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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE
COMMISSION CLERK
ADMINISTRATIVE SERVICES
TRANSACTION CENTER

In re:) Chapter 11
)
CABLE & WIRELESS USA, INC., et al.,) Case No. 03-13711 (CGC)
) (Jointly Administered)
)
Debtors.) Re: Docket No. 43

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NOTICE OF ERRATA

PLEASE TAKE NOTICE that the attached *Motion of the Debtors for an Order (A) Approving the Asset Purchase Agreement With Proposed Purchaser, (B) Authorizing (i) the Sale of Substantially All of the Debtors' Assets to Proposed Purchaser or Other Successful Bidder(s) at Auction, Free and Clear of All Liens, Claims, Encumbrances and Interests and (ii) Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases, and (C) Granting Related Relief* attached hereto as Exhibit A replaces the Motion of the Debtors for an Order (A) Approving the Asset Purchase Agreement With Proposed Purchaser, (B) Authorizing (i) the Sale of Substantially All of the Debtors' Assets to Proposed Purchaser or Other Successful Bidder(s) at Auction, Free and Clear of All Liens, Claims, Encumbrances and

AUS _____
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OTH _____
_____ Interests and (ii) Assumption and Assignment of Certain Executory

(1st two pages only)

The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP.

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Contracts, License Agreements and Unexpired Leases, and (C) Granting Related Relief (Docket No. 43), which was the wrong version of the Motion.

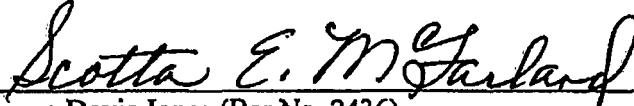
Dated: December 10, 2003

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[Proposed] Co-Counsel for the Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
CABLE & WIRELESS USA, INC., et al.,¹) Case No. 03-13711 (CGC)
) (Jointly Administered)
Debtors.)

**MOTION OF THE DEBTORS FOR AN ORDER (A) APPROVING
THE ASSET PURCHASE AGREEMENT WITH PROPOSED PURCHASER,
(B) AUTHORIZING (I) THE SALE OF SUBSTANTIALLY ALL OF THE
DEBTORS' ASSETS TO PROPOSED PURCHASER OR OTHER SUCCESSFUL
BIDDER(S) AT AUCTION, FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS AND (II) ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS AND
UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF**

On December 8, 2003 (the "Petition Date"), the above-captioned debtors and debtors in possession (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors also filed a plan of reorganization (the "Plan") on the Petition Date, which Plan contemplates a sale of substantially all of the Debtors' assets and business operations under section 363 of the Bankruptcy Code (the "Sale").

During the 6 months immediately preceding the filing of these chapter 11 cases, the Debtors, together with their professionals, extensively marketed the Debtors' U.S. domestic hosting and U.S. internet provider services businesses. As a result of their exhaustive efforts, on December 8, 2003, just prior to filing their chapter 11 petitions, the Debtors executed an asset

¹ The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP.

purchase agreement (the "APA," attached hereto as Exhibit A)² with Gores Asset Holdings, Inc., an affiliate of Gores Technology Group, LLC (the "Proposed Purchaser").

Pursuant to the APA, the Proposed Purchaser has agreed to purchase substantially all of the Debtors' assets under sections 363 and 365 of the Bankruptcy Code for at least \$50 million, and up to approximately \$125 million, in consideration (not including certain specified liabilities to be assumed by the Proposed Purchaser), as further described herein and in the attached APA, subject to higher and better offers through an auction process (the "Auction"). As required by the APA, and in furtherance of their sale efforts, on December 10, 2003, the Debtors filed a motion (the "Bidding Procedures Motion") for entry of an order (the "Bidding Procedures Order") approving certain bidding procedures by which the sale and Auction of the Debtors' assets will be governed.

As further required by the APA, the Debtors now file this Motion (this "Sale Motion") for entry of an order (A) approving the APA with the Proposed Purchaser; (B) authorizing (i) the sale of substantially all of the Debtors' assets to the Proposed Purchaser or other successful bidder(s) at an auction, free and clear of all liens, claims, encumbrances, and interests, and (ii) the assumption and assignment of certain executory contracts, license agreements and unexpired leases; and (C) granting certain related relief.

Because the Debtors seek to consummate the sale on an expedited basis, the Debtors have requested that the Court approve the Bidding Procedures Motion and set a hearing on the relief requested in this Sale Motion (the "Sale Hearing") at the earliest possible date.

² Due to the voluminous and confidential nature of the schedules and exhibits to the APA, the APA is attached hereto without copies of such schedules and exhibits. To the extent such schedules and exhibits do not contain confidential or proprietary information, copies of the schedules and exhibits will be made available to interested parties upon written request to the undersigned counsel for the Debtors.

Because the Debtors' businesses have been extensively marketed over the past 6 months, with more than 90 potentially interested parties contacted and 61 potential bidders executing confidentiality agreements and receiving a comprehensive detailed offering memorandum, and this Sale Motion is being filed approximately 40 days prior to the requested date of the Sale Hearing, the Debtors believe that all parties with an interest in the sale of the Debtors' assets will receive sufficient notice of the sale of the Debtors' assets. An expeditious sale of the Debtors' assets also is necessitated because the Debtors continue to require significant fresh cash resources to fund their daily business operations, which administrative expenses will be funded through a proposed debtor in possession financing facility. Furthermore, the value of the Debtors' businesses is dependent upon maintaining customer relationships and ensuring the seamless maintenance of hosting and networking services to their customers pending the consummation of the proposed sale. Thus, an expeditious sale as soon as possible, but in any event prior to January 19, 2004, will preserve the value of the business and minimize overall losses to creditors.

In further support of this Sale Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this Sale Motion pursuant to 28 U.S.C. §§ 157 and 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. The statutory predicates for the relief requested herein are sections 105(a), 363(b), (f), and (m), 365 and 1146(c) of the Bankruptcy

Code and Rules 2002(a)(2), 6004(a), (b), (c) and (e), 6006(a) and (c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

GENERAL BACKGROUND

2. On the Petition Date, the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

A. The Debtors' Business Operations and Corporate Structure.

3. The Debtors are leading providers of internet web hosting and network services throughout the United States. As of the Petition Date, the Debtors were the second largest hosting services provider in the United States and one of the largest carriers of Internet traffic, focusing on blue chip Fortune 1000 customers. The Debtors are headquartered in Northern California and maintain primary network operations and sales in Reston, Virginia. The Debtors also maintain other offices and operations in 20 additional states throughout the United States, as well as the District of Columbia. As discussed in greater detail below, after a series of acquisitions starting in 1998, the Debtors today provide services representing approximately 12-15% (when measured by revenue), of the customer base in the competitive hosting market with over 4,300 domestic and international customers including some of the nation's largest corporations such as Merrill Lynch, Yahoo, GE, Microsoft, Google, and Pearson.

4. The Debtors' web hosting business is comprised of approximately 19 operational world-class Internet Data Centers ("IDC") connected to their network in 8 major

metropolitan markets across the United States. These latest-generation IDCs provide co-location services in a highly reliable and secure physical environment that keep customers' servers up and running without interruption 24 hours a day, 7 days a week. The Debtors also provide managed hosting services that allow them to monitor and manage their customers' online operations in a manner that is cost-effective and highly reliable.

5. The Debtors' network business provides a broad portfolio of leading-edge internet services, ranging from basic infrastructure products to higher-value managed services, using the Debtors' state of the art facilities-based network, consisting of a fiber infrastructure with approximately 21 network locations that house the major network nodes that comprise the network, reaching all major markets across the country.

6. As of the Petition Date, the Debtors employ approximately 1,570 employees, about 99% of whom are full-time employees. Approximately two-thirds of the Debtors' employees are located in Northern California and Virginia, with the remaining one-third located in approximately 25 additional states and the District of Columbia, and a handful of employees located internationally. None of the Debtors' employees is subject to a collective bargaining agreement.

7. Each of the Debtors is an indirect subsidiary of Cable & Wireless PLC ("PLC"), a public limited company organized under the laws of England and Wales. The Debtors conduct the bulk of their business through two main operating companies, Cable & Wireless USA, Inc., a Delaware corporation ("CWUSA"), which owns essentially all of the network assets, and Cable & Wireless Internet Services, Inc., a Delaware corporation ("CWIS"),

which owns essentially all of the hosting assets and holds title to a parcel of real property located in El Segundo, California.

8. CWUSA is the parent company of both CWIS and of Cable & Wireless USA of Virginia, Inc. ("CWVA"). CWVA is a Virginia corporation formed solely to hold certain intellectual property pursuant to the laws of that state. CWIS is the parent of several wholly-owned subsidiaries and a member of two Delaware limited liability companies -- (i) CWIS is the sole member and manager of the Debtor Exodus Communications Real Property Managers I, LLC ("Exodus Managers") and (ii) CWIS and Exodus Managers are the members of the Debtor Exodus Communications Real Property I, LLC ("Exodus LLC"). Exodus LLC holds 4 parcels of real property, all of which are located in Santa Clara, California. Exodus Managers, as general partner, and Exodus LLC, as limited partner, hold a combined 100% interest in the Debtor Exodus Communications Real Property I, LP ("Exodus LP"). As of the Petition Date, Exodus LP does not maintain any operations or assets.

B. Events Leading To The Commencement Of These Chapter 11 Cases.

9. CWUSA, originally known as TDX Systems, Inc., a District of Columbia corporation, was formed in 1975 primarily to provide voice services. Thereafter, CWUSA expanded its business to include internet and web-hosting operations. To that end, CWIS and/or CWUSA consummated several substantial acquisitions between September 1998 and February 2002, beginning with the acquisition of MCI's Internet backbone, and the subsequent acquisitions of Digital Island, Inc. (a hosting and content distribution company) in June 2001 and substantially all the assets of EXDS, Inc. (formerly Exodus Communications, Inc.) in February 2002.

10. Recently, the telecommunications and Internet sectors have suffered drastic declines, caused in part by a prolonged period of weakened economic conditions in the U.S. markets, and by the presence of too many competitors in a market that did not grow as quickly as anticipated. In response to the challenges in the overall economy, many industry sectors introduced sweeping cost reduction programs, often targeting technology initiatives. Improvements in the efficiency of the technology in the telecommunications and Internet sectors led to increased competition and severe downward pricing pressures as established competitors and new entrants into the market competed for the traffic to populate the already overdeveloped network infrastructure.

11. The severity of the crisis in the telecommunications industry is exemplified by the significant number of telecommunications companies that recently have sought bankruptcy protection, a list that is populated heavily with household names, many of whom are direct competitors, suppliers or customers of the Debtors. The emergence of these competitors with streamlined cost structures and substantially de-leveraged balance sheets has continued the downward pressure on the economics of the telecommunications industry.

12. In addition to the effect of weakened telecommunications industry conditions in general, the Debtors had made significant expenditures of capital for their acquisitions and subsequent investments in the Digital Island and Exodus businesses, with significant management time and attention focused on the integration of those acquisitions into the then-existing business.

13. In September 2002, PLC introduced a new executive management team at the Debtors charged with restructuring the U.S. operations and curbing the mounting operating

losses at the Debtors. Management soon began implementing its restructuring plan designed to (i) integrate the two core U.S. businesses (hosting and networks), (ii) establish a smaller, more efficient backbone network, (iii) exit non-core and less profitable products and services, (iv) dramatically reduce costs, and (v) improve asset utilization and profits by consolidating IDCs that were spread too thin and not fully utilized. Over the subsequent nine months, management reduced headcount by approximately 45% from approximately 4,300 employees in September 2002 to 2,300 employees as of May 31, 2003, and implemented additional cost cutting initiatives, including, without limitation, the termination and sale of the Debtors' unprofitable and non-core voice services business.

14. However, the Debtors continued to suffer negative cash flow during 2003. For the period from January 2003 through May 2003, PLC loaned approximately \$234 million to provide liquidity to the Debtors and support their business operations. On June 4, 2003, PLC announced its determination that the U.S. domestic hosting and U.S. internet provider services business would no longer be a part of its core market and expressed its intention to withdraw from the U.S. domestic market while maintaining the U.S. infrastructure necessary to serve its international customers.

15. On September 17, 2003, in accordance with the June 4, 2003 announcement, Cable & Wireless Holdings, Inc. ("Holdings"),³ CWUSA, and CWIS on the one hand, and PLC and Cable & Wireless Americas Operations, Inc., a newly-formed wholly-owned subsidiary of PLC, on the other hand, executed a separation agreement with an effective date of

³ Holdings is the non-debtor, parent corporation of CWUSA, and holds certain of the Debtors' employee benefit assets and liabilities, but conducts no business operations.

July 1, 2003 (the "Separation Agreement"). The Separation Agreement governs the terms of the mutual separation of the Debtors' operations from PLC and the Cable and Wireless group's operations, and vice versa. The Separation Agreement contains provisions that specify, among other things, the terms for the exchange of goods and the provision of services between the parties thereto for the periods set forth in the Separation Agreement.

16. Notwithstanding its separation from its U.S. operations, PLC reiterated its commitment to provide continued financial support to the Debtors through a reasonable period. The Debtors therefore negotiated a credit agreement (more fully described below) with PLC to fund the Debtors' operations and preserve value in the business while management and the Debtors' Boards of Directors reviewed the Debtors' alternatives. To aid them in that effort, CWUSA, CWIS and Holdings engaged AP Services, LLC, an affiliate of AlixPartners, LLC ("AlixPartners") as restructuring advisors to assist them in evaluating and implementing strategic and tactical options through the restructuring process, including providing the services of a chief executive officer, chief financial officer, chief restructuring officer and other temporary staff.

C. The Debtors' Prepetition Financial Condition and Postpetition DIP Facility.

17. For the 6 months ended September 30, 2003, the Debtors generated revenues of approximately \$280 million and had aggregate operating losses of approximately \$240 million after crediting a gain on sales of assets of \$17 million. The losses included an intercompany interest charge of approximately \$90 million and extraordinary charges of \$88 million for, among other things, impairment of long lived assets, payments made to severed employees and payments required under contractual commitments that are no longer expected to benefit ongoing operations. The Debtors currently derive approximately two-thirds of their

revenues from the hosting services business operations and the remainder from the network business.

18. To finance the Debtors' operations through the chapter 11 sale process, prior to filing the chapter 11 cases, the Debtors negotiated a debtor in possession revolving credit facility of up to \$100 million in financial accommodations (the "DIP Facility") with PLC, as the DIP lender, and JPMorgan Chase Bank, as administrative agent and collateral agent. The DIP Facility will be secured by substantially all of the Debtors' assets, including their accounts receivable and property, plant and equipment. Advances under the DIP Facility will be used to pay postpetition operating expenses, certain prepetition claims as may be approved by this Court, and other items necessary to the successful sale and wind-down of the Debtors' businesses.

D. The Debtors' Plan of Reorganization.

19. As previously mentioned, the Debtors filed a Plan on the Petition Date. The Plan contemplates that the proceeds of the Sale will fund the distributions provided for in the Plan. Moreover, to the extent the proceeds of the sale are insufficient, under the Plan PLC shall, through a combination of cash contributions and claims subordinations, provide for the payment of administrative and priority claims (up to a specified amount) and for a pool of at least \$20 million for the benefit of unsecured creditors.

20. The Debtors expect to complete the initial closing of the Sale by the end of January 2004, shortly after the requested hearing date on the Sale Motion. Pursuant to the terms of the APA, the Proposed Purchaser (if it is the Prevailing Bidder) is to manage the business until the necessary regulatory approvals are obtained to transfer the assets to the Proposed Purchaser's ownership. The Debtors contemplate obtaining approval of their disclosure statement shortly

after the Sale Hearing and confirmation of the Plan at or about the time of receipt of final regulatory approval and consummation of the Sale. As such, the Plan and the Sale are inextricably intertwined.

THE DEBTORS' EXTENSIVE PREPETITION MARKETING AND SALES EFFORTS

21. On June 4, 2003, as part of its restructuring efforts, PLC announced its intentions to exit its domestic web hosting and internet connectivity operations in North America. In connection with the announcement, PLC and its financial advisors, Greenhill & Co. ("Greenhill") began the process of identifying potential purchasers of the Debtors' assets. The Debtors also retained their own legal counsel as well as investment bankers, The Blackstone Group ("Blackstone"), to analyze and advise them with respect to strategic alternatives of continuing operations as a stand-alone entity following the corporate separation from PLC. After examining all of the alternatives, the Debtors concluded that the prompt consummation of a transaction by which all or substantially all of the assets of the Debtors were sold together as an operational business would be the most beneficial to the Debtors' creditors and other holders of interests because it would maximize the value of the Debtors' assets, preserve jobs and maintain valuable business relationships with vendors and customers. With the help of Debtors' management, and working closely with Greenhill, Blackstone assembled a comprehensive offering memorandum to be used for marketing purposes.

22. The Debtors and their professionals, with the assistance of Greenhill, initially identified and then sent confidentiality agreements to approximately 92 entities that had expressed an interest in acquiring the assets of the Debtors. Of the parties that were initially contacted regarding such a transaction, approximately 61 executed confidentiality agreements.

Upon receiving an executed confidentiality agreement, the Debtors forwarded to potential buyers a comprehensive offering memorandum, which provided additional detail regarding the Debtors' financial and business operations, including information regarding customers, products lines, strategies, historical and projected financial performance,⁴ employees, real estate, various sale and marketing information, and overall company histories. Among the parties that were contacted, approximately 27 potential buyers submitted preliminary letters of interest expressing their interest in acquiring the assets of the Debtor and providing an initial value range for either individual businesses (i.e., the web hosting business or the network business) or the business as a whole. Based on the preliminary letters of interest, the Debtors, in consultation with their professionals, chose 14 entities (the "First Round Bidders") to continue in the process and to conduct further due diligence.

23. With the assistance of the Debtors, Blackstone assembled additional information regarding the assets of the businesses to allow First Round Bidders to conduct further due diligence. The Debtors assembled an online data room containing extensive financial, operational and strategic information for review by the First Round Bidders. To further facilitate the due diligence efforts, the Debtors arranged for their senior management to give presentations to the First Round Bidders. These management presentations were held in San Francisco, California and Washington, D.C. and consisted of 3 to 4 hour powerpoint presentations, followed by a question and answer session. First Round Bidders were also given the opportunity to tour one of the Debtors' internet data centers in Santa Clara, California.

⁴ The financial information provided was presented on a pro forma basis to enable prospective buyers to evaluate the business on a stand-alone basis.

Follow-up due diligence telephone conferences with the Debtors' senior management were scheduled at the request of the First Round Bidders. To narrow the field of First Round Bidders, the Debtors asked the bidders to provide a non-binding letter of intent. In response, 11 entities forwarded letters of intent to the Debtors, of which 5 entities (the "Second Round Bidders") were chosen to continue in the sale process.

24. The Second Round Bidders were given additional access to the Debtors' senior management, as well as more sensitive due diligence materials. To maximize value for the estates by selling the company as a whole rather than piecemeal, a Second Round Bidder interested in only one of the businesses was allowed to partner up with another Second Round Bidder interested in the other business. At the end of the second round of diligence, the Second Round Bidders were asked to provide binding letters of intent for the whole business as well as a mark-up of an asset purchase agreement previously drafted by the Debtors' legal counsel. Based on the value of the bid and the negotiated asset purchase agreement, the Debtors, along with their professionals, determined, in their business judgment, that the offer from the Proposed Purchaser was the highest and best offer for the Debtors' businesses as a whole. Specifically, the Proposed Purchaser offered a higher overall economic value, as well as the ability to quickly consummate a deal without financing contingencies and with minimal due diligence contingencies.

25. Immediately prior to the filing of these chapter 11 cases, and after prolonged and arms-length negotiations, the Debtors and the Proposed Purchaser executed the APA. Under the terms of the APA, approval of which is the subject of this Sale Motion, the Proposed Purchaser will acquire substantially all of the Debtors' assets for approximately \$125 million in consideration, consisting of approximately \$50 million in cash (including up to \$5

million towards payment of proposed cure amounts), and \$75 million in a senior secured increasing rate note from Gores Asset Holdings, Inc., as well as the assumption of specified pre-closing liabilities. The proposed purchase price is subject to adjustments based on business performance targets that have been set for Working Capital (as defined in the APA), revenue and certain overhead expenses. Although the proposed purchase price will be reduced if the Debtors do not achieve the business performance targets, under the terms of the APA, the purchase price cannot be reduced to less than \$50 million.⁵

Relief Requested

26. By this Sale Motion, pursuant to sections 105(a), 363(b), (f) and (m), 365 and 1146(c) of the Bankruptcy Code, the Debtors seek entry of an order by this Court (the "Sale Order") approving the APA with the Proposed Purchaser and authorizing the sale of substantially all of the Debtors' assets to the Prevailing Bidder(s) at the Auction, free and clear of all liens, claims, encumbrances, and interests (other than certain Permitted Encumbrances)⁶, upon the terms set forth in the APA and the proposed order attached hereto (the "Sale Order").

27. The Debtors also seek authorization and approval, under section 365 of the Bankruptcy Code, for the Debtors to assume and assign to the Prevailing Bidder(s) certain executory contracts and unexpired leases of real and personal property associated with the business (the "Assigned Contracts"). Given the number of Assigned Contracts that may be

⁵ Based on the Debtors' ongoing analysis of the business performance targets as of the date hereof, although the Debtors believe that they are likely to meet most of the business performance targets set forth in the APA, one of the business performance targets is estimated to adjust the proposed maximum purchase price downward to the floor price of \$50 million. The Debtors' assessment of the estimated closing adjustments, however, is ongoing and remains subject to change.

⁶ Capitalized terms used herein and not otherwise defined shall have the same meaning as in the APA attached hereto as Exhibit A.

transferred under the APA, the Debtors have requested that the Court approve a process by which the Debtors and the counter-parties to the Assigned Contracts that potentially will be assumed and assigned can establish the correct cure obligations necessary to be paid under section 365 of the Bankruptcy Code (the "Cure Procedures")⁷.

28. Finally, the Debtors seek an order from this Court exempting the Sale from the stamp tax or similar taxes pursuant to section 1146(c) of the Bankruptcy Code.

SUMMARY OF THE APA⁸

29. A summary of the key terms of the APA is set forth below:

Debtors	CWUSA, CWIS, CWVA, Exodus Managers, Exodus LLC, Exodus LP
Proposed Purchaser	Gores Asset Holdings, Inc.
Purchase Price (APA, §§ 1.3, 2.1, 2.5, 7.4)	\$120 million in consideration (consisting of \$45 million in cash and \$75 million in a senior secured increasing rate note from Gores Technology Group, LLC), plus the payment of cure costs corresponding to the Assigned Contracts in a maximum aggregate amount of up to \$5 million, plus the assumption of specified pre-closing liabilities. The proposed purchase price is subject to adjustments based on business performance targets that have been set for Working Capital, revenue and certain overhead expenses. Although the proposed purchase price will be reduced if the Debtors do not achieve the business performance targets, under the terms of the APA, the purchase price cannot be reduced to less than \$50 million.
Acquired Assets (APA, §§ 1.1, 7.7)	The Acquired Assets include substantially all of the property and assets of the Debtors' Business, moveable and immoveable, real and personal, tangible or intangible, of every kind and description and wheresoever situated (including, without limitation, all Owned Real Property; all rights under the Real Estate Leases; all owned Equipment and rights to the warranties and licenses received from manufacturers and sellers of the Equipment; deposits, pre-paid expenses, and prepayments related to the Acquired Assets; all owned personal property and rights under leases of equipment and personal property; Accounts Receivable;

⁷ The Debtors' proposed Cure Procedures for the Assigned Contracts is set forth in the Bidding Procedures Motion. As part of their Bidding Procedures Motion, the Debtors have requested that the Court approve a form of Cure Notice. Once the Court enters the Bidding Procedures Order, the Debtors will serve the Cure Notice on the relevant service parties. Specifically, the Debtors propose sending out the Cure Notice to all counterparties to the Assigned Contracts setting forth the proposed cure amount and objection deadline by which all objections to the cure amount are due.

⁸ To the extent of any inconsistency between this summary and the terms of the APA, the APA shall control.

	<p>Customer Contracts; Supplier Contracts; Other Contracts other than Excluded Contracts; Inventory and related warranties; all rights in Patents, Trademarks, Copyrights and all other Intellectual Property owned by the Debtors (to the extent transferable), and any rights to sue and recover damages and profits and all other remedies for past, present and future infringements of the foregoing; computer software or systems owned by the Debtors; rights under Permits (to the extent transferable); Business Records; all corporate telephone numbers, corporate addresses and bank accounts used in connection with the operation or conduct of the Business or the Acquired Assets; all assets acquired by the Proposed Purchaser pursuant to Article 9 of the APA relating to employees and employee benefit plans; any assets that would constitute an Acquired Asset that was or will be transferred to the Debtors in accordance with the Plc Transition Services Agreement; foreign nodes and the rights of the Debtors with respect to foreign collocation sites; and all rights, demands, claims, credit, allowances, rebates and causes of action (other than against the Debtors or any of their Affiliates) arising out of or relating to the Acquired Assets) all as further identified in Section 1.1(a) through (t) of the APA, but expressly excluding all Excluded Assets. The Proposed Purchaser reserves its right to amend any of the Schedules of Acquired Assets set forth in section 1.1 of the APA so as to remove any item.</p>
<p>Excluded Assets (APA, §§ 1.2, 7.7)</p>	<p>The Acquired Assets do not include the properties, assets, rights and claims of the Debtors listed or described in Section 1.2(a) through (q) of the APA, including, without limitation, the Debtors' cash and cash equivalents, checks in transit and undeposited checks; the Debtors' rights in the Excluded Contracts; all assets of Employee Benefit Plans and all other assets to be retained by the Debtors pursuant to Article 9 of the APA; all rights to certain Claims (including insurance proceeds), refunds or adjustments with respect to the Excluded Assets; assets that would otherwise be Acquired Assets that are disposed of in the Ordinary Course of Business or as otherwise expressly permitted by the terms of the APA; assets transferred to PLC in accordance with the PLC Transition Services Agreement; all losses, loss carry forwards and rights to receive refunds or credits with respect to Taxes incurred or accrued prior to the Closing Date; certain Claims relating to the Chapter 11 Cases, including, but not limited to, avoidance actions; all shares of capital stock or other equity interests of all of the Debtors and all their Affiliates; all rights in, to and under the Separation Agreement and the Apollo Agreement; all rights under the APA and any related documents; all rights in the Cable & Wireless brand name and any derivatives except as provided in the Plc Transition Services Agreement; certain specified corporate documents; all of the Debtors rights to recovery of cash collateral given to obtain letters of credit and rights to recover amounts drawn or paid on letters of credit; all intercompany accounts receivable; all rights under any Supplier</p>

	Contract that is the subject of any guarantee or other credit support by PLC or to which PLC is a party, with certain specified exceptions; and any other assets set forth in Schedule 1.2(q) to the APA. The Proposed Purchaser may amend or modify Schedule 1.2(q) and, subject to certain specified restrictions, Schedule 1.2(b).
Assigned Contracts (APA §§ 1.1, 1.5, 7.7)	The Debtors shall assume and assign to the Proposed Purchaser all of the Debtors' executory contracts and unexpired leases that may be assigned to the Proposed Purchaser in accordance with sections 363 and 365 of the Bankruptcy Code except for the Excluded Contracts (collectively, the "Assigned Contracts").
Assumed Liabilities (APA, § 1.3)	The Assumed Liabilities include those liabilities of the Debtors set forth in Section 1.3 of the APA that the Proposed Purchaser agrees to assume, including: (i) 50% of all liabilities and obligations of the Debtors for Transaction Taxes payable in connection with the transactions contemplated in the APA, subject to a maximum liability of the Proposed Purchaser of \$500,000, less any amounts by which cure costs actually paid by the Proposed Purchaser under Section 7.4 of the APA exceed \$4.5 million; (ii) all liabilities and obligations with respect to Accounts Payable in connection with the operation of the Business or the operation of the Acquired Assets (other than Accounts Payable owing to PLC or any of its Affiliates); (iii) all liabilities and obligations of the Debtors under the Permits included in the Acquired Assets; (iv) all liabilities and obligations of the Debtors to be assumed by the Proposed Purchaser pursuant to Article 9 of the APA; (v) all liabilities and obligations relating to the Proposed Purchaser's ownership of the Acquired Assets or that arise as a result of the Proposed Purchaser's operation of the Business other than Taxes that relate to the Business or the Acquired Assets for the periods through the Adjustment Date, but including Taxes relating to the Acquired Assets for periods after the Adjustment Date; and (vi) leases included in the Acquired Assets pursuant to section 1.1(e).
Excluded Liabilities (APA, § 1.4)	The Excluded Liabilities include all of the liabilities of the Debtors other than the Assumed Liabilities and those liabilities expressly set forth in Section 14.7 of the APA.
Deposit (APA, § 2.2)	Within 3 business days of the date of the APA, the Proposed Purchaser will execute and deliver to the Debtors a Deposit Escrow Agreement and deposit with the Escrow Agent \$5 million (the "Deposit"); provided, however, that the obligation to provide the Deposit may be satisfied by the Proposed Purchaser causing an irrevocable Letter of Credit in the face value of \$5 million issued by a commercial bank or similar institution unaffiliated with the Proposed Purchaser or any of its affiliates and having assets in excess of \$50 billion to be issued to the Escrow Agent.

