successful bidder fails to close the Asset Sale for any reason other than the failure of the Debtors to obtain an order from the Court approving the offer, the Debtors shall be entitled to all remedies available at law.

g. Auction; Bidding Increments; and Bids Remaining Open. If the Debtors receive one or more Qualified Bid(s) by the Bid Deadline, the Debtors will conduct an auction (the "Auction") at the offices of **Young Conaway Stargatt & Taylor LLP, 11th Floor, Rodney Square North, Wilmington, Delaware on May 23, 2001, beginning at 1:00 p.m.** or such later time or other place as determined by the Debtors and notified to all Qualified Bidder(s) who have submitted Qualified Bids prior to the Bid Deadline. Subject to the provisions set forth in this Paragraph 16(g), in order for any Qualified Bid(s) to be considered as a higher or better offer(s), (i) such Qualified Bid(s) must provide for the purchase of all or a substantial portion of the Assets and must be upon and subject to substantially the same or better terms and conditions contained in the Term Sheet and must also provide for an aggregate cash purchase price for the Assets, which exceeds the Purchase Price by at least $150,000.00, (ii) such Qualified Bid(s) must

provide for bidding increments to be in the amount of $50,000.00, (iii) such Qualified Bid(s) must not be subject to financing, and (iv) such Qualified Bidder(s) must provide evidence, satisfactory to the Debtors and approved by the Court, of their financial ability to perform in the event that their Qualified Bid(s) are accepted as higher or better than the bid of the Buyer and must demonstrate, and provide adequate assurance of, their ability to perform under the contracts to be assumed. Bidding at the Auction will continue until such time as the highest or best offer is determined by the Debtors. The Debtors may adopt rules for the bidding process that, in their judgment, will better promote the goals of the bidding process. Upon conclusion of the Auction, the Debtors shall review the Qualified Bid(s) on the basis of among other things, the following (a) the amount of the Qualified Bid(s), (b) the form of consideration, (c) the form of the proposed transaction, (d) the ability to obtain approval from this Court and other required approvals for the sale and close in a timely fashion, and (e) the net value provided to the Debtors and such other aspects as determined by the Debtors and shall submit the highest or otherwise best bid for approval by the Court pursuant to §363 of the Bankruptcy Code. Qualified Bid(s) submitted by the Bid Deadline shall remain open and irrevocable through the conclusion of the Sale Hearing. Upon failure to consummate the Asset Sale because of a breach or failure on the part of the successful Qualified Bidder, the Debtors may select in their business judgment the next highest or otherwise best Qualified Bidder to be the successful bidder without further order of the Court and consummate the Asset Sale with such next highest or otherwise best Qualified Bidder. If the Debtors do not receive any Qualified Bids by the Bid Deadline, other than from the Buyer, the Debtors will report the same to the Court and will proceed with the Asset Sale to Buyer pursuant to the Term Sheet.

17. Implementing the Bidding Procedures will not chill the bidding with respect to the sale of the Assets. The Debtors have discussed the possible sale of certain of the Debtors' assets including the Assets with several parties. However, the Debtors believe the proposal by the Buyer is the highest and best offer for the Assets at this time. Given the marketing of the Assets by the Debtors, the Debtors believe that they have contacted, or have been contacted by, virtually all prospective bidders. Accordingly, the approval of the Bidding Procedures should not "chill" the bidding.

18. The Debtors propose, under the Term Sheet, to pay an Expense Reimbursement Fee in the amount of $100,000.00 to the Buyer in the event that the Debtors consummate a sale of all or substantially all of the Assets subject to the Asset Sale to a third party or parties who submit a higher or better bid(s) at the Auction. Paying $100,000.00 -- less than 1% of the Purchase Price -- to the Buyer in the event the Debtors sell and assign the Assets to another bidder is reasonable and customary in this type of transaction. See, e.g., In re Montgomery Ward Holding Corp., et al., Case No., 97-1409 (PJW) (Bankr. D. Del., June 15, 1998) (Court approved break-up fee of 3%, or $3,000,000 in connection with $100,000,000 sale of real estate); In re Medlab, Inc., Case No. 97-1893 (PJW) (Bankr. D. Del., April 28, 1999) (Court approved break-up fee of 3.12%, or $250,000, in connection with $8,000,000 sale transaction).

19. The Expense Reimbursement Fee is a material inducement for, and condition of, the Buyer's entry into the Term Sheet and subsequent Asset Purchase Agreement. The Debtors believe that the Expense Reimbursement Fee is fair and reasonable in view of the analysis, due diligence investigation, and negotiation undertaken by the Buyer in connection with

the Asset Sale. Moreover, the Buyer had advised the Debtors that it is unwilling to enter into the Term Sheet and subsequent Asset Purchase Agreement unless it is assured payment of the Expense Reimbursement Fee as provided above.

20. Approval of the Expense Reimbursement Fee is governed by standards for determining the appropriateness of bidding incentives in the bankruptcy context established by the Third Circuit Court of Appeals in Calpine Corp. v. O'Brien Environmental Energy, Inc. (In re O'Brien Environmental Energy, Inc.), 181 F.3d 527 (3d Cir. 1999). In O'Brien, the Third Circuit held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of section 503(b) of the Bankruptcy Code govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the debtor's estate. Id. at 535.

21. The Third Circuit identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Id. at 537. Second, where the availability of bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum or floor bid on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth."

22. Whether evaluated under the "business judgment rule" or the Third Circuit's "administrative expense" standard, the Expense Reimbursement Fee should be approved. The Expense Reimbursement Fee is the result of good faith negotiations among the

Debtors and the Buyer. The Expense Reimbursement Fee is fair and reasonable in amount in view of the risk to the Buyer of being used as a "stalking horse." Approval of the Expense Reimbursement Fee is particularly warranted in the instant situation where the Buyer will help to establish a floor for other parties to bid against.

PROVISIONS FOR NOTICE AND OBJECTION DATES

23. The Debtors hereby seek to establish certain notice procedures, approve forms of notice and schedule the Sale Hearing.

24. Mailed Notices (Bid Procedures and Sale Motion). The Debtors shall cause, on or before May 10, 2001, service of this Motion by overnight express delivery upon (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for the Buyer, Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019, Attn: Raniero Daversa, Esq.; (iii) counsel for General Electric Capital Corporation; (iv) all entities (or counsel therefor) known to have asserted any lien, claim, encumbrance, right of refusal, or other property interest in or upon the Debtors; (v) the twenty largest unsecured creditors of the Debtors on a consolidated basis; (vi) all applicable federal regulatory agencies and such state and local regulatory or taxing authorities or recording offices where the Assets are located; (vii) all parties that have expressed a bona fide interest in acquiring the Assets; (viii) the United States Attorney's office; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; (xi) all entities who have filed a notice of appearance and request for service of papers in these cases; and (xiii) all parties to nonresidential real property leases (the "Leases"), municipal franchise ordinances (the "Ordinances"), and other executory contracts (the

"Executory Contracts" and together with the Leases and the Ordinances, collectively, the "Assumed Contracts") proposed to be assumed and assigned under the Term Sheet.

25. Notices (Assumption of Assumed Contracts). As part of the Sale Motion, the Debtors will seek authority to assume and assign to the Buyer or any successful Bidder at the Auction, the Assumed Contracts subject pursuant to the Term Sheet and subsequent Asset Purchase Agreement. The Debtors seek authority to file with the Court and serve on (a) all non-debtor parties to the Assumed Contracts, (b) those entities identified in Paragraph 24 above, and (c) all federal, state and local regulatory agencies having jurisdiction with respect to telephone service providers, a notice (the "Assumption Notice") substantially in the form attached as **Exhibit "E"**, of the Debtors' intention to assume and assign the Assumed Contracts of the non-debtor parties. The Assumption Notice shall be served by overnight express delivery upon the foregoing parties.

