Counsel for Michael M. Ozawa, Chapter 7 Trustoe for NorthPoint Communications Group, Inc.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

NORTHPOINT COMMUNICATIONS GROUP, INC.

Case No. 01-30127-C7 Chapter 7 (Jointly Administered)

DECLARATION OF MICHAEL M. OZAWA IN SUPPORT OF JOINT MOTION BY TRUSTEES FOR APPROVAL OF COMPROMISE OF CONTROVERSIES

July 18, 2003 9:30 a.m. 235 Pine St., 23rd Floor San Francisco, California Hon. Thomas E. Carlson

I, MICHAEL M. OZAWA, do hereby declare as follows:

1. I am the chapter 7 trustee for NorthPoint Communications Group, Inc. ("Group"). appointed as the trustee for Group (the "Group Trustee") on January 6, 2003, following an ection of creditors. This declaration is based upon my personal knowledge, and I could mnetently testify as to the facts set forth herein if called upon to do so in a court of law.

In my capacity as Group Trustee, I, and others working at my direction and on my half, have performed a substantial review of documents and information pertaining to Group and ts direct and indirect subsidiaries. Among the documents that we reviewed were: (a) all of the

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light of the foregoing, I have negotiated terms of the Settlement Agreement pursuant to which the atholders will retain recourse solely against Group and will not be subject to

ders -- appear to have relied in whole or part upon the credit of Communications. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

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pofs of claims filed against Group and its direct and indirect subsidiaries, and (b) financial and other business records relating to Group and its direct and indirect subsidiaries.

In my capacity as Group Trustee, one of my primary responsibilities has been to valuate the proper allocation of funds (the "Verizon Settlement Proceeds"), paid by Verizon ann, the trustee for NorthPoint Communications, Inc. acts as I know them, all of the remaining Verizon Settlement Proceeds should be and not to Communications. A detailed description of the basis for my position in Group's Opposition to the Motion for Substantive Consolidated filed by the Group rustee, dated February 24, 2003 (Docket No. 1055), as well as two summary judgment motions filed by the Group Trustee (Docket Nos. 1105 and 1120) seeking summary judgment with respect to he Motion for Substantive Consolidation filed by B. Lynn Schoenmann, the chapter 7 trustee for

- Notwithstanding my belief that Group would prevail in the litigation against Communications. I have been of the view that a global settlement between the Group Trustee and tions Trustee would be beneficial to creditors of Group, as it would expedite stribution to creditors of Group. Accordingly, the Group Trustee and Communications Trustee, ong with their respective counsel, participated in a mediation session before the Honorable Donnis April 14, 2003. Although that session did not result immediately in a consensual
- On or about May 28, 2003, the two trustees executed a written settlement agreement nent"), a true and correct copy of which is attached hereto as Exhibit A. It is my sed settlement is in the best interest of the creditors of Group, who will benefit rom the avoidance of significant expense and considerable delay that would result from continued litigation between the estates. Although I am confident that Group would prevail in litigation

ations Trustee, which would result in higher distribution to bondholders than ent (as much as an additional six cents per dollar of claim if the entire \$110 net Verizon Settlement Proceeds were allocated to the Group Trustee), that distribution to that the benefit of a prompt, albeit discounted, fixed distribution outweighs the nce of the potentially higher but delayed recovery if Group pursued litigation rather than Moreover, while I am confident that Group would prevail in litigation, the outcome of

- Under the proposed settlement, the only unsecured claims asserted against any of the our estates that will not be subject to substantive consolidation are the claims of holders of bonds ndholders") issued by Group. Other proofs of claim that were filed against Group's picy estate, and all claims filed against all other estates, will be subject to the substantive der the terms of the proposed settlement. In my capacity as Group Trustee. I have cluded, in the exercise of my business judgment, that it is in the best interests of the Group esta
- 7. That distinction is appropriate because nearly all creditors of the four Debtors' estat dholders dealt exclusively with Communications, the operating entity. Although ors filed claims in Group's bankruptcy case, based upon my review of each of se proofs of claim, and the underlying agreements, it is my belief that the proofs of claim show those creditors did business with Communications, but also that nearly all of the chase orders were in the name of Communications, not Group. In contrast to other of the four estates, only the Bondholders appear to have relied solely on the credit of Group ing the bonds, since only Group, and not Communications, was liable for payment of the onds. In fact, as an illustration of that fact, that the prospectus for the sale and exchange of the

