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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

-----X  
In re: : (Jointly Administered  
: Under Case No. 02-35895)  
VELOCITA CORP., et al., :  
: Chapter 11 Case Nos.  
Debtors. : 02-35894 through  
: 02-35905 (DHS)  
: :  
-----X

**NOTICE OF MOTION OF THE DEBTORS FOR THE ENTRY OF  
THE STIPULATION AND AGREED ORDER TO (I) RESOLVE CERTAIN  
CLAIMS OF LIBERTY MUTUAL INSURANCE COMPANY AND (II) MAKE  
ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION PURPOSES**

TO: MASTER SERVICE LIST, ALL CREDITORS, AND OTHER PARTIES IN INTEREST

PLEASE TAKE NOTICE that the above captioned debtors and debtors in

possession (the "Debtors"), will move before the Honorable Donald H. Steckroth at the

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OTH NON-MR  
United States Bankruptcy Court, King Federal Building, 50 Walnut Street, Newark, New  
Jersey 07102, at 11:00 a.m. in the forenoon, or soon thereafter as counsel may be heard  
on May 1, 2003, for the entry of the Stipulation and Agreed Order To (I) Resolve Certain  
Claims of Liberty Mutual Insurance Company and (II) Make Allocation Schedule Binding  
For Distribution Purposes (the "Motion").

*Along - original.*

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PLEASE TAKE FURTHER NOTICE that the Debtors will rely upon the supporting Motion submitted simultaneously herewith.

PLEASE TAKE FURTHER NOTICE that any objections to this Motion must be filed and served upon Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq.) and Ravin Greenberg PC, 101 Eisenhower Parkway, Roseland, New Jersey 07068 (Attn: Morris S. Bauer, Esq.) so as to be received seven (7) days prior to the hearing date.

PLEASE TAKE FURTHER NOTICE that there are no complex, factual or legal issues involved herein, and therefore, in accordance with D.N.J. LBR 9013-2, no memorandum of law is submitted herewith.

PLEASE TAKE FURTHER NOTICE that in accordance with D.N.J. LBR 9013-1(f), the Debtors request oral argument only if a timely objection is filed.

Dated: April 3, 2003

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- and -

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By:         /s/Morris S. Bauer                  
Howard S. Greenberg, Esq. (HSG 8559)  
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UNITED STATES BANKRUPTCY COURT  
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In re: : (Jointly Administered  
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**MOTION OF THE DEBTORS FOR THE ENTRY OF THE STIPULATION  
AND AGREED ORDER TO (I) RESOLVE CERTAIN CLAIMS OF  
LIBERTY MUTUAL INSURANCE COMPANY AND (II) MAKE  
ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION PURPOSES**

TO: HONORABLE DONALD H. STECKROTH  
UNITED STATES BANKRUPTCY JUDGE

Velocita Corp., ("Velocita") and its subsidiaries and affiliates, as debtors and  
debtors in possession (collectively, the "Debtors"), respectfully represent:

**Background**

1. On May 30, 2002 (the "Commencement Date"), the Debtors each  
commenced with this court a voluntary case under chapter 11 of title 11 of the United  
States Code (the "Bankruptcy Code"). The Debtors continue to operate their business

and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On June 7, 2002, the United States Trustee appointed two (2) statutory committees of unsecured creditors, a committee of bondholders (the "Bondholders Committee") representing the holders of the 13 ¾% notes issued by Velocita and a committee of general unsecured creditors of all of the Debtors (the "Trade Committee" and, together with the Bondholders' Committee, the "Committees").

#### **Jurisdiction And Venue**

3. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this court pursuant to 28 U.S.C. §§1408, 1409.

#### **The Debtors' Business and the Chapter 11 Cases**

4. Velocita, along with its direct and indirect subsidiaries (all of which are Debtors), were constructing a fiber-optic network (the "Network"). Velocita is the immediate corporate parent of PF.Net Corp. ("PF. Net"), the primary operating company of the Debtors. All of the other Debtors are wholly owned direct and indirect subsidiaries of PF.Net.

5. As of the Commencement Date, the Debtors were liable to Wachovia Bank, National Association in its capacity as administrative agent (in such capacity, the "Administrative Agent") for itself and a syndicate of senior secured lenders (collectively, the "Lenders") in the aggregate amount of approximately \$370 million on account of loans and other extensions of credit made by the Lenders pursuant to the Credit Agreement dated as of October 29, 1999 (as amended, supplemented, or otherwise

modified, the "Credit Agreement") among the Debtors, the Lenders and the Administrative Agent. These loans and other extensions of credit are secured by first priority liens on substantially all of the Debtors' assets and were used by the Debtors to fund the construction of the Network.

6. On July 16, 2002, the Court granted final approval to the Debtors to use the Lenders' cash collateral on a consensual basis and provide adequate protection to the Lenders pursuant to the Final Order (I) Authorizing the Use of Lenders' Cash Collateral and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 entered by this Court on July 16, 2002 (the "Final Cash Collateral Order").