Representations and Warranties; Covenants (APA, Articles 4 and 5, § 14.4)	<p>The representations and warranties and covenants are customary for a transaction of this type, including, without limitation, representations and warranties regarding the authority to enter into the Sale transaction and the agreement to abide by all laws with respect to the Sale, and covenants regarding conduct of the Business in the pre-Closing period, contract cure obligations, the best efforts of the parties, notices and consents, access to information and the risk of loss. The representations and warranties of the Debtors set forth in the APA or in any certificate delivered pursuant to Sections 12.3(a) or 12.3(b) shall survive for a period of 6 months after the Closing Date.</p>
Bidding Procedures (APA, § 8.2)	<p>The APA contemplates the approval of bidding procedures, as further described below, to govern the auction process.</p>
Overbid Protections and Subsequent Overbids (APA, §§ 8.2(e), 8.3)	<p>The initial overbid must be, in the Debtors' reasonable judgment after consultation with their financial and legal advisors, likely to result in value to the Debtors (taking into account the impact of any delay in closing such Bid and purchase price adjustments included therein, among other relevant factors) of an amount greater than the aggregate of the value of the sum of: (A) the Purchase Price (as defined in the APA), <u>plus</u> (B) the amount of the Break-Up Fee (as defined below); <u>plus</u> (C) the amount of the Expense Reimbursement (as defined below); <u>plus</u> (D) \$5 million. The first subsequent overbid made at the Auction must be in an increment of at least \$5 million higher than the bid at which the Auction commenced and then continue in minimum increments of at least \$2 million higher than the previous bid.</p>
Break-Up Fee and Termination Fee (APA, §§ 13.5(a), 13.5(b), 13.4)	<p>In the event that (i) the APA is terminated at any time before Closing because the Debtors have entered into an agreement with respect to an Alternative Transaction in accordance with Section 13.5, or (ii) if the APA is terminated in accordance with Section 13.2(a)(iv) due to a breach by the Debtors of any of their representations and warranties and the Debtors consummate an Alternative Transaction within 12 months of the date of such termination, the Debtors shall, jointly and severally, pay to the Proposed Purchaser in immediately available funds a cash fee equal to \$3,500,000 (the "Break-Up Fee"), with such Break-Up Fee to be paid upon the closing of the Alternative Transaction, <u>plus</u> the Expense Reimbursement (as defined below). The Debtors' obligation to pay the Break-Up Fee shall survive termination of the APA and shall constitute an administrative expense of the Debtors' estates under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code.</p> <p>In the event the APA is validly terminated by the Proposed Purchaser in accordance with Section 13.2(a)(iv) due to a breach by the Debtors of any of their representations and warranties or pursuant to Section 13.2(a)(iii) for failure to Close the Sale within 120 days of execution of the APA (other than if such termination is due to the Proposed</p>

	Purchaser's failure to fulfill any of its obligations or to satisfy any of its representations and warranties under the APA), the Debtors shall compensate the Proposed Purchaser in the amount of \$1.5 million for expenses incurred in connection with the performance of due diligence and negotiations of the APA by Proposed Purchaser (the "Termination Fee").
Expense Reimbursement (APA, § 13.4)	In the event the APA is validly terminated by the Proposed Purchaser in accordance with Section 13.2(a)(iv) due to a breach by the Debtors of any of their representations and warranties or by the Debtor pursuant to Section 13.2(a)(iii) for failure to Close the Sale within 120 days of execution of the APA (other than if such termination is due to the Proposed Purchaser's failure to fulfill any of its obligations or to satisfy any of its representations and warranties under the APA), the Debtors shall promptly pay (upon receipt of reasonable documentation) to the Proposed Purchaser the amount, not to exceed \$1 million, of the Proposed Purchaser's reasonably documented expenses, fees and disbursements incurred in connection with the due diligence investigation, the preparation and negotiation of the documents and instruments executed in connection with the APA, and the transactions contemplated therewith (the "Expense Reimbursement").
No Shop Provisions (APA, § 6.12)	Immediately upon the execution and delivery of the APA, the Debtors will cease any and all activities, discussions or negotiations with any parties with respect to the sale of the Business. The Debtors shall not, during the period beginning on the date of the APA and ending with the completion of the Auction, solicit or initiate any discussions with any Person relating to any Acquisition Proposal or enter into any binding or non-binding agreement or letter of intent with respect to an Acquisition Proposal; <u>provided, however</u> , that the foregoing shall not prohibit the Debtors from taking any action that their boards of directors reasonably conclude is necessary or appropriate in the exercise of their fiduciary duties as directors. The Debtors shall notify the Proposed Purchaser in the event that they enter into negotiations with any bidder (without disclosing such bidder's name) or permit any potential bidder other than the Proposed Purchaser to have access to the customers of the Business.
Closing Date (APA, § 3.1)	The consummation of the transactions contemplated in the APA shall take place on the 3 rd Business Day following the satisfaction or waiver by the appropriate party of all of the conditions contained in Article 12 of the APA, or on such other date as may be agreed to by the parties. If the terms of Section 12.4 of the APA apply, the consummation of the transactions contemplated in the APA, as modified by the terms of Section 12.4 shall take place on the 3 rd Business Day following the satisfaction or waiver by the appropriate party of all the conditions contained in Article 12 of the APA (other than with respect to the receipt of the Regulatory Approvals set forth in Section 12.1(b)), or on such other date as may be agreed to by the parties.

<p>Escrow Closing and Management Agreement Pending Regulatory Approvals (APA, § 12.4)</p>	<p>Upon the satisfaction or waiver by the appropriate party of all of the conditions set forth in Article 12 other than with respect to the receipt of the Regulatory Approvals set forth in Section 12.1(b), the following shall occur (and the relevant actions required by Article 3 of the APA shall be modified as follows): (a) the Proposed Purchaser shall deposit the Cash Payment of the Purchase Price and the Seller Note into the Closing Escrow Account in the form attached to the APA as Exhibit G; (b) the Acquired Assets and Assumed Liabilities shall be operated pursuant to the Management Agreement having the terms set forth in Exhibit C to the APA; and (c) subject only to the terms of the Management Agreement and the terms of Sections 12.4(a) and (b) of the APA, the Closing shall be deemed to have occurred at the Regulatory Escrow Closing, including for purposes of finalizing the obligations of each party to the APA to consummate the transactions contemplated in the APA and eliminating any rights of any party to terminate the APA.</p>
<p>Termination Provisions (APA §§ 13.1, 13.2, 13.5)</p>	<p>The APA may be terminated at any time before Closing: (i) by mutual written consent of the Debtors and the Proposed Purchaser; (ii) by the Proposed Purchaser on any date that is more than 180 days after the execution of the APA if the Closing has not occurred on or before such date, or any date that is more than 75 days after the date of the APA if the Auction has not been conducted as of such time, <u>provided, however,</u> that the Proposed Purchaser shall not have the right to terminate the APA if the Proposed Purchaser's failure to fulfill any of its obligations under the APA is the reason that the Closing or the Auction has not occurred on or before said dates; (iii) by the Proposed Purchaser if there shall be a breach by any of the Debtors of any representation or warranty, or any covenant or agreement contained in the APA which would result in a failure of a condition set forth in Section 12.3 of the APA and which breach cannot be cured or has not been cured by the earlier of 20 Business Days after the giving of written notice by the Proposed Purchaser to the Debtors of such breach and the Buyer Termination Date; (iv) by the Debtors on any date that is more than 120 days after the date of the APA if the Closing has not occurred on or before such date, <u>provided, however,</u> that the Debtors shall not have the right to terminate the APA if the Debtors' failure to fulfill any of their obligations under the APA is the reason that the Closing has not occurred on or before said date; (v) by any of the Debtors if there shall be a breach by the Proposed Purchaser of any representation or warranty, or any covenant or agreement contained in the APA which would result in a failure of a condition set forth in Section 12.2 and which breach cannot be cured or has not been cured by the earlier of 20 Business Days after the giving of written notice by the Debtors to the Proposed Purchaser of such breach and the Sellers Termination Date; and (vi) by either the Proposed Purchaser or the Debtors immediately upon an Order becoming final and non-appealable</p>

	that declares the APA or the Deposit Escrow Agreement invalid or unenforceable in any material respect or that prevents the consummation of the transactions contemplated by the APA and the Deposit Escrow Agreement, <u>provided, however</u> , that neither the Debtors nor the Proposed Purchasers shall have the right to terminate the APA if such party or any of its Affiliates has sought entry of, or has failed to use all commercially reasonable efforts to oppose entry of, such Termination Order.
Retained Employees (APA, § 9.1)	The Proposed Purchaser has agreed to assume certain obligations associated with employees of the Debtors hired by it.

Authority For The Relief Requested

A. A Sale Of Substantially All of the Debtors' Assets Pursuant To The APA Is In The Best Interests Of The Debtors' Estates.

30. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) provides in relevant part that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

31. A sale of a debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for doing so. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Lionel Corp., 722 F.2d 1063, 1070-71 (2d Cir. 1983); In re Titusville Country Club, 128 B.R. 396, 399 (W.D. Pa. 1991); In re Delaware & Hudson Railway Co., 124 B.R. 169, 176 (D. Del. 1991). The Delaware & Hudson Railway court rejected the pre-Code "emergency" or "compelling circumstances" standard, finding the "sound business purpose"

standard applicable and, discussing the requirements of that test under McClung and Lionel,

observing:

A non-exhaustive list of factors to consider in determining if there is a sound business purpose for the sale include: the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition of the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value.

124 B.R. at 176. The Delaware & Hudson Railway court further held that “[o]nce a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the proposed purchaser is proceeding in good faith.” Id.

32. As a result of the extensive marketing efforts conducted by the Debtors and their professionals, with the assistance of Greenhill, as discussed above, the Debtors believe that the offer received from the Proposed Purchaser for the Acquired Assets is fair and reasonable, and provides maximum value to the Debtors’ estates.

33. The Debtors have proposed the sale of substantially all of the Debtors’ assets after thorough consideration of all viable alternatives, and have concluded that the sale is supported by a number of sound business reasons. First, as discussed above, because of continuing liquidity problems facing most of the telecom and internet industry, the Debtors’ ultimate parent has attempted to restructure the Debtors’ operations and has decided to ultimately exit from the U.S. domestic market. Second, the Debtors have conducted an extensive analysis of viable strategic options to continue operating as a stand-alone entity, and have concluded that

a sale of all or substantially all of the assets of the Debtors is the best way to preserve jobs and is in the best interests of their estates, creditors, and other interest holders. Third, the Debtors are confident that their marketing efforts have yielded the maximum value for substantially all of their assets. As further assurance of such value, the Proposed Purchaser's bid will be tested through the Auction consistent with the requirements of the Bankruptcy Code, Bankruptcy Rules, and pursuant to procedures approved by the Court. Consequently, the fairness and reasonableness of the consideration to be paid by the Proposed Purchaser ultimately will be demonstrated by adequate "market exposure" and an open and fair auction process – the best means for establishing whether a fair and reasonable price is being paid.

B. The Proposed Sale Satisfies The Requirements Of Bankruptcy Code Section 363(f) For A Sale Free And Clear Of Liens, Claims, Encumbrances And Interests

34. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

35. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the sale of the Debtors' assets free and clear of liens, claims, encumbrances, pledges, mortgages, security

interests, charges, options, and other interests (collectively, the "Interests"). See In re Elliott, 94 B.R. 343, 345 (E.D. Pa. 1988).

36. First, with respect to their secured financings, the Debtors anticipate that their postpetition lender, who has been kept informed throughout the negotiation of the APA, will consent to the sale contemplated by the APA and thus subsection 363(f)(2) would be satisfied as to such party. In any event, the Debtors submit that each Interest that is not an Assumed Liability satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such Interest will be adequately protected by either being paid in full at closing of the sale, or by having it attach to the net proceeds of the sale, subject to any claims and defenses the Debtors may possess with respect thereto. Moreover, the Plan filed on the Petition Date contemplates that secured creditors will be paid the full present value of their claims or will be unimpaired. The Debtors accordingly request that the Acquired Assets be transferred to the Prevailing Bidder(s) free and clear of all Interests (except for the Assumed Liabilities), with such Interests to attach to the proceeds of the sale.

37. Once the Bidding Procedures Order is entered, the Debtors will send the Sale Notice (as defined in the Bidding Procedures Motion) giving notice of this Sale Motion to all known lienholders and secured creditors, among other interested parties. Based upon the foregoing, the sale free and clear of liens, claims, encumbrances and interests should be approved under section 363(f) of the Bankruptcy Code.

**C. The Sale of Assets Should Be Free of Any
Successor Liability to the Proposed Purchaser.**

38. Under the terms of the APA, the Prevailing Bidder is not liable for any of the Debtors' liabilities in connection with the sale of the Acquired Assets, as a successor to the Debtors' business or otherwise (the "Excluded Liabilities"), unless expressly assumed.

Extensive case law exists providing that claims against the winning bidder are directed to the proceeds of a free and clear sale of property and may not subsequently be asserted against a buyer.

39. Section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests." The term "any interest," as used in section 363(f), is not defined anywhere in the Bankruptcy Code. Folger Adam Security v. DeMatteis/MacGregor JV, 209 F.3d 252, 257 (3d Cir. 2000). In the recent case of In re Trans World Airlines, Inc., 322 F.3d 283 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term "any interest." 322 F.3d at 288-89. The Third Circuit observed that while some courts have "narrowly interpreted that phrase to mean only in rem interests in property," the trend in modern cases is towards "a broader interpretation which includes other obligations that may flow from ownership of the property." Id. at 289 (citing 3 Collier on Bankruptcy 363.06[1]). As determined by the Fourth Circuit in In re Leckie Smokeless Coal Co., 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited approvingly and extensively by the Third Circuit in Folger, supra, the scope of 11 U.S.C. § 363(f) is not limited to in rem interests. Thus, the Third Circuit in Folger stated that Leckie held that the debtors "could sell their assets under §363(f) free and clear of successor liability that otherwise would have arisen under federal statute." Folger, 209 F.3d, at 258.

40. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims. See Ninth Avenue Remedial Group, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); In re Johns-Manville Corp., 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); In re New England Fish Co., 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor's employees); In re Hoffman, 53 B.R. 874, 876 (Bankr. D. R.I. 1985), (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); In re All Am. Of Ashburn, Inc., 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded on successor doctrine in a sale of assets free and clear); In re WBQ Partnership, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (State of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).

41. In this matter, the Proposed Purchaser and the Debtors are completely and wholly unrelated entities. The Debtors expect that the Proposed Purchaser and the Debtors will not share any common incorporators, officers, directors or stockholders, and neither entity is an insider of the other. 11 U.S.C. § 101(31). For obvious reasons, the very purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the Proposed Purchaser arising from the Debtors' pre-sale conduct. Under section 363(f) of the Bankruptcy

Code, the Proposed Purchaser is entitled to know that the Acquired Assets are not infected with latent claims that will be asserted against the Proposed Purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the sale of the Acquired Assets should state that the Prevailing Bidder is not liable as a successor under any theory of successor liability, for claims that encumber or relate to, or purported to encumber or relate to, the Acquired Assets.

D. The Proposed Purchaser Is A Good Faith Buyer And Is Entitled To The Protections Of Bankruptcy Code Section 363(m).

42. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define “good faith,” the Third Circuit in In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986) held that:

[t]he requirement that a buyer act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a buyer’s good faith status at a judicial sale involves fraud, collusion between the Proposed Purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted). The APA is an intensely-negotiated, arms-length transaction, in which the Proposed Purchaser has, at all times, acted in good faith under the Abbotts Dairy standards. In addition to a fair and reasonable value offered by the Proposed Purchaser, the proposed sale also is the product of arms-length, good faith negotiations, in which the Debtors bargained for the maximum possible purchase price for the Acquired Assets. The

negotiations involved substantial time and energy by the parties and their professionals, and the APA reflects give-and-take and compromises by both sides. Under the circumstances, the Debtors submit that the proposed sale is the result of good faith, arms-length negotiations and that the Prevailing Bidder is entitled to all of the protection of section 363(m) of the Bankruptcy Code.

E. The Debtors' Request For Relief From Transfer Taxes Under Bankruptcy Code Section 1146(c) Should Be Granted.

43. Pursuant to section 1146(c) of the Bankruptcy Code provides, "the issuance, transfer . . . or the making of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax." 11 U.S.C. § 1146(c). This provision has been construed to include sales under section 363 of the Bankruptcy Code. Courts have focused on the necessity of the sale in relation to the plan. See, e.g., In re Smoss Enterprises, Corp., 54 B.R. 950, 951 (E.D.N.Y. 1985) ("where 'a transfer, and hence an instrument of transfer, is necessary to the consummation of a plan, the transfer is under a plan.'").

44. Here, the Debtors are seeking Court approval of the Sale, in conjunction with the Debtors' Plan, with a combined goal to facilitate a larger recovery for the Debtors' creditors. The Plan proposes, inter alia, that the Debtors' estates will be funded by the consummation of a sale under section 363 of the Bankruptcy Code. See Plan, Section III.A. Therefore, the Debtors submit that the consummation of the proposed Sale is a critical component of the Plan and is essential to an eventual Plan confirmation and, accordingly, should

be exempt from the stamp tax or similar taxes pursuant to section 1146(c) of the Bankruptcy Code.

45. In making this request, the Debtors are mindful of the opinion of the Third Circuit in In re Hechinger Investment Co., 335 F.3d 243 (3d Cir. 2003). In Hechinger, the Court expressed that there were several interpretations of the language in section 1146(c) of the Bankruptcy Code. Id. at 252 (noting that a sale of real estate could be “in accordance” with a plan if the sale . . . is later listed as part of a plan that is confirmed,” and explaining that there are other interpretations that section 1146(c) requires a sale be “authorized by” a plan before it qualifies for the tax exemptions therein provided). Although the language of the court in Hechinger makes clear that a sale proposed prior to the filing of a plan of reorganization, and without any relation thereto, is not entitled to the exemptions of section 1146(c), that is not the case here. Id. at 254. In Hechinger, the court was faced with a debtor that filed for protection under chapter 11 of the Bankruptcy Code in June 1999 and did not file its first sale motion pursuant to section 363 of the Bankruptcy Code until October 1999. Id. at 246. The Third Circuit dismissed the debtor’s attempt to garner the benefits of section 1146(c) for the buyer, as the sale proposed to consummate prior to confirmation of the debtor’s plan and were not proposed in accordance with the plan. Id. at 253-54.

46. Contrary to the situation in Hechinger, the Debtors in the instant case already have submitted the Plan, which relies almost exclusively on the ability of the Debtors to consummate a sale under section 363 of the Bankruptcy Code, for its funding. Further, given the timing requirements set forth in the APA and the terms of the agreement governing the Debtors’ DIP Facility, the actual consummation of the proposed sale will likely occur, pursuant to the

Plan, after Plan confirmation. Thus, the Debtors submit, that while the Hechinger case is relevant to the relief requested herein, its facts are highly distinguishable from the facts at hand in the Debtors' chapter 11 cases. Therefore, the Debtors submit that under the circumstances, the proposed sale should be exempt from the stamp tax or similar taxes pursuant to section 1146(c) of the Bankruptcy Code.

F. Authorization Of Assumption and Assignment Of Assigned Contracts Is Appropriate Under 11 U.S.C. § 365.

47. As required by the APA, and in order to enhance the value to the Debtors of the Acquired Assets (by curtailing further administrative liability to the estates and eliminating substantial rejection claims), the Debtors request the Court's authorization and approval, under 11 U.S.C. § 365, to assume and assign the Assigned Contracts to the Prevailing Bidder(s). Upon such assumption and assignment, the Debtors shall be relieved of any liability under the Assigned Contracts arising after the Closing. The Debtors further request that the Sale Order approving such sale provide that the Assigned Contracts will be transferred to, and remain in full force and effect for the benefit of, the Prevailing Bidder(s) notwithstanding any provisions in the Assigned Contracts, including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment.

48. Under section 365(a) of the Bankruptcy Code, a debtor "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, 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.

11 U.S.C. § 365(b)(1).

49. Moreover, with respect to assigning contracts to third parties after assumption by debtor section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

[t]he 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.

11 U.S.C. § 365(f)(2).

50. Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession's decision to assume an executory contract, courts have consistently applied a "business judgment" test when reviewing such a decision. See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., 318 U.S. 523, 550 (1943); Matter of Talco, Inc., 558 F.2d 1369, 1172 (10th Cir. 1977); Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (describing business judgment test as "traditional"); In re III Enterprises, Inc. V, 163 B.R.

453, 469 (Bankr. E.D. Pa. 1994) (citations omitted) (“Generally a court will give great deference to a debtor’s decision to assume or reject the contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment - a standard which we have concluded many times is not difficult to meet.”). A debtor satisfies the “business judgment” test when it determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. See, e.g., In re FCX, Inc., 60 B.R. 405, 411 (Bankr. E.D.N.Y. 1986). The assumption and assignment of the Assigned Contracts, as set forth in the APA, is a necessary part of the deal that the Debtors have struck with the Proposed Purchaser and is appropriate under the circumstances.

51. Moreover, the meaning of “adequate assurance of future payment” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” EBG Midtown South Corp. v. McLaren/Hart Envtl. Engineering Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), aff’d, 993 F.2d 300 (2d Cir. 1993).

52. When an executory contract or lease is to be assumed and assigned, adequate assurance may be provided by, among other things demonstrating the financial health of the assignee and its experience and ability in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when a prospective assignee of lease from debtor has financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of success).

53. To the extent that any defaults exist under any Assigned Contracts, the Debtors will cure such defaults pursuant to the procedures outlined in the APA and in the Cure Notice. Any provision in the Assigned Contracts that would restrict, condition, or prohibit an assignment of such contracts will be deemed unenforceable pursuant to section 365(f)(1). Moreover, the Debtors will demonstrate facts at the Sale Hearing that show the Prevailing Bidder's financial credibility, experience in the industry, and willingness and ability to perform under the Assigned Contracts. The Sale Hearing will therefore provide the Court and other interested parties with the opportunity to evaluate and, if necessary, challenge the ability of the Prevailing Bidder to provide adequate assurance of future performance under the Assigned Contracts. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

G. Notice Of The Proposed Sale Satisfies Bankruptcy Rule 2002.

54. Notice of Auction and Sale Hearing. As part of the Sale Notice, the Debtors intend to serve a notice that provides the time and place of the proposed Auction, a summary of the terms and conditions of the proposed Sale, the time and place of the Sale Hearing and the time for filing an objection, and directed them to contact Kirkland & Ellis LLP, proposed counsel to the Debtors for more information. A form of the Sale Notice was attached to the Bidding Procedures Motion for approval.

55. The Debtors also will publish the Sale Notice, no later than 10 days after entry of the Bidding Procedures Order, in the national edition of The Wall Street Journal and at least one regional paper in each of Northern California (where the Debtors are headquartered) and Reston, Virginia (where the Debtors maintain primary network operations).

56. The Debtors believe that the Sale Notice to be given by the Debtors, a form of which shall be approved by this Court, sufficiently describes the terms and conditions of the proposed Sale. See Delaware & Hudson Railway, 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement); see also In re Ionosphere Clubs, Inc., 184 B.R. 648, 652 (Bankr. S.D.N.Y. 1995). Several sections of the Bankruptcy Code dictate the sufficiency of notice and adequacy of service. As discussed below, the content and manner of service of this Motion and the related notices satisfies all such requirements.

57. Section 363 Notice: Section 363 of the Bankruptcy Code provides that a trustee may sell property “after notice and hearing”. Under section 102(1) of the Bankruptcy Code, the phrase “after notice and hearing” means “notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). As set forth above, creditors will be provided notice of the salient details regarding this Sale Motion and the Sale Hearing as soon as this Court enters the Bidding Procedures Order. Accordingly, notice is sufficient under section 363 of the Bankruptcy Code.

58. Bankruptcy Rule 2002: Bankruptcy Rule 2002 requires 20 days notice of proposed sales of property other than in the ordinary course of business. In addition, Bankruptcy Rule 2002 provides that notice of a sale shall “include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections.” Fed. R. Bankr. P. 2002. As set forth above, the Sale Notice will satisfy each of these requirements.

59. Bankruptcy Rule 6004 and 6006: Bankruptcy Rule 6004 requires that notices of sales of property out of the ordinary course of business comply with Bankruptcy Rule 2002. As set forth above, the Debtor has complied with Bankruptcy Rule 2002. Rule 6006 requires notice of a motion to assume or assign an executory contract or unexpired lease to be served on the counterparty to such contract or lease, as well as on other parties in interest as the Court may direct. The Cure Notice and this Sale Motion will be served on counterparties to the Assigned Contracts, and thus satisfy this requirement.

60. Procedural Due Process: The notice of this Sale Motion in the manner described above is “reasonably calculated” to apprise interested parties of the pendency of the matter and to afford them an opportunity to object. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Parties in interest should be found to have been afforded adequate notice of this Sale Motion as this Sale Motion is being filed well in advance of the requested Sale Hearing. Furthermore, once the Court enters the Bidding Procedures Order, the Sale Notice and related notices will be served out on all relevant and associated parties.

61. The Debtors submit that the notice they have provided and intend to provide both of the proposed sale and of this Sale Motion is timely, reasonable and appropriate and should be approved by this Court as adequate and sufficient notice.

NO PRIOR REQUEST

62. No prior Motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court enter the proposed Sale Order attached hereto and grant such other and further relief as the Court deems appropriate.

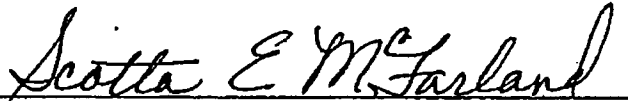
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EXHIBIT A

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

By and Among

CABLE & WIRELESS USA, INC., and

CABLE & WIRELESS INTERNET SERVICES, INC.,

AS SELLERS

And

GORES ASSET HOLDINGS, INC.

AS BUYER

Dated as of December 7, 2003

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*"), dated as of December 7, 2003, is made by and among CABLE & WIRELESS USA, INC., a Delaware corporation ("CWUSA"), and CABLE & WIRELESS INTERNET SERVICES, INC., a Delaware corporation ("CWIS," and together with CWUSA and CWIS and their subsidiaries set forth on Annex I attached hereto, "*Sellers*"), and GORES ASSET HOLDINGS, INC., a Delaware corporation ("*Buyer*"). Capitalized terms used in this Agreement are defined or cross-referenced in Article 15.