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TRUSTERS FOR APPROVAL OF COMPROMISE OF CONTROVERSIES - CASE NO. 01-30127

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SETTLEMENT AGREEMENT BETWEEN NORTHPOINT TRUSTEES (All Disputes, Including Consolidation, Subrogation and Allocation)

This Sottlement Agreement Between NorthPoint Trustees (All Disputes, Including This Sottlement Agreement Between NorthPoint Trustees (All Disputes, Including Consolidation, Subregation and Allocation) (this "Agreement") is contracted into as of May 18, 2003 by (a) E. Lyna Sodoenment, as the heates (the "Communications Trustee") of the chapter 7 estates of NorthPoint Communications", NorthPoint Communications", NorthPoint Communications ("Virginia, Inc. ("Virginia")) and NorthPoint International, Ibs. ("International"); and (b) Michael M. Orthon (b) Communications (c) Communicatio Oroup, Inc. ("Group"), based upon the following:

- A. On January 16, 2001 (the "Petition Date"), Group, Communications, Virginia and International (collectively, the "Debtors") such filed with the United States Barkruptery Court for the Northern District of California, San Francisco Division (the "Court"), a voluntary pention for relief under the privations of charger 11 of the United States Barkruptery Code, and an order for relief wate entered in each of such Debtors' chapter 11 cases on that date.
- B. On June 12, 2001, the Court ordered the conversion of each of the Debtors' chapter 11 cases to a case under chapter 7 of the Bankruptcy Code, and E. Lynn Schoenmann was appointed as the trustee of the chapter 7 estates of each of the Debtors.
- C. On October 23, 2002, Ma. Schommanin resigned as trustee of Group's chapter 7 estate, but remained trustee of the chapter 7 estates of Communications, Virginia and International. The United States Trustee appointed as interim trustee, Charles Sinia, as trustees of the Group estate (the "Interim Comp Trustee"), and December 3, 2002, the United States Trustee (the Interim Comp Trustee). On December 31, 2002, the United States Trustee filled a report confirming the section of Michael Mc Ouraws at the permanent trustee of the Group estate. On Jensery 7, 2003, the United States Trustee filed notice of Mr. Ozawa's
- D. On November 26, 2002, the Interim Group Trustee filed a proof of claim against the estate of Communications, seeking payment of an amount in excess of \$48,000,000 based upon a theory of subrogation (the "Subrogation Claim").
- E. The deadlines for the filing of all prepetition general unsecured claims against each of the Debton' entates expired prior hereto. Prior to such deadlines, proofs of general unsecured claims have been filed against all estaties in an aggregate amount in excess of \$1.2 billion. Of that amount, approximately \$421,474.474 of claims (not of deplications) arise out of certain 12 7/876 Senior Subordinated Noises Two 2010 (the "Notor') launced by Group Debtonary \$2.000 in the aggregate amount of \$400,000,000 (coltectively, the "Noto Claims'). Those claims, arising from the aforementioned bond instances, are direct, written, contractual obligations of Group. The indemtines trustee appointed with respect to such bond issuances, pursuant to an Indeature dated as of February \$2,000, is The Bank of Now York (the "Indeature Tustee").