7. On or about September 9, 2002, the Lenders notified the Debtors that defaults had occurred and were (and remain) continuing under paragraph 14 of the Final Cash Collateral Order as a result of, among other things, the Debtors' failure to have reached agreement on a debtor-in-possession financing facility on or before August 30, 2002. Notwithstanding the occurrence of these defaults, the Lenders agreed to continue to make Postpetition Loans from the Collateral Accounts (as such terms are defined in the Final Cash Collateral Order) pursuant to one-week Budgets, while reserving their rights, remedies, powers and privileges under the Final Cash Collateral Order and applicable law in respect of such defaults.

8. On November 26, 2002, the Lenders delivered a termination notice (as defined in the Final Cash Collateral Order) advising the Debtors that the expiration date under the Final Cash Collateral Order had occurred.

9. On November 7, 2002, the Court entered an order (the "Sale Order") pursuant to sections 105(a), 363(b) and (f), 365(a) and (f), and 1146(c) of the

Bankruptcy Code; (A) Authorizing Debtors to Sell Substantially All of Their Assets to AT&T Corp. ("AT&T") or its designee AT&T Network Assets 1 Inc. ("AT&T Network") Free and Clear of Liens, Claims, Encumbrances and Interests as set forth in Asset Purchase Agreement; and (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Waiving Automatic Stay under Fed. R. Bankr. P. 6004(g) and 6006(d).

10. Pursuant to the Sale of Order, the Debtors have sold substantially all of their assets to AT&T Network and assigned certain of their executory contracts and leases to AT&T Network pursuant to an asset purchase agreement (the "Asset Purchase Agreement") with AT&T dated October 30, 2002 for a purchase price of \$37 million (the "AT&T Sale Proceeds").

11. The Asset Purchase Agreement and the Sale Order reference an allocation schedule pursuant to which the AT&T Sale Proceeds were allocated to various links of the Network that were being purchased by AT&T Network (the "Allocation Schedule"). The Sale Order approved the Allocation Schedule only with respect to AT&T, and the Sale Order further provided that the Allocation Schedule "shall not prejudice the rights of any party to (i) assert that the Allocation Schedule is not binding for purposes of determining the distribution of sale proceeds to interested parties or (ii) introduce evidence and testimony to establish that the allocation schedule or the testimony with respect thereto should be disregarded or modified for purposes of determining the distribution of sale proceeds to interested parties".

12. Further, pursuant to the Asset Purchase Agreement, the Debtors sold the IFCI/All Star-Liberty Claims (as defined in the Asset Purchase Agreement) to AT&T

Network, and the Debtors retained a 25% interest in the IFCI/All Star-Liberty Claims in the form of the partial IFCI/All Star-Liberty Claims (as defined in the Asset Purchase Agreement).

13. Prior to the Petition Date, PF.Net Construction Corp., one of the Debtors herein ("PF.Net Construction"), entered into the following contracts with International Fibercom, Inc. and its subsidiaries and affiliates (collectively "IFCI"): (i) the Telecommunications System Turnkey Construction Contract dated November 10, 1999, to construct the Debtors' fiber optic network between Los Angeles and San Diego, (ii) the Telecommunications System Turnkey Construction Contract, dated December 23, 1999, to construct the Debtors' fiber optic network between San Diego and Blythe, California, (iii) the Telecommunications System Turnkey Construction Contract, dated September 29, 2000, to construct the Debtors' fiber optic network extending from Fort Worth to Dallas, Texas to Tulsa, Oklahoma and from Springfield, Illinois to Chicago, Illinois to Elkhart, Indiana, which was amended in April and May, 2001 to add a project between Greenville, South Carolina and Greensboro, North Carolina (as any such contracts may have been amended, supplemented or otherwise modified, collectively, the "Construction Contracts").

14. On February 13, 2002, IFCI and various other subsidiaries filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Arizona.

15. Liberty Mutual Insurance Company, its co-sureties and reinsurers ("Liberty Mutual") asserted and continues to assert (and the Lenders and Debtors dispute) that it holds valid mechanic's liens on certain of the Debtors' property that may be senior to

the liens and claims of the Lenders under the Credit Agreement and the Final Cash Collateral Order.

16. Liberty Mutual has represented and warranted to the Debtors and the Lenders that (a) IFCI assigned its asserted liens and claims against the Debtors' estates to Liberty Mutual, and (b) Liberty Mutual is subrogated to IFCI's rights with respect to, among other things, IFCI's asserted liens and claims against the Debtors' estates.

17. Liberty Mutual further asserts that it has a mechanic's lien claim against one or more of the Debtors in the approximate amount of \$27,000,000.00.

18. On August 6, 2002, PF.Net Construction filed a complaint (the "Complaint") against Liberty Mutual alleging, among other things, that Liberty Mutual failed to perform under certain bonds issued in connection with IFCI's construction of the Debtors' fiber optic network and the liens being asserted by Liberty Mutual were invalid (as consolidated with 10 other mechanic's lien foreclosure actions transferred to this Bankruptcy Court from various state court forums, hereinafter referred to as the "IFCI Adversary Proceeding").

19. Subsequent to the commencement of the IFCI Adversary Proceeding, AT&T Corp. intervened.

20. Subsequent to the entry of the Sale Order, several creditors, including First South Utility Construction, Inc. ("First South"), Northern Line Layers, Inc. ("Northern Line") and C&B Associates, Inc. ("C&B") all contested the Allocation Schedule. Subsequently, each of First South, Northern Line and C&B resolved their disputes with the Debtors and the Lenders regarding the Allocation Schedule, which settlements are embodied in orders of the Court.



