

HENNIGAN, BENNETT & DORMAN LLP  
BRUCE BENNETT (SBN 105430)  
SIDNEY P. LEVINSON (SBN 139419)  
601 South Figueroa Street, Suite 3300  
Los Angeles, California 90017  
Telephone: (213) 694-1200  
Fax: (213) 694-1234

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

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re ) Case No. 01-30127-C7  
NORTHPOINT COMMUNICATIONS ) Chapter 7 (Jointly Administered)  
GROUP, INC. )  
Debtor. ) DECLARATION OF MICHAEL M.  
OZAWA IN SUPPORT OF JOINT  
MOTION BY TRUSTEES FOR  
APPROVAL OF COMPROMISE OF  
CONTROVERSIES )  
)  
) Date: July 18, 2003  
) Time: 9:30 a.m.  
) Place: 235 Pine St., 23<sup>rd</sup> Floor  
) San Francisco, California  
) Judge: 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"). I was appointed as the trustee for Group (the "Group Trustee") on January 6, 2003, following an election of creditors. This declaration is based upon my personal knowledge, and I could competently testify as to the facts set forth herein if called upon to do so in a court of law.

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

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

3. In my capacity as Group Trustee, one of my primary responsibilities has been to evaluate the proper allocation of funds (the "Verizon Settlement Proceeds"), paid by Verizon Communication to E. Lynn Schoenmann, the trustee for NorthPoint Communications, Inc. ("Communications") who at the time was also chapter 7 trustee for Group. Those funds, not of payments to lenders with liens on the proceeds, total about \$110 million. Based on the analysis conducted by myself and my professionals, it is my position that, under applicable law and the underlying facts as I know them, all of the remaining Verizon Settlement Proceeds should be distributed to Group and not to Communications. A detailed description of the basis for my position is set forth in Group's Opposition to the Motion for Substantive Consolidation filed by the Group Trustee, 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 the Motion for Substantive Consolidation filed by E. Lynn Schoenmann, the chapter 7 trustee for Communications (the "Communications Trustee").

4. 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 the Communications Trustee would be beneficial to creditors of Group, as it would expedite distribution to creditors of Group. Accordingly, the Group Trustee and Communications Trustee, along with their respective counsel, participated in a mediation session before the Honorable Dennis Monti on April 14, 2003. Although that session did not result immediately in a consensual resolution of such disputes, subsequent discussions between the trustees and their counsel produced a tentative settlement, subject to approval by the bankruptcy court.

5. On or about May 28, 2003, the two trustees executed a written settlement agreement ("Settlement Agreement"), a true and correct copy of which is attached hereto as Exhibit A. It is my belief that the proposed settlement is in the best interest of the creditors of Group, who will benefit from 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

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against the Communications Trustee, which would result in higher distribution to bondholders than the proposed settlement (as much as an additional six cents per dollar of claim if the entire \$110 million in net Verizon Settlement Proceeds were allocated to the Group Trustee), that distribution to creditors would be delayed by months or years, pending not only completion of the underlying litigation with the Communications Trustee and any appeals thereto but also by the need to withhold distributions pending claims resolution and other administrative issues. Accordingly, it is my business judgment that the benefit of a prompt, albeit discounted, fixed distribution outweighs the chance of the potentially higher but delayed recovery if Group pursued litigation rather than settlement. Moreover, while I am confident that Group would prevail in litigation, the outcome of litigation is never certain.

6. Under the proposed settlement, the only unsecured claims asserted against any of the four estates that will not be subject to substantive consolidation are the claims of holders of bonds (the "Bondholders") issued by Group. Other proofs of claim that were filed against Group's bankruptcy estate, and all claims filed against all other estates, will be subject to the substantive consolidation under the terms of the proposed settlement. In my capacity as Group Trustee, I have concluded, in the exercise of my business judgment, that it is in the best interests of the Group estate as a whole to exclude only the Bondholders (but not other creditors that filed claims in the Group case) from substantive consolidation.