26. Objection Bar Date To Assumption and Cure Amounts. The Assumption Notice with an attached schedule setting forth the cure amounts as determined by the Debtors (the "Cure Amounts") shall be served by overnight express by May 10, 2001 to those entities identified in Paragraph 25 above. The non-debtor party to the Assumed Contracts to be assumed shall have until 12:00 p.m. on May 22, 2001 (the "Cure Bar Date") to object either (a) to the assumption and assignment of any of the Assumed Contracts, or (b) to the validity of amount of the Cure Amounts, or (c) to assert that non-monetary defaults, conditions or pecuniary losses or other amounts must be cured or satisfied (including all compensation for any pecuniary loss resulting from a default in respect of the Assumed Contracts) under any of the Assumed Contracts in order for such Assumed Contracts to be assumed and assigned. Such party must file

and serve an objection (the "Assumption and/or Cure Objection") setting forth (i) the basis for the objection (non-monetary or otherwise), and, if applicable, (ii) the amount the party asserts as the cure amount and/or the amount of all compensation for any actual pecuniary loss resulting from a default in respect of the Assumed Contracts (with appropriate documentation in support thereof). If no objection is received by the Cure Bar Date, the Cure Amounts attached to the Assumption Notice shall be controlling as to the amount necessary to be paid to cure under § 365(b)(1)(A) and (B) notwithstanding anything to the contrary in any Assumed Contract or other document, and the non-debtor party to the Assumed Contract shall be forever barred from asserting any claims for the Cure Amount against the Debtors, the Buyer or such other purchaser of the Assets through the effective date of the assumption and assignment in respect of such Assumed Contract.

27. The Approval Order shall provide that (i) the Assumed Contracts shall be deemed to be assumed and assigned effective as of the Closing Date (to be defined in the Asset Purchase Agreement), and (ii) in the event that the Closing (to be defined in the Asset Purchase Agreement) does not occur for any reason, the Assumed Contracts are neither deemed to be assumed or rejected and shall remain in the same status as they were immediately prior to the filing of this Motion subject to further orders of the Court.

28. The Debtors submit that the foregoing notice is reasonably calculated to provide timely and adequate notice to the Debtors' creditor and shareholder constituencies, those persons most interested in this case and those persons potentially interested in bidding on the Assets, and accordingly, such notice is sufficient for entry of an order or orders granting all of the relief requested in this Motion.

29. Final Sale Hearing. The Court has advised the Debtors that the Sale Hearing is scheduled for May 24, 2001 at 11:30 a.m.

30. Objections to Asset Sale. The Debtors further request, pursuant to Fed. R. Bankr. P. 9014, that objections, if any, to the Asset Sale, must: (i) be in writing; (ii) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; (iii) be filed with the Clerk of the Bankruptcy Court for the District of Delaware, Fifth Floor, 824 Market Street, Wilmington, Delaware 19801, on or before May 22, 2001 at 12:00 p.m.; and (iv) be served so as to be received no later than 12:00 p.m., on the same day, upon (a) co-counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, 11th Floor, Rodney Square North, P.O. Box 391, Wilmington, Delaware 19899, Attn.: Brendan Linehan Shannon, Esq.; (b) counsel to the Buyer, Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019, Attn: Raniero Daversa, Esq.; and (c) the Office of the United States Trustee, Curtis Center, Suite 950-W, 601 North Walnut Street, Philadelphia, PA 19106.

31. The Debtors further request, pursuant to Fed. R. Bankr. P. 9014, that the Court order that the failure of any objecting person or entity to file its objections timely will be a bar to the assertion at the Sale Hearing or thereafter of any objection to this Motion and the Debtors' consummation and performance of the Term Sheet (including the sale of Assets and the assumption and assignment of the Assumed Contracts, free and clear of any and all liens, claims, encumbrances, rights of first refusal and other interests).

32. Objections to Bidding Procedures. The Debtors further request, pursuant to Fed. R. Bankr. P. 9014, that objections, if any, to approval of the Bidding Procedures proposed herein, must: (i) be in writing; (ii) comply with the Federal Rules of Bankruptcy

Procedure and the Local Bankruptcy Rules; (iii) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Fifth Floor, 824 Market Street, Wilmington, Delaware 19801, on or before May 22, 2001 at 12:00 p.m.; and (iv) be served so as to be received no later than 12:00 p.m., on the same day upon (a) co-counsel to the Debtors, Young Conaway Stargatt & Taylor LLP, 11th Floor, Rodney Square North, P.O. Box 391, Wilmington, Delaware 19899, Attn.: Brendan Linehan Shannon, Esq.; (b) counsel to the Buyer, Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019, Attn: Raniero Daversa, Esq.; and (c) the Office of the United States Trustee, Curtis Center, Suite 950-W, 601 North Walnut Street, Philadelphia, PA 19106.

33. The Debtors further request, pursuant to Fed. R. Bankr. P. 9014, that the Court order that the failure of any objecting person or entity to file its objections timely will be a bar to the assertion at the Sale Hearing or thereafter of any objection to this Motion and the Debtors' consummation and performance of the Term Sheet (including the sale of Assets and the assumption and assignment of the Assumed Contracts, free and clear of any and all liens, claims, encumbrances, rights of first refusal, other interests or the payment of the Break-up Fee described herein).

THE SALE OF THE DEBTORS' ASSETS SHOULD BE APPROVED

34. The Debtors submit that ample authority exists for the approval of the proposed Asset Sale. Section 363 of the Bankruptcy Code, which authorizes a debtor to sell assets of the estate other than in the ordinary course of business free and clear of liens, claims and encumbrances, provides, in relevant part, as follows:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . .
>
> (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if --
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents; . . . or,
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. §363(b)(1), (f); see Fed. R. Bankr. P. 6004(f)(1) ("All sales not in the ordinary course of business may be by private sale or by public auction.").

35. Section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets prior to a confirmation of a plan. However, courts in this Circuit and others have required that the decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtor. See In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); In re Delaware & Hudson Ry. Co., 124 B.R. 169,176 (D. Del. 1991); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reasons exists for completing the sale and that the transaction is in good faith); Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); In re Chateaugay Corp., 973 F.2d 141 (2d Cir. 1992); Stephens Indus. v. McClung, 789 F.2d 3 86, 390 (6th Cir. 1986) ("bankruptcy court can authorize a sale of all a Chapter 11 debtor's assets under

§363(b)(1) when a sound business purpose dictates such action"); In re Titusville Country Club 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); Industry Valley Refrig. & Air Conditioning Supplies, Inc., 77 B.R. 15, 20 (Bankr. E.D. Pa. 1987).

36. The "sound business purpose" test requires a debtor to establish four elements to sell property outside the ordinary course of business, namely, (a) that a "sound business purpose" justifies the sale of assets outside the ordinary course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the debtor has obtained a fair and reasonable price, and (d) good faith. See Abbotts Dairies, infra; Titusville, 128 B.R. at 399; In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); Phoenix, 82 B.R. at 335-36; Industry Valley, 77 B.R. at 21. Courts have made it clear that a debtor's showing of a sound business justification need not be unduly exhaustive but rather, a debtor is "simply required to justify the proposed disposition with sound business reason." In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

SALE FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

37. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363(b) "free and clear of any interest in such property of an entity other than the estate" if one of the following conditions is satisfied:

> applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> such entity consents;
>
> such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> such interest is in bona fide dispute; or

such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. § 363(f); In re Elliot, 94 B.R. 343, 354 (E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale "free and clear" provided at least one of the subsections is met). The Debtors expect that they can satisfy both the second and fifth of these requirements.

38. In order to facilitate and as an express condition of the Asset Sale, the Debtors require authorization to sell the Assets free and clear of any and all liens, claims or interests that may be asserted, with such liens or interests to attach to the sale proceeds.

39. The Debtors anticipate that General Electric Capital Corporation ("GECC") and their other secured creditors will consent to the proposed sale of the Assets. All liens on the Assets will be released and will attach to the proceeds of sale of the Assets with the same force, effect and priority as such liens have on the Assets immediately prior to the consummation of the Asset Sale, subject to the rights and defenses, if any, of the Debtors and any party in interest with respect thereto. Accordingly, the Debtors submit that the sale of the Assets free and clear of any and all liens, claims and encumbrances satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

40. As noted above, the Debtors provide telephone services to residents in California and Florida. The Assets proposed to be sold to Buyer include approximately 45,000 telephone subscribers in the California and Florida area markets. To service these subscribers, the Debtors have entered into various executory contracts and nonresidential real property leases which assignment to the Buyer is also a condition of the Asset Sale. The executory contracts and

nonresidential real property leases are the Assumed Contracts attached as a schedule to this Motion.

41. To facilitate and effectuate the sale of the Assets, the Debtors seek to assume and assign the Assumed Contracts to the Buyer. Section 365 of the Bankruptcy Code provides that a debtor may assume and/or assign its executory contracts and unexpired leases subject to the approval of the Bankruptcy Court as follows:

> . . . (a) Except as provided in... subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.
>
> (b)(1) If there has been a default in an executory contract or unexpired lease of the debt the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee:
>
> (a) cures, or provides adequate assurance that the trustee will promptly cure such default;
>
> (b) compensates or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (c) provides adequate assurance of future performance under such contract or lease. ...
>
> (f)(2) The trustee may assign an executory contract or unexpired lease of the debtor only if --
>
> (a) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (b) adequate assurance of future performance by the assignee of such contract or lease is provided,

> whether or not there has been a default in such contract or lease.