21. In addition to First South, Northern Line and C&B, Liberty Mutual/IFCI asserted that the Allocation Schedule should not be binding for purposes of determining the distribution of the AT&T Sale Proceeds. As previously stated, Liberty Mutual believed that its liens may be senior to the liens and claims of the Lenders. On the other hand, the Debtors disputed the validity of Liberty Mutual's liens and the Lenders disputed the priority thereof.

22. Subsequent to the entry of the Sale Order, the Debtors, the Lenders and Liberty Mutual commenced negotiations regarding Liberty Mutual's asserted lien rights, Liberty Mutual's claims, and the Allocation Schedule. These negotiations resulted in the parties agreeing to the Stipulation and Agreed Order to (I) Resolve Certain Claims of Liberty Mutual Insurance Company and (II) Make Allocation Schedule Binding for Distribution Purposes (the "Liberty Mutual Stipulation").

23. The Liberty Mutual Stipulation, in pertinent part, provides as follows: (a) the Debtors shall pay \$1,700,000.00 (the "Settlement Payment") to Liberty Mutual from the AT&T Sale Proceeds in full and final satisfaction and settlement of all of Liberty Mutual's and IFCI's (i) liens, claims, encumbrances and interests in or against the AT&T Sale Proceeds and objections to the Allocation Schedule, (ii) right to receive any distribution from the Debtors' estates and (iii) claims against the Lenders (and in full satisfaction of all of the Lenders' claims against Liberty Mutual and IFCI in the Debtors' chapter 11 cases); (b) Liberty Mutual's agreement to the Allocation Schedule as annexed to the Asset Purchase Agreement; (c) Liberty Mutual's acknowledgment as to the validity, priority and extent of the Lenders' liens and claims as set forth in the Final

Cash Collateral Order; and (d) a waiver by the Debtors and the Lenders of any and all claims to the Settlement Payment.

24. The Liberty Mutual Stipulation does not make the Allocation Schedule binding on Liberty/IFCI, the Debtors or AT&T in the IFCI Adversary Proceeding. Further, the Liberty Mutual Stipulation is not intended to constitute a determination of the validity, priority or extent of any liens or claims that (i) Liberty Mutual or IFCI has or may have against the Debtors, AT&T or other parties or (ii) the Debtors or AT&T has or may have against Liberty Mutual, IFCI or other parties, in each case whether asserted in the IFCI Adversary Proceeding or otherwise, nor shall it relieve the Debtors of their obligation under the Asset Purchase Agreement to cooperate with AT&T and AT&T Network in connection with the IFCI Adversary Proceeding. Further, the Liberty Mutual Stipulation is without prejudice to the right of the Debtors, AT&T or Liberty Mutual/IFCI to argue the Liberty Mutual Stipulation does or does not resolve or effect a claim made in Count VII or any other Count of the Complaint in the IFCI Adversary Proceeding or any related proceeding.

25. Lastly, the Liberty Mutual Stipulation and the within Motion is being provided to all creditors and other parties in interest of the within chapter 11 case. The Liberty Mutual Stipulation specifically provides in paragraph 3 that the Allocation Schedule shall become binding for purposes of determining the distribution of the AT&T Sale Proceeds upon all parties in interest in these chapter 11 cases, the Lenders, the Debtors and their estates and their respective successors and assigns, including without limitation, any chapter 11 or chapter 7 Trustee appointed or elected in any of the Debtors' cases.

### Relief Requested

26. By the within Application the Debtors respectfully request the entry of the Liberty Mutual Stipulation pursuant to Fed. R. Bankr. P. 9019 and Section 105(a) of the Code.

27. Section 105(a) of the Bankruptcy Code provides in pertinent part that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. Bankruptcy Rule 9019(a) provides in pertinent part that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” To approve the settlement under Bankruptcy Rule 9019(a), the Court must find that it is “fair, reasonable and in the best interest of the estate.” In re Louise’s, Inc., 211 B.R. 798, 801(D.Del. 1997). This standard has been further described as follows:

“In undertaking an examination of the settlement, we emphasize that this responsibility of the bankruptcy judge ... is not to decide the numerous questions of law and fact raised ... but rather to canvas the issues and see whether the settlement “fall[s] below the lowest point in the range of reasonableness.”

Cosoff v. Rodman (In re W. T. Grant Co.), 699 F.2d 599, 608 (2<sup>nd</sup> Cir. 1982), cert. denied, 464 U.S. 822 (1983), quoting Newman v. Stein, 464 F.2d 689, 693 (2<sup>nd</sup> Cir. 1972), cert. denied sub nom, Benson v. Newman, 409 U.S. 1039 (1973).

28. The U.S. Supreme Court has stated that in determining the fairness of a compromise, a judge should:

form an educated estimate of the complexity, expense and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors rolled into a full and fair assessment of the wisdom of the proposed compromise. Basic to this

process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v.

Anderson, 390 U.S. 419, 424-25 (1968). The 3<sup>rd</sup> Circuit, applying TMT Trailer in the context of a settlement pursuant to Bankruptcy Rule 9019(a), has set forth four factors to be considered:

(1) the probability of success in litigation; (2) the likely difficulties of collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.