EXHIBIT A

solely of the Group estate, Michael M. Ozewa shall remain the chapter 7 trustee of Group for the purpose of administrating such assets and liabilities in conformily with the tenus of this Agreement. Upon the full dishorments by the comparison of the State of the St

- 6. <u>Disbursements By Group Trustes</u>. Disbursements shall be made by the Group Trustes, solely from the funds not held in the Coscolidated Estato, only for the following purposes:
 - A. For full payment or reserve on account of any and all federal, state or local income tax liabilities of any of the Dobors for the year 2002, subject to the previsions of paragraph 7 below (the Group Trustee shall have sole and complete authority subject in separation and integration with respect to the preparation, filing, handling, negotiation and hitigation of any matters relating to such tax highlites, provided that the Group cetter hold the Communication Trustee, the Consolidated Estates and all consolidated assets that and indemnify the same, from any such tax liabilities);
 - B. For full payment or reserve, not to exceed the sum of \$150,000, on account of any corporate taxes owed by Group to the State of Delaware for any period of time prior to the Efficience Date, nudget to the provisions of paragraph no. 7 below, provided that the Group Trusten's obligation to pay any such cooperate taxes shall not accord the amount of \$150,000, and may taxes payable in success of such amount shall be the responsibility of the Consolidated Estate;
 - C. For full payment or reserve of all flow and expenses allowed in fever of the Interim Orrop Trustee or the Group Trustee, as well as each of their respective stocetys, accountants and other profusionals or representative (collectively, with the interim Group Trustee and the Group Trustee. The "Croup Trustee Professionals", as allowed by the Court pursuant to the provisions of Sections 327 at age, of the building States Bankringery Code, neglect to the provisions of Sections 327 at age, of the building States Bankringery Code, neglect to the provisions of paragraph no. 7 became, provided that the seconds of such reserve for payment of a such less and expenses shall be determined to the sole discretion of the Group Trustee with the consent of the Group Trustee Professionals, and provided further that the Group Trustee Professionals shall not be emitted to seek payment of any amounts errord to say of them from the Coasolidated Estate, the trustee thereof or assots therein;
 - D. For full payment or reserve of all fees and expenses allowed in favor of the indenture Trustee, as well as its respective attorneys, accountants and other professionals or representatives (collectively, with the indenture Trustee, the "Indenture

- P. On December 16, 2002, the Communications Trustee filed a motion seeking substantive consolidation of the estates of all four Debters (the "Consolidation Motion"). On February 24, 2003, the Group Trustee filed a memorandum in opposition (the "Group Opposition") to the Consolidation Motion. In addition, other parties have filed opposing and
- G. Issues raised in the Cossolidation Motion, the Group Opposition and later briefs filed by each rustee in support of their respective positions include: (a) the propriety of their respective positions include: (b) the allocation smoop the Dabbort estates of certain funds derived from a prior selfacion (b). "Verticon Settlement") with Bell Atlantic Corporation, doing business as Vericon Communications, and related companies; and (c) arguments and claims sucred by the Group Trustice under the doctrines of exoneration and subrogation.
- H. On March 6, 2003, the Court issued its scheduling order with respect to the Consolidation Motion and the Group Opposition. Among other things, with the parties' encouragement, the Court ordered that the parties engage in settlement negotiation before commencing formal discovery and soldition, the Court directed that all discovery and briefing commence after April 3, 2003, and that an evidentiary bearing of the Consolidation Motion be needed and only 17, 2003.
- I. On or about April 14 and 25, 2003, the Group Trustee filed two exparats motions, initially seeking partial summary judgment and subsequently seeking full summary judgment and subsequently seeking full summary judgment with respect to the Consolidation Motion (collectively), the "Summary Judgment Motion" 30 of which were scheduled for beering on May 23, 2003. In addition, both trustees initiated discovery requests, and moticed multiple depositions during the month of May 2003.
- J. Pursuant to an order of the Court dated April 3, 2003, the Court scheduled a formal settlement confirmes before the Honorathin Dennis Montali, and on April 14, 2000 the Montali and Court Courtee of the Honorathin Dennis Montali at a full-density of the Courtee of the Court
- K. On May 8, 2003, at the request of the parties boreto and in order to facilitate such further discussions, the Court issued an order suspending litigation of the Consolidation Motion, and, in particular, removing from the Court's calendar the May 32, 2003 bearing of the Summary Judgment Motions and the June 17, 2003 hearing of the Cassilidation Motion, and staying all scheduled discovery (florebund specialism), peopling further order of the Court.
- At present, the Communications Trustee is in possession of funds in the amount of \$112,000,000, with respect to which both the Group Trustee and the nications Trustee claim ownership and entitlement. In addition, the Commu