See 11 U.S.C. §§ 365(a), (b)(1), (f)(2). Accordingly, section 365 authorizes the proposed assumptions and assignments, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is given.

42. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.").

43. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of a lease from debtor has financial resources and has expressed a willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

44. The case law is uniform in its treatment for determining what constitutes adequate assurance of future performance where both monetary and non-monetary defaults have occurred. The standard mirrors that provided for the demand for adequate assurance under

Uniform Commercial Code ("UCC") section 2-609. See In re Sapolin Paints, Inc., 5 B.R. 412 (Bankr.E.D.N.Y.1980); In re Bon Ton Restaurant & Pastry Shop, Inc., 53 B.R. 789 (Bankr. N.D. Ill. 1985). Thus, in the spirit of the UCC, the standard relies upon commercial rather than legal criteria. See In re Sapolin, 5 B.R. at 421. Early cases indicate that Congress intended the term "adequate assurance" to be given a "practical, pragmatic construction." Id. at 420-421. The test does not require a guarantee of future performance. Rather, it turns simply on "whether it *appears* that . . . lease obligations [will be] met." See In re Vitanza, 1998 Bankr. LEXIS at 92. Courts recognize that the required assurance will fall "considerably short" of an absolute guarantee of performance. See In re Bon Ton, 53 B.R. at 803 (citing Matter of Luce Indust., Inc., 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980). The Bankruptcy Code does require, however, that the party receive the benefit of the bargain. See generally, In re Sapolin, supra; Matter of Luce, supra. Later cases refine the inquiry by formulating the test as follows: "What constitutes adequate assurance is a factual question to be determined on a case-by-case basis with due regard to the nature [of] the parties, their past dealings and present commercial realities." See In re Vitanza, 1998 Bankr. LEXIS at 92. In In re Bon Ton, a case in which the debtor defaulted under a lease by failing to make repairs, alterations and improvements, the Bankruptcy Court found that adequate assurance of future performance existed where the debtor showed both willingness and ability to undertake performance of the lease and provide the benefit of the bargain. Id.,53 B.R. at 804. Similarly, in Matter of Luce, the Bankruptcy Court found that the debtor's commitment to rectify its nonfinancial defaults by submitting reports and samples pursuant to the contract, along with its promise, constituted adequate assurance. The Court also listed other ways debtors could satisfy the adequate assurance standard including promises,

sufficient financial backing, economic conditions, and certificates. Ultimately, deciding whether a debtor has provided adequate assurance sufficient to persuade a court to allow it to assume an executory contract requires an inquiry examining all facts and circumstances. Bon Ton, 53 B.R. at 803.

45. The time frame for curing pre-petition and post-petition non-monetary defaults upon assumption is established under §365(b)(1) of the Bankruptcy Code which provides that a trustee or debtor in possession may not assume an executory contract in default unless, at the time of assumption, it cures, or provides adequate assurance that it will "promptly" cure, such default. The Bankruptcy Code does not define the term "promptly." Courts have interpreted it to require a determination of the facts and circumstances of each case, much like the standard required to assess "adequate assurance." See Matter of DiCamillo, 206 B.R. 64, 72 (Bankr. D.N.J. 1997) ("Admittedly, the task of determining what constitutes a "prompt" cure is an arbitrary one."). In Matter of DiCamillo it was noted that courts have allowed a cure over the course of two or three years in special circumstances. Id. at 72, fn. 10 (citing cases).

46. In In re Reed, 226 B.R. 12 (Bankr. W.D.Ky. 1998) the Bankruptcy Court adhered to the case-by-case standard after noting the scant precedent in the issue of what constitutes a prompt cure. In that case, the Court listed the following considerations to be taken into account: the nature of the lease property; the provisions of the lease; the amount of arrearage under the lease; the remaining term of the lease; and the provisions of the debtor's plan. Id. at 2. The Court acknowledged that although it would be a "cumbersome and time-consuming process," it was necessary given the "indefinite nature of what constitutes a prompt cure under 11 U.S.C. §365(b)(1)." Id. at 2. And, in In re PRK Ent., 235 B.R. 597 (Bankr. E.D.Tex. 1999),

the Bankruptcy Court confirmed that what constitutes a prompt cure depends on the facts and circumstances of each case, and that no "clear litmus test or set of factors . . . can be rigidly applied in order to make this determination." Id. at 601. The Court offered an additional guide. It noted that courts have contrasted the proposed cure period with the time remaining on a lease and found the proposed period to be prompt when it did not extend to the lease period.

47. One case in the Third Circuit went as far as to hold that courts have "some latitude" to waive strict enforcement of contractual provisions in the assumption process. See In re Vitanza at *88, (citing In re Joshua Slocum, 922 F.2d 1081, 1090-91 & n.8 (3d Cir. 1990)(involving assumption and assignment of non-shopping center lease)). The relevant factors in determining whether to refuse to enforce the provisions are the "materiality" of the default at issue and whether the default caused "substantial economic detriment" to the non-breaching party. See In re Vitanza at *88; see also In re Windmill Farms, Inc., 841 F.2d 1467, 1473 (9th Cir. 1988) (bankruptcy court did not act erroneously in finding that alleged non-monetary defaults, including the failure to maintain insurance and make repairs, were "not of sufficient substance to preclude assumption of the lease."); In re Whitsett, 163 B.R. at 754 (determining factor appears to be "materiality" of the default when deciding whether debtor's compliance with lease provisions would be deemed insignificant in the assumption process).

48. The Debtors believe that they can and will demonstrate that all requirements for the assumption and assignment of the Assumed Contracts proposed to be assigned to the Buyer will be satisfied at the Sale Hearing to approve the Asset Sale. The Debtors will provide all parties to the Assumed Contracts an opportunity to be heard. The Debtors intend to demonstrate at the Sale Hearing that the Buyer will adequately assure future

performance under the Assumed Contracts and otherwise satisfy the requirements of § 365(b)(3) of the Bankruptcy Code, as outlined above. Thus, the Debtors respectfully submit that by the conclusion of the Sale Hearing, assumption and assignment of the Assumed Contracts should be approved.

49. Notwithstanding anything to the contrary contained in the Motion, the Term Sheet and subsequent Asset Purchase Agreement or the Approval Order, the Assumed Contracts are hereby deemed to be assumed by the Debtor and assigned to the Buyer effective as of the Closing Date (to be defined in the Asset Purchase Agreement) and to the extent of any cure claims such claims will be cured by agreement between Debtors and Buyer, entered into on or before 3:00 P.M. (Eastern Daylight Time), May 14, 2001 requiring that Buyer agrees to expressly assume and pay certain liabilities and obligations associated with the Asset Purchase Agreement and the Assumed Contracts, including any Cure Amounts in Exhibit A to satisfy the requirements of Section 365 of the Bankruptcy Code. In the event that the Closing (to be defined in the Asset Purchase Agreement) does not occur for any reason or the Asset Sale is not consummated, the Assumed Contracts are neither deemed to be assumed or rejected and shall remain in the same status as they were immediately prior to the filing of the Motion.

EXEMPTION OF SALE FROM STAMP OR SIMILAR TAXES

50. In connection with the Asset Sale, the Debtors, by this Motion, also seek an order, pursuant to § 1146(c) of the Bankruptcy Code, decreeing and adjudging that the Asset Sale be exempt from any and all stamp or similar transfer tax.

APPLICABLE AUTHORITY

51. Section 1146(c) of the Bankruptcy Code provides that the making or delivery of an instrument of transfer under a confirmed Chapter 11 plan of reorganization may not be taxed under any law imposing a stamp or similar tax. See 11 U.S.C. 1146(c). Specifically, section 1146(c) of the Bankruptcy Code provides that:

> [t]he issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of [the Bankruptcy Code], may not be taxed under any law imposing a stamp or similar tax.

11 U.S.C. § 1146(c). It is well settled that a transfer which is "necessary to consummation of a plan" is a transfer made under a plan within the meaning of section 1146(c) of the Bankruptcy Code. See, e.g., City of New York v. Jacoby-Bender, Inc. (In re Jacoby-Bender, Inc.), 758 F.2d 840, 842 (2d Cir. 1985); City of New York v. Smoss Enters. Corp. (In re Smoss Enters. Corp.), 54 B.R. 950, 951 (E.D.N.Y. 1985).