Martin v. Myers (In re Martin), 91 F.3d 389, 393 (3<sup>rd</sup> Cir. 1996). Settlements should only be rejected if they fall “below the lowest point in the range of reasonableness.” Cosoff v. Rodman, 699 F.2d at 608 (citing Newman v. Stein, 464 F.2d 689, 693 (2<sup>nd</sup> Cir. 1972).

29. The settlement set forth in the Liberty Mutual Stipulation is well within the range of reasonableness required by Bankruptcy Rule 9019(a) and is in the best interest of the Debtors’ estates.

30. As described above, Liberty Mutual is asserting secured and unsecured claims aggregating approximately \$27,000,000.00. Further, Liberty Mutual is disputing the extent, validity and priority of the Lenders’ claim and further disputing the Allocation Schedule annexed to the Asset Purchase Agreement. Pursuant to the Liberty Mutual Stipulation, all of these issues are being resolved by way of the Settlement Payment in the amount of \$1,700,000.00. In exchange therefor, Liberty Mutual has consented to the Allocation Schedule, consented to the extent, validity and priority of the Lenders’ claim, and waived any right to receive any distribution from the Debtors’ estates.

31. Considering the extensive costs of litigation and uncertain result if the Debtors were to litigate the Allocation Schedule with Liberty Mutual and the validity of the Lenders' liens, the payment to Liberty Mutual is an appropriate settlement. Accordingly, the Debtors respectfully submit that the Liberty Mutual Stipulation should be approved.

32. Finally, as previously stated, the Liberty Mutual Stipulation, in paragraph 3, specifically provides that the Allocation Schedule shall be deemed binding for purposes of determining the distribution of the AT&T Sale Proceeds upon all parties in interest in these chapter 11 cases, the Lenders, the Debtors and their estates and their respective successors and assigns, including without limitation, any chapter 11 or chapter 7 Trustee appointed or elected in any of the Debtors' cases. Each of these creditors and parties in interest have had since November 7, 2002 to challenge the validity of the Allocation Schedule. By this Motion, the Debtors have placed each and every creditor and party in interest on notice of the Debtors' request to have the Allocation Schedule deemed binding.

#### **Conclusion**

33. Based upon the foregoing, the Debtors submit that the Motion should be granted.

#### **Waiver of Memorandum of Law**

34. This Motion does not raise any novel issues of law and all of the legal precedent in support of the relief requested is cited herein. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in the local rules D.N.J. LBR 9013-2 that a separate memorandum of law be submitted.

**Notice**

35. The Debtors have served notice of this Motion upon The Office of the United States Trustee for the District of New Jersey, counsel for the Secured Lenders, respective counsel for the Bondholders Committee and the Trade Committee, and those parties entitled to notice pursuant to this court's Order dated May 30, 2002 establishing certain notice procedures in these chapter 11 cases, and all creditors and other parties in interest. The Debtors submit that no other or further notice need be given .

36. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this court enter the Liberty Mutual Stipulation, and grant the Debtors such other and further relief as is just.

Dated: April 3, 2003  
Newark, New Jersey

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By: /s/ Morris S. Bauer  
Howard S. Greenberg, Esq. (HSG 8559)  
Morris S. Bauer, Esq. (MB 6677)

ATTORNEYS FOR DEBTORS and  
DEBTORS-IN-POSSESSION

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Co-Counsel for the Debtors

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

VELOCITA CORP., et al.,

Debtors.

Jointly Administered Under Case No. 02-35895(DHS)

Chapter 11 Case Nos. 02-35894 (DHS) through 02-35905 (DHS)

Hon. Donald H. Steckroth, U.S.B.J.

**STIPULATION AND AGREED ORDER TO (I)  
RESOLVE CERTAIN CLAIMS OF LIBERTY  
MUTUAL INSURANCE COMPANY AND (II) MAKE  
ALLOCATION SCHEDULE BINDING FOR  
DISTRIBUTION PURPOSES**

The relief set forth on the following pages, numbered two (2) through fourteen (14), is hereby ordered.

**STIPULATION AND AGREED ORDER TO (I) RESOLVE CERTAIN CLAIMS OF LIBERTY MUTUAL INSURANCE COMPANY AND (II) MAKE ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION PURPOSES**

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THIS STIPULATION AND AGREED ORDER, dated as of March 31, 2003 (this "Stipulation"), by and among Velocita Corp. ("Velocita"), PF.Net Corp. (the "Company") and its direct and indirect domestic subsidiaries which are debtors and debtors-in-possession herein (together with Velocita and the Company, the "Debtors"), Liberty Mutual Insurance Company, its co-sureties and reinsurers ("Liberty Mutual"), as assignee, subrogee or designee of the liens and claims asserted by International Fibercom, Inc. and its subsidiaries and affiliates (collectively, "IFCI"), and Wachovia Bank, National Association, in its capacity as administrative agent (in such capacity, the "Administrative Agent") for itself and a syndicate of senior secured lenders (collectively, the "Lenders") to the Debtors, has been entered into in order to resolve all of the various claims of Liberty Mutual or IFCI against the Debtors and certain related disputes between Liberty Mutual/IFCI and the Lenders, and in furtherance thereof, the Debtors, the Administrative Agent and Liberty Mutual/IFCI, by and through their undersigned counsel, hereby stipulate and agree as follows:

**Background of Chapter 11 Cases**

WHEREAS, on May 30, 2002 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the "Court");

WHEREAS, since the Petition Date, the Debtors have continued in possession of their properties and the management of their businesses as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on June 7, 2002, the U.S. Trustee appointed (i) a committee of unsecured creditors of the Company and its operating subsidiaries and (ii) in Velocita's Chapter



In re Velocita Corp., et al.