BACKGROUND INFORMATION

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer desires to purchase from Sellers, and Sellers desire to sell to Buyer, the Acquired Assets, in a sale authorized by the Bankruptcy Court pursuant to, inter alia, sections 105, 363, and 365 of the Bankruptcy Code;

WHEREAS, it is intended that the acquisition of the Acquired Assets would be accomplished through the sale, transfer and assignment of assets by Sellers that own or lease such Acquired Assets;

WHEREAS, Buyer also desires to assume, and Sellers desire to assign and transfer to Buyer, the Assumed Liabilities; and

WHEREAS, Sellers either have filed or will file the Chapter 11 Cases.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and undertakings herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sellers and Buyer hereby agree as follows:

ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS

1.1. Transfer of Acquired Assets. At the Closing, and upon the terms and conditions herein set forth, Sellers shall sell to Buyer, and Buyer shall acquire from Sellers, free and clear of all liens, other than Permitted Liens, all of Sellers' right, title and interest in, to and under all of the assets, property, rights and claims of Sellers other than the Excluded Assets (the "*Acquired Assets*"), including without limitation the following:

(a) the real property owned by any Seller and listed by address on Schedule 1.1(a) of the disclosure schedule accompanying this Agreement (the "*Disclosure Schedule*"), together with any Improvements erected thereon (the "*Owned Real Property*");

(b) all of Sellers' rights under the leases (the "*Real Estate Leases*") of real property in which the address is listed on Schedule 1.1(b) of the Disclosure Schedule, as amended from time to time in accordance with Section 7.7 (the real property leased by

any Seller pursuant to the Real Property Leases, the "*Leased Real Property*" and; together with the Owned Real Property; the "*Real Property*";

(c) all of (i) Sellers' owned equipment, spare parts, machinery, furniture, fixtures, and other personal property, whether located on the Real Property or elsewhere (but not including any license to software embedded in such equipment if consent is required to assign such license and has not been obtained ("*Embedded Software*")) (the "*Equipment*"); and (ii) any rights of Sellers to the warranties and licenses received from manufacturers and sellers of the Equipment;

(d) all of Sellers' deposits, pre-paid expenses and prepayments, to the extent such deposits, prepaid expenses and prepayment relate to the Acquired Assets;

(e) all of Sellers' rights under the leases of equipment and property other than Real Property;

(f) all of Sellers' accounts and notes receivable from any Person other than Cable and Wireless plc or any of its Affiliates (other than Sellers) (the "*Accounts Receivable*");

(g) all of Sellers' rights under all sales orders, master services agreements, customer contracts or other similar Contracts entered into by any Seller with all customers, including the customers of the Business on Schedule 1.1(g) ("*Customer Contracts*");

(h) all of Sellers' rights under outstanding purchase orders or other similar Contracts entered into by any Seller with any supplier of goods or services for materials or supplies ("*Supplier Contracts*");

(i) all of Sellers' rights under any other Contracts other than the Excluded Contracts (the "*Other Contracts*" and, together with the Real Estate Leases, the Customer Contracts and the Supplier Contracts, the "*Assigned Contracts*");

(j) all (i) inventories of supplies, materials and spares owned by Sellers on the Closing Date (the "*Inventory*"), and (ii) any rights of Sellers to the warranties received from suppliers with respect to such Inventory;

(k) all of Seller's rights in (i) the patents, patent applications, inventions disclosed therein, reissues, reexaminations, continuations, extensions, and all U.S. and foreign applications and patents or registrations relating thereto listed on Schedule 1.1(k) of the Disclosure Schedule (the "*Patents*"); (ii) the copyrights and copyright applications listed on Schedule 1.1(k) of the Disclosure Schedule, together with all goodwill associated therewith (the "*Copyrights*"); (iii) the trademarks, service marks, domain names and internet protocol addresses listed on Schedule 1.1(k) of the Disclosure Schedule, together with all applications and registrations therefor and all goodwill associated therewith (the "*Trademarks*"); (iv) all other Intellectual Property owned by any Seller; (v) Claims related to Intellectual Property owned by Sellers (to the extent such

Claims are transferable); and (vi) rights to sue and recover any damages and profits and all other remedies for past, present and future infringements of the foregoing;

(l) any computer software or systems owned by any Seller or collectively by Sellers;

(m) to the extent transferable under applicable Law, all rights of Sellers' under the permits, authorizations, approvals, registrations and licenses issued by any Government (and pending applications for the foregoing) listed on Schedule 1.1(m) of the Disclosure Schedule ("*Permits*");

(n) copies of all books, files and records to the extent they apply to the Acquired Assets or the Business, including customer lists, historical customer files, reports, plans, data, accounting and tax records, test results, product specifications, drawings, diagrams, training manuals, engineering data, safety and environmental reports and documents, maintenance schedules, operating and production records, inventory records, business plans, and marketing and all other studies, documents and records, (the "*Business Records*");

(o) all Sellers' rights to corporate telephone numbers, corporate addresses (including electronic mail addresses, except as limited by Section 1.2(l) hereof) and bank accounts (but not cash in excess of checks, debits and other charges outstanding and not cleared or accepted for payment) used in connection with the operation or conduct of the Business or the Acquired Assets;

(p) all assets to be acquired by Buyer pursuant to Article 9;

(q) any asset of any Seller that would constitute an Acquired Asset (if owned by such Seller on the Closing Date) that was or will be transferred to such Seller under the terms of the Separation Agreement and the Apollo Agreement, all in accordance with the PLC Transition Services Agreement;

(r) all other property and assets of the Business, moveable and immovable, real and personal, tangible or intangible, of every kind and description and wheresoever situated, including the full benefit of all representations, warranties, guarantees, indemnities, undertakings, certificates, covenants, agreements and all security therefor received by any of Sellers on the purchase or other acquisition of any part of the Acquired Assets;

(s) any rights, demands, claims, credits, allowances, rebates, causes of action, known or unknown, or rights of set-off (other than against any Seller or any of their Affiliates) arising out of or relating to any of the Acquired Assets; and

(t) foreign nodes and rights of Sellers with respect to foreign collocation sites.

1.2. Excluded Assets. The Acquired Assets are the only properties, assets, rights, and claims transferred to Buyer under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Acquired Assets do not include the properties,

assets, rights and claims of Sellers listed or described in this Section 1.2 (all properties, assets, rights and claims not being acquired by Buyer are herein referred to as the "*Excluded Assets*");

(a) all of Sellers' cash and cash equivalents, checks in transit and undeposited checks, other than those items included in Section 1.1(o);

(b) all of Sellers' rights under (i) the Contracts listed on Schedule 1.2(b)(i) of the Disclosure Schedule (as amended from time to time in accordance with Section 7.7); (ii) Real Estate Leases not listed on Schedule 1.1(b) of the Disclosure Schedule; and (iii) all leases for personal property which is located on the properties referred to in (ii) above and listed on Schedule 1.2(b)(iii) (the "*Excluded Contracts*");

(c) except as provided in Article 9, all assets of Employee Benefit Plans and all other assets to be retained by Sellers pursuant to Article 9;

(d) except as provided in Section 1.1(k), all rights to Claims, refunds or adjustments with respect to Excluded Assets, and all rights to insurance proceeds or other insurance recoveries to the extent relating to Excluded Liabilities;

(e) any asset of any Seller that would constitute an Acquired Asset (if owned by such Seller on the Closing Date) that is conveyed or otherwise disposed of during the period from the date hereof until the Closing Date either (i) in the Ordinary Course of Business of such Seller in accordance with Section 6.2 hereof or (ii) as otherwise expressly permitted by the terms of this Agreement;

(f) any asset of any Seller that would constitute an Acquired Asset (if owned by such Seller on the Closing Date) that was or will be transferred to Cable and Wireless plc (or any of its Affiliates other than the Sellers) under the terms of the Separation Agreement or the Apollo Agreement, all in accordance with the Plc Transition Services Agreement;

(g) all losses, loss carry forwards and rights to receive refunds or credits with respect to any and all Taxes of any Seller incurred or accrued on or prior to the Closing Date, including interest receivable with respect thereto;

(h) except as provided in Section 1.1(k) and Section 1.1(s), any and all rights, demands, claims, credits, allowances, rebates, causes of action, known or unknown, pending or threatened (including all causes of action arising under sections 510, 544 through 551 and 553 of the Bankruptcy Code or under similar state Laws including fraudulent conveyance claims, and all other causes of action of a trustee and debtor-in-possession under the Bankruptcy Code) or rights of set-off (collectively, "*Claims*"), of any Seller or any Affiliate of any Seller (other than against Buyer), including but not limited to Claims arising out of or relating in any way to the Chapter 11 Cases or any of the transactions contemplated thereby or entered into as a consequence thereof, including any claims (as defined in section 101(5) of the Bankruptcy Code) filed, scheduled or otherwise arising in the Chapter 11 Cases;

(i) all shares of capital stock or other equity interests of all Sellers and all Affiliates of Sellers;

(j) all rights of Sellers in, to and under the Separation Agreement and the Apollo Agreement;

(k) all rights of Sellers arising under this Agreement and under any other agreement between Sellers and Buyer entered into in connection with this Agreement;

(l) all rights in the Cable & Wireless brand name and any derivatives (including without limitation, the use of "cw," "cable-and-wireless," "cable and wireless," "cablewireless," "candw," "cable-wireless," "cwa," or any other similar variation) thereof no matter how used, whether as a corporate name, domain name or otherwise, other than as provided in the Plc Transition Services Agreement;

(m) all corporate seals, minute books, charter documents, corporate stock record books, original tax and financial records and such other files, books and records to the extent they relate to any of the Excluded Assets or Excluded Liabilities or to the organization, existence or capitalization of any Seller or of any Affiliate of any Seller;

(n) all of Sellers' rights to recovery of cash collateral given to obtain letters of credit and rights to recover amounts drawn or paid on letters of credit as set forth on Schedule 1.2(n);

(o) all accounts receivable and other amounts due to any Seller from any Affiliate of such Seller and all rights and Claims of any Seller against any other Seller or any other Affiliate of such Seller, including all claims of any Seller against Cable and Wireless plc;

(p) except (1) as otherwise provided in the Plc Transition Services Agreement, and (2) with respect to the Real Estate Leases that are the subject of the guarantees and letters of credit addressed in Section 14.7, all rights under any Supplier Contract that is the subject of any guarantee or other credit support by Cable and Wireless plc (or any of its Affiliates other than Sellers) or to which Cable and Wireless plc (or any of its Affiliates other than Sellers) is a party and in each case for which such credit support has not been released or such entity has not been released as a party, as applicable, or for which alternative arrangements, satisfactory to Cable and Wireless plc in its sole discretion, have not been made; and

(q) any assets set forth on Schedule 1.2(q) of the Disclosure Schedule as it may be amended from time to time in accordance with Section 7.7.

1.3. Assumption of Liabilities. Buyer shall assume no liability or obligation of any of the Sellers except the liabilities and obligations set forth in this Section 1.3 (the "Assumed Liabilities"), which Buyer shall thereafter assume and pay, perform and discharge in the ordinary course of business, subject to any defenses or claimed offsets asserted in good faith against the obligee to whom such liabilities or obligations are owed:

(a) all liabilities and obligations with respect to trade accounts payable arising after the Petition Date (as defined in Section 8.1) in connection with the operation of the Business (other than operations that relate to the Excluded Assets) or the operation of the Acquired Assets and in existence on the Closing Date (the "*Accounts Payable*") but excluding any and all such Accounts Payable owing to Cable and Wireless plc or any of its Affiliates;

(b) all liabilities and obligations of Sellers under the Permits included in the Acquired Assets;

(c) all liabilities and obligations of Sellers to be assumed by Buyer pursuant to Article 9;

(d) 50% of all liabilities and obligations of Sellers for Transaction Taxes payable in connection with the transactions contemplated by this Agreement, subject to a maximum liability of Buyer of \$500,000 less any amounts by which cure costs actually paid by the Buyer under Section 7.4 hereof exceed \$4,500,000;

(e) all liabilities and obligations relating to Buyer's ownership of the Acquired Assets or that arise as a result of Buyer's operation of the Business other than Taxes that relate to the Business or the Acquired Assets for the periods through the Adjustment Date, but including Taxes relating to the Acquired Assets for periods after the Adjustment Date; and

(f) leases included in the Acquired Assets pursuant to Section 1.1(e).

1.4. Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, the parties expressly acknowledge and agree that Buyer shall not assume or in any manner whatsoever be liable or responsible for any liability or obligation of any of the Sellers, or any predecessors or affiliates of any of the Sellers, or any of their representatives or any claim against any and all of the foregoing other than Assumed Liabilities. Without limiting the generality of the foregoing, Buyer is not assuming hereunder any liability or obligation of Sellers or any Affiliate of Seller to Cable and Wireless plc, except for as expressly provided by the terms of Section 14.7. All such liabilities and obligations other than the Assumed Liabilities are collectively referred to as the "*Excluded Liabilities*."

1.5. Non-Assignment of Assigned Contracts. Anything contained herein to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Assigned Contract if, after giving effect to the provisions of sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without obtaining a Consent, would constitute a breach thereof by the assignee of such Assigned Contract, unless and until such consent shall have been obtained. If, after giving effect to the provisions of sections 363 and 365 of the Bankruptcy Code, such Consent is required but not obtained, Sellers shall, at Buyer's sole cost and expense, cooperate with Buyer in any reasonable arrangement designed to provide for Buyer the benefits and obligations of or under any such Assigned Contract, including enforcement for the benefit of Buyer of any and all

rights of any Seller against a third party thereto arising out of the breach or cancellation thereof by such third party. Sellers shall seek an Order from the Bankruptcy Court providing that (i) all parties to executory contracts shall be given notice of Sellers' assignment and Buyer's assumption of Assigned Contracts and (ii) a party's failure to timely object to such assignment and such assumption shall be deemed to constitute such party's Consent of such assignment and such assumption. Any assignment to Buyer of any Assigned Contract that shall, after giving effect to the provisions of sections 363 and 365 of the Bankruptcy Code, require the Consent of any third party for such assignment as aforesaid shall be made subject to such Consent being obtained.

ARTICLE 2 CONSIDERATION

2.1. Consideration. The aggregate consideration for the sale and transfer of the Acquired Assets shall be (a) \$120,000,000, subject to adjustment pursuant to Section 2.3 and Section 2.4 (the "*Purchase Price*"), which price is payable and deliverable at the Closing in accordance with Section 3.3 and (b) the assumption by Buyer of the Assumed Liabilities. The Purchase Price, prior to any adjustments in Section 2.3 and Section 2.4, shall consist of \$45,000,000 payable in cash (the "*Cash Payment*") plus a note with a face value equal to \$75,000,000 (the "*Seller Note*") in the form attached as Exhibit A hereto.

2.2. Deposits. Within three (3) days of the date hereof, Buyer has executed and delivered to Sellers the Deposit Escrow Agreement and deposited with the Escrow Agent \$5,000,000 (the "*Deposit*"). The Deposit shall be held and disbursed pursuant to the terms of the Deposit Escrow Agreement and this Agreement. The obligation to provide the Deposit may be satisfied by Buyer by causing an irrevocable Letter of Credit issued by a commercial bank or similar institution unaffiliated with Buyer or any of its affiliates and having assets in excess of \$50,000,000,000 to be issued to the Escrow Agent (the "*Letter of Credit*") and, in addition, the Buyer shall, at any time after the date such Deposit was made in cash, have the right to provide a Letter of Credit and have any such cash Deposit equal to the face amount of the Letter of Credit so provided, returned.

2.3. Working Capital Adjustment

(a) The "*Reference Working Capital*" shall be \$17,900,000; provided that the dollar amount of any (y) deposit for rent and utilities that is included in an Assigned Contract that has been rejected in the Chapter 11 Cases shall be deducted, and (z) any long-term capital lease that is included in an Assigned Contract that has been rejected in the Chapter 11 Cases shall be added; to the Reference Amount for the purposes of the calculation of Working Capital under this Section 2.3; further provided, that in each case such dollar amount would otherwise have been included for the purposes of the determination of the Estimated Working Capital and Closing Working Capital had such Assigned Contract not been so rejected.

(b) Sellers and Buyer together shall prepare and deliver, on a date which is three Business Days before the Closing Date (the "*Estimate Date*"), a good faith estimate

of the Working Capital on the Closing Date, giving effect to the transactions contemplated by this Agreement (the "*Estimated Closing Working Capital*"), which estimate shall be prepared in a manner consistent in all respects with the principles and rules set forth on Schedule 2.3(b). The Purchase Price, and cash to be paid by Buyer at Closing shall be decreased on a dollar for dollar basis by the Negative Initial Adjustment Amount, if any. The "*Negative Initial Adjustment Amount*" shall mean the amount, if any, by which Reference Working Capital exceeds the Estimated Closing Working Capital.

(c) As promptly as practicable after the Closing, but no later than 90 days after the Closing Date, Buyer shall cause to be prepared and delivered to Sellers a statement of the calculation of Working Capital as of the end of business on the Closing Date and giving effect to the transactions contemplated by this Agreement ("*Closing Working Capital*"), which statement shall be prepared in a manner consistent in all respects with the principles and rules applied in the preparation of the Estimated Closing Working Capital.

(d) If Sellers disagree with Buyer's calculation of Closing Working Capital delivered pursuant to Section 2.3(c), then Sellers may, within 20 days after delivery of Buyer's calculation of Closing Working Capital, deliver a notice to Buyer stating Seller's disagreement with such calculation and setting forth Seller's calculation of the Closing Working Capital. Any such notice of disagreement shall specify those items or amounts as to which Seller disagrees. If Sellers do not deliver a notice of disagreement in accordance with this Section 2.3(d), then the amount of Closing Working Capital shall thereupon be final and binding upon Buyer and Sellers, and shall not be subject to further judicial or other review.

(e) If a notice of disagreement is duly delivered pursuant to Section 2.3(d), Buyer and Sellers shall, during the 15 days following such delivery, use their reasonable efforts to reach agreement on the disputed items or amounts in order to determine the amount of Closing Working Capital, which amount shall not be less than the amount thereof shown in Buyer's calculation delivered pursuant to Section 2.3(c), nor more than the amount thereof shown in Seller's calculation delivered pursuant to Section 2.3(d). If during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause Ernst & Young LLP or such other internationally recognized independent accounting firm mutually agreed upon by Sellers and Buyer, as the case may be (the "*Accounting Referee*"), to review the disputed items or amounts and to calculate the Closing Working Capital (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accounting Referee shall consider only those items or amounts in Buyer's calculation of Closing Working Capital as to which Sellers have disagreed pursuant to Section 2.3(d). The Accounting Referee shall not require or consider witness or expert testimony or briefings of any nature. The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than 30 days from the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Buyer and Sellers, and shall not be subject to further judicial or other review. Sellers and Buyer shall be responsible for

the fees and expenses of the Accounting Referee based on the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party (e.g., if Sellers make a claim for \$1,000 and Buyer only contests \$500 of the amount claimed by Sellers, and if the Accounting Referee resolves the dispute by awarding Sellers \$300 of the \$500 contested, then the Accounting Referee's fees and expenses shall be allocated 60% to Buyer and 40% to Sellers). The date on which the Closing Working Capital becomes final and binding on the parties is the "*Determination Date*".

(f) Buyer and Sellers shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the calculation of Estimated Closing Working Capital under Section 2.3(b) and Closing Working Capital and in the conduct of the review referred to in Section 2.3(e), including, without limitation, the making available to the extent necessary of books, records, work papers and personnel.

(g) (i) If the Estimated Closing Working Capital exceeds the amount of the Closing Working Capital, as finally determined pursuant to this Section 2.3, then an amount equal to such excess shall be released to Buyer from the Retention Fund; and (ii) if the amount of the Closing Working Capital exceeds the Reference Working Capital, as finally determined pursuant to this Section 2.3, Buyer shall pay such excess amount to Sellers, or if the amount of the Closing Working Capital does not exceed the Reference Working Capital but does exceed the amount of the Estimated Closing Working Capital, Buyer shall pay such excess over Estimated Closing Working Capital to Sellers, in either such case within three (3) days following the Determination Date, by wire transfer of immediately available funds to an account designated by Sellers, without deduction for any rights of defense, setoff, recoupment or counterclaim that Buyer may allege. Buyer's sole remedy for setoff or recoupment under this Section 2.3(g) shall be from the Retention Fund; and Sellers' aggregate liability under this Section 2.3(g) shall in no event exceed the amounts in the Retention Fund at such time; provided that, to the extent that due to the operations of the provisions of Sections 2.3, and 2.4 and 14.4 hereof, the amount of Retention Fund is insufficient to pay the amount required to be paid under this Section 2.3, the principal amount of the Seller Note shall be reduced by the amount not paid by the Escrow Agent from the Retention Fund; provided that the sum of the (x) cash paid by the Escrow Agent from the Retention Fund pursuant to this Section 2.3 and Section 14.4, and (y) the amount by which the principal amount of the Seller Note has been reduced pursuant to this Section 2.3 and Section 14.4 shall in no event exceed \$15 million.

(h) The amount of any cash payment to be made pursuant to this Section 2.3, shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest published from time to time by the Wall Street Journal as the "prime rate" at large U.S. money center banks during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of three hundred sixty (360) days and the actual number of days elapsed.

2.4. Total Revenue/Lease Adjustment. As promptly as practicable after the Closing, but no later than the Calculation Delivery Date, Buyer and Sellers together shall cause to be prepared a statement of a calculation of the Total Run-Rate Revenues and the Lease Adjustment. If Sellers and Buyer jointly agree to such statement, then the amount of Total Run-Rate Revenues and/or the Lease Adjustment as set forth in such statement shall be final and binding upon Buyer and Sellers. "*Calculation Delivery Date*" means the last to occur of (i) the 100th day after Closing and (ii) the first to occur of (x) the Lease Deficit Zero Date and (y) the first day of the seventh full calendar month after Closing.

(b) If Sellers and Buyer do not agree to the calculation of Total Run-Rate Revenues and/or the Lease Adjustment pursuant to Section 2.4(a) within 10 days after the Calculation Delivery Date, then, within 20 days following the Calculation Delivery Date, Sellers and Buyer shall each prepare its statement of the calculation of the Total Run-Rate Revenues and the Lease Adjustment setting forth their respective calculations of Total Run-Rate Revenues and/or the Lease Adjustment (a "*Calculation Statement*"). If either the Sellers or Buyer deliver such a Calculation Statement and the other party does not deliver such a Calculation Statement in accordance with this Section 2.4(b), then the amount of Total Run-Rate Revenues and/or the Lease Adjustment of the Party delivering such statement shall be final and binding upon Buyer and Sellers.

(c) If each of Sellers and Buyer duly deliver a Calculation Statement pursuant to Section 2.4(b), Buyer and Sellers shall, during the 15 days following the delivery of the later Calculation Statement to be delivered, use their reasonable efforts to reach agreement on the disputed items or amounts in order to determine the amount of the Total Run-Rate Revenues and/or the Lease Adjustment, which amounts shall not, in the case of the Total Run-Rate Revenue, be less, or in the case of Lease Adjustment, be more than the amounts thereof shown in Buyer's calculation delivered pursuant to Section 2.4(b), nor, in the case of the Total Run-Rate Revenue, be more or, in the case of Lease Adjustment, be less than the amount thereof shown in Seller's calculation delivered pursuant to Section 2.4(b) (the range between the Total Run-Rate Revenues determined by each of the Buyer and Sellers being the "*Disputed Revenue Range*" and the range between the Lease Adjustment determined by each of the Buyer and Sellers being the "*Disputed Lease Expense Range*"). If, during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause the Accounting Referee to review the disputed items or amounts and to calculate the Total Run-Rate Revenues and/or Lease Adjustment (it being understood that in making such calculations, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculations, the Accounting Referee shall consider only those items or amounts in Buyer's or Sellers' calculation of the Total Run-Rate Revenues and/or Lease Adjustment as to which Buyer and Sellers disagree pursuant to Section 2.4(b) and shall not determine the Total Run-Rate Revenues to be greater or less than an amount within the Disputed Revenue Range or the Lease Adjustment to be greater or less than an amount within the Disputed Lease Expense Range. The Accounting Referee shall not require or consider witness or expert testimony or briefings of any nature. The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than 30 days from the date of engagement of the Accounting Referee), a report setting forth such

calculations. Such report shall be final and binding upon Buyer and Sellers. Sellers and Buyer shall be responsible for the fees and expenses of the Accounting Referee based on the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party (e.g., if Sellers make a claim for \$1,000 and Buyer only contests \$500 of the amount claimed by Sellers, and if the Accounting Referee resolves the dispute by awarding Sellers \$300 of the \$500 contested amount, then the Accounting Referee's fees and expenses shall be allocated 60% to Buyer and 40% to Sellers).

(d) Buyer and Sellers shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the calculation of Total Run-Rate Revenues and/or Lease Adjustment and in the conduct of the review referred to in this Section 2.4, including, without limitation, the making available to the extent necessary of books, records, work papers and personnel.

(e) If the Total Run-Rate Revenues as finally determined pursuant to this Section 2.4 are less than \$34,400,000 (the "*Projected Revenue Amount*"); the Purchase Price shall be reduced (the "*Revenue Based Adjustment*") by 1.5 times the Annualized Closing Revenue Shortfall. The "*Closing Revenue Shortfall*" means the amount, if any, by which the Projected Revenue Amount exceeds Total Run-Rate Revenues. "*Annualized Closing Revenue Shortfall*" means twelve multiplied by the Closing Revenue Shortfall.

(f) If any of Buyer's Affiliates successfully competes for any hosting or network business of a customer of the Business that Buyer otherwise could have provided during the period revenue is being measured for revenue determination, then any revenue generated from the Affiliate of Buyer shall be deemed to be part of the revenue for purposes of measurement.

(g) Upon the final determination of the Revenue Based Adjustment and calculation of the Lease Adjustment, the Purchase Price shall be reduced by the sum of the Revenue Based Adjustment and the Lease Adjustment (together, the "*Section 2.4 Adjustment*") as follows:

(i) Firstly, the Revenue Escrow Fund shall be reduced to zero; and

(ii) Secondly, to the extent that the Revenue Escrow Fund has been reduced to zero and there remains a Section 2.4 Adjustment to be applied to reduce the Purchase Price, the Retention Fund shall be reduced until the amount by which the Revenue Escrow Adjustment and the Retention Fund have been reduced by \$20,000,000 pursuant to a Section 2.4 Adjustment; thereafter the Retention Fund and Seller Note shall be reduced equally until the Retention Fund has been reduced to zero;

(iii) Thirdly, to the extent that the Revenue Escrow Fund and Retention Fund have been reduced to zero and there remains a Section 2.4 Adjustment to be applied to reduce the Purchase Price, a remaining Section 2.4

Adjustment shall be applied against the Seller Note, but in no event shall the Minimum Consideration be less than \$50,000,000.

2.5. Minimum Consideration. Any other provision hereof notwithstanding, in no event shall the Minimum Consideration be less than \$50,000,000, and no reduction shall be made under any of Sections 2.3, 2.4 or 14.4 that would result in the Minimum Consideration being less than \$50,000,000.

ARTICLE 3 CLOSING AND DELIVERIES

3.1. Closing. The consummation of the transactions contemplated hereby (the "Closing") shall take place at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York at 9:00 a.m. on the third Business Day following the satisfaction or waiver by the appropriate party of all the conditions contained in Article 12 hereof, or on such other date or at such other place and time as may be agreed to by the parties hereto (the "Closing Date"). If the terms of Section 12.4 hereof apply, the consummation of the transactions contemplated hereby, as modified by the terms of Section 12.4 hereof (the "Regulatory Escrow Closing") shall take place at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York at 9:00 a.m. on the third Business Day following the satisfaction or waiver by the appropriate party of all the conditions contained in Article 12 hereof (other than with respect to the receipt of the Regulatory Approvals set forth in Section 12.1(b)), or on such other date or at such other place and time as may be agreed to by the parties hereto (the "Regulatory Escrow Closing Date").