52. It is equally well settled that even a preconfirmation sale of a debtor's assets, if the sale is essential to confirmation of the plan, is "under a plan" for purposes of § 1146(c) of the Bankruptcy Code. See In re Smoss Enters. Corp., 54 B.R. at 951 (sale taking place three months before confirmation was "under a plan," and therefore tax exempt, when transfer of property was essential to confirmation of plan); In re CCA Partnership, 70 B.R. 696 (Bankr. D. Del.), aff'd, 72 B.R. 765 (D. Del.), aff'd without op., 833 F.2d 303 (3d Cir. 1987) (allowing the section 1146(c) tax exemption to transfer occurring prior to confirmation of the plan); In re 995 Fifth Avenue Assocs., L.L.P., 116 B.R. 384 (Bankr. S.D.N.Y. 1990), aff'd 127 B.R. 533 (S.D.N.Y. Oct. 23, 1991); Cf., In re Jacoby-Bender, Inc., 755 F.2d at 841 (despite absence of specific language in plan regarding transfer of property, court concluded transfer was necessary to consummation of plan, noting that "Congress' apparent purpose in enacting section 1146 was to facilitate reorganizations through giving tax relief").

53. The Debtors submit that the Asset Sale is "under a plan" within the meaning of § 1146(c) of the Bankruptcy Code. Consummation of the Asset Sale is clearly essential to preparation and consummation of a plan in the Debtors' cases. A part of the consideration to be paid upon consummation of the Asset Sale will be utilized to fund distributions for administrative and other claims under the plan. Given these circumstances, the Asset Sale is one made "under a plan" pursuant to § 1146(c) of the Bankruptcy Code, and therefore, should be exempt from the imposition of any stamp or similar tax. Moreover, the relief requested herein is similar to relief previously granted. See, e.g., In re RCG Liquidation Company (f/k/a Reading China and Glass, Inc.), et al., Case No. 98-2466 (MFW) (Order) (July 21, 1999).

REQUEST FOR RELIEF UNDER BANKRUPTCY RULE 6004(G)

54. The Debtors propose to consummate the Asset Sale as soon as possible upon the entry of an order by this Court granting the relief requested in this Motion. Accordingly, the Debtors are hereby requesting that said order shall not be stayed pursuant to Rule 6004(g) of the Federal Rules of Bankruptcy Procedure.

55. The Debtors submit that the relevant legal authorities are set forth herein and no novel issues of law have been raised. Accordingly, the requirement pursuant to Local Rule 7.1.2 that the Debtors file a memorandum of law in support of this Motion is satisfied.

56. The relief requested herein has not been previously sought from this or any other court.

WHEREFORE, the Debtors respectfully request the Court grant the Debtors the relief requested in this Motion, together with such further and other relief as this Court deems just and proper.

Dated: Wilmington, Delaware
May 10, 2001

Young Conaway Stargatt & Taylor LLP

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Co-Counsel for the Debtors and Debtors-in-Possession

EXHIBIT "A"

EXHIBIT A

PointeCom, Inc.
International Interlink Communications, Inc
Telscape International, Inc
Telscape U.S.A., Inc.
Pointe Communications Corp.
Pointe Local Exchange Company
Overlook Communications International Corp
Rent-A-Line Telephone Company, LLP

EXHIBIT "B"

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	**Chapter 11**
	)	
Telscape International, Inc., et al.,	)	**Case Nos. 01-1561 through 01-**
	)	**1568 (JJF)**
Debtors.	)	
		(Jointly Administered)

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) 363, 365 AND 1146(c) OF THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004, 6006, AND 9014 (A) APPROVING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS AND ENCUMBRANCES AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND (C) EXEMPTION OF SUCH SALE AND ASSIGNMENT FROM STAMP OR SIMILAR TAXES

Upon the motion dated May 10, 2001 (the "Motion") of Telscape International, Inc. ("Telscape") for itself and on behalf of its subsidiaries and affiliates set forth on Exhibit "A" to the Motion (such subsidiaries and affiliates together with Telscape are collectively referred to herein as the "Debtors" and/or "Debtors in Possession"), by and through their co-counsel, Young Conaway Stargatt & Taylor LLP for entry of an Order under sections 105, 363, 365 and 1146(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Fed. R. Bankr. P. 6004 and 6006: (a) approving the terms of the sale of all right, title and interest of the Debtors in and to substantially all of the tangible and intangible assets used by the Debtors in connection with their competitive local exchange carrier telecom business services unit (the "CLEC Unit") to TSG Capital, L.L.C. and/or its designee ("TSG") pursuant to and as more fully described in the Term Sheet (as defined herein) (collectively, the "Assets") free and clear of any and all liens, claims and encumbrances, (b) authorizing the assignment of certain executory contracts and unexpired leases which are included as part of the Assets (collectively, the "Assumed

Contracts") pursuant to section 365 of the Bankruptcy Code, to TSG pursuant to and in accordance with the terms of a certain asset purchase term sheet among the Debtors and TSG dated as of May 7, 2001 (the "Term Sheet") for the sum of $13,000,000 subject to certain adjustments and holdbacks as set forth in the Term Sheet (the "Purchase Price"), subject to higher or better offers, (the sale of the Assets and the assumption of the Assumed Contracts are hereinafter collectively referred to as the "Asset Sale"), (c) exemption of the Asset Sale from stamp or similar taxes pursuant to § 1146(c) of the Bankruptcy Code, and (d) granting such other and further relief as the Court may deem just and proper; and upon the record of the hearing on the Motion held on May 24, 2001 (the "Hearing"); and the Debtors having marketed and conducted an auction of the Assets (the "Auction"); and the Auction having been held on May 23, 2001; and the _____ (the "Buyer") having made the highest or best offer at the Auction of the Assets and the Debtors and the Buyer having executed an asset purchase agreement for the purchase of the Assets dated as of May __, 2001 (the "Asset Purchase Agreement"), a copy of which is annexed hereto as **Exhibit "1"** and it appearing that the provisions of §§ 105(a), 363(f), 363(m), 363(n), 365 and 1146(c) of the Bankruptcy Code having been complied with and that consummation of the Asset Purchase Agreement is in the best interest of the Debtors and their estates as it will maximize the value of the Assets; and it appearing that the Asset Purchase Agreement is entered into in contemplation of the formulation of a chapter 11 plan in the Debtors' cases; and upon all of the prior pleadings and proceedings in the Debtors' cases including the instant pleadings and the Hearing; and after considering all objections to the relief requested in the Motion as it relates to the Asset Sale (the "Objections"); and it appearing that, under the circumstances, good, sufficient and timely notice of the relief sought and granted in this order (the "Order") has been given and that no other or further notice need be given; and the appearances of all interested parties and all responses and objections to the Motion, if any, having been duly noted in the record of the Hearing; and upon the record of the Hearing and after due

deliberation and sufficient cause appearing therefor, the Court hereby **FINDS, DETERMINES, AND CONCLUDES THAT**:[6]

1. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. Determination of the Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (N) and (O). The statutory predicates for the relief requested herein are sections 105, 363, 365 and 1146(c) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 2002, 6004 and 6006.

3. Proper, timely, adequate and sufficient notice of the Motion and the Hearing, has been provided in accordance with (i) section 102(1) of the Bankruptcy Code, (ii) Bankruptcy Rules 2002, 6004 and 6006, and no other or further notice of the Motion, the Hearing or the entry of this Order is required.

4. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all parties in interest including, but not limited to, parties to Assumed Contracts (as hereinafter defined) to be assumed and assigned under the Asset Purchase Agreement.

5. The Debtors have full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby, and the sale of the Assets has been duly and validly authorized by all necessary corporate action of the Debtors. The Debtors have all the corporate power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement and no consents or approvals, other than those expressly provided in the Asset Purchase Agreement, are required for the Debtors to consummate such transactions.

---

[6] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

6. The Asset Purchase Agreement and the transactions contemplated thereby, including without limitation the assumption and assignment of certain executory contracts and unexpired leases as listed and attached hereto as **Exhibit "2"** (the "Assumed Contracts"), which Assumed Contracts will be deemed assumed by the Debtors and assigned to the Buyer effective as of the Closing Date (as defined in the Asset Purchase Agreement) reflect the exercise of the Debtors' sound business judgment.