Jointly Administered Under Case No. 02-35895

**STIPULATION AND AGREED ORDER TO (I) RESOLVE CERTAIN CLAIMS OF LIBERTY MUTUAL INSURANCE COMPANY AND (II) MAKE ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION PURPOSES**

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11 case, a committee of holders of the 13¾% Senior Notes due 2010 issued by Velocita (collectively, the "Committees");

**The Lenders; Final Cash Collateral Order**

WHEREAS, as of the Petition Date, the Company was liable to the Lenders in the aggregate amount of approximately \$370 million on account of loans and other extensions of credit made by the Lenders pursuant to the Credit Agreement dated as of October 29, 1999 (as amended, supplemented or otherwise modified, the "Credit Agreement"), among the Company, the Lenders and the Administrative Agent. The Debtors and the Lenders assert that these loans and other extensions of credit are secured by first priority liens on substantially all of the Debtors' assets and were used by the Debtors to fund the construction of their fiber optic network;

WHEREAS, on July 16, 2002, the Court granted final approval to the Debtors to use the Lenders' cash collateral on a consensual basis and provide adequate protection to the Lenders pursuant to the Final Order (I) Authorizing the Use of Lenders' Cash Collateral and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 entered by this Court on July 16, 2002 (the "Final Cash Collateral Order");

WHEREAS, on or about September 9, 2002, the Lenders notified the Debtors that defaults had occurred and were (and remain) continuing under paragraph 14 of the Final Cash Collateral Order as a result of, among other things, the Debtors' failure to have reached agreement on a debtor-in-possession financing facility on or before August 30, 2002. Notwithstanding the occurrence of these defaults, the Lenders agreed to continue to make Postpetition Loans from the Collateral Accounts (as such terms are defined in the Final Cash

**STIPULATION AND AGREED ORDER TO (I) RESOLVE CERTAIN CLAIMS OF LIBERTY MUTUAL INSURANCE COMPANY AND (II) MAKE ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION PURPOSES**

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Collateral Order) pursuant to one-week Budgets, while reserving their rights, remedies, powers and privileges under the Final Cash Collateral Order and applicable law in respect of such defaults;

WHEREAS, on November 26, 2002, the Lenders delivered a Termination Notice (as defined in the Final Cash Collateral Order) advising the Company that the Expiration Date under the Final Cash Collateral Order had occurred;

**IFCI/Liberty Mutual**

WHEREAS, prior to the Petition Date, PF.Net Construction Corp., one of the Debtors herein ("PF.Net Construction"), entered into the following contracts with IFCI: (i) the Telecommunication System Turnkey Construction Contract, dated November 10, 1999, to construct the Debtors' fiber optic network between Los Angeles and San Diego, (ii) the Telecommunication System Turnkey Construction Contract, dated December 23, 1999, to construct the Debtors' fiber optic network between San Diego and Blythe, California and (iii) the Telecommunication System Turnkey Construction Contract, dated September 29, 2000, to construct the Debtors' fiber optic network extending from Fort Worth to Dallas, Texas to Tulsa, Oklahoma and from Springfield, Illinois to Chicago, Illinois to Elkhart, Indiana (which was amended in April and May 2001 to add a project between Greenville, South Carolina and Greensboro, North Carolina) (as any such contracts may have been amended, supplemented or otherwise modified, collectively, the "Construction Contracts");

WHEREAS, on February 13, 2002, IFCI and various of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Arizona (the "Arizona Bankruptcy Court");

In re Velocita Corp., et al.

Jointly Administered Under Case No. 02-35895

**STIPULATION AND AGREED ORDER TO (I) RESOLVE CERTAIN CLAIMS OF LIBERTY MUTUAL INSURANCE COMPANY AND (II) MAKE ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION PURPOSES**

---

WHEREAS, Liberty Mutual, as assignee, subrogee or designee of IFCI, asserts (and the Lenders and Debtors dispute) that it holds valid mechanic's liens on certain of the Debtors' property that may be senior to the liens and claims of the Lenders under the Credit Agreement and the Final Cash Collateral Order;

WHEREAS, Liberty Mutual has represented and warranted to the Debtors and the Lenders that (a) IFCI has assigned its asserted liens and claims against the Debtors' estates to Liberty Mutual, and (b) Liberty Mutual is subrogated to IFCI's rights with respect to, among other things, IFCI's asserted liens and claims against the Debtors' estates;