3.2. Sellers' Deliveries. At the Closing, unless otherwise waived in writing by Buyer, Sellers shall deliver or cause to be delivered to Buyer or its Permitted Assignee:

(a) duly executed bills of sale to transfer the Acquired Assets which are tangible property to Buyer or its Permitted Assignee free and clear of all Liens, other than Permitted Liens;

(b) duly executed assignments of intangible property to transfer the Acquired Assets which are intangible property to Buyer or its Permitted Assignee free and clear of all Liens, other than Permitted Liens;

(c) executed counterparts of the Plc Transition Services Agreement in the form attached as Exhibit B (the "Plc Transition Services Agreement");

(d) executed counterparts of the Management Agreement having the terms set forth in Exhibit C (the "Management Agreement");

(e) executed counterparts of the CWA Transition Services Agreement in accordance with the terms set forth on Exhibit D (the "CWA Transition Services Agreement").

(f) executed counterparts of the Retention Fund and Revenue Escrow Fund Escrow Agreement in the form attached as Exhibit E;

(g) duly executed and acknowledged quit claim deeds conveying each Owned Real Property to Buyer or its Permitted Assignee free and clear of all Liens, other than Permitted Liens;

(h) a receipt for the Purchase Price; and

(i) such other documents and instruments of transfer and conveyance, excluding any representations, warranties or covenants and otherwise reasonably requested by Buyer consistent with the terms of this Agreement and reasonably satisfactory in form and substance to Buyer.

3.3. Buyer's Deliveries. On the Closing Date, in payment for the Acquired Assets:

(a) the Escrow Agent shall pay to Sellers the Deposit in accordance with the terms of the Deposit Escrow Agreement, by wire transfer of immediately available funds to a bank account designated by Sellers in writing to Buyer (the "*Sellers' Account*");

(b) Buyer shall pay to Sellers the Cash Payment of the Purchase Price, reduced by the amount of the Deposit paid pursuant to Section 3.3(a), the deposits made pursuant to Section 3.3(c) and the Negative Initial Adjustment Amount (if any), by wire transfer of immediately available funds to Sellers' Account;

(c) Buyer shall deposit with the Escrow Agent an amount equal to \$15,000,000 (the "*Retention Fund*") and an amount equal to \$15,000,000 (the "*Revenue Escrow Fund*"), which funds shall be disbursed in accordance with the provisions of this Agreement and a Retention Fund and Revenue Escrow Fund Escrow Agreement substantially in the form of Exhibit E attached hereto (the "*Retention Fund and Revenue Escrow Fund Escrow Agreement*");

(d) Buyer shall execute and deliver to Sellers an instrument of assumption of liabilities with respect to the Assumed Liabilities reasonably satisfactory in form and substance to Sellers;

(e) an executed counterpart of the Plc Transition Services Agreement;

(f) an executed counterpart of the CWA Transition Services Agreement;

(g) an executed counterpart of the Management Agreement;

(h) the executed Seller Note; and

(i) an executed counterpart of the Retention Fund and Revenue Escrow Fund Escrow Agreement.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Buyer as follows, except in all cases as disclosed in the Disclosure Schedule:

4.1. Corporate Organization. Each Seller is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Each Seller is licensed, registered, qualified or admitted to do business in each jurisdiction in which the ownership, use or leasing of any of the Seller's assets or properties or the conduct or nature of the Business makes such licensing, qualification, or admission necessary, except such as would not reasonably be expected to have a Material Adverse Effect. Subject to any necessary authority from the Bankruptcy Court, each Seller has all requisite corporate power and authority to own, lease and operate its properties and assets and to conduct its business as now conducted except for such failures as would not reasonably be expected to have a Material Adverse Effect. Each Subsidiary of each of the Sellers is identified on Schedule 4.1 of the Disclosure Schedule.

4.2. Authorization and Validity. Subject to the Bankruptcy Court's entry of the Sale Order and the receipt of the Consents set forth on Schedule 4.4 of the Disclosure Schedule, each Seller has all requisite corporate power and authority to enter into this Agreement and the other agreements contemplated hereby to which it is or will be a party to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. Subject to the entry of the Sale Order, the execution and delivery of this Agreement and the other agreements contemplated hereby to which any of them is or will be a party and the performance of each Seller of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action by the board of directors and stockholders of such Seller, and no other corporate proceedings on the part of such Seller are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by each Seller and, subject to the Bankruptcy Court's entry of the Sale Order and assuming the due execution of Buyer, constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

4.3. No Conflict or Violation. Subject to (a) the receipt of all Consents set forth on Schedule 4.4 of the Disclosure Schedule, (b) the Bankruptcy Court's entry of the Sale Order and (c) the receipt of the Antitrust Approvals, the execution, delivery and performance by each Seller of this Agreement and the other agreements contemplated hereby to which it is or will be a party do not and will not (i) violate or conflict with any provision of the certificate of incorporation or by-laws (or equivalent organizational documents) (collectively, the "*Organizational Documents*") of any Seller, (ii) violate any provision of law, regulation, rule or other legal requirement of any Government ("*Law*") or any order, judgment or decree of any court or Government (which, for the avoidance of doubt, shall not include any objection filed with the Federal Communications Commission by a state public utility commission or other state governmental agency to the consent or approval of the Federal Communications Commission of any of the transactions contemplated hereby) ("*Order*") applicable to any Seller, or (iii) violate or

result in a breach of or constitute (with due notice or lapse of time or both) a default under any Assigned Contract, which violation, conflict, breach or default in any such case would reasonably be expected to have a Material Adverse Effect.

4.4. Governmental Consents, Approvals and Notifications. Schedule 4.4 of the Disclosure Schedule sets forth a true and complete list of each Consent and each declaration to or filing or registration with any Government that is required in connection with the execution and delivery of this Agreement and the other agreements contemplated hereby by Sellers or the performance by Sellers of their obligations hereunder or thereunder, the failure of which to obtain would reasonably be expected to have a Material Adverse Effect.

4.5. Compliance with Law. Except as may result from the Chapter 11 Cases, since January 1, 2003, no Seller has received written notice of any material violation of any Law (other than with respect to Environmental Law, as to which the only representations and warranties made by Sellers are those contained in Section 4.16 of the Disclosure Schedule). No Seller is in violation of any Law, or in default with respect to any Order, applicable to the Business or any of its assets, properties or operations other than violations and defaults the consequences of which would not reasonably be expected to have a Material Adverse Effect.

4.6. Litigation. As of the date of this Agreement and except as set forth on Schedule 4.6 or Schedule 4.17 of the Disclosure Schedule, there are no Claims, suits or proceedings or Government investigations pending or, to the Knowledge of Sellers, threatened in writing, before any Government brought by or against any Seller that, if adversely determined, could reasonably be expected to have a Material Adverse Effect or materially impair the ability of Sellers to consummate the transactions contemplated by this Agreement.

4.7. Financial Statements. The unaudited financial statements attached hereto as Annex III (the "*Financial Statements*"), fairly present in all material respects the financial position of Sellers as of their respective dates and the income of Sellers for the periods covered thereby (except for normal audit adjustments and the absence of footnotes). The Financial Statements have been prepared in accordance with the principles set forth in Schedule 4.7.

4.8. Sales Practices; Receivables. Since August 31, 2003, each Seller has operated in the Ordinary Course of Business and has not changed its business practices in such a manner as would reasonably be expected to result in an accounts receivable portfolio that, in amount or character, is materially different than that maintained by such Seller in the Ordinary Course of Business.

4.9. No Material Adverse Effect. Except as contemplated by this Agreement, since June 30, 2003 through the date hereof, there has not been any change, occurrence or circumstance that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

4.10. Tax Representation. There is no material liability for Taxes with respect to the Acquired Assets or Sellers for the period prior to Closing for which Buyer will be liable, or to which the Acquired Assets will be subject, except as otherwise provided in Article 11 of this Agreement;

(b) except in each case or in the aggregate as would not reasonably be expected to have a Material Adverse Effect, Sellers have filed all Tax Returns required to be filed, and have paid all Taxes shown as due on such Tax Returns;

(c) except in each case or in the aggregate as would not reasonably be expected to have a Material Adverse Effect and except as set forth on Schedule 4.10(c), Sellers have not been audited by any Governmental Authority with respect to Taxes during the three (3) year period ending on the date hereof, are not presently undergoing an audit or other investigation with respect to Taxes, and have not received any written notification that an audit or other investigation with respect to Taxes may be contemplated;

(d) except in each case or in the aggregate as would not reasonably be expected to have a Material Adverse Effect and except as set forth on Schedule 4.10(d), Sellers have not received any notice of deficiency for any Taxes that has not since been paid; and

(e) Sellers have not received any notice or inquiry from a Governmental Authority in a jurisdiction in which they have not filed a Tax Return that indicates that a Governmental Authority may take the position that Sellers should have filed Tax Returns in the jurisdiction where the determination that Sellers should have filed a Tax Return would reasonably be expected to result in the payment of Tax.

4.11. Material Contracts.

(a) Schedule 4.11 of the Disclosure Schedule sets forth, to Sellers' Knowledge, a complete and correct list, categorized to correspond to the subparagraphs of this Section 4.11(a), of each Contract or customer, as the case may be:

(i) that creates a right to lease, use or occupy real estate;

(ii) that contemplates or involves the performance of services or sales of products by any of the Sellers having a value in excess of \$500,000 in the aggregate during the three (3) month period (annualized) ended September 30, 2003, and which is not terminable by Sellers without material penalty or on not more than ninety (90) days' prior notice;

(iii) that relates to the purchase or lease of personal property with any supplier or the furnishing of services to any Seller and involves payments in excess of \$500,000 during the twelve (12) month period ended September 30, 2003 or commitments for such purchase or lease during the twelve (12) month period following such period, other than short-term purchase orders entered into in the Ordinary Course of Business consistent with past practice;

(iv) pursuant to which Sellers received (or were entitled to receive) or paid (or were obligated to pay) more than \$1,000,000 in the twelve (12) month period ended September 30, 2003;

(v) relating to, and evidences of, indebtedness for borrowed money, any mortgage, security agreement, or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset in excess of \$100,000);

(vi) containing covenants of any of the Sellers not to compete in any line of business or with any other Person in any geographical area; or

(vii) that is material or otherwise significant to the Business (collectively, but excluding Contracts that are not Assigned Contracts as of the Closing the "*Material Contracts*").

(b) Other than as set forth on Schedule 4.11 of the Disclosure Schedule, (i) except as will be cured pursuant to Section 6.9 and Section 7.4 hereof, each of the Sellers has performed all material obligations required to be performed by it to date under each Material Contract and is not (with or without the lapse of time or the giving of notice, or both) in breach or default thereunder and (ii) no Seller nor, to Sellers' Knowledge, any other party to any of the Material Contracts has commenced any action against any of the parties to such Material Contracts or given or received any written notice of any material default or violation under any Material Contract that was not withdrawn or dismissed, except only for those defaults that will be cured in accordance with the Sale Order (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Assigned Contracts). To Sellers' knowledge, each of the Material Contracts is, or will be at the Closing, valid, binding and in full force and effect against a Seller, except as otherwise set forth on Schedule 4.11 of the Disclosure Schedule. Copies of all Material Contracts have been previously delivered to or made available by Sellers for inspection by Buyer, and such copies are, true, complete, and correct.

(c) Except as set forth on Schedule 4.11 of the Disclosure Schedule or pursuant to the Separation Agreement or the Apollo Agreement, no Seller has assigned any rights or obligations under any Material Contract to any other Person.

4.12. Personal Property. One of the Sellers (subject to the entry of, and the provision of, the Sale Order) has good title to all of the owned personal property and assets, tangible or intangible, that are Acquired Assets free and clear of all Liens, except for: (i) Liens incurred in the Ordinary Course of Business; (ii) Permitted Liens; (iii) Liens that shall be released at or prior to the Closing; and (iv) Liens set forth on Schedule 4.12 of the Disclosure Schedule; provided, however, that Sellers make no representations or warranties in this Section 4.12 with respect to Real Property and Intellectual Property, which are specifically addressed in Section 4.13 and Section 4.14, respectively, or with respect to the Excluded Assets. With respect to leased personal properties and assets, Sellers possess and operate such property and assets pursuant to valid leases.

4.13. Real Property. One of the Sellers is the owner of good and marketable fee title to the Owned Real Property, free and clear of all Liens, except for (i) the matters listed on Schedule 4.13 of the Disclosure Schedule; and (ii) Permitted Liens. The Owned Real Property constitutes all of the real property owned by Sellers. Subject to (x) the Chapter 11 Cases (including any breaches or defaults relating to the commencement thereof and any payables that would have been paid but for the commencement thereof), and (y) payment of any cure costs, and except as set forth on Schedule 4.13 of the Disclosure Schedule: (i) all of the Real Estate Leases are valid, existing, in full force and effect and binding upon Sellers and the other parties thereto in accordance with their terms; and (ii) each of the Sellers is in compliance with all material terms and requirements of each such Real Estate Lease, and all undisputed rent and other material sums and charges payable by Sellers as tenant thereunder are current; and (iii) the approximate aggregate amount of such rent and other sums and charges so payable are as set forth in Schedule 4.13 opposite the applicable Real Estate Lease. To Sellers' Knowledge there is no proposed or pending proceeding to change or redefine the applicable legal requirements pertaining to zoning of any portion of the Real Property except which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the impacted premises. To Sellers' Knowledge no proceeding seeking a reduction in real estate taxes imposed upon the Real Property or the assessed valuation of the Real Property or any portion thereof have been settled during the three (3) year period preceding the date of this Agreement or are currently pending. There is no pending or, to Sellers' Knowledge, proposed imposition of any special or other assessments affecting the Real Property or any portion thereof or any penalties or interest due with respect to real estate Taxes assessed against all or any portion of the Real Property that are payable by Sellers or would result in a Lien against the Real Property. None of the Sellers has received written notice of, and to Sellers' Knowledge, there is not any pending, threatened or contemplated action to change the zoning status of the Real Property or eminent domain proceedings which would reasonably be expected to have, individually and in the aggregate, a Material Adverse Effect on the use or operation of any portion of the Real Property.

4.14. Intellectual Property. Schedule 1.1(k) of the Disclosure Schedule sets forth, as indicated therein, all of the material Registered Intellectual Property that is owned by Sellers. Except as set forth on Schedule 4.14(a)-1 of the Disclosure Schedule, one of the Sellers owns, individually or with another Seller, all right, title and interest in and to, the Registered Intellectual Property listed in Schedule 1.1(k), free and clear of all Liens, except for (i) Permitted Liens and (ii) Liens that shall be released at or prior to the Closing. Except as set forth in Schedule 4.14(a)-2 of the Disclosure Schedule, and except as would not have, individually or in the aggregate, a Material Adverse Effect, to Sellers' Knowledge, Sellers' own or currently have a right to use all of the Intellectual Property that is necessary for performing under the Assigned Contracts and otherwise conducting the Business in the ordinary course.

(b) Except as set forth on Schedule 4.14(b) of the Disclosure Schedule, and except as would not have, individually or in the aggregate, a Material Adverse Effect, to Sellers' Knowledge, the conduct of the Business as currently conducted, whether by

Sellers or by Buyer after giving effect to the transaction contemplated hereby, does not conflict with or infringe upon any Intellectual Property right of any third party.

(c) Except as set forth on Schedule 4.14(c) of the Disclosure Schedule, to Sellers' Knowledge no third party is infringing on the Intellectual Property owned by any Seller.

(d) Notwithstanding Section 1.1(k)(v), all Claims of Sellers relating to the litigation disclosed on Schedule 4.6 relating to Intellectual Property owned by Sellers constitute Acquired Assets.

4.15. Permits. Schedule 1.1(m) of the Disclosure Schedule sets forth a complete and correct list of all material Permits and all pending applications therefor obtained by any Seller in connection with the Business. As of the date of this Agreement, except as would not reasonably be expected to have a Material Adverse Effect, each such Permit is valid and in full force and effect, and is not subject to any pending or, to Sellers' Knowledge, threatened administrative or judicial proceeding to revoke, cancel, suspend or declare such Permit invalid in any respect. Except as would not reasonably be expected to have a Material Adverse Effect, the Permits are sufficient and adequate in all material respects to permit the continued lawful conduct of the Business in the manner now conducted.

4.16. Environmental Matters. Except as set forth on Schedule 4.16 of the Disclosure Schedule:

(a) Sellers are in compliance with applicable Environmental Laws, except where such non-compliance would not reasonably be expected to have a Material Adverse Effect.

(b) Since January 1, 2003, Sellers have received no written complaint, Order, directive, Claim, citation or notice of violation from any Government or any other Person with respect to any release, spill, leak, discharge or emission of any Hazardous Materials to the air, surface water, groundwater or soil of the Real Property, except where such matter would not reasonably be expected to have a Material Adverse Effect:

(c) To Sellers' Knowledge, and except as where not reasonably expected to have a Material Adverse Effect, there have not been and are no material events, conditions, circumstances, incidents, actions or omissions relating to or in any way affecting any of the Sellers, the Business, the Acquired Assets, the Owned Real Property, the Leased Real Property, or formerly owned or leased Real Property that violate any Environmental Law, or that have given rise to any Liability under any Environmental Law (including, without limitation, any Hazardous Materials which have been released, disposed of, emitted, treated, stored, generated, placed, deposited, discharged, or spilled at, upon or under any facility ever owned, operated or leased by any of the Sellers, or any facility to which Sellers have sent any Hazardous Material), or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation (i) under any Environmental Law or (ii) based on or related to the manufacture, processing,

distribution, use, treatment, storage (including without limitation underground storage tanks), disposal, transport or handling, or the emission, discharge, release or threatened release of any Hazardous Material or resulting from exposure to workplace hazards.

(d) The representation and warranties contained in this Section 4.16 are the only representations and warranties made by Sellers with respect to matters arising under Environmental Laws or relating to Hazardous Materials.

4.17. Employee Benefits

(a) Set forth on Schedule 4.17 of the Disclosure Schedule is a list of all Employee Benefit Plans which Sellers maintain or to which Sellers contribute.

(b) None of the Sellers or any ERISA Affiliate contributes or has ever contributed to, has or has ever had any obligation to contribute to, or has any liability (including withdrawal liability as defined in Section 4201 of ERISA) under or with respect to any Multiemployer Plan.

(c) No Employee Benefit Plan provides and none of the Sellers provide benefits, including without limitation, death or medical benefits (whether or not insured), with respect to current or former employees, directors or consultants (or any of their spouses or dependents) of the Sellers beyond their retirement or other termination of employment or service other than: (i) coverage mandated by law or (ii) death or retirement benefits under an "employee pension benefit plan" (as such term is defined under ERISA §3(2)) that is qualified under Code §401(a).

4.18. Labor Matters. Except as set forth on Schedule 4.18 or such as would not reasonably be expected to have a Material Adverse Effect, (i) there are no material controversies, suits, charges of unlawful harassment or discrimination, or complaints or allegations of unlawful harassment or discrimination pending or, to the knowledge of Sellers, threatened with respect to the Business; (ii) no Seller is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by any Seller; (iii) none of the employees of any of the Sellers is represented by any labor organization and no Seller has knowledge of any current union organizing activities now or within the past three (3) years among the employees of any of the Sellers; (iv) to the knowledge of the Sellers, no union claims to represent any of the employees of any of the Sellers; (v) there are no material unfair labor practice complaints, grievances, or arbitration proceedings pending, or to the knowledge of Sellers, threatened; and (vi) there is no strike, slowdown, work stoppage or lockout pending, or, to the knowledge of Sellers, threat thereof, by or with respect to any employees of the Business. Sellers have previously delivered to Buyer as of the date hereof a list of the name, title, location, base salary, variable compensation and retention bonus of each employee and secondees who is or will be employed primarily in or with respect to the Business as of a recent date (the "*Business Employee*"), other than any such employees or secondees in respect of whom a notice of termination of employment has been given or will be given by Sellers.

4.19. Assets. The Acquired Assets, together with (a) the Excluded Assets and (b) the assets expressly retained or expressly acquired pursuant to the CWA Transition Services Agreement or the Plc Transition Services Agreement, constitute all of the assets used in the conduct of the Business as conducted on the date hereof.

4.20. Customers and Suppliers. Schedule 4.20 of the Disclosure Schedule lists the seventy-five (75) largest customers of the hosting business and the seventy-five (75) largest customers of the network business (measured by dollar volume for the twelve (12) calendar months ended September 30, 2003) of the Business ("*Major Customers*") and the revenue derived from or payments made to each such customer in such 12-month period. As of the date hereof, except as set forth on Schedule 4.20 of the Disclosure Schedule, (i) no Seller is engaged in a material written dispute, or, to Sellers' Knowledge, a material verbal dispute, with any of the Major Customers, and (ii) since September 30, 2003, no Major Customer has proposed to Sellers in writing or, to Sellers' Knowledge, verbally, any material modification or change in the business relationship with any Seller.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as follows, except in all cases as disclosed in the Disclosure Schedule.

5.1. Corporate Organization. Buyer is a corporation duly incorporated, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. Buyer is licensed, registered, qualified or admitted to do business in each jurisdiction in which the ownership, use or leasing of any of Buyer's assets or properties or the conduct or nature of its business makes such licensing, qualification, or admission necessary, except as would not reasonably be expected to have a material adverse effect on Buyer's ability to complete the transactions contemplated hereby. Buyer has all requisite corporate power and authority to own its properties and assets and to conduct its business as now conducted.

5.2. Authorization and Validity. Buyer has all requisite corporate power and authority to enter into this Agreement and the other agreements contemplated hereby and to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other agreements contemplated hereby and the performance of Buyer's obligations hereunder and thereunder have been duly authorized by all necessary corporate action by the board of directors of Buyer, and no other corporate proceedings on the part of Buyer are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Buyer, assuming due execution by Sellers, and constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

5.3. No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement and the other agreements contemplated hereby and the operation of the Business by Buyer as it is constituted as of the Closing Date do not and will not violate or conflict with any provision of the Organizational Documents of Buyer and do

not and will not violate any provision of Law, or any Order applicable to Buyer, nor will they result in a breach of or constitute (with due notice or lapse of time or both) a default under any material Contract to which Buyer is a party or by which it is bound or to which any of its properties or assets is subject.

5.4. Consents, Approvals and Notifications. The execution, delivery and performance of this Agreement and the other agreements contemplated hereby and the operation of the Business by Buyer as it is constituted as of the Closing Date by Buyer do not require the Consent of, or filing with or notification of, any Government or any other Person except: (a) as required under any Antitrust Law; (b) for entry of the Sale Order by the Bankruptcy Court; or (c) for such Consents and filings, the failure to obtain or make would not be reasonably be expected to have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby.

5.5. Availability of Funds. Buyer has, and on the Closing Date will have, sufficient funds available to finance and consummate the transactions contemplated by this Agreement.

5.6. Adequate Assurances Regarding Assigned Contracts. To Buyer's best knowledge and belief, Buyer is and will be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

5.7. Licenses, Permits, etc. Buyer has, or will have as of the Closing Date, all licenses, permits, franchises and authority, whether from a Government or otherwise, including Regulatory Approvals, and has provided any requisite notice to customers necessary to purchase the Acquired Assets and to assume the Assumed Liabilities; to perform the Management Agreement and to operate the Business as it is constituted as of the Closing Date.

5.8. Federal Communications Commission and other Federal Government Approvals.

Neither Buyer, or any of its shareholders or controlling persons, is (i) a foreign carrier, controls a foreign carrier, is controlled by a foreign carrier, or is affiliated with a foreign carrier, as such is defined in Sections 214 and 310 of the Communications Act of 1934 and regulations promulgated thereunder by the FCC (including, without limitation, 47 CFR 63.09(d)-(e)), or (ii) could be treated as a foreign person under Section 721 of Title VII of the Defense Production Act of 1950 (Exxon-Florio) and regulations promulgated thereunder by the U.S. Department of the Treasury (including, without limitation, 31 CFR 800.101 et seq. (CFIUS)). Buyer and its controlling persons all are citizens of the United States, and Buyer, after due inquiry and consultation with appropriate counsel, is unaware of any reason why the FCC, the U.S. Department of the Treasury, the U.S. Department of Justice, the U.S. Department of Defense, the U.S. Department of Homeland Security, or any other federal agency with jurisdiction, could seek to deny, delay or condition approval of the transfer as contemplated by this Agreement. As of the date the Buyer files its licensure application with the FCC, no

foreign person or entity singly or in concert with other foreign persons or entities will hold a 10% equity or other ownership interest in Buyer.

ARTICLE 6 COVENANTS OF SELLERS

Sellers hereby covenant to Buyer as follows:

6.1. Actions Before Closing. Sellers shall use commercially reasonable efforts to perform and satisfy all conditions to Buyer's obligations to consummate the transactions contemplated by this Agreement that are to be performed or satisfied by Sellers under this Agreement.

6.2. Conduct of Business Before the Closing Date. Without the prior written consent of Buyer or the authorization of the Bankruptcy Court, after notice and a hearing, between the date hereof and the Closing Date, Sellers shall not, except as required or expressly permitted pursuant to the terms hereof or of any Ancillary Agreement, make any material change in the Acquired Assets, Material Contract or lease for a Continuing IDC, or enter into any material transaction other than an Alternative Transaction, in each case other than in the Ordinary Course of Business. Without limitation of the foregoing, except as may be required by the Bankruptcy Court, from the date hereof until the Closing, Sellers shall conduct the Business in substantially the same manner as conducted on the date of this Agreement, taking into account business exigencies arising as a result of Sellers' financial condition and status as a filer under Chapter 11 of the Bankruptcy Code, and in accordance with the principles set forth on Schedule 6.2 attached hereto.

6.3. Sale Order. As promptly as practicable following the execution of this Agreement, and in any event within two (2) Business Days, Sellers shall file with the Bankruptcy Court a motion or motions seeking entry by the Bankruptcy Court on a reasonably expedited basis of an Order substantially in the form of Exhibit F attached hereto (the "Sale Order"). In the event the Sale Order shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

6.4. Consents and Approvals. Sellers shall use commercially reasonable efforts to obtain all necessary material consents, waivers, authorizations and approvals of all Governments, and of all other Persons, required to be obtained by Sellers in connection with the execution, delivery and performance by them of this Agreement, including for the avoidance of doubt those necessary for the satisfaction of the condition set forth in Section 12.3(e).

6.5. Access to Properties and Records; Confidentiality. Sellers shall afford to Buyer, and to the accountants, counsel and representatives of Buyer, reasonable access during normal business hours throughout the period prior to the Closing Date (or the earlier termination of this Agreement pursuant to Article 13) to all books and records of Sellers relating to the Business (to the extent permitted under Law). Upon reasonable prior notice, Sellers shall also afford Buyer reasonable access, during normal business hours, to the management of the Business, to the Business, all operations of the Business

and to all Acquired Assets throughout the period prior to the Closing Date. Sellers shall permit Buyer reasonable access, accompanied by management of the Business, to the customers and suppliers of the Business throughout the remaining period prior to the Closing Date. The rights of access contained in this Section 6.5 are granted subject to, and on, the following terms and conditions: (A) any such investigation shall not include physical testing or samplings, and shall be exercised in such a manner as not to interfere unreasonably with the operation of the Business; (B) during the period from the date hereof to the Closing Date, all information provided to Buyer or its agents or representatives by or on behalf of Sellers or their agents or representatives (whether pursuant to this Section 6.5 or otherwise) shall be governed by and subject to the Confidentiality Agreement, dated as of March 4, 2003, by and among Buyer (or one of its affiliates), Cable and Wireless plc, CWUSA and CWIS (the "*Confidentiality Agreement*"); and (C) such rights of access shall not affect or modify the conditions set forth in Section 11.1 in any way.

6.6. Assumption and Rejection of Assigned Contracts. Sellers shall not assume or reject any Assigned Contracts pursuant to the Chapter 11 Cases without the prior written consent or direction of Buyer.

6.7. Material Contracts. Except as contemplated by the Separation Agreement or Section 14.1, no Seller shall assign any rights or obligations under any Material Contracts to any other Person.

6.8. Transition Services Agreement. On or prior to the Closing Sellers shall execute and deliver the Plc Transition Services Agreement and the CWA Transition Services Agreement.