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Trustee Professionals"), subject to the provisions of paragraph no. 7 below, provided that the indenture Trustee Professionals shall not be entitled to seek payment of any amounts owed to any of them from the Consolidated Estate, the trustee thereof or assets therein;

- E. After full payment or reserve for all amounts described in subparagraphs 6(A), (B), (C) and (D) above, only remaining proceeds shall be distributed to the indeature Trustee on seconal of Note Claims, subject to the provisions of paragraph 9 below, provided that solitor the indeature Trustee on why holder of a Note Chaim shall be smitled to seek payment from the Consolidated Baists, the trustee thereof or any assets therein on account of any Note that the control of the Note Chaim shall be the shall be the described on the Note Chair and the Note of the Note of
- 7. Cortain Promests And Reserves By Group Trustoe. The Group Trustoe shall make no payments or other disbursements or trustfers gurssant to subparagraph no. 67(8) bereinsbors unless and until the Group Trustee has fully paid all amounts claimed or asserted the extent described in subparagraphs nos. 67(A), (B), (C) or (D) hereinsbors, or has established the catent described in subparagraphs nos. 67(A), (B), (C) or (D) hereinsbors, or has established it cash reserves for such claims, upon notice to be Communications Trustee and each inflected claimant, each in an amount that is (a) no less than an amount determined by the Court to fully satisfy all possible payment requirements with respect to noch claimant; or, (b) in the absence of noch a determination, the full amount esserted by each noch affected claimant to be owing.

- 8. [intestionally Cralified]
 9. Templatein of the Indeature. The indeature shall terminate as of the Effective Date except as necessary to administer the rights, elains, lieus and other interests of the Indeature Trustee as to fund paid to the Indeature Trustee pursuant to this Agreement (but not as to my rights, claims, lieus or other interest than intight otherwise the asserted against the Commincations Trustee, the Consolidated Estate, the trustee thereof or any associations of the Effective Estate and the Estate and the Indeature Sall continues in selfect the textice increasary is allow the applicable indeatures. Trustee to provide distributions pursuant to this Agreement and my Approval Orders and to reductivate them usuaft the applicable infeature to Protection. The Indeatures Trustee shall be relieved of all further deutes and responsibilities related to the Indeatures. Trustee the Juneau to the Approval Orders of the Spiessons regulated to be made to the Indeatures under this Agreement or the Approval Orders of the Indeatures and the Indeatures and the Indeatures and Indeatures. Termination of the Indeatures and Indeatures are in the Indeatures and Indeatures and Indeatures. The Indeatures is the Indeature and Indeatures and Indeatures and Indeatures. Termination of the Indeatures against property that would officiently be interested to the Indeature against property that would officiently be interested to the Indeature.
- Mubal. General Reicass. As of the Effective Date, for good and valuable ration, the receipt and sufficiency of which is hereby acknowledged, the Group Trustee Communications Trustee, each on behalf of himself and herself and their respective

Trustee holds other assets, including without limitation avoidance claims under the provinces of Section 547 of the United States Bankruptcy Code.

M. The parties' discussions have resulted in a full, consensual resolution of all disputes between the Group Trustee and the Communications Trustee upon the terms and conditions set forth below, without conceding the positions, allegations, defenses and other

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION RECEIVED AND HEREBY ACKNOWLEDGED, EACH OF THE PARTIES HERETO AGREES, PROMISES, COVENANTS, REPRESENTS, WARRANTS AND STIPULATES as follows:

- <u>Recitals</u>. Each of the foregoing recitals forms a material part of this Agre reporated herein by reference.
- 2. Court Approxial. The effectiveness of this Agreement is expressly conditioned upon the entry of an order or orders (collectively, the "Approval Orders") of the Court in the chapter 7 cases of each of the Debtors, pursuant to the provisions of Rule 5019(s) of the Federal Rules of Bankviney Procedure, approving this Approvale and all turns set forth becain, and providing for substantive consolidation and disbursements as set forth in parapite 3, 3 and 6 below. The pathies hereds shall such seek next cut for the Approval Criters as soon as practicable. This Agreement shall become effective on the date (the "Effective Date") that is the eleventh (11)* day folioning satty of the Approval Orders or such later date as may be ordered by the Court or mutually acceptable in writing to the parties bereto.
- Parement to Group Trustee. On the Effective Date, the Communications Trustee
 thall pay to the Group Trustee, for the benefit of the Group estate, the num of eighty-six million
 dollars (816,000,000), which sum shall be distributed by the Group Trustee in the manner set
 forth below.
- Withdrawal of Subrogation Claim. As of the Effective Data, and expressly contingent upon receipt by the Group Trustee of the sum of \$36,000,000 as set forth in paragraph 3 above, the Group Trustee shall be deemed to have fully and finally withdrawn the Subrogation.
- 5. Substantive Consolidation of Assets and Liabilities. As of the Bifredive Dats, and contingent upon receipt by the Group Trustee of \$16,000,000 as set forth in paragraph 3 above, all of the assets and hiabilities of the four Debtors, except as expressly set forth in this paragraph 3, shall be unbarmietely consolidated within Leas No. 01-30135-C7, and B. Lynn Schoemmann shall serve as chapter 7 variets of the consolidated assets and liabilities in such case (the Crossolidated Batter). Only the following assets and liabilities in the Debtors shall not be subject to substantive consolidation, and shall be and remain assets and liabilities in such as the Croup states: (1) the \$46,000,000 paid to the Group Trustee pursuant to paragraph 3 above, and (2) each of the claims and liabilities for which the Group Trustee shall make the disbursements described in paragraph 5 show. With respect to the assets and liabilities has are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively consolidated purrount to this paragraph 5 and that are not substantively

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Debtors and cetatos, beneficiarios, successors and assigns, shall and hereby do absolutaly, unconditionally, and irrevocably release and forever discharge such other, their respective estates, beneficiarios, successors and sasigns and any agents, asternoys, accountants, financial sarkiness or representatives of the Group Trustes or the Communications Trustee (the "Releases"), of and from all demands, actions, causes of action, suite, covenants, context, context, agents, agreements, promises, summer of mostly, seconds, billine recognings, damages and any and all other dalams, countertaints, defenses, rights of set-off, domands and hisbities whistonever of every kind and nature relaining to the bothor or the similaration of any of the Debtors' benkrupply cases or estates, whocher known or unknown, suspected or unsuspected, both at lies and in equity, which such issuasing party many now a hereathe body, have or claim to have against the Releases, or any of them, from the beginning of time until the date of this Agreement, including without limitation the Group poporation, the Summary Jedgment Motions, the Subrogation Claim and any claim, right, cownering interest or entitlement that the Group Trustee or the Communication Trustee, provided, herewere, that mothing in this reviews a proper of the Communication to the complex asserts in the postession of the Communication Trustee, provided, herewere, that mothing in this reviews a proper of the Communication and the contraction of the Communication of the Communication and the contraction of the contractions, and the contractions, claims, covenants or agreements trade or preserved by the express terms of this Agreement.

11. Acknowledgement and Waiver. Each of the releasing parties, with respect to the releasing parties, with respect to the releasing parties, with respect to the pleaded by any of the Releases as a full and coupleds defense and may be produced by each Releases as a basis for an injunction against any soften, put or claim or other proceeding which way be instituted, prosecuted or stamped to breasth of the provisions of work whether. Such of the releasing parties hereby acknowledges that it is familiar with Southon 15-92 of the Chill Code of the State of California, and any number federal or state status, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY APPECTED THIS SETTLEMENT WITH THE

Buch releasing party hereby waives and reliaquishes my right or bonelli which it has or may have under said Secjion 1543 of the Civil Code of the State of Culifornia or any similar provision of the stateshoy or one catastardy law of any other justification with respect the releases greated hermoder. In connection with spack moving and reliaquishment, each releasing sexty enhancedings that it is ware dont in or its attempt or again tay the restant discover facts in addition to or different front those which it more known or believes to exist with respect to the subject matter of their planes or their Agreement, but that it is each releasing party intention hereby to section and release fully, finally and forever at claims, disputes and differences, known or materials, suspected or warmoproted, as set forth hereinsbown, polyvitustanding the discovery or existence of any such additional or different facts.