WHEREAS, the Arizona Bankruptcy Court entered an order on March 17, 2003 approving the Joint Prosecution Agreement between IFCI and Liberty Mutual, and formalizing the arrangements pursuant to which Liberty Mutual, as assignee, subrogee or designee of IFCI, has asserted liens and claims against the Debtors' estates, and nothing in this Stipulation is intended to determine or affect how Liberty Mutual and/or IFCI may choose to apply funds received on account of such asserted liens and claims against the Debtors' estates;

WHEREAS, Liberty Mutual, as assignee, subrogee or designee of IFCI, asserts that it has mechanic's lien claims against one or more of the Debtors in the approximate amount of \$27 million;

WHEREAS, on August 6, 2002, PF.Net Construction filed a complaint (the "Complaint") against Liberty Mutual alleging, among other things, that Liberty Mutual failed to perform under certain bonds issued in connection with IFCI's construction of the Debtors' fiber optic network and the liens being asserted by Liberty Mutual, as such assignee, subrogee or

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designee of IFCI, were invalid (as consolidated with the 10 actions referenced below, the “IFCI Adversary Proceeding”);

WHEREAS, AT&T Corp. intervened in the IFCI Adversary Proceeding;

WHEREAS, pursuant to the Stipulation and Order filed on January 15, 2003, the IFCI Adversary Proceeding was consolidated with 10 other mechanic’s lien foreclosure actions transferred to this Court;

**AT&T Sale**

WHEREAS, on November 6, 2002, the Court approved the sale of substantially all of the Debtors’ assets and the assignment of certain executory contracts (the “Sale Assets”) to AT&T Corp.’s (“AT&T”) designee, AT&T Network Assets 1 Inc. (“AT&T Network”), for \$37 million (the “AT&T Sale Proceeds”) pursuant to an Asset Purchase Agreement dated as of October 30, 2002 (as amended, supplemented or otherwise modified, the “Purchase Agreement”), by and among AT&T, the Company and each other Debtor party thereto;

WHEREAS, pursuant to the Purchase Agreement, the Debtors sold the IFCI/All Star-Liberty Claims (as defined in the Purchase Agreement) to AT&T Network, and the Debtors retained a 25% interest in the IFCI/All Star Liberty Claims in the form of the Partial IFCI/All Star-Liberty Claim (as defined in the Purchase Agreement);

WHEREAS, the Order entered by the Court on November 7, 2002 (the “Sale Approval Order”) approving the sale of the Sale Assets to AT&T or its designee AT&T Network provides, in the manner and to the extent set forth therein, that such sale shall be free and clear of the Liens and Claims (each as defined in the Sale Approval Order) on the Sale Assets and that any such Liens shall attach to the AT&T Sale Proceeds. The Sale Approval Order further

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provides that the AT&T Sale Proceeds are to be deposited and held pending Court resolution of the competing interests asserted in the AT&T Sale Proceeds;

WHEREAS, pursuant to the Sale Approval Order, pending a determination as to the validity, priority or extent thereof, the mechanic's liens asserted by Liberty Mutual, as assignee, subrogee or designee of IFCI, attached to the AT&T Sale Proceeds;

WHEREAS, Liberty Mutual asserted that the Allocation Schedule set forth in Schedule 3.3(a) of the Purchase Agreement should not be binding for purposes of determining the distribution of AT&T Sale Proceeds to the competing claimants in the Debtors' cases;

WHEREAS, the Sale Approval Order provides that the findings made by the Court in paragraph O of the Sale Approval Order with respect to the Allocation Schedule set forth in Schedule 3.3(a) to the Purchase Agreement "shall not prejudice the rights of any party to (i) assert that the Allocation Schedule is not binding for purposes of determining the distribution of sale proceeds to interested parties or (ii) introduce evidence and testimony to establish that the Allocation Schedule or the testimony with respect thereto should be disregarded or modified for purposes of determining the distribution of sale proceeds to interested parties";

WHEREAS, a contested matter exists among the Debtors, the Lenders and Liberty Mutual, as assignee, subrogee or designee of IFCI, regarding Liberty Mutual's entitlement in such capacity to a portion of the AT&T Sale Proceeds, which contested matter is settled, compromised and resolved by this Stipulation without any factual findings or legal determinations related to the validity, extent or priority of the asserted mechanic's liens;

WHEREAS, pursuant to, various stipulations and agreements the Debtors and the Lenders reached with other parties, the Debtors, the Lenders, the Committees, First South Utility

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Construction Inc., Northern Line Layers, Inc. and C&B Associates, Inc. have all agreed that the Allocation Schedule is reasonable and properly binding for purposes of determining the distribution of the AT&T Sale Proceeds, and the Debtors and the Lenders now request, and Liberty Mutual/IFCI consent, subject to the terms of this Stipulation, that the Court order that the Allocation Schedule shall be binding for purposes of determining the distribution of the AT&T Sale Proceeds, but it is understood and agreed that entry of this Stipulation shall not make the Allocation Schedule binding on Liberty Mutual/IFCI, AT&T or the Debtors in the IFCI Adversary Proceeding.