6.9. Cure of Defaults. Seller shall, on or prior to the Closing, cure any and all defaults under the Assigned Contracts that Buyer has requested that Seller cure and that are required to be cured under the Bankruptcy Code, so that such Contracts may be assumed by Sellers and assigned to Buyer or its Permitted Assignee in accordance with the provisions of section 365 of the Bankruptcy Code; provided, however that Sellers shall not be required to cure any defaults for which Buyer is obligated to pay under the terms of Section 7.4 hereof and does not so pay upon request of the Sellers as required under Section 7.4. Sellers shall allow Buyer to participate in all material negotiations with any third party regarding the amount that Sellers must pay in order to cure any default that Seller is required to cure pursuant to this Section 6.9. Sellers shall deliver to Buyer, on or before the date of the Bidding Procedures hearing, a schedule setting forth cure costs, to the best of Sellers' Knowledge, as of such date by Contract (other than those Contracts listed on Schedule 7.7(b)).

6.10. Further Assurances. Upon the request and at the sole expense of Buyer at any time after the Closing Date, Sellers shall execute and deliver such documents as Buyer or its counsel may reasonably request to effectuate the purposes of this Agreement. Buyer and Sellers shall work together in good faith to determine the appropriate method of transfer for the assets of Exodus Federal Systems, Inc. and the California fee-owned property.

6.11. Transition Contracts and Services. Prior to the date of the Auction, Buyer shall deliver to Sellers a schedule setting forth a list of Contracts and Permits that Buyer will need on a transitional basis prior to the rejection thereof by Sellers in the Chapter 11 Cases. Sellers shall use their reasonable efforts to maintain such Contracts and Permits for the temporary benefit of Buyer during a period ending no later than the later of (i) the date which is five (5) months after the Closing Date and (ii) June 30, 2004. Buyer shall bear the out-of-pocket costs of maintaining such contracts in existence from the Closing Date through the end of that period, including making funds available to Sellers in advance of any payments that may be due to the contracting party under such contracts, and including all incremental out-of-pocket employee-related costs in accordance with the CWA Transition Services Agreement. In furtherance of the foregoing, as soon as is reasonably practicable after the execution of this Agreement, Buyer and Sellers will negotiate in good faith the terms the CWA Transition Services Agreement pursuant to which Sellers will provide any additional services to Buyer (at Buyer's expense) and Buyer will provide additional services to Sellers (at Sellers' expense) during the period from and after the Closing Date and prior to the termination of the Chapter 11 Cases, including without limitation, the services set forth in Exhibit C attached hereto.

6.12. No Shop Provisions. Immediately upon the execution and delivery of this Agreement, Sellers will cease and cause their officers, directors, advisors, agents and representatives to cease any and all existing activities, discussions or negotiations with any parties with respect to the sale of the Business. Sellers shall not, nor shall they permit any of their officers, directors, advisors, agents or representatives to (i) during the period beginning on the date hereof and ending with the completion of the Auction, solicit or initiate any discussions with any Person relating to any Acquisition Proposal or enter into any binding or non-binding agreement or letter of intent with respect to an Acquisition Proposal, or (ii) during the period beginning on the date hereof and ending on the date of the filing of the chapter 11 proceedings, participate in any discussions or negotiations regarding any Acquisition Proposal; provided, however, that the foregoing shall not prohibit Sellers or any of its or their officers, directors, agents, representatives or advisors from taking any action that their boards of directors reasonably concludes is necessary or appropriate in the exercise of their fiduciary duties as directors. Sellers shall notify Buyer in the event that they enter into negotiations with any bidder (without disclosing such bidder's name) or permit any potential bidder other than Buyer to have access to the customers of the Business. "Acquisition Proposal" means a proposal to enter into a transaction involving a sale of all or substantially all of the Business or the Acquired Assets.

6.13. Information Requests. From and after the date hereof and ending on the Closing Date, Sellers will use their reasonable efforts to provide Buyer on a timely basis with such information, including lists of assets, liabilities, accounting records and detailed operational data relating to the Business as Buyer may reasonably request in connection with its planning for the post-Closing operation of the Business.

6.14. Payments and Proceeds. If, at any time on or after Closing, any Seller receives any asset or any proceed in respect of any Acquired Asset, whether or not in payment of any sum due to Buyer, or otherwise comes into possession of any Acquired

Asset or product or proceed thereof, such Seller shall turn over such asset or proceed to Buyer and pending such turn over, the Seller shall hold such asset or proceed in trust for Buyer's benefit.

ARTICLE 7 COVENANTS OF BUYER

Buyer hereby covenants to Sellers as follows:

7.1. Actions Before Closing. Buyer shall use all commercially reasonable efforts to perform and satisfy all conditions to Sellers' obligations to consummate the transactions contemplated by this Agreement that are to be performed or satisfied by Buyer under this Agreement.

7.2. Consents, Approvals and Notifications. Buyer shall use all commercially reasonable efforts to obtain all consents and approvals of all Governments, and all other Persons, required to be obtained by Buyer and provide notifications to all Persons required to be notified by Buyer to effect the transactions contemplated by this Agreement, including for the avoidance of doubt those necessary for the satisfaction of the condition set forth in Section 12.3(e). Buyer shall promptly take all actions as are reasonably requested by Sellers to assist in obtaining the Bankruptcy Court's entry of the Sale Order, including furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court and making Buyer's employees and representatives available to testify before the Bankruptcy Court.

7.3. Adequate Assurances Regarding Assigned Contracts. With respect to each Assigned Contract, to the extent requested by the Bankruptcy Court, Sellers or the counterparty to such Contract, Buyer shall provide the Bankruptcy Court, Sellers or such counterparty, as the case may be, adequate assurance of the future performance of such Assigned Contract by Buyer.

7.4. Buyer's Cure Costs Obligation. At the Closing, Buyer shall pay to Sellers, provided Sellers pay or have paid a like amount, cure costs corresponding to the Assigned Contracts in a maximum aggregate amount, when taken together with Buyer's actual payments in respect of their obligations for Transaction Taxes under Section 1.3(d), of up to \$5,000,000, based on the cure amounts as they may be finally determined by the Bankruptcy Court in the Sale Order or other applicable Order, but only to the extent such cure costs are required to be paid to cause such assignment of Assigned Contracts. Buyer's payment of cure costs hereunder shall be applied ratably to the Assigned Contracts to which they relate.

7.5. Availability of Business Records. After the Closing Date, Buyer shall provide to Sellers and Related Persons (after reasonable notice and during normal business hours and without charge to Sellers) such access to all Business Records for periods prior to the Closing and shall preserve such Business Records until the later of (a) six (6) years after the Closing Date or (b) the required retention period for all government contact information, records or documents. Such access shall include access to any

computerized information systems that contain data regarding the Acquired Assets. In addition, Buyer acknowledges that Sellers have the right to retain originals or copies of Business Records for periods prior to the Closing. Prior to destroying any Business Records for periods prior to the Closing, Buyer shall notify Seller thirty (30) days in advance of any such proposed destruction of its intent to destroy such Business Records, and Buyer will permit Seller to retain such Business Records; provided, however, that failure to provide such notification shall not constitute a basis for any liability or claim for damages. With respect to any litigation and claims that are Excluded Liabilities, Buyer shall render all reasonable assistance that Seller may request in defending such litigation or claim and shall make available to Seller personnel most knowledgeable about the matter in question.

7.6. Transition Services Agreements. On or prior to the Closing Buyer shall execute and deliver the Plc Transition Services Agreement and the CWA Transition Services Agreement.

7.7. Amendment of Schedules

At any time after the date of this Agreement, Buyer shall have the right to amend or modify any schedule delivered under Section 1.1, Schedule 1.2(q) or Schedule 1.2(b) (except with respect to any of the Contracts set forth on Schedule 7.7(a), which Contracts may not be rejected and may not be included on Schedule 1.2(b); and except with respect to those Contracts set forth on Schedule 7.7(b), which Contracts must be rejected and may not be removed from Schedule 1.2(b)); provided that (a) Buyer may only add Contracts to the Schedule prior to the date of the Auction, and (b) no Contract that shall have been previously on Schedule 1.2(b) and terminated by reason of a previous rejection election of Seller or a motion to reject pending before the Court may be removed from such Schedule without Sellers' prior written consent. At any time prior to the date of the Auction, Sellers may remove any Contract set forth on Schedule 7.7(b) from such schedule.

7.8. Ordinary Course of Business. Buyer agrees to operate the Business in the Ordinary Course of Business during any periods after the Closing Date which relate to the measurement of the Total Run-Rate Revenues or any of the Four Revenue Streams. Without limiting the generality of the foregoing, Buyer shall (i) operate in the Ordinary Course of Business during the Measurement Month and (ii) seek customers' agreements to migrate Hosting MRC Net Revenues to the Continuing IDCs, as contemplated by clause (ii) of the definition of Hosting MRC Net Revenues.

ARTICLE 8 BANKRUPTCY PROCEDURES

8.1. Bankruptcy Actions. Sellers shall commence the Chapter 11 Cases on a date (the "*Petition Date*") as soon as reasonably practicable after execution of this Agreement (but not later than two (2) Business Days after the date hereof), and serve notice of the execution of this Agreement on interested parties as required by the Bankruptcy Code and Rules. As promptly as practicable following the execution of this

Agreement, and in any event within five (5) Business Days of the Petition Date, Sellers shall file with the Bankruptcy Court a motion or motions seeking entry by the Bankruptcy Court of the Bidding Procedures Order conforming to those set forth in this Article 8 and the Sale Order. Sellers shall request reasonably expedited approval of the Bidding Procedures and Sale Order. Sellers shall file all pleadings with the Bankruptcy Court as are necessary or appropriate to secure entry of such Bidding Procedures Order and the Sale Order, shall serve all parties entitled to notice of such pleadings under applicable provisions of the Bankruptcy Code and Rules, including all parties to the Assigned Contracts and all Governmental Authorities having or asserting jurisdiction over Sellers or the Acquired Assets and shall diligently pursue the obtaining of such orders.

(a) Buyer covenants and agrees that it shall cooperate with Sellers in connection with furnishing information or documents to Sellers to satisfy the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code.

(b) In the event an appeal is taken, or a stay pending appeal is requested from any of the Orders of the Bankruptcy Court in connection with the sale of the Acquired Assets, Sellers shall immediately notify Buyer of such appeal or stay request and, upon Buyer's request, shall provide to Buyer within three Business Days after Sellers' receipt thereof a copy of the related notice of appeal or order of stay. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from any of such Orders.

8.2. Bidding Procedures. The following bidding procedures (the "*Bidding Procedures*") are to be employed with respect to this Agreement and shall be reflected in the Bidding Procedures Order. Buyer acknowledges that the Bidding Procedures may be supplemented by other customary procedures not inconsistent with the matters set forth herein and the terms of this Agreement. The sale of the Acquired Assets may be subject to competitive bidding only as set forth in this Section 8.2:

(a) One or more Persons who are financially capable of consummating a transaction substantially similar to the transactions contemplated by this Agreement (such Person or Persons being referred to collectively as a "*Qualifying Bidder*") may submit a written offer or group of offers (collectively, a "*Bid*") stating that: (v) such Qualifying Bidder offers to purchase all or substantially all of the Acquired Assets upon the terms and conditions as substantially set forth in this Agreement or through a merger or alternative structure on such different or additional terms as appropriate and desirable for such transaction structure (which terms and conditions shall be no less favorable to Sellers as the terms and conditions contained herein); (w) such Qualifying Bidder is prepared to enter into a legally binding purchase and sale agreement or similar agreement for the acquisition of the Acquired Assets on terms and conditions no less favorable to Sellers than terms and conditions contained in this Agreement (as determined by Sellers in their reasonable business judgment, taking into consideration the timing of such transaction and any delay caused thereby); (x) such Qualifying Bidder is financially capable of consummating a transaction substantially similar to the transactions contemplated by this Agreement; and (y) each such Qualifying Bidder's offer is

irrevocable until the closing of the purchase of the Acquired Assets. In addition, each Bid shall contain such financial and other information that will allow Sellers to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by this Agreement. For clarification, (i) Persons who collectively are referred to herein as a "Qualifying Bidder" need not be Affiliated Persons and need not act in concert with one another and (ii) Sellers may aggregate separate bids from unaffiliated Persons to create one "Bid" from a "Qualifying Bidder".

(b) All Bids must be submitted to Sellers' counsel, so as to be received not later than five Business Days prior to the date scheduled by the Bankruptcy Court for the Sale Hearing (the "*Bid Deadline*"). If Sellers do not receive any Bids by the Bid Deadline, counsel for Sellers shall report the same to the Bankruptcy Court and Sellers shall proceed with the transactions contemplated by this Agreement.

(c) If Sellers receive a Qualifying Bid other than this Agreement, they shall conduct the Auction on the date that is not less than three Business Days prior to the Sale Hearing, at a time and place reasonably acceptable to Sellers.

(d) Only Buyer, Sellers, Cable and Wireless plc, representatives of any official statutory committees appointed in the Chapter 11 Cases and any Qualifying Bidders and the professionals for each of the foregoing shall be entitled to attend and be heard at the Auction, and only Buyer and such Qualifying Bidders shall be entitled to make any subsequent Bids at the Auction.

(e) During the Auction, bidding shall begin initially with the highest Qualifying Bid and subsequently increase by at least \$5,000,000 higher than the initial bid and then continue in minimum increments of at least \$2,000,000 higher than the previous Bid. Subsequent Bids submitted by Buyer shall not require a deposit. Bidding at the Auction shall continue until such time as the highest and best Bid is determined.

8.3. Overbid Protections. Notwithstanding the provisions in Section 8.2, pursuant to the Bidding Procedures Order: (i) a Bid will not be considered by Sellers as qualified for the Auction unless such Bid in Sellers' reasonable judgment, after consultation with Sellers' financial and legal advisors, is likely to result in value to Sellers (taking into account the impact of any delay in closing such Bid and purchase price adjustments included therein, among other relevant factors) of an amount greater than the aggregate of the value of the sum of: (A) the Purchase Price, plus (B) the amount of the Break-Up Fee; plus (C) the amount of the Expense Reimbursement; plus (D) \$5,000,000; (ii) a higher Bid will not be considered by Sellers as qualified for the Auction if: (x) such Bid contains due diligence contingencies of any kind; (y) such Bid does not contain evidence that the Person submitting it has received debt and/or equity funding commitments sufficient in the aggregate to finance the purchase of the Acquired Assets or contains financing contingency; or (z) does not provide for a Deposit at least equal to the Deposit contemplated by this Agreement. A Bid that is in conformance with this Section 8.3 and the Bidding Procedures Order is referred to as a "*Qualifying Bid*." This Agreement shall also constitute a Qualifying Bid for all purposes.

**ARTICLE 9
EMPLOYEE AND BENEFITS MATTERS**

This Article 9 sets forth Buyer's and Sellers' acknowledgements, covenants and undertakings with respect to certain matters related to employees and secondees of the Business.

9.1. Employment Offers. Buyer shall offer employment at the same or substantially similar positions, effective as of the Closing Date, to those Business Employees of Buyer's choice; provided that the offer of employment from Buyer to each Business Employee be expressly conditioned upon the Business Employee's agreement to sign a release waiving his or her rights to any benefit under any severance plan, policy or arrangement maintained by Sellers or their Affiliates, which general release shall be in a form satisfactory to Sellers. Sellers shall not waive the provisions of Section 5.3 of their Termination Procedure/Pay policy, and accordingly shall not offer or pay severance to any Business Employees offered employment by the Buyer pursuant to and in accordance with the terms of this Section 9.1 who do not accept such employment offers.. Notwithstanding anything in the contrary, Buyer shall be solely responsible for any liabilities to any Business Employee under any federal, state or local employment laws, discrimination law or other laws relating to employment arising out of the manner in which Buyer's actions in selecting employees and otherwise implementing the offers in this Section 9.1.

9.2. Transferred Employees. Those Business Employees who are offered employment and accept such offers of employment and become employees of Buyer are referred to herein as the "*Transferred Employees*". Each such offer of employment shall be at a salary or wage and benefits level (excluding any pension or retirement benefits), and on other terms and conditions that are, on the whole, reasonably equivalent to those applicable to each such Transferred Employee immediately prior to the Closing. Without duplication of the foregoing, Buyer agrees to provide the Transferred Employees and their covered dependents with welfare and severance benefits (except for post-retirement welfare benefits not required by law) that are reasonable and customary for a business of the type and size of Buyer. Sellers shall obtain a release of claims against Buyer for any employee or secondee Sellers terminate and to whom Sellers pay severance, which release shall be in a form satisfactory to Buyer. In the event that Buyer does not make an offer of employment to any Business Employee and subsequently hires such Business Employee within six (6) months of the Closing Date, Buyer shall promptly reimburse Sellers for any severance costs, but not "stay puts" or retention or similar bonuses, actually paid by Sellers as a result of the termination of such Business Employee.

9.3. 401(k) Plan Rollovers. Buyer will cause its 401(k)/profit sharing plan to accept, after the Closing Date, the rollover of amounts distributed by Sellers to any Transferred Employee from the Sellers' 401(k) plan, including the acceptance in such rollover of any outstanding plan loan of such Transferred Employee.

9.4. WARN Act Obligations. Buyer shall promptly after the date hereof notify Sellers of Buyer's intentions with respect to its offering of jobs to Sellers' workforces.

Prior to the Closing Date, Sellers shall be responsible for performing and discharging any requirements under the WARN Act or applicable state and local laws and regulations for the notification of Sellers' employees, provided that Buyer has complied with the covenant set forth in the preceding sentence. After the Closing Date, Buyer shall be responsible for performing and discharging any requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees with respect to the Acquired Assets and the Business. The parties hereto shall provide one another with all assistance reasonably requested by each party to ensure that the parties can comply with their respective notification requirements of the WARN Act, if any. Buyer agrees to indemnify Sellers and their Affiliates and their respective directors, officers, employees, consultants and agents for, and to hold them harmless from and against, any and all Losses arising or resulting, or alleged to arise or result from liabilities arising under the WARN Act with respect to any Transferred Employees, provided that Sellers have complied with the covenants set forth in this Section 9.4.

9.5. Buyer Benefit Plans. To the extent permitted under Buyer's welfare benefit plans, Buyer shall (i) waive pre-existing condition requirements (except with respect to any pre-existing condition for which coverage was denied under any welfare benefit plan of Sellers), evidence of insurability provisions, waiting period requirements or any similar provisions under any welfare benefit plans maintained by Buyer for Transferred Employees after the Closing Date, and (ii) apply toward any deductible requirements and out-of-pocket maximum limits under its employee welfare benefit plans any amounts paid (or accrued) by each Transferred Employee under Sellers' welfare benefit plans during the applicable plan year in which the Closing Date occurs. Buyer shall recognize for purposes of eligibility and vesting under its policies and employee benefit plans the service of any Transferred Employee with Sellers or any of their Affiliates prior to the Closing Date.

9.6. Welfare Benefits Claims. Claims of Transferred Employees and their eligible beneficiaries and dependents for medical, dental, prescription drug, life insurance, and/or other welfare benefits ("*Welfare Benefits*") (other than disability benefits as described below) that are incurred before the Closing Date shall be the sole responsibility of Sellers and Sellers' welfare benefit plans. Claims of Transferred Employees and their eligible beneficiaries and dependents for Welfare Benefits (other than disability benefits) that are incurred on or after the Closing Date shall be the sole responsibility of Buyer and Buyer's welfare benefit plans. For purposes of the preceding provisions of this paragraph, a medical/dental claim shall be considered incurred on the date when the medical/dental services are rendered or medical/dental supplies are provided, and not when the condition arose or when the course of treatment began. Claims of individuals receiving or individuals who have filed claims for long-term disability benefits under a disability plan of Sellers as of the Closing Date shall be the sole responsibility of Sellers and such plan. Claims of Transferred Employees and their eligible beneficiaries and dependents for short-term or long-term disability benefits that are first made on or after the Closing Date shall be the sole responsibility of Buyer.

9.7. COBRA Obligations. Notwithstanding anything in this Agreement to the contrary, Sellers shall retain all liabilities, and Buyer shall have no liability, with respect

to the provision of notices, election periods and benefits pursuant to Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA ("*COBRA*"), to any Business Employees or any other former employees of Sellers or other individuals associated with any Business Employees or any other former employees of Sellers with respect to qualifying events occurring on or before the Closing Date or in connection with the transactions contemplated herein.

9.8. Purchase of Assets; Assumption of Liabilities. Buyer shall purchase all assets and assume all liabilities and obligations to any Transferred Employees for (x) holiday and vacation pay and sick pay arising on and after the Petition Date, and (y) base wages, and payroll Taxes relating thereto, for the period commencing on the first day of a regular payroll period that begins prior to, and ends after, the Closing Date, which regular payroll period shall not exceed 14 days. In no event shall Buyer have any claim against Sellers in respect of unpaid holiday and vacation pay, or sick pay, arising prior to the Petition Date. Notwithstanding any of the foregoing, Sellers shall pay all bonuses in respect of any period ending on or before December 31, 2003.

9.9. Key Employee Retention Plan. Buyer shall not be responsible for any amounts due and owing under the key employee retention plan or post-petition employee retention or severance plan. Buyer shall be responsible for any compensation attributable to the performance of service to Buyer.

9.10. Flexible Benefit Plan. As soon as administratively practicable after the Closing, Buyer shall establish a flexible benefits plan pursuant to Section 125 of the Code. Buyer shall accept a transfer of account balances from the Cable & Wireless Holdings, Inc. Flexible Benefit Plan for Transferred Employees with balances remaining under such plan as of the Closing.

9.11. No Other Obligations. Except with respect to those obligations and liabilities specifically set forth in this Article 9, the Buyer shall not have any obligation with respect to or liability under any Employee Benefit Plan, including without limitation, any obligation or liability under the Cable & Wireless Holdings, Inc. Retirement Income Plan, the Cable & Wireless Holdings, Inc. Supplemental Pension Plan or any retention, bonus or severance or other payments due to any Business Employees or other individuals whose employment or service with Sellers occurred prior to or on the Closing Date.

ARTICLE 10 ANTITRUST MATTERS

Buyer hereby covenants to Sellers, and Sellers hereby covenant to Buyer, as follows:

10.1. Antitrust Filings. Subject to the terms and conditions of this Agreement, each party shall use its reasonable best efforts to (a) take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable Laws to consummate the transactions contemplated by this Agreement; (b) file a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby within ten

Business Days after the date hereof; (c) supply as promptly as practicable any additional information and documentary material that may be requested or required pursuant to any Antitrust Law, including the HSR Act; and (d) cause the expiration or termination of the applicable waiting periods under the HSR Act or any other Antitrust Law as soon as practicable.

10.2. Cooperation; Confidentiality Agreement. In connection with the efforts referenced in Section 10.1 to obtain all requisite approvals and authorizations for the transactions contemplated by this Agreement under the HSR Act or any other Antitrust Law, each of the parties shall use reasonable best efforts to (a) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (b) keep the other parties informed in all material respects of any material communication received by such party from, or given by such party to, any Government and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby; and (c) permit the other party to review any material communication given to it by, and consult with each other in advance of any meeting or conference with any Government, including in connection with any proceeding by a private party. The foregoing obligations in this Section 10.2 shall be subject to the Confidentiality Agreement and any attorney-client, work product or other privilege, and each of the parties hereto shall coordinate and cooperate fully with the other parties hereto in exchanging such information and providing such assistance as such other parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods under Antitrust Law. The parties will not take any action that will have the effect of delaying, impairing or impeding the receipt of any required authorizations, consents, Orders or approvals. "Antitrust Law" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other Laws and Orders that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition. "Antitrust Approval" means any approval or consent of any Government required under any applicable Antitrust Law or the expiration or termination of any applicable waiting period under any applicable Antitrust Law.

10.3. Objections or Other Challenges.

If any objections are asserted with respect to the transactions contemplated hereby under any Antitrust Law or if any suit is instituted by any Government or any private party challenging any of the transactions contemplated hereby as violative of any Antitrust Law, each of the parties shall use reasonable best efforts to resolve such objections or challenge as such Government or private party may have to such transactions under such Antitrust Law, including to vacate, lift, reverse or overturn any Order, whether temporary, preliminary or permanent, so as to permit consummation of the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, Buyer shall promptly take and diligently pursue any or all of the following actions to the extent necessary to eliminate any concerns on the part of, or to satisfy any conditions imposed by, any Government with jurisdiction over the enforcement of any

applicable Law, including any Antitrust Law, regarding the legality of Buyer's acquisition of the Business or any portion thereof, the Acquired Assets or the Assumed Liabilities: (i) entering into negotiations, providing information, making proposals, entering into and performing agreements or submitting to Orders, or, pursuant to any such agreement or Order or otherwise, selling or otherwise disposing of, or holding separate (through the establishment of a trust or otherwise), particular assets or categories of assets (including, after the Closing, any of the Acquired Assets), or operations (including, after the Closing, the Business or any portion thereof), of Buyer or any of its Affiliates; (ii) using its reasonable best efforts to prevent the entry in a judicial or administrative proceeding brought under any Law, including any Antitrust Law, by any Government or any other Person of any permanent, temporary or preliminary injunction or other Order that would make consummation of the acquisition of the Business or any portion thereof, the Acquired Assets or the Assumed Liabilities in accordance with the terms of this Agreement unlawful or that would prevent or delay such consummation; (iii) taking promptly and diligently pursuing, in the event that an injunction or Order has been issued as referred to in Section 10.3(ii), any and all steps, including the appeal thereof, the posting of a bond and/or the steps contemplated by Section 10.3(ii), necessary to vacate, modify or suspend such injunction or Order so as to permit such consummation as promptly as possible; and (iv) promptly take and diligently pursue all other actions and do all other things necessary and proper to avoid or eliminate each and every impediment under any Law, including any Antitrust Law, that may be asserted by any Government or any other Person to the consummation of the acquisition of the Business or any portion thereof, the Acquired Assets or the Assumed Liabilities by Buyer in accordance with the terms of this Agreement.

10.4. Alternative Filing.

Without Buyer's prior written consent, no Seller shall file a Notification and Report Form pursuant to the HSR Act with any party other than Buyer, or participate in any such filing, unless and until this Agreement has been terminated pursuant to Section 13.5 and Sellers have entered into an agreement with respect to an Alternative Transaction.

ARTICLE 11 TAXES

11.1. Transfer Taxes, Proration of Real and Personal Property Taxes. All sales, use, gross-receipts, transfer, gains, excise, value-added or other similar Taxes in connection with the transfer of the Acquired Assets and the assumption of the Assumed Liabilities, and delivery of the Acquired Assets, and all recording and filing fees that may be imposed by reason of the sale, transfer, assignment of the Acquired Assets and that are not exempt under section 1146(c) of the Bankruptcy Code (collectively, "Transaction Taxes"), shall be paid by Sellers on or prior to their due date, except to the extent provided in Section 1.3(d) hereof.

(b) All real and personal property taxes and assessments on the Acquired Assets for any taxable period commencing prior to the day immediately preceding the

Closing Date (the "Adjustment Date") and ending after the Adjustment Date (a "Straddle Period") shall be prorated between Buyer and Sellers as of the close of business on the Adjustment Date based on the best information then available, with Sellers being liable for such Taxes attributable to any portion of a Straddle Period through the Adjustment Date and Buyer being liable for such Taxes attributable to any portion of a Straddle Period beginning after the Adjustment Date. In satisfaction of any such liability, the Purchase Price shall be reduced by the amount of any such Taxes attributable to the Sellers to the extent such Taxes are payable by Buyer. Information available after the Adjustment Date that alters the amount of Taxes due with respect to the Straddle Period will be taken into account and any change in the amount of such Taxes shall be prorated between Buyer and Sellers as set forth herein. All such prorations shall be allocated so that items relating to the portion of a Straddle Period ending on the Adjustment Date shall be allocated to Sellers based upon the number of days in the Straddle Period through the Adjustment Date and items related to the portion of a Straddle Period beginning after the Adjustment Date shall be allocated to Buyer based upon the number of days in the Straddle Period after the Adjustment Date. If a payment on a tax bill is due after the Closing Date, the party that is legally required to make such payment shall make such payment and promptly forward an invoice to the other party for its pro rata share, if any, if not previously taken into account in the reduction of the Purchase Price. If the other party does not pay the invoice within 30 calendar days of receipt, the amount of such payment shall bear interest at the rate of 6% per annum. The party responsible under applicable law for paying a Tax described in this Section 11.1 shall be responsible for administering the payment of (and any reimbursement for) such Tax. For purposes of this Section 11.1, the Proration Period for ad valorem taxes and real and personal property taxes shall be the fiscal period for which such taxes were assessed by the Tax jurisdiction. Notwithstanding any provision in this Agreement to the contrary, Sellers' obligations under this Section 11.1 shall survive until 60 days after the expiration of the statute of limitations with respect to the collection of the Straddle Period Tax.