12. No Admission Of Liability. This Agreement is not intended to, and does not, constitute any admission or evidence of any liability whatsoever by either of the parties hereto with respect to any of the matters released herounder, and shall not be construed, offered or

received in evidence as an admission or concession of any liability or wrongdoing by either of them with respect to any of the matters released hereunder.

- 13. <u>Binding Effect</u>. This Agreement shall be binding upon, and inure to the benefit of, each of the parties hereto and its respective successors and assigns, including any successor trustee appointed in any of the Debtors' bankrupkey cases.
- 14. Counterparts. This Agreement may be executed in any number of counterparts, but all such counterparts shall together constitute but one and the same Agreement. In making proof of this Agreement, it shall not be increasing to greater or accounterpart thereof signed by seed of the parties thereof. The Agreement may be executed and delivered by selectory with the same force and effect as if it were a manually executed and delivered counterpart.
- 15. <u>Molices.</u> Except as otherwise provided, all notices, requests and demands hereunder shall be: (a) made to either party hereto at its additisese set forth on the signature pages hereto or to note often extenses as any party hereto any designate by written notice to the other parties in accordance with this provision; and (b) deemed to have been given or made as incliners: if by hand, (namedistative upon of every if they steeday or existent must, inventigate upon receipt; if by overnight delavory steed, immediately upon receipt; and if by first class or certified must, five (b) days after measuring.
- 16. <u>Authority.</u> Each of the persons signing this Agreement represent and warrest to all parties to this Agreement that he or she has full and redylistic authority to bind each party for whom such person purports to execute this Agreement, and to perform the obligations set forth in this Agreement.
- 17. Further Assurances. The parties hereto agree that they shall, from time to time, execute and deliver any sed all additional and/or supplemental lastruments, and on such other cots and things, as may be reasonably necessary or desirable to effect the purposes of this Agreement and the consumnation of the transactions contamplated hereby.
- 13. <u>Morgac</u>. This Agreement is the result of a full and complete negotiation at armie length by all parties. No prior drafts or memoranda prepared by any parties shall be used to construe or interpret any provision haved or or any related document, nor shall any one perty hereto be considered the "faither" of this Agreement or any related document for purposes of construing the terms, conditions and odligations are forth harden or thorus?
- 19. Entire Agreement This Agreement iets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supercodes say and all prior agreements and understandings of the parties hereto with respect to the foregoing, and this Agreement cannot be changed, modified, amonded or terminated accept in writing excepted by the parties hereto.

B. LYNN SCHOBNMANN, As Trustee of The Estates o Notificial Communications, Inc., NorthPoint Communications of Virginia, Inc. and NorthPoint International, Inc.

Address: 800 Powell Street San Francisco, CA 94108 Telephone: (415) 362-0415 Faccimile: (415) 362-0416 Panell: Ischargmann/Septhlink or

With a copy to:

Morio C. Meyors, Eaq. Goldberg, Stinnett, Meyers & Davis A Professional Corporation 4 Montgomery Street, Suite 2900 San Francisco, CA 94104 Telephone: (415) 362-3045 Facsimite: (415) 362-2392 MICHAEL M. OZAWA As Trustee of the Estate of NorthBule Communications Group, Inc.

Address: FTI Committing 635 W. PATA Street, Suits 1600 Los Angeles, CA 90071 Telephone: (213) 452-6028 Facsimole: (213) 452-6028 Pacsimole: (213) 453-6098 Bradt united accumulations

With a copy to:

Sidney Lavinson, Eaq.
Hannigan, Bonniell & Donnan, LLP
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