**Best Interests; Notice**

WHEREAS, the Debtors, the Lenders and Liberty Mutual/IFCI believe that it is in the best interest of the parties hereto and the Debtors' estates to avoid the costs and uncertainty of litigation over (i) the Allocation Schedule with regard to determining the distribution of the AT&T Sale Proceeds in the Debtors' cases, (ii) the various liens and claims that have or could be asserted by the parties hereto related to the AT&T Sale Proceeds, and (iii) other challenges to the liens and claims being asserted by such parties; provided that the parties hereto have agreed that nothing in this Stipulation shall resolve the IFCI/All Star-Liberty Claims, and this Stipulation is not intended to constitute a determination of the validity, priority or extent of any liens or claims that Liberty Mutual or IFCI has or may have against the Debtors or AT&T whether asserted in the IFCI Adversary Proceeding or otherwise, nor shall it relieve the Debtors of their obligation under the Purchase Agreement to cooperate with AT&T and AT&T Network in connection with the IFCI Adversary Proceeding; and

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WHEREAS, notice of the Stipulation has been given to (i) the Office of the United States Trustee, (ii) counsel to the Committees, (iii) any party who filed a request for notice in the Debtors' Chapter 11 cases pursuant to Bankruptcy Rule 2002 and (iv) any and all creditors and parties in interest in the Debtors' Chapter 11 cases.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Debtors, Liberty Mutual/IFCI and the Administrative Agent, by and through their undersigned counsel, as follows:

1. In full and final satisfaction and settlement of all of Liberty Mutual's and IFCI's (a) liens, claims, encumbrances and interests in or against the AT&T Sale Proceeds and objections to the Allocation Schedule, (b) right to receive any distribution from the Debtors' estates and (c) claims against the Lenders (and in full and final satisfaction of all of the Lenders' claims against Liberty Mutual and IFCI in the Debtors' Chapter 11 cases), the Debtors shall pay \$1,700,000 (the "Settlement Payment") to Liberty Mutual from the AT&T Sale Proceeds three (3) business days after the later to occur of (i) the entry of this Stipulation by the Court and (ii) the distribution of any portion of the AT&T Sale Proceeds to the Lenders; provided that nothing in this Stipulation shall resolve, release or otherwise impair the IFCI/All Star-Liberty Claims. Upon approval of this Stipulation by the Court, the Debtors and the Lenders agree to fully and forever release, waive and extinguish any and all claims to the Settlement Payment and acknowledge Liberty Mutual's unconditional and absolute right to retain the Settlement Payment in accordance with the terms of this Stipulation.

2. Subject to the receipt of the Settlement Payment by Liberty Mutual, Liberty Mutual for itself, and on behalf of IFCI and any other entity from which Liberty Mutual

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claims an interest as assignee, subrogee, designee or otherwise, hereby (a) consents to the entry of this Stipulation ordering that the Allocation Schedule set forth in Schedule 3.3(a) to the Purchase Agreement is binding for purposes of distribution of the AT&T Sale Proceeds in the Debtors' cases, (b) agrees not to challenge the validity, priority and extent of the Lenders' liens and claims as set forth in the Final Cash Collateral Order, (c) acknowledges that it lacks standing to assert a claim under Section 506(c) of the Bankruptcy Code and that no legal or factual basis exists for the Debtors to assert such a claim and (d) agrees not to object to the approval of any disclosure statement or confirmation of any Chapter 11 plan filed in the Debtors' cases so long as any such plan incorporates or is otherwise consistent with the terms of this Settlement Agreement, including payment of the Settlement Payment to Liberty Mutual as set forth herein.

3. The Allocation Schedule is reasonable and shall be properly binding for purposes of determining the distribution of the AT&T Sale Proceeds upon all parties in interest in these Chapter 11 cases, the Lenders, the Debtors and their estates and their respective successors and assigns, including without limitation, any Chapter 11 or Chapter 7 trustee appointed or elected in any of the Debtors' cases, but it is understood and agreed that entry of this Stipulation shall not make the Allocation Schedule binding on Liberty Mutual/IFCI, the Debtors or AT&T in the IFCI Adversary Proceeding.

4. This Stipulation is not intended to constitute a determination of the validity, priority or extent of any liens or claims that (i) Liberty Mutual or IFCI has or may have against the Debtors, AT&T or other parties or (ii) the Debtors or AT&T has or may have against Liberty Mutual, IFCI or other parties, in each case whether asserted in the IFCI Adversary Proceeding or otherwise, nor shall it relieve the Debtors of their obligation under the Purchase



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Agreement to cooperate with AT&T and AT&T Network in connection with the IFCI Adversary Proceeding. This Stipulation is without prejudice to the right of the Debtors, AT&T or Liberty Mutual/IFCI to argue that this Stipulation does or does not resolve or affect the claim made in Count VII or any other count of the Complaint in the IFCI Adversary Proceeding or any related proceeding. In entering into this Stipulation, the Lenders did not intend to resolve or affect any allegations in the Complaint, the IFCI/All Star-Liberty Claims or the IFCI Adversary Proceeding.

5. Liberty Mutual, the Debtors and the Lenders agree to take all actions reasonably necessary to effectuate the terms of this Stipulation, including without limitation, the filing of any appropriate dismissals with prejudice of pending actions (other than the IFCI Adversary Proceeding) in any court, tribunal, arbitration proceeding, mediation proceeding, administrative proceeding or otherwise. Subject to receipt of the Settlement Payment by Liberty Mutual, Liberty Mutual, as assignee, designee or subrogee of IFCI, hereby acknowledges and agrees that it shall not receive any further distributions of any kind whatsoever from the Debtors, their estates or the Lenders on account of any proofs of claim whether heretofore or hereafter filed by or on behalf of Liberty Mutual or IFCI.