11.2. Tax Refunds. Any Tax refunds (including any interest related thereto) received by Buyer, its Affiliates or successors relating to Taxes that Buyer has paid shall be for the account of Buyer; and any Tax refunds (including any interest related thereto) received by Buyer, its Affiliates or successors relating to Taxes that Sellers have paid shall be for the account of Sellers, and Buyer shall pay over to Sellers any such amount (net of any Taxes payable by Buyer or its owners as a result of receiving such Tax refunds), within ten (10) Business Days of receipt thereof. Buyer shall include with its remittance to Sellers copies of any correspondence, documents, or other materials received or transmitted by Buyer with respect to the Tax refund and, if the amount of the remittance is less than the amount of the refund, an explanation as to how Buyer determined the amount of the remittance to Sellers. Sellers shall be entitled to request that Buyer, at Sellers' expense, file for and obtain any Tax refunds with respect to Tax periods or portions thereof ending on or before the Closing Date (with respect to the relevant Acquired Asset). Buyer's consent to such request shall not be unreasonably withheld.

11.3. Cooperation on Tax Matters. Sellers and Buyer shall (and shall cause their respective Affiliates to) cooperate fully with each other and make available or cause

to be made available to each other for consultation, inspection and copying (at such other party's expense) in a timely fashion such personnel, Tax data, relevant Tax Returns or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably required (a) for the preparation by such other party of any Tax Returns or (b) in connection with any Tax audit or proceeding including one party (or an Affiliate thereof) to the extent such Tax audit or proceeding relates to or arises from the transactions contemplated by this Agreement.

11.4. Retention of Tax Records. After the Closing Date and until the expiration of all statutes of limitation applicable to Sellers' liabilities for Taxes, Buyer shall retain possession of all accounting, business, financial and Tax records and information that (a) relate to the Acquired Assets and are in existence on the Closing Date and (b) come into existence after the Closing Date but relate to the Acquired Assets before the Closing Date, and Buyer shall give Sellers notice and an opportunity to retain any such records in the event that Buyer determines to destroy or dispose of them during such period. In addition, from and after the Closing Date, Buyer shall provide to Sellers and their Related Persons (after reasonable notice and during normal business hours and without charge to Sellers) access to the books, records, documents and other information relating to the Acquired Assets as Sellers may reasonably deem necessary to (i) properly prepare for, file, prove, answer, prosecute and defend any Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer or (ii) administer or complete any cases under chapter 11 of the Bankruptcy Code of or including Sellers. Such access shall include reasonable access to any computerized information systems that contain data regarding the Acquired Assets, to the extent such information may be assessed without adverse impact to Buyer.

11.5. Allocation of Purchase Price and Purchase Price Allocation Forms. The Purchase Price, the Assumed Liabilities that constitute liabilities for tax purposes and other relevant items shall be allocated among the Acquired Assets and among Sellers in accordance with Section 1060 of the Code. Buyer shall prepare an allocation schedule setting forth the allocation (the "Allocation Schedule") within 30 days after the date hereof, which Allocation Schedule shall be subject to the reasonable approval of Sellers. The Allocation Schedule shall identify the transferor and transferee thereof, and shall be prepared in accordance with Treas. Reg. Section 1.1060-1 (or any comparable provision of state or local tax Law) or any successor provision. If the Sellers approve the Buyer's allocation, the parties agree to report the federal, state, local and other Tax consequences of the purchase and sale hereunder (including in filings on IRS Form 8594) in a manner consistent with the agreed-upon allocation and that they will not take any position inconsistent therewith in connection with any Tax Return, refund claim, litigation or otherwise, unless and to the extent required to do so pursuant to applicable law. Sellers and Buyer shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation, if the allocation is agreed upon. Notwithstanding any other provision of this Agreement, this Section 11.5 shall survive any termination or expiration of this Agreement.

11.6. Tax Structure Disclosure. Notwithstanding anything herein to the contrary, each party to the transactions contemplated herein (and each Affiliate and

Person acting on behalf of any such party) agrees that each party (and each employee, representative, and other agent of such party) may disclose to any and all Persons, of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such party or such Person relating to such tax treatment and tax structure, except to the extent necessary to comply with any applicable federal or state securities laws; provided, however, that such disclosure may not be made until the earliest of the date of any public announcement of the discussions relating to the transaction, the date of any public announcement of the transaction and the date of the execution of this Agreement except that the parties are not restricted in any manner in discussing the tax treatment or the tax structure with its tax advisors at any time. This authorization is not intended to permit disclosure of any other information including: (i) any portion of any materials to the extent not related to the tax treatment or tax structure of the transaction; (ii) the identities of participants or potential participants in the transaction; (iii) the existence or status of any negotiations; (iv) any pricing or financial information (except to the extent such pricing or financial information is related to the tax treatment or tax structure of the transaction); or (v) any other term or detail not relevant to the tax treatment or the tax structure of the transaction.

11.7. Unbilled Transactional Taxes. If a Tax assessment is levied upon any party by an authorized tax jurisdiction for unbilled transactional Taxes that are the obligation of the other party under this Agreement, then the non-assessed party shall reimburse the assessed party for those taxes including any interest and penalty.

ARTICLE 12

CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

12.1. Conditions Precedent to Performance by Sellers and Buyer. The respective obligations of Sellers and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver (other than the condition contained in Section 12.1(a), the satisfaction of which cannot be waived), on or prior to the Closing Date, of the following conditions:

(a) Sale Order. The Bankruptcy Court shall have entered the Sale Order, and no Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

(b) Antitrust and Regulatory Approvals. The applicable waiting periods for the transactions contemplated under this Agreement under the HSR Act, and any other Antitrust Law shall have expired or terminated and the Regulatory Approvals shall have been obtained; provided, however, that an objection filed with the Federal Communications Commission by any state public utility commission or other state governmental agency to the consent or approval of the Federal Communications Commission to any of the transactions contemplated hereby shall not constitute a failure to obtain the requisite Regulatory Approvals.

(c) No Violation of Orders. No preliminary or permanent injunction or other Order that declares this Agreement or the Deposits Escrow Agreement invalid or

unenforceable in any respect or that prevents the consummation of the transactions contemplated hereby or thereby shall be in effect.

12.2. Conditions Precedent to Performance by Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Sellers in their sole discretion:

(a) Representations and Warranties of Buyer. All representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if again made by Buyer on and as of such date (or, if made as of a specific date, at and as of such date), and Sellers shall have received a certificate dated the Closing Date and signed by the President or a Vice President of Buyer to that effect.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date (except with respect to the obligation to pay the Purchase Price in accordance with the terms of this Agreement, which obligation shall be performed in all respects as required under this Agreement), and Sellers shall have received a certificate dated the Closing Date and signed by the President or a Vice President of Buyer to that effect.

(c) Buyer's Deliveries. Buyer shall have delivered, and Seller shall have received, all of the items set forth in Section 3.3 of this Agreement.

12.3. Conditions Precedent to the Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Buyer in its sole discretion:

(a) Representations and Warranties of Sellers. The representations and warranties made by Sellers in Article 4 of this Agreement shall be true and correct as of the Closing, in each case as though made at and as of such time (or, if made as of a specific date, at and as of such date), except to the extent such failures to be true and correct do not constitute a Material Adverse Effect, and Buyer shall have received a certificate dated the Closing Date and signed by the President or a Vice President of each of Sellers to that effect.

(b) Performance of the Obligations of Sellers. Sellers shall have performed in all respects all obligations required under this Agreement to be performed by them on or before the Closing Date, except for such failures to perform as do not constitute a Material Adverse Effect, and Buyer shall have received a certificate dated the Closing Date and signed by the President or a Vice President of each of Sellers to that effect.

(c) No Material Adverse Effect. Except as contemplated by this Agreement or by the matters identified in the schedules to this Agreement, there shall not be in

existence on the Closing Date any state of facts that has had, or would reasonably be likely to have, any Material Adverse Effect.

(d) Sellers' Deliveries. Sellers shall have delivered, and Buyer shall have received, all of the items set forth in Section 3.2 of this Agreement.

(e) Consents. Subject to Section 1.5 of this Agreement, any consent required to be obtained to permit the transfer and assignment of any material Acquired Asset, including any right to use any material Intellectual Property under the Assigned Contracts shall have been obtained.

12.4. Escrow Closings: Management Agreement. Notwithstanding anything set forth in this Agreement, upon the satisfaction or waiver by the appropriate party of all of the conditions set forth in Article 12 other than with respect to the receipt of the Regulatory Approvals set forth in Section 12.1(b), the following shall occur (and the relevant actions required by Article 3 hereof shall be modified as follows): (a) Buyer shall deposit the Cash Payment of the Purchase Price and the Seller Note into the Closing Escrow Account (the "Closing Escrow Account") pursuant to the Closing Escrow Agreement (the "Closing Escrow Agreement") in the form attached hereto as Exhibit G; (b) the Acquired Assets and Assumed Liabilities shall be operated pursuant to the Management Agreement having the terms set forth in Exhibit C; and (c) subject only to the terms of the Management Agreement and the terms of Sections 12.4(a) and (b) below, the Closing (as such term is used in this Agreement) shall be deemed to have occurred at the Regulatory Escrow Closing, including for purposes of finalizing the obligations of each party hereunder to consummate the transactions contemplated hereby and eliminating any rights of any party to terminate this Agreement.

(a) First Escrow Closing. Upon receipt of approvals required by clause (1) of the definition of Regulatory Approvals, the First Escrow Closing (the "First Escrow Closing") shall occur and all Acquired Assets and Assumed Liabilities other than the Acquired Assets and Assumed Liabilities relating to the Private Line Network Business (as such term is defined in the Management Agreement) shall no longer be subject to the Management Agreement and shall be formally transferred to the Buyer (and the relevant Assigned Contracts shall be assumed by Sellers and assigned to Buyer), and 95% of the amounts in the Closing Escrow Account (comprised of proportional amounts of cash and of the principal amount of the Seller Note, in each case together with any accrued but unpaid interest thereon,) shall be released from the Closing Escrow Account and delivered to Sellers pursuant to the Closing Escrow Agreement.

(b) Second Escrow Closing. Upon receipt of the approvals required by clause (2) of the definition of Regulatory Approvals, the Second Escrow Closing (the "Second Escrow Closing") shall occur and all Acquired Assets and Assumed Liabilities relating to the Private Line Network Business shall no longer be subject to the Management Agreement and shall be formally transferred to the Buyer (and any remaining Assigned Contracts shall be assumed by Sellers and assigned to Buyer), and all remaining amounts in the Escrow Account shall be released from the Closing Escrow Account and delivered to Sellers pursuant to the Closing Escrow Agreement.

ARTICLE 13
TERMINATION AND EFFECT OF TERMINATION

13.1. Right of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated only as provided in this Article 13. In the case of any such termination, the terminating party shall give notice to the other party specifying the provision pursuant to which the Agreement is being terminated.

13.2. Termination Without Default.

(a) This Agreement may be terminated at any time before Closing:

(i) by mutual written consent of Sellers and Buyer;

(ii) by Buyer, on any date that is more than 180 days after the date hereof (the "*Buyer Termination Date*"), if the Closing has not occurred on or before such date or on any date that is more than 75 days after the date hereof (the "*Auction Outside Date*") if the auction provided for in the Bidding Procedures has not been conducted as of such time; provided, however, that Buyer shall not have the right to terminate this Agreement under this Section 13.2(a)(ii) if Buyer's failure to fulfill any of its obligations under this Agreement is the reason that the Closing or the Auction has not occurred on or before said dates;

(iii) by Sellers, on any date that is more than 120 days after the date hereof (the "*Sellers Termination Date*"), if the Closing has not occurred on or before such date; provided, however, that Sellers shall not have the right to terminate this Agreement under this Section 13.2(a)(iii) if Sellers' failure to fulfill any of their obligations under this Agreement is the reason that the Closing has not occurred on or before said date; or

(iv) by Buyer, if there shall be a breach by any Seller of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 12.3 and which breach cannot be cured or has not been cured by the earlier of (i) 20 Business Days after the giving of written notice by Buyer to Sellers of such breach and (ii) the Buyer Termination Date;

(v) by any Seller, if there shall be a breach by Buyer of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 12.2 and which breach cannot be cured or has not been cured by the earlier of (i) 20 Business Days after the giving of written notice by Seller to Buyer of such breach and (ii) the Sellers Termination Date;

(vi) by either Buyer or Sellers, immediately upon an Order becoming final and non-appealable that declares this Agreement or the Deposit

Escrow Agreement invalid or unenforceable in any material respect or that prevents the consummation of the transactions contemplated hereby or thereby (a "Termination Order"); provided, however, that neither Sellers nor Buyer shall have the right to terminate this Agreement pursuant to this Section 13.2(a)(vi) if such party or any of its Affiliates has sought entry of, or has failed to use all commercially reasonable efforts to oppose entry of, such Termination Order.

13.3. Effect of Failure of Conditions to Closing.

(a) If this Agreement is terminated by Sellers pursuant to Section 13.2(a)(v), then (i) Buyer acknowledges that a monetary remedy may be inadequate or impracticable and that Sellers may have been caused irreparable harm and, if Sellers so determine, Sellers shall have the right, subject to the waiver by Sellers or satisfaction of the conditions contained in Section 12.1, to obtain an Order requiring Buyer to specifically perform all of its obligations under, or (ii) if Sellers determine that a monetary remedy is adequate and practicable, Sellers shall as an exclusive remedy be entitled to retain the Deposit as liquidated damages and, notwithstanding any provision in this Agreement to the contrary, shall not be entitled to seek any other remedies conferred hereby, or by law or equity upon such party, and, in such case of clause (ii), none of Sellers, Buyer or any of their respective Related Parties shall have any liability or obligation arising under or in connection with this Agreement.

(b) If this Agreement is terminated for any reason other than by Sellers pursuant to Section 13.2(a)(v): (i) the Deposits, together with any interest accrued thereon less any fees and expenses of the Escrow Agent, shall be returned to Buyer or the Letter of Credit shall be released, as applicable, (ii) this Agreement shall become null and void and have no effect (other than this Article 13, Article 14 and Article 15, which shall survive termination), and (iii) except as provided in this Section 13.3, none of Sellers, Buyer or any of their respective Related Parties shall have any liability or obligation arising under or in connection with this Agreement.

13.4. Expenses. In the event that this Agreement is validly terminated by Buyer pursuant to Section 13.2(a)(iv) or by Sellers pursuant to Section 13.2(a)(iii) (subject to the condition in the final sentence of this Section), the Sellers shall promptly (upon receipt of reasonable documentation) pay to Buyer the amount, not to exceed \$1,000,000, of Buyer's reasonably documented expenses, fees and disbursements incurred in connection with the due diligence investigation, the preparation and negotiation of the documents and instruments executed in connection herewith, and the transactions contemplated hereby (the "*Expense Reimbursement*") plus \$1,500,000 to compensate the Buyer for expenses incurred in connection with the performance of due diligence and negotiations of the Agreement by Affiliates of Buyer. In the event this Agreement is validly terminated by Sellers pursuant to Section 13.2(a)(iii), Sellers shall not be obligated to pay the amounts referred to in the preceding sentence in the event that at the time of such termination Buyer shall have failed to fulfill any of its obligations or to satisfy any of its representations or warranties under this Agreement.

13.5. Termination on Alternative Transaction.

(a) Subject to Sellers' payment to Buyer of the Break-Up Fee (as defined in Section 13.5(b)), this Agreement may be terminated at any time before Closing by either Buyer or Sellers, upon Sellers' entering into any agreement with respect to an Alternative Transaction. If this Agreement is terminated pursuant to this Section 13.5(a): (i) the Deposit, together with any interest accrued thereon less any fees and expenses of the Escrow Agent, shall be returned to Buyer or the Letter of Credit shall be released, (ii) Sellers shall pay Buyer the Break-Up Fee in accordance with Section 13.5(b) and the Expense Reimbursement as calculated under Section 13.4, (iii) this Agreement shall become null and void and of no effect (except for this Article 13, Article 14 and Article 15, which shall survive termination), and (iv) except as provided in this Section 13.5(a) and 13.5(b), none of Buyer, Sellers or their respective Related Parties shall have any liability or obligation arising under or in connection with this Agreement.

(b) Break-Up Fee

(i) If this Agreement is terminated (x) pursuant to Section 13.5(a) or (y) pursuant to Section 13.2(a)(iv) and within 12 months of the date of such termination, Sellers consummate an Alternative Transaction, then Sellers shall, jointly and severally, pay to Buyer in immediately available funds a cash fee equal to \$3,500,000 (the "Break-Up Fee"), such fee to be paid upon the closing of the Alternative Transaction.

(ii) Sellers' obligation to pay the Break-Up Fee pursuant to this Section 13.5(b) shall survive termination of this Agreement and shall constitute an administrative expense of Sellers under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code. The obligation to pay the Expense Reimbursement and the Break-Up Fee will be a first priority lien on such lenders' collateral.

(iii) The Break-Up Fee and Expense Reimbursement payable under the circumstances provided in Section 13.5(b)(i) shall be the exclusive remedy of Buyer and its Affiliates for any termination of this Agreement pursuant to Section 13.5. In no event shall Sellers or any of their respective Affiliates, or Related Parties, have any liability with respect to Buyer or any other Person hereunder in excess of the applicable Break-Up Fee and Expense Reimbursement in the event that this Agreement terminates for any reason permitted by Section 13.5, and any claim, right or cause of action by Buyer or any other Person against Sellers or their respective Affiliates or Related Persons in excess of the applicable Break-Up Fee and Expense Reimbursement is hereby fully waived, released and forever discharged. In no event shall Sellers or their respective Affiliates have any liability to Buyer or any other Person for any special, consequential or punitive damages, and any such claim, right or cause of action for any damages that are special, consequential or punitive or for specific performance of this Agreement is hereby fully waived, released and forever discharged.

ARTICLE 14
MISCELLANEOUS

14.1. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto. Except as otherwise provided in this Agreement, no party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto, and any such attempted assignment without such prior written consent shall be void and of no force and effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto; provided, however, that Buyer may assign any or all of its rights and interests hereunder to one or more direct or indirect wholly-owned or controlled subsidiaries of Affiliates of Buyer Parent, provided that Buyer shall nonetheless remain responsible for the performance of its obligations hereunder). Buyer shall have the right to assign any rights hereunder to a Permitted Assignee, including the right to acquire Acquired Assets on the Closing Date; provided that Buyer shall not be relieved of any of its obligations hereunder to the extent not performed by the Permitted Assignee.

14.2. Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of New York (without giving effect to the principles of conflicts of Laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby may be brought in the courts of the State of New York sitting in Manhattan or of the United States for the Southern District of New York, and by execution and delivery of this Agreement, each of the Parties consents to the non-exclusive jurisdiction of those courts. Each of the Parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or the transactions contemplated hereby.

14.3. Warranties Exclusive. The representations and warranties contained herein are the only representations or warranties given by Sellers and all other express or implied warranties are disclaimed. Without limiting the foregoing, Buyer acknowledges that the Acquired Assets are conveyed "AS IS," "WHERE IS" and "WITH ALL FAULTS" and that all warranties of merchantability or fitness for a particular purpose are disclaimed.

14.4. Survival of Representations and Warranties; Indemnification. The representations and warranties of Sellers set forth in this Agreement or in any certificate delivered pursuant to Section 12.3(a) or Section 12.3(b) shall survive for a period of six months after the Closing Date.

(b) On and after Closing, Sellers agree to indemnify and hold Buyer and its directors, officers, employees, Affiliates, agents, successors and permitted assigns harmless from and against any and all actual direct out-of-pocket losses, liabilities, obligations, damages, costs and expenses (individually, a "Post-Closing Loss" and collectively, "Post-Closing Losses") arising or resulting primarily from: (i) any and all Excluded Liabilities; (ii) any breach by Sellers of representation or warranties contained in Sections 4.5, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.17, 4.18, 4.19, and 4.20 of this Agreement; and (iii) all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable attorneys' fees, incident to the foregoing. Notwithstanding the foregoing, Seller's aggregate liability under this Section 14.4 shall in no event exceed the amounts contained in the Retention Fund at the time of such claim, and Buyer's sole source of remedy for Excluded Liabilities, breaches of representations, warranties and covenants, and for the post-Closing Working Capital Adjustment mechanisms contained in Section 2.3 hereof, shall be the Retention Fund; provided, that, in the event the Retention Fund has been reduced due to the operation of Section 2.4 the Buyer shall have the right to set off and reduce the principal amount of the Seller Note by the amount of any such reduction, effective as of the Closing Date, and any interest accrued on such amount shall be deemed never to have accrued; provided, further, however, that the sum of the (x) cash paid by the Escrow Agent from the Retention Fund pursuant to this Section 14.4 and Section 2.3, and (y) the amount by which the principal amount of the Seller Note has been reduced pursuant to this Section 14.4 and Section 2.3 shall in no event exceed \$15 million.

(c) On and after Closing, Buyer agrees to indemnify and hold Sellers and their directors, officers, employees, Affiliates, agents, successors and permitted assigns harmless from and against any and all Post-Closing Losses arising or resulting primarily from: (i) any and all Assumed Liabilities; (ii) any breach by Buyer of its representation or warranties in this Agreement; (iii) the post-Closing operation of the Business; and (iv) all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable attorneys' fees, incident to the foregoing. Buyer's total indemnification liability under this Section 14.4(c) shall be limited to \$15,000,000.

(d) If any third party shall notify any Party (the "Indemnified Party") with respect to any matter (a "Third Party Claim") which may give rise to a claim for indemnification against any other Party (the "Indemnifying Party") under this Section 14.4, then the Indemnified Party shall promptly (and in any event within five business days after receiving notice of the Third Party Claim) notify each Indemnifying Party thereof in writing. Any Indemnifying Party will have the right at any time to assume and thereafter conduct the defense of the Third Party Claim with counsel of his or its choice reasonably satisfactory to the Indemnified Party; provided, however, that the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably) unless the judgment or proposed settlement involves only the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnified Party. Unless and until an Indemnifying Party assumes the defense of the Third Party Claim, however, the Indemnified Party may defend against the Third Party Claim in any manner he, she, or it reasonably may deem appropriate. In no event

will the Indemnified Party consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of each of the Indemnifying Parties (not to be withheld unreasonably).

(e) In the event that any legal proceedings shall be instituted or that any claim or demand shall be asserted by Buyer in respect of which indemnification may be sought from Sellers pursuant to the provisions of this Section 14.4, such claim shall constitute an administrative claim and shall be adjudicated by the Bankruptcy Court. All claims for Post-Closing Losses shall be satisfied in accordance with the terms of the Retention Fund Escrow Agreement, with no further obligation of any of the Sellers. Upon the date which is six months after the Closing Date, if there shall be no claims pending for Post-Closing Losses, the balance of the Retention Fund shall be disbursed promptly to Sellers by a wire transfer of immediately available funds from the Retention Fund. If on such date there are claims pending for Post-Closing Losses, an amount equal to the disputed claims shall be retained in the Retention Fund and the balance shall be disbursed as described above.

14.5. Notification of Certain Matters: Sellers shall give reasonably prompt notice to Buyer of (i) the occurrence or non-occurrence, of any event the occurrence or non-occurrence, of which would be likely to cause (x) any representation or warranty contained in this Agreement to be untrue or inaccurate, in any material respect, or (y) any covenant, condition or agreement contained in this Agreement not be complied with or satisfied, in any material respect; and (ii) any failure or inability of Sellers to comply, in any material respect, with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

14.6. No Recourse Against Third Parties.

Buyer, on the one hand, and each of the Sellers, on the other hand, agrees for itself and for all of its officers, directors, shareholders, Affiliates, attorneys, agents and any other parties making any claim by, through or under the rights of such persons (collectively, the "*Claim Group*") that no member of the Claim Group shall have any rights against any officer, director, shareholder, Affiliate, attorney or agent of any of the other party (each, individually, a "*Non-Recourse Person*") for any damages, suits, claims, proceedings, fines, judgments, costs or expenses (including attorneys' fees and incidental, consequential or punitive damages) (collectively, "*Losses*") that any party may suffer in connection with this Agreement. If any member of the Claim Group makes a claim against any person or entity that is not a Non-Recourse Person (a "*Third Person*") that in any way gives rise to a claim by such Third Party against any Non-Recourse Person asserting that such Non-Recourse Person is or may be liable to such Third Party with respect to any Losses arising in connection with this Agreement (whether by way of indemnification, contribution, or otherwise on any theory whatever) (a "*Claim Over*"), such member of the Claim Group shall reduce or credit against any judgment or settlement such member of the Claim Group may obtain against such Third Party the full amount of any judgment or settlement such Third Party may obtain against the Non-Recourse Person on such Claim Over, and shall, as part of any settlement with such Third

Party, obtain from such Third Party for the benefit of such Non-Recourse Person a satisfaction in full of such Third Party's Claim Over against the Non-Recourse Person.

14.7. Other Agreements. Not later than the earliest to occur of (a) the occurrence of a change in control of Buyer, (b) the date five years after the Closing Date, (c) the sale, lease or other transfer of all or substantially all assets of Buyer or the merger or consolidation of Buyer with or into any other person or entity, other than any internal reorganization solely involving Buyer and one or more of its Affiliates which would not result in a default under or be prohibited under Section 8.9 of the Seller Note, whether or not then outstanding, (d) any amendment or other alteration of the terms of any of the obligations secured thereby, or (e) the occurrence of an event of default (however denominated) under any other material obligation of Buyer, Buyer shall with respect to each of the guarantees or letters of credit listed on Schedule 14.7 either (a) cause such guarantee or letter to be released without payment or draw, or (b) provide to Cable and Wireless plc a letter of credit or bank guaranty issued by a money-center commercial bank or similarly creditworthy institution and in form and substance reasonably satisfactory to Cable and Wireless plc securing Buyer's obligation to reimburse Cable and Wireless plc in the event Cable and Wireless or any of its Affiliates other than Sellers has made any payment on or after the Closing in respect of such letter of credit or guarantee. Buyer agrees that in the event Cable and Wireless plc is required to pay any amount in respect of any of the guarantees or letters of credit listed on Schedule 14.7 after the Closing Date Buyer shall promptly pay to Cable and Wireless plc the full amount of such payment, with interest thereon at the rate of 8% per annum, compounded monthly, and all reasonable expenses, including reasonable fees and expenses of counsel, incurred in collecting any amounts due under this Section 14.7. Cable and Wireless plc is an intended beneficiary of this Section 14.7 entitled to enforce the terms hereof. Buyer further agrees that in the event it or any of its Affiliates shall receive any payment of or from the cash collateral given to obtain letters of credit, or receive any other funds from or proceeds of amounts drawn or claimed under, or paid on, a letter of credit or guarantee given by, or backstopped by a letter of credit procured by, Cable and Wireless plc, it shall promptly pay such payment, collateral or other funds or proceeds to Cable and Wireless plc and shall hold such payment, collateral, funds, or proceeds in trust for Cable and Wireless plc until so paid.

14.8. Mutual Drafting.

This Agreement is the result of the joint efforts of Buyer and Sellers, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the parties and there is to be no construction against either party based on any presumption of that party's involvement in the drafting thereof.