7. Approval at this time of the Asset Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their creditors and estates. Good and sufficient business justification for consummating the sale of the Assets pursuant to section 363(b) of the Bankruptcy Code, and for the assumption and assignment of the Assumed Contracts pursuant to sections 363 and 365 of the Bankruptcy Code, has been established in that, among other matters:

(a) In the absence of a prompt sale of the Assets, their value may decline because of current market conditions;

(b) Each of the Assumed Contracts are executory contracts within the meaning of section 365(a) of the Bankruptcy Code; and

(c) Unless a sale to the Buyer is concluded expeditiously as provided for in the Motion and under the Asset Purchase Agreement, the Debtors, their estates and their creditors will realize less value for the Assets.

8. The terms and conditions of the Asset Purchase Agreement are fair and reasonable. The Asset Purchase Agreement represents the highest or best offer for the Asset Sale and the purchase price payable thereunder is fair and reasonable. The Debtors determined to accept the Buyer's offer to purchase the Assets following a marketing effort and the conducting of the Auction at which time the Buyer submitted the higher or better bid over any other bid for the Assets.

9. The cure amounts that are either disputed or undisputed and all compensation for any actual pecuniary loss resulting from a default in respect of the Assumed Contracts (collectively the "Cure Amounts"), if any, are the sole amounts necessary to cure all defaults, and to pay all established

actual or pecuniary losses that have resulted from such defaults under the Assumed Contracts. Debtors shall escrow from the proceeds of the Asset Sale sufficient funds to pay all allowed cure claims and will take all actions necessary to cure the Assumed Contracts.

10. The Buyer has provided adequate assurance of Buyer's performance under the Assumed Contracts to be assigned to Buyer within the meaning of section 365(F)(2)(B) of the Bankruptcy Code.

11. The sale of the Assets (including the assumption and assignment of the Assumed Contracts) pursuant to the Asset Purchase Agreement is in the best interests of the Debtors, their creditors and their estates.

12. The Asset Purchase Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith, and from arm's length bargaining positions. The Buyer is a buyer in good faith under section 363(m) of the Bankruptcy Code and upon consummation of the Asset Sale, is entitled to the protections afforded thereby. Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Asset Purchase Agreement and the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code.

13. The transfer of the Assets and the assignment of the Assumed Contracts pursuant to the Asset Purchase Agreement are or will be legal, valid and effective transfers of property of the Debtors' estates to the Buyer, and vest or will vest the Buyer with good title to the Assets, free and clear of any and all liens, claims, interests, and encumbrances under section 363(f) of the Bankruptcy Code.

14. All of the provisions of this Order and the Asset Purchase Agreement are nonseverable.

15. The transactions contemplated by the Asset Purchase Agreement and approved in this Approval Order are in contemplation of the filing of a plan of reorganization by the Debtors.

16. The relief requested in the Motion, including approval of the Asset Purchase Agreement, is in the best interests of the Debtors, their creditors and estates.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion be, and it hereby is, granted in its entirety.

2. All Objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits.

3. The terms, conditions and transactions contemplated by the Asset Purchase Agreement with the Buyer are hereby approved in all respects, and the sale transaction contemplated thereby is hereby approved in all respects and authorized under section 363(b) of the Bankruptcy Code.

4. Pursuant to sections 363(b) and 365 of the Bankruptcy Code, each of the Debtors is hereby authorized and empowered to fully assume, perform under, consummate and implement the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to consummate the Asset Sale, and to take all further actions as may reasonably be requested by the Buyer for the purpose of selling, assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession, any or all of the Assets free and clear of any and all Encumbrances (as defined below) or as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Asset Purchase Agreement.

5. Subject to the terms and conditions of the Asset Purchase Agreement, the Buyer shall execute all instruments and documents and perform all of its obligations under the Asset Purchase Agreement, including without limitation, payment of the Purchase Price (as defined in the Asset Purchase Agreement) and assumption of the Assumed Liabilities (as defined in the Asset Purchase Agreement).

6. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the closing under the Asset Purchase Agreement the Assets shall be transferred to the Buyer free and clear of any and all Encumbrances (as defined in the Asset Purchase Agreement) with all Encumbrances, to transfer, affix and attach to the net proceeds of the Asset Sale in the order of their priority and with the same validity, force and effect which they have against the Assets immediately prior to the Asset Sale, subject to the rights, claims, defenses and objections, if any, of the Debtors and all interested parties with respect to such Encumbrances.

7. The Debtors are hereby authorized in accordance with sections 363 and 365 of the Bankruptcy Code to (a) assume and assign to the Buyer each of the Assumed Contracts free and clear of any and all Encumbrances, and (b) execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer such Assumed Contracts to the Buyer. In order to facilitate the transactions contemplated by the Asset Purchase Agreement, the Debtors are authorized, if necessary, to submit a "short form" order, without further notice to any party in interest, approving the assumption and assignment of any or all of the Assumed Contracts to the Buyer in accordance with sections 363 and 365 of the Bankruptcy Code (which assumption and assignment of any and all Assumed Contracts shall be authorized, if necessary, pursuant to those separate orders of the Court granting relief pursuant to sections 363 and 365 of the Bankruptcy Code).

8. Notwithstanding anything to the contrary contained in the Motion, the Asset Purchase Agreement or this Order, the Assumed Contracts are hereby deemed to be assumed by the Debtor and assigned to the Buyer effective as of the Closing Date (as defined in the Asset Purchase Agreement). In the event that the Closing (as defined in the Asset Purchase Agreement) does not occur for any reason or the Asset Sale is not consummated, each of the Assumed Contracts is neither deemed to be assumed or rejected and shall remain in the same status as each was immediately prior to the filing of the Motion subject to further orders of this Court.

9. There are no defaults with respect to the Assumed Contracts except defaults which will be cured pursuant to the terms of this Order. Subject to the provisions of decretal paragraph 8 of this Order, the Debtors are hereby authorized to pay (a) the undisputed Cure Amounts, if any, in respect of the assumption and assignment to the Buyer of the Assumed Contracts, by paying all such undisputed Cure Amounts within (30) days of the consummation of the Asset Sale, and (b) all disputed Cure Amounts either within (30) days of the entry of an order by this Court determining the Debtors' liabilities with respect thereto, or as otherwise may be agreed to by the parties. Payment of the Cure Amounts are the sole responsibility of Debtors and Buyer shall have no liability for such payment. All Assumed Contracts shall be transferred to Buyer without liability for pre-sale defaults

10. With respect to any objection received by the Debtors regarding the Cure Amount which has not been resolved by the consummation of the Asset Sale, the Debtors shall deposit in escrow from the proceeds of the Asset Sale, an amount equal to the purported cure payment as asserted by such party unless otherwise ordered by the Court.

11. The Assumed Contracts shall, upon assignment to the Buyer, be deemed cured or to be cured by the Debtors, valid and binding and in full force and effect and enforceable in accordance with their terms, and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any liability for any breach of such Assumed Contracts occurring on and after the Closing Date.

12. This Order (a) is and shall be effective as a determination that, (i) there are no defaults under the Assumed Contracts which have not been cured or for which adequate assurance of prompt cure has not been provided, and (ii) on the Closing Date, all Encumbrances against the Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyance of the Assets, free and clear of any and all Encumbrances, has been effected and vested in the Buyer, and (b) is and shall be binding upon and 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, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal 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).

13. If any person or entity that has filed financing statements or other documents or agreements evidencing liens, claims or encumbrances on or interests in the Assets shall not have delivered to the Debtors prior to the Closing Date, (as defined in the Asset Purchase Agreement) in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims and encumbrances or other interests (including Encumbrances) which the person or entity with respect to the Assets, the Debtors or Buyer are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and shall have no liability for any act pursuant thereto.

14. All entities who are presently, or on the Closing Date (as defined in the Asset Purchase Agreement) may be, in possession of some or all of the Assets are hereby directed to surrender possession of said Assets to the Buyer or Buyer's designee on the Closing Date.

15. This Court retains jurisdiction (i) to enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith, (ii) to compel delivery of the Assets to the Buyer in accordance with the terms of the Asset Purchase Agreement, (iii) to compel delivery of the Purchase Price in accordance with and subject to the terms and conditions of the Asset Purchase Agreement, (iv) to resolve any disputes, controversies or claims arising out of or relating to the Asset Purchase Agreement, and (v) to interpret, implement and enforce the provisions of this Order.