6. This Stipulation may be executed in counterparts and by facsimile, and all such counterparts shall constitute one stipulation.

7. This Stipulation shall inure to the benefit of, and be binding upon, the Lenders, Liberty Mutual/IFCI, the Debtors and their estates and their respective successors and assigns, including without limitation, any Chapter 11 or Chapter 7 trustee appointed or elected in any of the Debtors' cases.

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8. This Stipulation constitutes the entire agreement between the parties with respect to the subject matter hereof. This Stipulation supersedes all prior negotiations and documents reflecting any such prior negotiations among the parties hereto with respect to the subject matter hereof. No prior or contemporaneous agreement may be used to alter the terms of this Stipulation.

9. Liberty Mutual represents and warrants to the Debtors and the Lenders that it has the power and authority, and the legal right, as assignee, subrogee or designee of IFCI, to settle and release all liens, claims, encumbrances and interests, if any, of IFCI or Liberty Mutual against the Debtors, the Debtors' estates and the Lenders. No consent or authorization of, filing with, notice or other act by or in respect of, the Arizona Bankruptcy Court, IFCI or any other person is required in connection with the settlement hereunder or with the execution, delivery, performance, validity or enforceability of this Stipulation.

10. This Stipulation may be modified from time to time only in a writing signed by the party to be charged with such modification and without further Court approval in the event of a non-material modification hereto.

11. This Stipulation is subject to the approval of the Court. The parties agree to use reasonable commercial efforts to obtain the approval of the Court. Nothing in this Stipulation shall be deemed effective unless the Court approves this Stipulation. In the event the Court declines to approve this Stipulation, (a) the parties hereto shall return to their respective rights and obligations existing prior to the execution of this Stipulation and (b) neither this Stipulation nor any part thereof may be used by any party for any purpose, except to enforce this provision.

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INSURANCE COMPANY AND (II) MAKE ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION  
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12. This Stipulation and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the law of the State of New York, except to the extent that the Bankruptcy Code governs such rights and obligations. The Court shall retain and have exclusive jurisdiction to consider any material modification of this Stipulation or any dispute or other matters that may arise in connection with this Stipulation.

13. Proper and adequate notice of the Stipulation has been given and no other or further notice is necessary for entry of this Stipulation.

RIKER, DANZIG, SCHERER, HYLAND &  
PERRITTI, LLP

RAVIN GREENBERG PC

By: /s/ Warren J. Martin  
Warren J. Martin Jr. (WM 0487)

By: /s/ Morris S. Bauer

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-and-

-and-

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Lenders

Co-Counsel for the Debtors

In re Velocita Corp., et al.

Jointly Administered Under Case No. 02-35895

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SHAPIRO & CROLAND

By:  /s/ John P. Di Iorio  
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Counsel to Liberty Mutual Insurance  
Company, for Itself and as Authorized  
Assignee, Subrogee or Designee of  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

-----X  
In re: : (Jointly Administered  
: Under Case No. 02-35895)  
VELOCITA CORP., et al., :  
: Chapter 11 Case Nos.  
Debtors. : 02-35894 through  
: 02-35905 (DHS)  
: :  
-----X

**CERTIFICATE OF CONSENT RE: THE STIPULATION  
AND AGREED ORDER TO (I) RESOLVE CERTAIN CLAIMS OF  
LIBERTY MUTUAL INSURANCE COMPANY AND (II) MAKE  
ALLOCATION SCHEDULE BINDING FOR DISTRIBUTION PURPOSES**

MORRIS S. BAUER, ESQ., certifies as follows:

1. I am a partner at the law firm of Ravin Greenberg PC ("RG"), counsel to the above-captioned Debtors.
2. On this date, I submitted to the Court the following: (a) Notice of Motion of the Debtors for the Entry of the Stipulation and Agreed Order to (i) Resolve Certain Claims of Liberty Mutual Insurance Company and (ii) Make Allocation Schedule Binding For Distribution Purposes, (b) Motion in Support of the Requested Relief, and (c) The Stipulation and Agreed Order to (i) Resolve Certain Claims of Liberty Mutual Insurance

Company and (ii) Make Allocation Schedule Binding For Distribution Purposes (the "Liberty Mutual Stipulation"). The terms of the electronically submitted Liberty Mutual Stipulation is identical to those set forth in the original Liberty Mutual Stipulation.

3. The signature of /s/ Warren Martin, /s/ John Di Iorio and /s/ Morris S. Bauer on the electronically submitted Liberty Mutual Stipulation references signatures of consenting parties obtained on the original Liberty Mutual Stipulation.

4. RG will retain the original Liberty Mutual Stipulation for the required seven (7) year retention period.

5. RG will make the original Liberty Mutual Stipulation available for inspection upon request of the Court or any party in interest.

6. The Certificate of Consent is being filed simultaneously with the pleadings outlined in Paragraph 2 above.

This 3rd day of April, 2003.

By: /s/ Morris S. Bauer  
MORRIS S. BAUER

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DISTRIBUTION CENTER