14.9. Expenses. Except as otherwise provided herein, each of the parties hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal and accounting fees, whether or not the transactions contemplated hereby are consummated. Seller shall pay the cost of all Transaction Taxes other than those expressly included within the Assumed Liabilities under Section 1.3 hereof and Buyer shall pay the cost of all surveys, title insurance

policies and title reports obtained in connection with, this Agreement and the transactions contemplated hereby and all filing fees required to be paid in connection with any filings made or notices given pursuant to any Antitrust Law.

14.10. Broker's and Finder's Fees. Each of the parties represents and warrants that no broker or finder in connection with any of the transactions contemplated by this Agreement shall be entitled to receive any fees or expenses from any other party, the fees and expenses of whom shall, as between the parties hereto, be the responsibility of the other party.

14.11. Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended.

14.12. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of service if served personally on the party to whom notice is to be given; (b) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and telephonic confirmation of receipt is obtained promptly after completion of transmission; (c) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (d) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to any Seller:

c/o Cable & Wireless USA, Inc.
4650 Old Ironsides Drive,
Santa Clara, California
Attention: General Counsel
Facsimile: (415) 738-4166

Copy to:

Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601-6636
Attention: James H.M. Sprayregen
Gerald T. Nowak
Facsimile: (312) 861-2000

Kirkland & Ellis LLP
777 South Figueroa Street

Los Angeles, California 90017-5800
Attention: Bennett L. Spiegel
Facsimile: (213) 680-8500

If to Buyer:

Gores Technology Group
10877 Wilshire Blvd.
Suite 1805
Los Angeles, CA 90024
Attention: Eric Hattler
Facsimile: (310) 209-3310

Copy to:

Pepper Hamilton LLP
400 Berwyn Park
899 Cassatt Road
Berwyn, Pennsylvania 19312-1183
Attention: James D. Rosener
Facsimile: (610) 640-7835

Any party may change its address for the purpose of this Section 14.12 by giving the other party written notice of its new address in the manner set forth above.

14.13. Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

14.14. Public Announcements. No party shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other parties, unless a press release or public announcement is required by Law or Order of the Bankruptcy Court. If any such announcement or other disclosure is required by Law or Order of the Bankruptcy Court, the disclosing party shall give the nondisclosing party or parties prior notice of, and an opportunity to comment on, the proposed disclosure. The parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

14.15. Employee and Customer Announcements. Sellers shall not make any announcement of this Agreement to any of their customers or employees without providing prior notice to Buyer and reasonably considering any comments Buyer may have with respect to such announcement. Buyer shall be entitled to participate in any

communication (other than initial communications made in accordance with the written communication plan) with customers or employees in connection with any such announcement.

14.16. Entire Agreement. This Agreement, the Deposits Escrow Agreement and the Confidentiality Agreement contain the entire understanding among the parties hereto with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All schedules hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

14.17. Parties in Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than Sellers and Buyer and their respective successors and permitted assigns (except with respect to Section 14.7 hereof, for which Cable and Wireless plc shall be considered an intended beneficiary). Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Persons to Sellers or Buyer. Except as noted in the parenthetical in the first sentence of this Section 14.17, no provision of this Agreement shall give any third Persons any right of subrogation or action over or against Sellers or Buyer.

14.18. Headings. The article and section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

14.19. Construction. Unless the context of this Agreement otherwise requires, (i) words of any gender include the other gender, (ii) words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement as a whole and not to any other particular Article, Section or other subdivision, (iv) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (v) "shall," "will," or "agrees" are mandatory, and "may" is permissive, and (vi) "or" is not exclusive.

14.20. Currency. Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States currency.

14.21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement.

14.22. Apportionment. Any payments made by Buyer to the Sellers' Account shall be allocated or apportioned among the Sellers as the Sellers so direct.

DEFINITIONS

15.1. Certain Terms Defined. As used in this Agreement, the following terms shall have the following meanings:

"*Affiliate*" means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under direct or indirect common control with such other Person.

"*Alternative Transaction*" means a transaction or plan of reorganization involving a sale of all or substantially all of the Business or the Acquired Assets, whether directly or indirectly through a sale of equity (by merger, consolidation or otherwise) or claims by Cable and Wireless plc, to a party other than Buyer Parent or any of its Affiliates.

"*Ancillary Agreement*" means any of the Separation Agreement, the Apollo Agreement, the Plc Transition Services Agreement or the CWA Transition Services Agreement.

"*Apollo Agreement*" means that certain Asset Purchase Agreement dated as of September 17, 2003 between the CWUSA and Cable & Wireless America Systems, Inc.

"*Auction*" means the auction conducted by Sellers pursuant to the Bidding Procedures Order.

"*Bandwidth Costs*" means costs for network circuits that are shared, supporting multiple products and customers. These costs will include, among other things, entrance facilities, leased long haul backbone circuits, upstream costs and leased local interconnect circuits, it being understood that duplicate costs associated with network IRU's are specifically excluded.

"*Bankruptcy Code*" means title 11 of the United States Code.

"*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases originally administered in the United States Bankruptcy Court of the District of Delaware.

"*Bidding Procedures Order*" means the order of the Bankruptcy Court: (i) establishing procedures for the submission of higher and better offers for the Acquired Assets; (ii) prescribing the form and manner of notice of the proposed sale of the Acquired Assets to creditors and other interested parties, including, but not limited, to publication notice; (iii) authorizing and approving the payment of the Expense Reimbursement and Break-Up Fee; and (iv) otherwise approving and implementing the provisions of Sections 8.2, and 8.3 hereof.

"*Business*" means the business of providing network and hosting services as conducted by Sellers and their respective Subsidiaries on the date hereof and encompassing the business operations, including all customer relationships, as well as any other business operations related to maintaining such customer relationships and business operations (including managed and professional services businesses) described above, but excluding any business operations, customer relationships, assets or liabilities of Sellers or any of their respective Subsidiaries outside the United States (other than as set forth in Section 1.1(t)).

"*Business Day*" means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or other Governmental action to close.

"*Chapter 11 Cases*" means, collectively, the cases commenced and to be commenced by Sellers under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

"*Clayton Act*" means title 15 of the United States Code §§ 12-27 and title 29 of the United States Code §§ 52-53, as amended.

"*Circuit Access Cost*" means the cost of the dedicated circuits between the customer premise and the Buyer's facility.

"*Circuit Expense*" means the product of (a) the amount of network telecommunication providers expense associated with continuing N3 Nodes, Collocation Sites and IDC's incurred by the Buyer (measured in accordance with generally accepted accounting principles and policies of the Seller) during the Measurement Month relating to IP, Private Line, and hosting (excluding CDN) (i) Circuit Access Costs, (ii) Bandwidth Costs, (iii) Collocation Costs and (iv) entrance connectivity costs and backbone costs payable to any third-party telecommunications providers (i.e. a LEC, CLEC or IXC) and (b) 12 (twelve).

"*Circuit Expense Deficit*" means the greater of (x) (i) the Circuit Expense for the Measurement Month minus \$50,000,000 times (ii) two and (y) zero.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Collocation Costs*" means any property costs related to ongoing collocation sites.

"*Consent*" means any consent, approval, authorization, qualification, waiver or notification of a Government or notification of a customer, as required by a Government.

"*Continuing IDCs*" means the fifteen data centers listed and referred to as such on Schedule 1.1(a) and Schedule 1.1(b).

"*Continuing N3 Nodes*" means the fifteen nodes listed and referred to as such on Schedule 15.1A.

"*Contract*" means any written or oral contract, agreement, license, warranty, sublicense, lease, sublease, mortgage, instruments, guarantees, commitment, undertaking or other similar arrangement, whether express or implied.

"*Deposits Escrow Agreement*" means the escrow agreement by and between Buyer and Sellers, dated as of even date herewith.

"*Employee Benefit Plan*" means (i) any "employee benefit plan" (as such term is defined in ERISA §3(3)) and (ii) any other profit-sharing, deferred compensation, bonus, pension, retirement, severance, health, welfare or incentive plan, contract, commitment, program, policy, arrangement or practice; in each case maintained, sponsored or contributed to by Sellers.

"*Environmental Laws*" means all currently existing federal, state, provincial, municipal, local and foreign statutes, ordinances, rules, Orders, regulations and other provisions having the force of law regarding pollution or protection of the environment.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity treated as a single employer with Sellers pursuant to Section 414 of the Code.

"Escrow Agent" means the escrow agent under the Deposits Escrow Agreement and the Escrow Closing Agreement.

"Government" means any agency, division, subdivision, audit group, procuring office or governmental or regulatory authority in any event or any adjudicatory body thereof, of the United States, Canada, any state or province thereof or any foreign government, including the employees and agents thereof or private entities authorized by such government authorities.

"Hazardous Materials" means and includes any hazardous or toxic substance or waste or any contaminant or pollutant regulated under Environmental Laws, including, but not limited to, "hazardous substances" as currently defined by the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, "hazardous wastes" as currently defined by the Resource Conservation and Recovery Act, as amended, natural gas petroleum products or byproducts and crude oil.

"Hosting MRC Net Revenues" means contracted recurring Net Revenues relating to hosting services (including, but not limited to, the Business' infrastructure, managed services and connectivity product offerings) (i) provided in the Continuing IDCs or (ii) from one of the Business' data centers other than the Continuing IDCs or one of the data centers of Buyer or any of its Affiliates, but for which the customer has contracted (provided that Buyer has operated in the Ordinary Course of Business) within 90 days after the Closing Date to migrate such revenue within a three month period from the date the customer so contracts to one of the Continuing IDCs.

"Hosting NRC Net Revenues" means (i) non-recurring Net Revenues relating to certain consulting, other managed hosting services, or equipment sales in the Continuing IDCs plus (ii) Net Revenues related to the Content Delivery Network product offering; provided, however, that for purposes of calculating Total Run-Rate Revenues, the amount of Hosting NRC Net Revenues included therein shall not exceed the lesser of (x) the actual amount of such revenue and (y) \$4,500,000.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Improvements" means the buildings, improvements and structures now existing on the Real Property or demised under the Real Estate Leases.

"Intellectual Property" means all copyrights, patents, service marks, trademarks, trade names, domain names, industrial models, trade secrets, mask work rights, any applications and registrations for any of the foregoing, and any other proprietary intellectual property rights.

"IP Revenues" means recurring Net Revenues relating to the Business' Internet Protocol network service offering for data traffic originating in the Continuing N3 Nodes; provided,

however, that any revenue provided by Cable and Wireless plc (or any of its Affiliates other than Sellers) for IP services shall be included in the calculation to the extent contracted for a minimum of two years, it being understood that the revenues shall be counted on a cumulative basis, meet existing CWA SLA targets and be priced at a market rate.

"Knowledge of Sellers," "Sellers Knowledge" or any other similar term or knowledge qualification means the actual knowledge, after reasonable inquiry, of William Ginn, Paul Miszler, Tim Caulfield, Clint Heiden, Theresa Hennesy, Nick Bacon, Jim Pitchford, Cheryl Houser, Siobhan DeLeeuw or Suzanne Colvin.

"Lease Adjustment" means the sum of the Real Estate Lease Expense Deficit and the Circuit Expense Deficit.

"Lease Annual Expense" means the aggregate contracted annual lease rates as in effect for the relevant month to be payable to the counterparties of the Real Estate Leases for the Continuing IDCs and for the Plaza of Americas facility, located in Reston, VA.

"Lease Deficit Zero Date" means the first day of the first month following the Closing for which the Lease Annual Expense is equal to or less than the Real Estate Annual Lease Expense Target.

"Lease Measurement Period" means the three-month period beginning the first day of the calendar month immediately following the month in which the Closing occurs.

"Lease Monthly Expense" means one-twelfth of the Lease Annual Expense for the relevant calendar month.

"Lien" means any mortgage, pledge, charge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement.

"Material Adverse Effect" means any state of facts, event, change or effect that, individually or in the aggregate, results in a material adverse effect on the combined operations of the Business but excluding any state of facts, event, change or effect caused by events, changes or developments relating to (i) Cable and Wireless plc's announcement of its intention to exit the U.S. market; (ii) the transactions contemplated by this Agreement or the announcement thereof; (iii) changes or conditions affecting the industries of which the Business is a part generally; (iv) changes in economic, regulatory or political conditions generally; or (v) any act(s) of war or of terrorism.

"Measurement Month" means (i) if the date on which the Closing occurs is on or before the fifteenth day of any month, the nearest full month immediately preceding the month in which the Closing occurs, or (ii) if the date on which the Closing occurs is after the fifteenth day of any month, the month in which the Closing occurs; provided that if the Closing occurs on or before January 15, 2004, the Measurement Month shall be January 2004.

"Minimum Consideration" means the sum of (i) the portion of the Cash Payment actually received by Sellers after all reductions pursuant to Sections 2.3, 2.4 and 14.4, and (ii) the face amount of the Seller Note after all reductions pursuant to Sections 2.3, 2.4 and 14.4.

"Multiemployer Plan" has the meaning set forth in ERISA §3(37).

"Net Revenue" means revenue (net of reserves) earned in accordance with generally accepted accounting principles and the policies of the Seller, excluding revenue earned, or with to which services have been, or are to be, performed in a period other than the month with respect to which such revenues are measured.

"Ordinary Course of Business" means the operation and conduct of the affairs of an enterprise with the objective of:

(i) preserving and protecting goodwill and client, customer, supplier and employee relationships; and

(ii) refraining from entering into any agreements, understandings or arrangements that (A) accelerate revenue from one period to an earlier period; (B) defer expenditures (capital or otherwise), expenses or commitments from one period to a later period; (C) generate revenue in a particular period that but for such agreement, understanding or arrangement would not have been generated and which agreement, understanding or arrangement would not have been made by an enterprise operating as a going concern and in a manner that is intended to generate long-term, sustainable relationships with clients, customers, suppliers and employees; and (D) provide incentives or other compensation to employees, agents, customers, clients or suppliers to do any of the foregoing.

"Permitted Assignee" means XO Communications or one of its direct or indirect wholly-owned or controlled subsidiaries.

"Permitted Liens" means: (i) Liens securing, or included in the, Assumed Liabilities; (ii) Liens that will attach to the proceeds of this sale under this Agreement pursuant to section 363 of the Bankruptcy Code or that will not survive the Closing; (iii) such covenants, conditions, restrictions, easements, encroachments or encumbrances, or any other state of facts, that do not materially interfere with the present occupancy of the Real Property or the use of such Real Property as it has been used by Sellers in the Business prior to the Closing Date; (iv) zoning, building codes and other land use laws regulating the use of occupancy of Owned Real Property of the activities conducted thereon which are imposed by any governmental authority having jurisdiction over Owned Real Property; (v) a lessor's interest in, and any mortgage, pledge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement on or affecting a lessor's interest in, property underlying any of the Real Estate Leases; (vi) Liens that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Government.

"Private Line Net Revenues" means recurring Net Revenues relating to the Business' private line network service offering for network traffic originating in the Continuing N3 Nodes; provided, that for purposes of calculating Total Run-Rate Revenues, the amount of Private Line Net Revenues shall not exceed the lesser of (x) the actual amount of such revenue and (y) \$950,000.

"Registered Intellectual Property" means any Intellectual Property registered with, or issued by, any Government, including any applications therefor.

"Regulatory Approvals" means, subject to the proviso in the parenthetical at the end of Section 12.1(b), (1) requisite approvals and/or notifications with respect to assignment of licenses, new licenses where required, and transfer of customers by the Federal Communications Commission and (2) any requisite approvals by state public utility commissions and/or notifications with respect to assignment of licenses, new licenses where required, and transfer of customers that, if not obtained, would, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

"Real Estate Lease Expense Deficit" means the sum of (i) the Real Estate Monthly Lease Expense Deficit for each of the first six full calendar months following Closing that occurs prior to or includes the Lease Deficit Zero Date and (ii) if the Lease Deficit Zero Date has not occurred on or prior to the first day of the seventh full calendar month following Closing, three times the difference between the Lease Annual Expense for the seventh full calendar month after Closing minus the Real Estate Annual Lease Expense Target.

"Real Estate Monthly Lease Expense Deficit" means the greater of (x) zero and (y) Lease Monthly Expense for the relevant month minus the Real Estate Monthly Lease Expense Target.

"Real Estate Annual Lease Expense Target" means \$24,300,000.

"Real Estate Monthly Lease Expense Target" means one-twelfth of the Real Estate Annual Lease Expense Target.

"Related Person" means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, investment bankers, Affiliates or representatives of any such Person.

"Rule" or **"Rules"** means the Federal Rules of Bankruptcy Procedure.

"Separation Agreement" means the Separation Agreement, dated September 17, 2003, by and among Cable and Wireless plc, Cable & Wireless Americas Operations, Inc., Cable & Wireless Holdings, Inc., CWUSA and CWIS, together with all schedules, exhibits, amendments and supplements thereto and thereof.

"Sherman Act" means title 15 of the United States Code §§ 1-7, as amended.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof,

a Person or Persons shall be deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person or Persons shall be allocated a majority of partnership, limited liability company, association or other business entity gains or losses or shall be or control the managing director or general partner of such partnership, limited liability company, association or other business entity.

"*Tax Return*" means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

"*Taxes*" means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, which taxes shall include all income taxes, Transaction Taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen's compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under section 59A of the Code) and other obligations of the same or a similar nature, whether arising before, on or after the Closing Date.

"*Total Run-Rate Revenues*" means the sum of Hosting MRC Net Revenues, Hosting NRC Net Revenues, IP Revenues, and Private Line Net Revenues (collectively, the "Four Revenue Streams") as calculated for the Measurement Month. The calculation of each of the Four Revenue Streams shall be based upon GAAP applying Staff Accounting Bulletin No. 101 of the Securities Exchange Commission. For purposes of calculating each of the Four Revenue Streams, the classification of product offerings and customers included in such calculation shall be consistent with the Sellers' Management Revenue Forecast listed on Schedule 15.1B.

"*WARN Act*" means the Worker Adjustment and Retraining Notification Act of 1988, as amended.

"*Working Capital*" means as of a particular date (i) current Acquired Assets (including all deposits, including, without limitation, for rent and utilities, and all pre-paid maintenance) minus (ii) Assumed Liabilities (excluding the Assumed Liabilities described in Section 1.3(c) hereof) as calculated in a manner consistent in all respects with the principles and rules set forth on Schedule 2.3(b).

15.2. All Terms Cross-Referenced: Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Accounting Referee.....	2.3(e)
Accounts Payable.....	1.3(a)
Accounts Receivable.....	1.1(f)
Acquired Assets.....	1.1
Acquisition Proposal.....	6.12

Adjustment Date.....	11.1(b)
Affiliate	15.1
Agreement	<i>Preamble</i>
Allocation Schedule	11.5
Alternative Transaction.....	15.1
Ancillary Agreement.....	15.1
Annualized Closing Revenue Shortfall	2.4(e)
Antitrust Approval.....	10.2
Antitrust Law.....	10.2
Apollo Agreement	15.1
Assigned Contracts.....	1.1(i)
Assumed Liabilities.....	1.3
Auction	15.1
Auction Outside Date.....	13.2(a)(ii)
Bandwidth Costs	15.1
Bankruptcy Code.....	15.1
Bankruptcy Court.....	15.1
Bid	8.2(a)
Bid Deadline.....	8.2(b)
Bidding Procedures	8.2
Bidding Procedures Order.....	15.1
Break-Up Fee	13.5(b)(i)
Business.....	15.1
Business Day.....	15.1
Business Employee	4.18
Business Records.....	1.1(ii)
Buyer	<i>Preamble</i>
Buyer Termination Date.....	13.2(a)(ii)
Calculation Delivery Date.....	2.4(a)
Calculation Statement	2.4(b)
Cash Payment.....	2.1
Chapter 11 Cases.....	15.1
Circuit Access Cost.....	15.1
Circuit Expense	15.1

Circuit Expense Deficit.....	15.1
Claim Group.....	14.4(a)
Claim Over.....	14.4(a)
Claims.....	1.2(h)
Clayton Act.....	15.1
Closing.....	3.1
Closing Date.....	3.1
Closing Escrow Account.....	12.4
Closing Escrow Agreement.....	12.4
Closing Revenue Shortfall.....	2.4(e)
Closing Working Capital.....	2.3(c)
COBRA.....	9.7
Code.....	15.1
Collocation Costs.....	15.1
Confidentiality Agreement.....	6.5
Consent.....	15.1
Continuing IDCs.....	15.1
Continuing N3 Nodes.....	15.1
Contract.....	15.1
Copyrights.....	1.1(k)
CWA Transition Services Agreement.....	3.2(e)
CWIS.....	<i>Preamble</i>
CWUSA.....	<i>Preamble</i>
Deposit.....	2.2
Deposits Escrow Agreement.....	15.1
Determination Date.....	2.3(e)
Disclosure Schedule.....	1.1(a)
Disputed Lease Expense Range.....	2.4(c)
Disputed Revenue Range.....	2.4(c)
Embedded Software.....	1.1(c)
Employee Benefits Plan.....	15.1
Environmental Laws.....	15.1
ERISA.....	15.1
ERISA Affiliate.....	15.1

Escrow Agent.....	15.1
Estimate Date	2.3(b)
Estimated Closing Working Capital.....	2.3(b)
Excluded Assets	1.2
Excluded Contracts	1.2
Excluded Liabilities.....	1.4
Expense Reimbursement.....	13.4
First Escrow Closing.....	12.4(a)
Government.....	15.1
Hazardous Materials.....	15.1
Hosting MRC Revenues.....	15.1
Hosting NRC Revenues	15.1
HSR Act	15.1
Improvements.....	15.1
Indemnified Party.....	14.4(d)
Indemnifying Party.....	14.4(d)
Intellectual Property	15.1
Inventory	1.1(j)
IP Revenues.....	15.1
Knowledge of Sellers	15.1
Law.....	4.3
Lease Adjustment.....	15.1
Lease Annual Expense	15.1
Lease Deficit Zero Date	15.1
Lease Measurement Period	15.1
Lease Monthly Expense.....	15.1
Leased Real Property	1.1(b)
Letter of Credit.....	2.2
Lien.....	15.1
Losses.....	14.4(a)
Machinery and Equipment.....	1.1(c)
Major Customers.....	4.20
Management Agreement.....	3.2(d)
Material Adverse Effect	15.1

Material Contracts	4.11(a)(vii)
Measurement Month	15.1
Minimum Consideration	15.1
Multiemployer Plan.....	15.1
Negative Initial Adjustment Amount.....	2.3(b)
Net Revenue	15.1
Non-Recourse Person.....	14.4(a)
Order.....	4.3
Ordinary Course of Business.....	15.1
Organizational Documents	4.3
Other Contracts	1.1(i)
Owned Real Property	1.1(a)
Patents	1.1(k)
Permits.....	1.1(m)
Permitted Assignee.....	15.1
Permitted Liens	15.1
Person.....	15.1
Petition Date.....	8.1
Plc Transition Services Agreement.....	3.2(c)
Post-Closing Loss.....	14.4(b)
Post-Closing Losses	14.4(b)
Private Line Revenues.....	15.1
Projected Revenue Amount.....	2.4(e)
Purchase Price	2.1
Qualifying Bid.....	8.3
Qualifying Bidder.....	8.2(a)
Real Estate Annual Lease Expense Target.....	15.1
Real Estate Lease Expense Deficit.....	15.1
Real Estate Leases	1.1(b)
Real Estate Monthly Lease Expense Deficit.....	15.1
Real Estate Monthly Lease Expense Target.....	15.1
Real Property.....	1.1(b)
Reference Working Capital.....	2.2
Registered Intellectual Property	15.1

Regulatory Approvals	15.1
Regulatory Escrow Closing.....	3.1
Regulatory Escrow Closing Date	3.1
Related Person.....	15.1
Retention Fund	3.3(c)
Retention Fund and Revenue Escrow Fund Escrow Agreement	3.3(c)
Revenue Based Adjustment	2.4(c)
Revenue Escrow Fund.....	3.3(c)
Rule	15.1
Rules.....	15.1
Sale Order.....	6.3
Sales Orders.....	1.1(g)
Second Escrow Closing.....	12.4(b)
Section 2.4 Adjustment	2.4(f)
Seller Note.....	2.1
Sellers	<i>Preamble</i>
Sellers' Account.....	3.3(a)
Sellers' Knowledge.....	15.1
Sellers Termination Date.....	13.2(a)(iii)
Separation Agreement	15.1
Sherman Act.....	15.1
Straddle Period	11.1(b)
Subsidiary.....	15.1
Supplier Contracts	1.1(h)
Tax Return.....	15.1
Taxes	15.1
Termination Order.....	13.2(a)(vi)
Third Party Claim.....	14.4(d)
Third Person	14.4(a)
Total Run-Rate Revenues.....	15.1
Trademarks.....	1.1(k)
Transaction Taxes	11.1
Transferred Employees	9.2
WARN Act.....	15.1

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Welfare Benefits.....	9.6
Working Capital	15.1

(Signatures are on the following page.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

GORES ASSET HOLDINGS, INC.

By: *Scott M. Honour*
Name: *Scott M. Honour*
Title: *Managing Director*

CABLE & WIRELESS USA, INC.

By: _____
Name: _____
Title: _____

CABLE & WIRELESS INTERNET SERVICES, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

GORES ASSET HOLDINGS, INC.

By: _____

Name: _____

Title: _____

CABLE & WIRELESS USA, INC.

By: MLG

Name: MICHAEL GRANT

Title: CHAIRMAN & DIRECTOR

CABLE & WIRELESS INTERNET SERVICES, INC.

By: MLG

Name: MICHAEL GRANT

Title: CHAIRMAN & DIRECTOR

EXHIBIT B

Proposed Bidding Procedures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
CABLE & WIRELESS USA, INC., et al.,¹) Case No. 03-13711 (CGC)
Debtors.) (Jointly Administered)

THE DEBTORS' BIDDING PROCEDURES

These Bidding Procedures set forth the process by which the above-captioned debtors and debtors in possession (collectively, the "Debtors") are authorized to conduct a sale by auction (the "Auction") of all or substantially all of the assets of the Debtors. These Bidding Procedures were approved by order dated December __, 2003 (the "Bidding Procedures Order"), of the United States Bankruptcy Court for the District of Delaware (the "Court") (in which the Debtors' jointly administered chapter 11 bankruptcy cases, Case No. 03-13711 (CGC), are pending) pursuant to the motion of the debtors for an order (a) approving bidding procedures and overbid protections in connection with the sale of substantially all of their assets, (b) approving the form and manner of the sale notice and bidding procedures notice, (c) scheduling a sale hearing date, and (d) approving procedures for determining cure amounts in connection with the assumption and assignment of executory contracts and unexpired leases (the "Bidding Procedures Motion"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the asset purchase agreement, dated December 8, 2003 (the "APA"), between the Debtors and Gorès Asset Holdings, Inc. (the "Proposed Purchaser"). Any party desiring to obtain a copy of the APA may do so by contacting Debtors' co-counsel at Kirkland & Ellis LLP, 777 South Figueroa Street, Los Angeles, CA 90017, Attn: Bennett L. Spiegel, Esq. or Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C., 919 North Market Street, 16th Floor, P.O. Box 8705, Wilmington, DE 19899-8705, Attn: Laura Davis Jones, Esq.

1. **Assets to be Sold**

The Debtors propose these Bidding Procedures, whereby prospective bidders, if any may qualify for and participate in the Auction, thereby competing to make the highest and best offer for all or substantially all of the property and assets of the Debtors' network and hosting businesses (collectively the "Acquired Assets").

¹ The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP.