16. The terms and provisions of the Asset Purchase Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon the Debtors, their estates and creditors, the Buyer, and their respective affiliates, successors and assigns, and any affected third parties, including but not limited to all non-debtor parties to the Assumed Contracts to be assigned to the Buyer pursuant to the Asset Purchase Agreement, and all persons asserting a claim against or interest in the Debtors' estates or any of the Assets to be sold to the Buyer pursuant to the Asset Purchase Agreement. The Asset Purchase Agreement and the transactions contemplated thereby, shall be specifically performable, enforceable against, binding upon and not subject to rejection by any or all of the Debtors or any chapter 7 or chapter 11 trustee of any or all of the Debtors and their respective estates.

18. The failure specifically to include any particular provisions of the Asset Purchase Agreement in this Order shall not diminish or impair the efficiency of such provisions, it being the intent of the Court that the Asset Purchase Agreement, all transactions contemplated thereby and all documents required to effectuate the Asset Purchase Agreement are approved in their entirety and incorporated by reference in this order.

19. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material.

20. The transfer of the Assets to the Buyer is not subject to taxation under any state or local law imposing a stamp, transfer or similar tax in accordance with sections 1146(c) and 105(a) of the Bankruptcy Code. Each and every federal, state and local government agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the sale and assignment of the Assets to Buyer, all without imposition and payment of any stamp tax, transfer tax or similar tax, pursuant to section 1146(c) of the Bankruptcy Code.

21.This Order and any other order authorizing the assumption and assignment of the Assumed Contracts shall (i) be effective, binding and enforceable immediately upon entry, and (ii) not be stayed pursuant to Bankruptcy Rules 6004(g) or 6006(d).

Dated: Wilmington, Delaware
May __, 2001

Honorable Joseph J. Farnan, Jr.
United States District Judge

EXHIBIT "C"

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	**Chapter 11**
	)	
Telscape International, Inc., et al.,	)	**Case Nos. 01-1561 through 01-1568 (JJF)**
	)	
Debtors.	)	**(Jointly Administered)**

ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, 503 AND 507 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004 APPROVING BIDDING PROCEDURES, EXPENSE REIMBURSEMENT FEE PROVISIONS AND APPROVING FORM AND MANNER OF NOTICE OF AUCTION AND SALE HEARING, SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE OF CERTAIN OF THE DEBTORS' ASSETS AND ESTABLISHMENT OF ASSUMPTION, CURE AND OBJECTION BAR DATE OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Upon the motion dated May 10, 2001 (the "Motion") of Telscape International, Inc. ("Telscape") for itself and on behalf of those subsidiaries and affiliates set forth on Exhibit "A" attached to the Motion (such subsidiaries and affiliates together with Telscape are collectively referred to herein as the "Debtors" and/or "Debtors in Possession"), by and through their co-counsel Young Conaway Stargatt & Taylor LLP, under sections 105(a), 363(b), 503(b)(1)(A) and 507(a)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Fed. R. Bankr. P. 6004 for an order (the "Order") (a) approving (i) bidding procedures (the "Bidding Procedures") with respect to the sale (the"Asset Sale") of certain of the Debtors' assets (the "Assets") to TSG Capital Group, L.L.C. and/or its designee (the "Buyer") and (ii) the payment of an expense reimbursement fee in the amount of

$100,000.00 (the "Expense Reimbursement Fee") to the Buyer, (b) approving the form and manner of notice of the Auction (as defined in the Motion) and the Bidding Procedures, (c) scheduling a hearing (the "Sale Hearing") and objection deadline with respect to the Asset Sale and approving the form and manner of notice of the Bidding Procedures Hearing (as defined herein), and (d) establishment of assumption, cure and objection bar date of certain executory contracts and unexpired leases; and sufficient notice of the Motion and the Bidding Procedures Hearing having been given; and upon the entire record made at the Bidding Procedures Hearing and this Court having found good and sufficient cause appearing therefor,

IT IS HEREBY FOUND that:

On October 28, 1999 (the "Filing Date"), the Debtors filed voluntary petitions for relief with this Court under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are continuing in possession of their property, and operating and managing their businesses, as debtors in possession pursuant to Bankruptcy Code §§ 1107 and 1108.

1. This Court has jurisdiction over the Chapter11 Cases and the location pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

2. The Bidding Procedures carefully balance the Debtors' interests in (a) inducing the Buyer to commit to purchase the Assets, (b) preserving the opportunity to attract higher or better offers, and (c) expediting the sale process.

3. Based on the record presented to the Court by the Debtors at the hearing to approve the Motion (the "Bidding Procedures Hearing"), the Bidding Procedures, including the

Expense Reimbursement Fee have been negotiated in good faith between the Debtors and the Buyer.

4. Based on the record presented to the Court by the Debtors at the Bidding Procedures Hearing, the Bidding Procedures, including the Expense Reimbursement Fee, are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and, in the case of the Expense Reimbursement Fee, is supported by reasonably equivalent value and fair consideration, and is an actual and necessary cost and expense of preserving the Debtors' estates.

5. Based upon the record presented to the Court by the Debtors at the Bidding Procedures Hearing , (i) implementing the Bidding Procedures will not chill the bidding with respect to the sale of the Assets, (ii) the Debtors approached parties to discuss the possible sale of certain of the Debtors' assets including the Assets, (iii) the Debtors believe that the proposal by the Buyer is the highest and best offer for the Assets at this time, and (iv) the approval of the Bidding Procedures does not "chill" the bidding.

6. The notice procedures proposed in the Motion are fair and reasonable and provide sufficient notice of the Asset Sale to creditors, equity security holders, and those persons interested in bidding on the Assets.

7, The notice procedures proposed in the Motion are fair and reasonable and provide sufficient notice of the assumption and assignment of the Assumed Contracts (as defined in the Motion) and the objection bar date with respect to Assumption and/or Cure Objection (as defined in the Motion).

8. The Court finds and concludes that entry of this Order is in the best interest of the Debtors' respective estates and creditors as it will, among other matters, retain for the benefit of the creditors of the Debtors the prospect of a successful Asset Sale.

9. Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Bidding Procedures Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, that:

1. The Motion is granted in its entirety, subject to the terms and conditions set forth in this Order.

2. The Expense Reimbursement Fee is approved and constitutes an administrative expense claim under §§ 503(b) and 507(a)(1) of the Bankruptcy Code payable from the proceeds of the Asset Sale (free and clear of all liens, claims and encumbrances of any party in interest) and shall be paid pursuant to the terms of that certain Term Sheet dated May 7, 2001 among the Debtors and the Buyer and related Asset Purchase Agreement (the Term Sheet and related Asset Purchase Agreement are hereinafter collectively referred to as the "Asset Purchase Agreement").

3. The Bidding Procedures, the Auction (as defined in the Motion) and the determination of the highest or best bid as set forth in Paragraph 16 of the Motion are hereby approved in their entirety.

4. Pursuant to Fed. R.Bankr. P. 9014, objections, if any, to the assumption and assignment of the Assumed Contracts, were to (a) be in writing, (b) comply with Paragraph 26 of the Motion and the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy

Rules, (c) be filed with the Clerk of the Bankruptcy Court for the District of Delaware, Fifth Floor, 824 Market Street, Wilmington, Delaware 19801, on or before May 22, 2001 at 12:00 p.m., and (d) be served so as to be received no later than 12:00 p.m., on May 22, 2001, upon (i) co-counsel to the Debtors, and Young Conaway Stargatt & Taylor, LLP, 11th Floor, Rodney Square North, P.O. Box 391, Wilmington, Delaware 19899, Attn.: Brendan Linehan Shannon, Esq., (ii) counsel to the Buyer, Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019, Attn: Raniero Daversa, Esq.; and (iii) the Office of the United States Trustee, Curtis Center, Suite 950-W, 601 North Walnut Street, Philadelphia, PA 19106.

5. If no objection is received by the Cure Bar Date (as defined in the Motion), the Cure Amounts (as defined in the Motion) set forth in the schedule attached to the Assumption Notice (as defined in the Motion) shall be controlling as to the amount necessary to be paid to cure under § 365(b)1(A) and (B) notwithstanding anything to the contrary in any Assumed Contract or other document, and the non-Debtor party to the Assumed Contract shall be forever barred from asserting any claims for the Cure Amount against the Debtors, the Buyer or such other purchaser of the Assets through the effective date of the assumption and assignment in respect of such Assumed Contract.