7. That distinction is appropriate because nearly all creditors of the four Debtors' estates other than the Bondholders dealt exclusively with Communications, the operating entity. Although some of those creditors filed claims in Group's bankruptcy case, based upon my review of each of those proofs of claim, and the underlying agreements, it is my belief that the proofs of claim show not only that those creditors did business with Communications, but also that nearly all of the contracts and purchase orders were in the name of Communications, not Group. In contrast to other creditors of the four estates, only the Bondholders appear to have relied solely on the credit of Group in purchasing the bonds, since only Group, and not Communications, was liable for payment of the bonds. In fact, as an illustration of that fact, that the prospectus for the sale and exchange of the bonds explicitly and repeatedly warned the Bondholders that they did not have any direct recourse

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against Communications or its assets, meaning that their sole source of repayment was Group. In light of the foregoing, I have negotiated terms of the Settlement Agreement pursuant to which the claims of Bondholders will retain recourse solely against Group and will not be subject to substantive consolidation with other claims asserted by unsecured creditors that -- unlike the Bondholders -- 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.

Executed this 25th day of June, 2003 at Los Angeles, California.

By: *Michael M. Ozawa*  
Michael M. Ozawa

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CAF \_\_\_\_\_  
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ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
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*Nancy*

DOCUMENT NUMBER DATE

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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. **Binding Effect.** 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' bankruptcy 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 necessary to produce or account for more than one counterpart thereof signed by each of the parties thereto. This Agreement may be executed and delivered by telecopy with the same force and effect as if it were a manually executed and delivered counterpart.


15. **Notice.** Except as otherwise provided, all notices, requests and demands hereunder shall be: (a) made to either party hereto at its addresses set forth on the signature pages hereto or to such other addresses as any party hereto may designate by written notice to the other parties in accordance with this provision; and (b) deemed to have been given or made as follows: if by hand, immediately upon delivery; if by telecopy or electronic mail, immediately upon receipt; if by overnight delivery service, immediately upon receipt; and if by first class or certified mail, five (5) days after mailing.

16. **Authority.** Each of the persons signing this Agreement represent and warrant to all parties to this Agreement that he or she has full and requisite 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 Assurance.** The parties hereto agree that they shall, from time to time, execute and deliver any and all additional and/or supplemental instruments, and do such other acts and things, as may be reasonably necessary or desirable to effect the purposes of this Agreement and the consummation of the transactions contemplated hereby.

18. **Merge.** This Agreement is the result of a full and complete negotiation at arms length by all parties. No prior drafts or memoranda prepared by any parties shall be used to construe or interpret any provision hereof or of any related document, nor shall any one party hereto be considered the "drafter" of this Agreement or any related document for purposes of construing the terms, conditions and obligations set forth herein or therein.

19. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings of the parties hereto with respect to the foregoing, and this Agreement cannot be changed, modified, amended or terminated except in writing executed by the parties hereto.

  
E. LYNN SCHOBMANN, As Trustee of The Estates of  
NorthPoint Communications, Inc., NorthPoint  
Communications of Virginia, Inc. and NorthPoint  
International, Inc.

Address:  
800 Powell Street  
San Francisco, CA 94108  
Telephone: (415) 362-0415  
Facsimile: (415) 362-0416  
Email: lschobmann@earthlink.net

With a copy to:

Mark C. Meyers, Esq.  
Goldberg, Silver, Meyers & Davis  
A Professional Corporation  
44 Montgomery Street, Suite 2900  
San Francisco, CA 94104  
Telephone: (415) 362-5045  
Facsimile: (415) 362-2392  
Email: mcmeyers@gandrew.com

  
MICHAEL M. OZA WA, As Trustee of The Estates of  
NorthPoint Communications Group, Inc.

Address:  
FTI Consulting  
633 W. PICO Street, Suite 1600  
Los Angeles, CA 90071  
Telephone: (213) 433-6023  
Facsimile: (213) 433-6008  
Email: michael.oza@fticonsulting.com

With a copy to:

Bibury Levinson, Esq.  
Herrigas, Bennett & Doonan, LLP  
601 South Figueroa Street, Suite 3300  
Los Angeles, CA 90071  
Telephone: (213) 694-1179  
Facsimile: (213) 694-1324  
Email: blevinson@bb-levinson.com