2. Determination of "Qualifying Bidder" Status

In order to participate in the bidding process and be deemed a "Qualifying Bidder," each potential bidder other than the Proposed Purchaser,² must deliver (unless previously delivered) to the Debtors a written offer or group of offers (a "Qualifying Bid") that:

(i) states such Qualifying Bidder offers to purchase all or substantially all of the Acquired Assets upon the terms and conditions as substantially set forth in the APA or through a merger or alternative structure on such different or additional terms as appropriate and desirable for such transaction structure (which terms and conditions shall be no less favorable to the Debtors as the terms and conditions contained in the APA);

(ii) states such Qualifying Bidder is prepared to enter into a legally binding purchase and sale agreement or similar agreement for the acquisition of the Acquired Assets on terms and conditions no less favorable to the Debtors than terms and conditions contained in the APA (as determined by the Debtors in their reasonable business judgment, taking into consideration the timing of such transaction and any delay caused thereby);

(iii) states such Qualifying Bidder is financially capable of consummating a transaction substantially similar to the transactions contemplated by the APA;

(iv) states such Qualifying Bidder's offer is irrevocable until the closing of the purchase of the Acquired Assets;

(v) contains such financial and other information that will allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the APA;

(vi) is likely to result in a value to the Debtors, in the Debtors' reasonable judgment after consultation with their financial and legal advisors (taking into account the impact of any delay in closing such Bid and purchase price adjustments included therein, among other relevant factors), that is more than the aggregate of the value of the sum of: (A) the Purchase Price (as defined in the APA), plus (B) the amount of the Break-Up Fee; plus (C) the amount of the Expense Reimbursement; plus (D) \$5,000,000;

(vii) (A) does not contain any due diligence or financing contingencies of any kind; and (B) contains evidence that the Bidder has received debt and/or equity funding commitments sufficient in the aggregate to finance the purchase of the Acquired Assets; and

² The Proposed Purchaser is deemed a Qualifying Bidder and the APA constitutes a Qualifying Bid for all purposes.

(viii) provides for a deposit at least equal to the Deposit contemplated by the APA.

3. Aggregate Bids

Persons who collectively are referred to as a "Qualifying Bidder" need not be Affiliated Persons and need not act in concert with one another and the Debtors may aggregate separate bids from unaffiliated persons to create one "Bid" from a "Qualifying Bidder."

4. Bid Deadline

All Qualified Bids must be submitted to (i) the Debtors' proposed reorganization co-counsel, Kirkland & Ellis LLP, 777 South Figueroa Street, Los Angeles, CA 90017, Attn: Bennett L. Spiegel, Esq., and (ii) the Debtors' proposed investment bankers, The Blackstone Group, 345 Park Avenue, New York, NY 10154, Attn: Timothy R. Coleman, so as to be received not later than 5:00 p.m. (prevailing Eastern Time) five (5) business days prior to the date scheduled by the Bankruptcy Court for the Sale Hearing (the "Bid Deadline"). If the Debtors do not receive any Qualifying Bids by the Bid Deadline, counsel for the Debtors shall report the same to the Court and the Debtors shall proceed with the transactions contemplated by the APA.

5. Evaluation of Qualifying Bids

Prior to the Auction, the Debtors shall determine, in their reasonable judgment after consultation with the Debtors' financial and legal advisors, which of the Qualifying Bids is likely to result in the highest value to the Debtors, taking into account the impact of any delay in closing such Bid and purchase price adjustments included therein, among other relevant factors.

6. No Qualifying Bids

If no timely, conforming Qualifying Bids are submitted by the Bid Deadline, Debtors shall request at the Sale Hearing that the Court approve the APA with the Proposed Purchaser.

7. Auction

In the event that the Debtors timely receive one or more Qualifying Bids other than the APA, the Debtors shall conduct an auction with respect to the Acquired Assets (the "Auction"). The Auction will take place starting at 10:00 a.m. (prevailing Eastern time) not less than three (3) business days prior to the Sale Hearing at Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611, or at such other place, date and time as may be designated in writing by the Debtors. The Auction shall be governed by the following procedures:

(i) Only the Proposed Purchaser, the Debtors, PLC, representatives of any official statutory committees appointed in these chapter 11 cases and any Qualifying Bidders (and the professionals for each of the foregoing) shall be entitled to attend and be heard at the Auction;

(ii) Only the Proposed Purchaser and the Qualifying Bidders shall be entitled to make any subsequent bids at the Auction;

(iii) The Proposed Purchaser and the Qualifying Bidders shall appear in person at the Auction, or through a duly authorized representative;

(iv) Bidding shall commence at an amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction;

(v) Qualifying Bidders may then submit successive bids³ in increments of at least \$5,000,000 higher than the bid at which the Auction commenced and then continue in minimum increments of at least \$2,000,000 higher than the previous bid; and

(vi) The Auction shall continue until there is only one offer that the Debtors determine, subject to Court approval, is the highest and best Qualifying Bid (the "Prevailing Bid"). In making this decision, the Debtors shall consider without limitation the amount of the purchase price, the form of consideration being offered, the likelihood of the bidder's ability to close a transaction and the timing thereof, and the net benefit to the Debtors' estates. The Qualifying Bidder submitting such Prevailing Bid shall become the "Prevailing Bidder," and shall have such rights and responsibilities of the purchaser, as set forth in the applicable asset purchase agreement. Within 1 day after adjournment of the Auction, the Prevailing Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made.

8. Sale Hearing

The Prevailing Bid (or the APA if no Qualifying Bid other than that of the Proposed Purchaser is received) will be subject to approval by the Bankruptcy Court. Please be advised that sale of the Acquired Assets to the Prevailing Bidder (the "Sale Hearing") will take place before the Honorable Charles G. Case, II, United States Bankruptcy Judge, on January ____, 2004 at __: __ m. (prevailing Eastern time) or at such time thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

³ Overbids submitted at the Auction shall not require a deposit.

9. Failure to Consummate Purchase

Following the Sale Hearing, if the Prevailing Purchaser fails to consummate an approved Sale because of a breach or failure to perform on the part of such Prevailing Purchaser, the next highest or otherwise best Qualifying Bid, as determined by the Debtors in the exercise of their business judgment, will be deemed to be the new prevailing bid and the Debtors will be authorized, but not required, to consummate the Sale with the new Prevailing Purchaser by submitting such bid without further order of the Bankruptcy Court. In such case, the defaulting Prevailing Purchaser's deposit, if any, shall be forfeited to the Debtors and parties in interest, and the Debtors specifically reserve the right to seek all available damages from the defaulting Prevailing Purchaser.

10. Reservation of Rights; Deadline Extension

The Debtors reserve their rights to impose, at or prior to the Auction, additional customary terms and conditions on a sale of the Acquired Assets consistent with the Bidding Procedures Order and not inconsistent with the APA, including, without limitation, extending the deadlines set forth in the Auction procedures, adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice, withdrawing from the Auction any or all of the Acquired Assets at any time prior to or during the Auction or canceling the Auction, and rejecting all Qualifying Bids (other than the APA) if, in the Debtors' business judgment, no such bid is for a fair and adequate price.

Dated: December ____, 2003

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
CABLE & WIRELESS USA, INC., et al.,¹) Case No. 03-13711 (CGC)
) (Jointly Administered)
Debtors.)

ORDER (A) APPROVING THE ASSET PURCHASE AGREEMENT WITH PROPOSED PURCHASER, (B) AUTHORIZING (I) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS TO PROPOSED PURCHASER OR OTHER SUCCESSFUL BIDDER(S) AT AUCTION, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF.

Upon the motion² (the "Sale Motion"), dated December 10, 2003, of Cable & Wireless USA, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, and Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP (collectively, the "Debtors,"), for entry of an order pursuant to sections 105(a), 363, 365, 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9014 and 9019: (A) approving the asset purchase agreement (as amended from time to time, the "APA") by and among the Debtors and Gores Asset Holdings, Inc. (the "Purchaser"), and such other agreements to be entered into and among the parties as contemplated therein, (B) authorizing (i) the sale (the "Sale") of substantially all of the Selling

¹ The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA and the Sale Motion, and to the extent of any inconsistency, the APA shall govern.

Debtors' assets to the Purchaser free and clear of all liens, claims, encumbrances, and other interests (collectively, the "Liens"), other than any permitted encumbrances and assumed liabilities under the APA, and (ii) the assumption and assignment to the Purchaser of certain executory contracts and unexpired leases, and (C) granting certain related relief; and upon the order of this Court, dated _____, 2003 (the "Bidding Procedures Order"), (A) approving bidding procedures and overbid protections in connection with the Sale, (B) approving the form and manner of notice of the Sale Notice and Bidding Procedures Notice, (C) scheduling a hearing date on the Sale Motion, and (D) approving procedures for determining cure amounts in connection with the assumption and assignment of certain executory contracts and unexpired leases; and a hearing having been held on January __, 2004 in connection with the Sale Motion (the "Sale Hearing"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Sale; and the Court having considered (x) the Sale Motion, (y) the objections to the Sale Motion, and (z) the arguments made and evidence proffered or adduced in support of approval of the Sale at the Sale Hearing; and it appearing from the affidavits of service filed with the Court that due and sufficient notice of the Sale Motion and the relief granted by this Order, have been provided to all parties affected thereby (the "Sale Notice"); and it further appearing that no other or further notice hereof is required; and the Court having received evidence in support of the approval of the APA and the Sale; and it appearing that the relief requested in the Sale Motion and approved hereby is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and upon the record of the Sale Hearing and these chapter 11 cases, including the decision of the Court to approve the Sale Motion, APA, and Sale as reflected on the record of the Sale Hearing; and after due deliberation and good and

sufficient cause appearing therefor, this Court hereby makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

IT IS HEREBY FOUND AND DETERMINED THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). 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.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), the parties may consummate the Sale immediately upon entry of this Order. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

C. The statutory predicates for the relief requested in the Sale Motion are sections 105(a), 363(b), (f), and (m), 365, and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c) and (e), 6006(a) and (c), 9014 and 9019.

Retention of Jurisdiction

D. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Any statements of the Court from the bench at the Sale Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this Order to the extent not inconsistent herewith.

the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which any of the Debtors is a party or which has been assigned by any Debtor to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Notice of the Sale Motion, Auction and the Cure Amounts

E. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, the Sale Hearing, and the Sale has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014, and in substantial compliance with the Bidding Procedures Order.

F. Actual written notice of the Sale Hearing, the Auction, the Sale Motion, and the Sale and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to: (i) the United States Trustee for the District of Delaware (the "UST"); (ii) counsel to the Debtors' postpetition lender; (iii) counsel for the statutory committee appointed by the UST in the Debtors' cases (the "Committee"); (iv) counsel to Cable and Wireless plc ("PLC"); (v) all non-debtor counter-parties to the Assigned Contracts; (vi) any entity that filed a notice of appearance and demand for service of papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002 as of the date of service of the Sale Notice; (vii) counsel to the Purchaser; (viii) all parties that have signed confidentiality agreements and to which The Blackstone Group L.P. and/or Greenhill & Co., LLC have sent the Confidential Information Memorandum/Initial Bid Solicitation Materials of the Selling Debtors; (ix) all parties that timely

filed an objection to entry of the Bidding Procedures Order; (x) all parties holding Liens against the Selling Debtors' estates; and (xi) all creditors of the Debtors listed on the master mailing matrix.

G. The Selling Debtors published notice of the time and place of the proposed Auction, the time and place of the Sale Hearing and the time for filing an objection to the Sale Motion in the national editions of The Wall Street Journal and The New York Times on _____, 2003, as soon as practical after the approval of the Sale Notice.

H. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served the cure notice as set forth in the Bidding Procedures Order (the "Cure Notice") upon each non-debtor counter-party to an Assigned Contract that the Selling Debtors seek to assume and assign to the Purchaser on the Closing Date. The service of such Cure Notice was good and sufficient and appropriate under the circumstances and no further notice need be given in respect of establishing a Cure Amount for the respective Assigned Contract. Non-debtor counter-parties to the Assigned Contracts have had an opportunity to object to the Cure Amount set forth in the Cure Notice.

I. The Selling Debtors have complied with all obligations to provide notice of the Sale Motion, Auction, Sale Hearing, and Sale required by the Bidding Procedures Order. The foregoing notice described in paragraphs E through H was good and sufficient and appropriate under the circumstances, and no other or further notice of the Sale Motion, Auction, the Sale Hearing, or the Sale is required.

J. The disclosures made by the Selling Debtors concerning the APA, the Sale, and the Sale Hearing were good, complete and adequate.

Consent of Secured Lenders

K. The DIP Lender and the Debtors' prepetition senior secured lender, PLC, consent to the entry of this Order, to the terms and conditions of the APA, and to the consummation of the Sale; provided, that, concurrent with the Sale, the net proceeds thereof are applied in the following priority: first, to principal, interest and other amounts then outstanding under the [DIP Credit Agreement]; second, to principal, interest and other amounts then outstanding under the [pre-petition secured credit agreement], subject to such carve-outs for administrative expenses and/or priority claims as may be agreed to between PLC and the Debtors prior to the closing of the Sale; and third to payment to the Debtor.

Good Faith of the Purchaser and Third Party Purchasers

L. The Purchaser is not affiliated with the Debtors.

M. The terms of the Sale, as set forth in the APA, are fair and reasonable under the circumstances of these chapter 11 cases.

N. The Purchaser negotiated the terms and conditions of the Sale in good faith and at arm's length, is entering into the Sale in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protections afforded thereby. The Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the Sale at any time after the entry of this Order, including immediately after its entry. The Court has found that the Purchaser has acted in good faith in all respects in connection with these chapter 11 cases and the Sale in that, among other things:

(1) the Purchaser recognized that the Selling Debtors were free

to negotiate with any other party that expressed qualified interest in purchasing their assets;

(2) the Purchaser agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order;

(3) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser with the Selling Debtors in connection with the Sale have been disclosed;

(4) there is no evidence that the Purchaser has violated section 363(n) of the Bankruptcy Code by any action or inaction;

(5) no common identity of directors or controlling stockholders exists between the Purchaser and any of the Debtors; and

(6) the negotiation and execution of the APA and all other aspects of the Sale were conducted in good faith.

Highest and Best Offer

O. The APA constitutes the highest and best offer for the Acquired Assets, and will provide a greater recovery for the Selling Debtors' estates than would be provided by any other available alternative. The Selling Debtors' determination that the APA constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Selling Debtors' business judgment.

P. The APA represents a fair and reasonable offer to purchase the Acquired Assets under the circumstances of these chapter 11 cases. No other entity or group of entities has offered to purchase the Acquired Assets for greater economic value to the Selling Debtors' estates than the Purchaser.

No Fraudulent Transfer

Q. The consideration provided for the Acquired Assets pursuant to the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

Validity of Transfer

R. The transfer of each of the Acquired Assets to the Purchaser will be as of the Closing Date a legal, valid, and effective transfer of such assets, and vests or will vest the Purchaser with all right, title, and interest of the Selling Debtors to the Acquired Assets free and clear of all Liens accruing, arising or relating to any time prior to the Closing Date, except for any permitted encumbrances and assumed liabilities under the APA.

Section 363(f) Is Satisfied

S. The Selling Debtors may sell the Acquired Assets free and clear of all Liens against the Selling Debtors or their estates (except for any permitted encumbrances and assumed liabilities under the APA) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens against the Debtors or their estates who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Liens who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Liens, if any, in each instance against the Selling Debtors or their estates, attach to the cash proceeds of the Sale ultimately attributable to the Acquired Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force and effect that such creditor had prior to the

Sale, subject to any claims and defenses the Selling Debtors and their estates may possess with respect thereto.

Highest and Best Offer

T. Pursuant to section 1146(c) of the Bankruptcy Code, transactions contemplated by the APA are determined to be under a plan to be confirmed under section 1129 of the Bankruptcy Code in that the net proceeds of the sale of the Acquired Assets are essential and required to fund a chapter 11 plan for the Debtors, and therefore, are exempt from any transfer, stamp or similar tax or any so called "bulk sale" law in all necessary jurisdictions arising as a result of, or in connection with, the Debtors sale and transfer of the Acquired Assets to the Purchaser.

Compelling Circumstances for Immediate Sale

U. The Selling Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification, and (ii) compelling circumstances for the Sale pursuant to section 363(b) of the Bankruptcy Code prior to a chapter 11 plan in that, among other things, the value of the business is extremely time-sensitive given the importance of maintaining a seamless hosting and networking services business and maintaining customer relationships, and the threat of erosion of these relationships and in the value of the business.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

General Provisions

1. The relief requested in the Sale Motion is granted and approved as set forth in this Order, and the Sale contemplated thereby is hereby approved as set forth in this Order.

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

Approval of the APA

3. The APA and all other ancillary documents and all of the terms and conditions thereof are hereby approved in their entirety. To the extent of any conflict or inconsistency between the provisions of this Order and the terms and conditions of the APA and such other ancillary documents, as applicable, this Order shall govern and control.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Selling Debtors are authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale of each of the Acquired Assets to the Purchaser pursuant to and in accordance with the terms and conditions of the APA, (ii) close the Sale as contemplated in the APA and this Order, and (iii) execute and deliver, perform under, consummate, implement and close fully the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale, including any other ancillary document, and to take all further actions as may be reasonably requested in accordance with the APA by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession, the Acquired Assets, or as may be

reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such other ancillary documents.

5. The terms and provisions of this Order shall be binding in all respects upon the Purchaser and the Selling Debtors, any trustees thereof, their estates, all creditors and shareholders of any of the Selling Debtors, all interested parties, and their respective successors and assigns, including, but not limited to, the DIP Lender and the Debtors' prepetition senior secured lender, PLC, and any other creditor asserting a lien, all non-debtor counter-parties to the Assigned Contracts that are to be assigned to the Purchaser under the APA.

Transfer of the Acquired Assets

6. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Selling Debtors are authorized to transfer the Acquired Assets on the Closing Date. Such Acquired Assets shall be transferred to the Purchaser upon and as of the Closing Date and such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets and, upon the Selling Debtors' receipt of the Purchase Price, shall be free and clear of (a) all Liens except any permitted encumbrances and assumed liabilities under the APA, and (b) all other interests, including without limitation, any and all "claims" (as that term is defined in section 101(5) of the Bankruptcy Code), with all such Liens to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect that they now have as against such Acquired Assets, subject to any claims and defenses the Selling Debtors and their estates may possess with respect thereto.

7. Except as expressly permitted by the APA with respect to any permitted encumbrances and assumed liabilities, the Purchaser shall have no liability or responsibility for

any Lien arising, accruing, or relating to a period prior to the Closing Date.

8. Notwithstanding anything to the contrary contained in any order of the Court governing post-petition financing or use of cash collateral, upon the Selling Debtors' receipt of the Purchase Price, the liens granted pursuant to any such orders to the DIP Lenders or any trade creditor shall not encumber (i) any of the Acquired Assets, on and after the Closing Date with regard to such Acquired Assets, (ii) property, including Inventory, relating to the Selling Debtors' business first arising or coming into any Selling Debtor's possession after the Closing Date, including, without limitation, any revenues and accounts receivable generated by the business after the Closing Date, or (iii) any other property of the Purchaser, with all such property described in clause (i) through (iii) above being the property solely of the Purchaser and the Selling Debtors not having any property interest therein; provided, however, that all such liens shall attach to the proceeds of the Sale in accordance with paragraph 6 above.

Assumption and Assignment of the Assigned Contracts

9. The Selling Debtors are hereby authorized, in accordance with sections 365(b)(1) and (f)(2) of the Bankruptcy Code, to: (i) assume the Assigned Contracts; (ii) sell, assign and transfer to the Purchaser the Assigned Contracts free and clear of all Liens; and (iii) execute and deliver to the Purchaser such assignment and transfer documents as may be necessary to sell, assign and transfer the Assigned Contracts.

10. The Selling Debtors and Purchaser are directed to pay the Cure Amounts owing under each of the Assigned Contracts as provided in the APA, as further set forth in Exhibit ___ to the Cure Notice, on or before the Closing Date.

11. The Assigned Contracts shall, as of the Closing Date, be valid and binding

on the Purchaser and the other non-debtor counter-parties thereto, and in full force and effect and enforceable in accordance with their respective terms. Following such assignment, the Selling Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Contracts.

12. Consummation of the Sale, including, without limitation, the transfer of the assets to Purchaser pursuant to the APA and the assumption and assignment to Purchaser of the Assigned Contracts, will not subject Purchaser to any debts, liabilities, obligations, commitments, responsibilities or claims of any kind or nature whatsoever, whether known or unknown, contingent or otherwise, existing as of the date hereof or hereafter arising, of or against the Debtors, any affiliate of the Debtors, or any other person by reason of such transfers and assignments under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia applicable to such transactions, based, in whole or in part, directly or indirectly, in any theory of law or equity, including, without limitation, any theory of equitable law, including, without limitation, any theory of antitrust or successor or transferee liability, except that Purchaser shall be liable for payment only of the Assumed Liabilities.

Additional Provisions

13. On the Closing Date, each creditor of the Debtors is authorized to execute such documents and take all other actions as may be necessary to release Liens (except permitted encumbrances) on the Acquired Assets, if any, as provided for herein, as such Liens may have been recorded or may otherwise exist; provided, however, such Liens shall be deemed to attach to the proceeds of the Sale in accordance with paragraph 6 above.

14. All entities who are presently, or on or before the Closing Date may be, in

possession of some or all of the Acquired Assets to be transferred as of such Closing Date are hereby directed to surrender possession of the Acquired Assets to the Purchaser on the Closing Date at that entity's sole expense.

15. The Selling Debtors are authorized, in their sole discretion, but with the consent of the Purchaser, where required by the APA, to compromise disputes regarding amounts either due to or owed by the Selling Debtors under the terms of the APA and other ancillary documents, pursuant to section 363(b) of the Bankruptcy Code and Rule 9019(b) of the Bankruptcy Rules.

16. The terms and provisions of the APA and other ancillary documents, together with the terms and provisions of this Order, shall be binding in all respects upon all entities, including the Debtors, any trustees thereof, their estates, their creditors, their shareholders, and all interested parties, administrative agencies, governmental units, secretaries of state, federal, state and local officials, including any such administrative or governmental authorities maintaining any authority relating to environmental, health, or safety laws, and their respective successors or assigns, including, but not limited to, all non-debtor counter-parties to the Assigned Contracts that will be assigned to the Purchaser under the APA, and upon any persons asserting a Lien against the Selling Debtors' estates or any of the Acquired Assets to be sold and assigned to the Purchaser.

17. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (i) these chapter 11 cases, (ii) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (iii) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the APA or the terms of

this Order. The Selling Debtors agree that the relief and protections granted to the Purchaser pursuant to this Order shall not be affected in any manner by the entry of an order confirming a chapter 11 plan of reorganization in any of the Selling Debtor's chapter 11 cases. This Order shall be binding upon and enforceable against, among others, the Debtors, their estates and any and all chapter 7 and chapter 11 trustees thereof.

18. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Acquired Assets on account of the filing of these chapter 11 cases.

19. This Court retains jurisdiction, even after the closing of these chapter 11 cases, to:

- (a) interpret, implement and enforce the terms and provisions of this Order and the terms of the APA, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith to which any of the Debtors is a party or which has been assigned by any Debtor to the Purchaser;
- (b) protect the Purchaser or any of the Assigned Contracts or Acquired Assets against any of the Liens, as provided herein, including to enjoin the commencement or continuation of any action seeking to impose successor liability;
- (c) enter orders in aid or furtherance of the Sale;
- (d) compel delivery of all Acquired Assets to the Purchaser;
- (e) adjudicate any and all remaining issues concerning the Selling Debtors' right and authority to assume and assign the Assigned Contracts and the rights and obligations of the Purchaser with respect to such assignment and the existence of any default under any such Assigned Contract;

- (f) adjudicate all issues concerning (alleged) pre-closing Liens, and any other (alleged) interest(s) in and to the Acquired Assets, including the extent, validity, enforceability, priority and nature of all such (alleged) Liens;
- (g) adjudicate any and all issues and/or disputes relating to the Selling Debtors' right, title or interest in the Acquired Assets and the proceeds thereof, the Sale Motion and/or the APA; and
- (h) re-open the Debtors' chapter 11 cases to enforce the provisions of this Order.

20. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale.

21. The failure specifically to include any particular provision of the APA or other agreements executed in connection therewith in this Order shall not diminish or impair the efficacy of such provision, it being the intent of this Court that the APA and other agreements executed in connection therewith and each and every provision, term, and condition thereof be authorized and approved in their entirety.

22. The Purchaser may consummate the Sale at any time after entry of the Order (including immediately thereafter) by waiving any and all closing conditions set forth in the APA that have not been satisfied and by proceeding to close the Sale without any notice to the Court, any prepetition or postpetition creditor of the Debtors, and/or any other party in interest.

23. This Order shall be effective immediately upon entry and Bankruptcy Rules 6004(g) and 6006(d) shall not apply.

24. The Sale is undertaken by the Purchaser in good faith (as that term is used

in section 363(m) of the Bankruptcy Code), and the Purchaser shall continue to be in good faith (as that term is used in section 363(m) of the Bankruptcy Code) by proceeding to close the Sale, even if such closing occurs immediately upon entry of this Order. Accordingly, the reversal or modification on appeal of the authorization to consummate the Sale provided herein shall not affect the validity of the Sale to the Purchaser unless such authorization is duly stayed prior to closing of the Sale pending such appeal. The Purchaser is a purchaser in good faith of the Acquired Assets and the Assigned Contracts, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

25. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties in accordance with the terms thereof, without further order of the Court, provided that (a) any such modification, amendment, or supplement is not material and (b) to the extent practicable, notice of any modification, amendment, or supplement should be delivered to counsel for the Committee and counsel for the DIP Lender at least five (5) days prior to the effective date of any such modification, amendment, or supplement.

26. The provisions of this Order are non-severable and mutually dependent.

27. For purposes of this Order, permitted encumbrances shall include liens for taxes not yet due and payable.

Dated: _____, 2004

UNITED STATES BANKRUPTCY JUDGE

File a Motion:03-13711-CGC CABLE & WIRELESS USA, INC.

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from McFarland, Scotta Edelen entered on 12/11/2003 at 3:32 PM EST and filed on 12/11/2003.

Case Name: CABLE & WIRELESS USA, INC.**Case Number:** 03-13711-CGC**Document Number:** 64**Docket Text:**

Motion to Approve Sale /*Notice of Errata Regarding Motion of the Debtors for an Order (A) Approving the Asset Purchase Agreement with Proposed Purchaser, (B) Authorizing (I) The Sale of Substantially All of the Debtors' Assets to Proposed Purchaser or Other Successful Bidder(s) at Auction, Free and Clear of all Liens, Claims, Encumbrances and Interests and (II) Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases, and (C) Granting Related Relief* (related document(s)[43]) Filed by CABLE & WIRELESS USA, INC. (Attachments: # (1) Attachment part 1# (2) Attachment part 2# (3) Attachment part 3) (McFarland, Scotta)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:** \PSZY1_DE\Data\EF\Documents\Cable & Wireless\12-11-03\SEM\Ntc of Errata\Main doc.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=12/11/2003] [FileNumber=2149047-0] [2a884c0aec7bec85a39398d3f31718a50fdad62f5e2efe3716a7ab9d42046b32ebb83da93ec770a5db844b174be647f88a8bb4b5148693a94c4294890d560bf4]]

Document description:Attachment part 1**Original filename:** \PSZY1_DE\Data\EF\Documents\Cable & Wireless\12-11-03\SEM\Ntc of Errata\Attachment part 1.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=12/11/2003] [FileNumber=2149047-1] [43a8a2d1c64bb3cdae4868ebec2d26931271555c53e0381f9a5c56ab7ecbefe27802bdce1fc1fe19e9b7b9ca21553017c4165916cba6429e5d35ad908a1e1d8]]

Document description:Attachment part 2**Original filename:** \PSZY1_DE\Data\EF\Documents\Cable & Wireless\12-11-03\SEM\Ntc of Errata\Attachment part 2.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=12/11/2003] [FileNumber=2149047-2] [9438217e2e940c2d00f480170add77cdedcc0c4f8affd6a15dc75bf0c1de0c12a72b32797c299442eb20ccecf5ae685031befe9a1bd18d4d65d73dfe0f9e8f95e]]

Document description:Attachment part 3**Original filename:** \PSZY1_DE\Data\EF\Documents\Cable & Wireless\12-11-03\SEM\Ntc of