6. Pursuant to Fed. R.Bankr. P. 9014, objections, if any, to the Asset Sale (as defined in the Motion), were to (a) be in writing, (b) comply with Paragraph 30 of the Motion and the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, (c) be filed with the Clerk of the Bankruptcy Court for the District of Delaware, Fifth Floor, 824 Market Street, Wilmington, Delaware 19801, on or before May 22, 2001 at 12:00 p.m., and (d) be served so as to be received no later than 12:00 p.m., on May 22, 2001, upon (i) co-counsel to the

Debtors, Young Conaway Stargatt & Taylor, LLP, 11th Floor, Rodney Square North, P.O. Box 391, Wilmington, Delaware 19899, Attn.: Brendan Linehan Shannon, Esq., (ii) counsel to the Buyer, Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019, Attn: Raniero Daversa, Esq.;(iii) the Office of the United States Trustee, Curtis Center, Suite 950-W, 601 North Walnut Street, Philadelphia, PA 19106

7. The failure of any objecting person or entity to file its objections timely and in accordance with the requirements of this Order shall be a bar to the assertion at the Sale Hearing or thereafter of any objection to the (i) Sale Motion, (ii) Debtors' consummation and performance of the Asset Purchase Agreement, and (iii) sale of the Assets and assumption and assignment of the Assumed Contracts free and clear of any and all liens, Encumbrances (as defined in the Asset Purchase Agreement).

8. The order authorizing the sale of the Assets to the Buyer or such other purchaser of the Assets (the "Approval Order") shall provide that the Approval Order shall be effective and enforceable immediately upon entry and shall not be stayed pursuant to Rule 6004(g) of the Federal Rules of Bankruptcy Procedure.

9. The Sale Hearing shall be held in this Court on May 24, 2001 at 11:30 a.m.

Dated: Wilmington, Delaware
May __, 2001

Honorable Joseph J. Farnan, Jr.
United States District Judge

EXHIBIT "D"

TSG CAPITAL GROUP, L.L.C.
177 BROAD STREET, 12TH FLOOR, STAMFORD, CT 06901
TELEPHONE 203.541.1500 FACSIMILE 203.541.1590

May 7, 2001
Board of Directors of Telscape International, Inc.
c/o Mr. Lawrence Gottlieb
Kronish Lieb Weiner & Hellman LLP
1114 Avenue of the Americas
New York, NY 10036

Gentlemen:

TSG Capital Group, L.L.C., ("TSG"), through its fund, TSG Capital Fund III, L.P., is pleased to submit a proposal to acquire certain assets related to the competitive local exchange carrier business services unit (the "CLEC Unit") of Telscape International, Inc. (the "Company") for an aggregate purchase price of $10.5 million (the "Transaction").

TSG is a private equity investment firm that manages approximately $750 million in capital provided by institutional investors. TSG has extensive experience in buying and operating telecom and media-related companies that focus on the ethnic demographic – particularly the Hispanic segment.

The basic terms and conditions of our proposal are as follows:

1. Purchase Price. The purchase price for the Purchased Assets (as defined below) shall be $13.0 million (the "Purchase Price"), consisting of: (a) $1.0 million in cash to be paid by wire transfer of immediately available funds at the closing; and (b) $12.0 million in a senior secured note (as described in Exhibit A) to purchase all of the other Purchased Assets. Upon the execution of the Definitive Agreement (as defined below) TSG will make a $100,000 good faith deposit. The Purchase Price is based upon review and valuations of the accounts receivable, real property, equipment and other tangible assets of the CLEC Unit as of April 30, 2001.

TSG

2. Assets to be Acquired. TSG, through a newly established company ("Newco") shall acquire all of the following assets relating to or used in the operation of the CLEC Unit (collectively, the "Purchased Assets"): (i) all accounts receivable, (ii) all real property and personal property located at the locations set forth on Exhibit B, including the equipment, trade fixtures, inventories, patents, trademarks, trade names and other tangible and intangible property, rights and/or assets related thereto, (iii) all rights under any contracts relating to the business and operations of the CLEC Unit, (iv) all records, books, documents relating to

forth on Exhibit B, including the equipment, trade fixtures, inventories, patents, trademarks, trade names and other tangible and intangible property, rights and/or assets related thereto, (iii) all rights under any contracts relating to the business and operations of the CLEC Unit, (iv) all records, books, documents relating to the CLEC Unit, (v) all other trademarks, patents, trade names, and other intangible property of the CLEC Unit, (vi) all valid open customer orders of the CLEC Unit, and (vii) certain capital leases relating to the CLEC Unit. These Purchased Assets shall be further detailed in the Definitive Agreement (as defined below) with the understanding that the Purchased Assets shall include all assets necessary to permit the operation of the CLEC Unit in a manner consistent with prior practice, including but not limited to any and all licenses, permits and manufacturers' and vendors' warranties.

3. Title to Assets. At the closing, Newco will purchase from the Company, and the Company will sell and transfer to Newco all right, title and interest in and to the Purchased Assets free and clear of any and all liens, claims, interests, encumbrances, mortgages, charges, security interests, options, rights, restrictions or any other interests or imperfections of title whatsoever.

4. No Assumption of Liabilities. At the closing, Newco will assume no liabilities or other obligations, commercial or otherwise, of the Company or the CLEC Unit in respect of the Purchased Assets known or unknown, fixed or contingent, choate or inchoate, liquidated or unliquidated, secured or unsecured, or otherwise, regardless of when the same may arise or may have arisen, including, without limitation, (i) any costs associated with the cure of any defaults under any leases for real property and executory contracts, and (ii) any compensation, benefits, pension, retiree, medical or tax obligations.

5. Definitive Agreement. Upon the acceptance of this letter, the parties hereto will negotiate in good faith based upon the basic terms and conditions set forth in this letter of intent and other terms and conditions as are mutually acceptable to the parties a mutually satisfactory definitive purchase agreement, which shall be subject to approval by the Bankruptcy Court, and other ancillary documents, including deeds and a bill of sale, containing such agreements, representations, warranties, covenants and indemnities as are consistent with this letter and are customary for acquisitions of this nature (collectively, the "Definitive Agreement"). The parties will cooperate fully with each other in preparing the Definitive Agreement.

6. Conditions. The Transaction will be conditioned upon.

a. the obtaining of any required governmental agency or agencies approvals, including any consents or approvals relating to environmental matters, required consents or notifications of judicial or regulatory authorities, lenders or other third parties;

b. the obtaining of Bankruptcy Court orders (i) approving the Definitive Agreement and Break-Up Fee (described below), and (ii) approving the Transaction under Section 105 and 363 of the Bankruptcy Code and shall include provisions typical in such orders, including, but not limited to, a finding that the purchaser has acted in good faith according to Section 363 of the Bankruptcy Code;

c. the obtaining of a Bankruptcy Court order Section 366 of the Bankruptcy Code, in form reasonably satisfactory to TSG, prohibiting any utility from terminating services to the Company and the CLEC Unit; and

d. satisfactory completion by the TSG Parties (as defined below) of financial and legal due diligence on a timely basis; provided however, that the Company will continue to afford TSG and its employees, representatives, agents and advisers (collectively, the "TSG Parties") full access to all of the Purchased Assets, personnel and to all information, including without limitation the financial records and reports of the Company that are related to or connected with the business or operations of the CLEC Unit, in each case in order to determine that the transactions contemplated hereby can be consummated in accordance with applicable statutes and regulations, to verify the accuracy of the representations heretofore made and hereafter to be made in definitive documents, and to evaluate the business prospects and profitability of the Assets; provided further, that none of the TSG Parties will perform on-site due diligence on any of the Purchased Assets without the prior approval of the Company.

7. Maintaining the Business and Operations of the CLEC Unit. From the date hereof until the closing of the Transaction, the business of the CLEC Unit shall be conducted in the ordinary course consistent with prior practice. With respect to the CLEC Unit, the Company shall not enter into, perform, conduct or promise to enter into, perform or conduct any material commitments, purchases, sales (including "fire sales"), discounts or changes in business or operations for the products or services of the CLEC Unit or otherwise without prior notification to, and written approval of, TSG.

8. Confidentiality. Each of the parties hereto agree that, without the prior written consent of the other, it will not and will direct its representatives not to, directly or indirectly, disclose to any person the existence of this letter, the fact that discussions or negotiations are taking place concerning a possible transaction involving the Company or any of the terms, conditions or other facts

hereto, or (b) by any party hereto, if by 5:00 p.m., New York City time, on May 18, 2001, the Definitive Agreement shall not have been approved by the Bankruptcy Court, unless such date is extended by mutual agreement.

10. Expenses; Break-Up Fee. The parties hereto agree that they will bear their own expenses in respect of this letter, the Definitive Agreement and the transactions contemplated hereby and thereby, whether or not such transactions are consummated; provided, however, that if the Transaction is subject to auction, (a) we shall be entitled to (and the Company will use its best efforts to obtain approval of) a Bankruptcy Court ordered break-up fee of $100,000 (the "Break-Up Fee"); and (b) minimum opening bids must be equal to (i) the Purchase Price, plus (ii) the Break-Up Fee, plus (iii) $50,000.

11. Proposed Equity Capitalization of Newco. Following the closing of the Transaction, the proposed equity capitalization of Newco will be substantially as set forth in Exhibit C.

12. Legally Binding; Successors and Assigns. The parties hereto agree that, except for Sections 5, 6, 7, 8, 9, 12, 13 and 14 (collectively, the "Binding Provisions"), the terms of this letter shall not be legally binding upon the parties hereto. All provisions set forth herein shall be refined and reflected in the Definitive Agreements. The Binding Provisions shall survive the termination of this letter of intent and shall be legally binding upon and enforceable against the parties hereto and their respective successors, and permitted assigns.

13. Governing Law. Each of the parties hereto each agree that this letter and the respective rights and duties and obligations hereunder shall be governed and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law thereof. Each of the parties hereto hereby irrevocably submits to the exclusive jurisdiction of any New York state or a Federal court sitting in the City of New York, New York over any action or proceeding arising out of or relating to this letter, and each of the parties hereto hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York state or Federal court.

14. Agreement of the Parties. The agreements contained in this letter supersede all prior agreements relating to the subject matter hereof.

15. Counterparts. This letter may be executed in counterparts, each of which shall be an original and all of which, taken together, shall constitute one instrument.

If you approve and agree to the foregoing, please sign and return the enclosed copy of this letter to the undersigned no later than 5:00 p.m. New York City time on Wednesday, May 9, 2001. If such executed copies are not received on or before such date and time, this letter of intent forthwith shall expire and terminate.

Very truly yours,

TSG CAPITAL FUND III, L.P.

By: David B. Thompson
managing member

Agreed to and accepted as
of the date of this letter

TELSCAPE INTERNATIONAL, INC.

By:_____
Name:
Title:

EXHIBIT A
NEWCO
SENIOR SECURED NOTES
Summary of Terms

Borrower:	Newco
Creditor:	Telscape International, Inc. ("Telscape")
Security:	Senior Secured Note ("Note")
Ranking:	The Note is senior in right of payment to all other debt obligations of the Borrower.
Amount:	$12,000,000
Maturity:	December 31, 2006
Interest Rate:	The Note will bear an interest rate of 9.5% per annum, compounded quarterly. There will be no payments for the first year. During this time interest is capitalized and added to the principle amount of the Note. There will be interest-only payments for the second year. Ordinary quarterly interest payments will be payable after the second year.
Repayment:	The principal amount of the Note will be amortized in equal quarterly payments, beginning in third year.

EXHIBIT B

605 East Huntington Drive
Monrovia, California 91016

1455 N.W. 107th Ave., #682
Hialeah, Florida 33012

6906 Pacific Blvd.
Huntington Park, California 90255

1859 Montebello Town City
Montebello, California 90640

8401 Van Nuys Blvd., #26
Panorama City, California 91402

555 Broadway, #124
Chula Vista, California 91910

11025 Valley Boulevard
El Monte, California 91731

1301 Fannin Street, Suite 1275
Houston, Texas 77002

99 S.E. 5th Street, 1st Floor
Miami, Florida 33131-2545

3949 Ruffin Road, Suite E2
San Diego, California 92123

EXHIBIT C
NEWCO
Proposed Capitalization

Debt:	$12,000,000 of 9.5% Senior Secured Notes (Exhibit A)
Equity:	$20,000,000 commitment • $10,000,000 at closing • $10,000,000 phased in based on operating milestones
Use of Proceeds:	Capital infusion will fund: • $1,000,000 of the purchase price • $2,500,000 of deposits to ILECs • $6,500,000 of capital expenditures during 2001 • $10,000,000 of cash operating losses including incremental overhead (CFO, accounting, human resources, information systems and legal) required for standalone operations

EXHIBIT "E"

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

	Chapter 11
In re:	
	Case Nos. 01-1561 through 01-1568
Telscape International, Inc., et al.,	**(JJF)**
Debtors.	**(Jointly Administered)**
	Hearing Date: May 24, 2001 at 11:30 a.m.
	Objections Due: May 22, 2001 at 12:00 p.m.

NOTICE OF DEBTORS' INTENT TO SELL CERTAIN OF THEIR ASSETS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS, AND OTHER INTERESTS PURSUANT TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER UNDER 11 U.S.C. §§ 105, 363, 365 AND 1146(C) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004, 6006 AND 9014(A) APPROVING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS AND ENCUMBRANCES, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND (C) EXEMPTION OF SUCH SALE AND ASSIGNMENT FROM STAMP OR SIMILAR TAXES

TO ALL CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that the Debtors have submitted a proposed order requesting that a hearing (the "Sale Hearing") will be held before The Honorable Joseph J. Farnan, Jr.,United States District Court Judge, on **May 24, 2001 at 11:30 a.m.** in the United States District Court, 844 King Street, Wilmington, Delaware 19801, to consider the motion (the "Motion") of Telscape International, Inc. ("Telscape") for itself and on behalf of those subsidiaries and affiliates set forth on Exhibit "A" attached to the Motion (such subsidiaries and affiliates together with Telscape are collectively referred to herein as the "Debtors" and/or "Debtors-in-Possession"), for an order pursuant to sections 105, 363, 365 and 1146(c) of title 11

of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure 6004 and 6006 seeking, among other things, entry of an order (i) authorizing and approving the (a) terms of the sale of all right, title and interest of the Debtors in and to substantially all of the tangible and intangible assets used by the Debtors in connection with their competitive local exchange carrier telecom business services unit (the "CLEC Unit") that services the California and Florida markets as more fully described in the Term Sheet and related Asset Purchase Agreement (as defined herein) (collectively, the "Assets"), and (b) assignment of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, to TSG Capital Group, L.L.C. and/or its designee (the "Buyer") pursuant to and in accordance with the terms of a certain Term Sheet dated as of May 7, 2001 and related Asset Purchase Agreement contemplated thereby (the Term Sheet and the Asset Purchase Agreement are hereinafter referred to collectively as the "Asset Purchase Agreement"), by and among the Debtors and the Buyer for the sum of $13,000,000 subject to certain adjustments and hold backs as set forth in the Term Sheet (the "Purchase Price"), subject to higher or better offers, and (c) exemption of the sale of the Assets and the assignment of the Assumed Contracts from stamp or similar taxes, and (ii) granting such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that the Motion and the Asset Purchase Agreement may be examined in the office of the Clerk of the Bankruptcy Court during regular business hours, or obtained from the undersigned counsel for the Debtors.

PLEASE TAKE FURTHER NOTICE that the Debtors are hereby accepting competing bids (the "Bids") for the sale and assignment of the Debtors' Assets. Such Bids must

be received by the undersigned counsel for the Debtors no later than **12:00 p.m. on May 22, 2001.**

PLEASE TAKE FURTHER NOTICE that the Bidding Procedures, the Auction (as those terms are defined in the Motion) and the terms and conditions in respect of the submission of Bids are set forth in Paragraph 16 of the Motion and may be examined in the offices of the Clerk of the Bankruptcy Court during regular business hours, or obtained from the undersigned counsel for the Debtors.

PLEASE TAKE FURTHER NOTICE that any interested party seeking to object to the sale of the Assets pursuant to the Asset Purchase Agreement must file and serve an objection (the "Objection") in accordance with Paragraph 30 of the Motion and must set forth the basis of the Objection **(with appropriate documentation in support thereof)** so that such Objection is received by (i) the undersigned counsel for the Debtors, (ii) counsel for the Buyer, Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019, Attn: Raniero Daversa, Esq; and (iii) the Office of the United States Trustee, no later than **12:00 p.m. on May 22, 2001** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that unless an Objection is filed and served by the Objection Deadline, all parties who have received actual or constructive notice hereof shall (i) be forever barred from objection to the sale of Assets pursuant to the Asset Purchase Agreement, and (ii) be deemed to have consented to the sale of the Assets pursuant to the Asset Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to any Objections shall be held on **May 24, 2001 at 11:30 a.m.** or such other date as the Court may designate.

Dated: Wilmington, Delaware
May 10, 2001

YOUNG CONAWAY STARGATT & TAYLOR LLP

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P.O. Box 391
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Co-Counsel for the Debtors and Debtors-in-Possession

TO BE FILED

AND

SERVED SEPARATELY