

ORIGINAL

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(Eastern Division)

In re

ESSENTIAL.COM, INC.,

Debtor.

UNITED SYSTEMS ACCESS, INC.,

Plaintiff,

v.

ESSENTIAL.COM, INC., et al.,

Defendants.

CHARLES A. DALE, III, PLAN  
TRUSTEE OF ESSENTIAL.COM, INC.,

Plaintiff,

v.

DOMESTIC OPERATING  
SUBSIDIARIES OF VERIZON  
COMMUNICATIONS, INC., AND  
QWEST COMMUNICATIONS CORP.,

Defendants.

Chapter 11  
Case No. 01-15339-WCH

Adversary Proceeding  
Case No. 02-1110

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**PLAN TRUSTEE'S MOTION TO APPROVE SETTLEMENT AGREEMENT  
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

Charles A. Dale III, in his capacity as the duly-appointed plan trustee (the "Plan Trustee")  
of Essential.com, Inc. (the "Debtor"), hereby requests the Court enter an order approving the  
settlement agreement (the "Agreement") by and among the Plan Trustee, United Systems

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Access, Inc. ("USA"), and the Operating Telephone Company Subsidiaries of Verizon Communications Inc.<sup>1</sup> (collectively, "Verizon"). In support of his request, the Plan Trustee respectfully represents as follows:

### **Jurisdiction And Venue**

1. The Court has jurisdiction over this contested matter pursuant to 28 U.S.C. sections 157 and 1334.
2. This is a "core" proceeding as that term is defined in 28 U.S.C. section 157(b).
3. Venue in this Court is proper pursuant to 28 U.S.C. sections 1408 and 1409.

### **Background**

4. On June 29, 2001 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Massachusetts. On July 18, 2001, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee") consisting of three of the Debtor's unsecured creditors.

5. On November 2, 2001, the Committee and the Debtor filed a Joint Plan of Liquidation (the "Plan") and Disclosure Statement in this case. The Disclosure Statement was approved by Order dated November 28, 2001, and on December 21, 2001, the Court entered an order confirming the Plan. The Effective Date under the Plan occurred on January 1, 2002. Pursuant to the terms of the Plan, Charles A. Dale III was duly appointed the Plan Trustee.

6. Prior to the Petition Date, the Debtor was engaged in the business of providing utility services, including local and long-distance telephone services and limited electrical utility

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<sup>1</sup> The Operating Telephone Company Subsidiaries of Verizon Communications Inc. include without limitation: Verizon Delaware Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New York Inc., Verizon New Jersey Inc., Verizon North Inc., Verizon Pennsylvania Inc., Verizon Washington, DC Inc., and Verizon West Virginia Inc.

services, to subscribers. Subscribers could then manage their utility services via online internet access at a central website maintained by the Debtor. Underlying telecommunications services were provided, through the Debtor, by companies such as Verizon and Qwest Communications Corporation (“Qwest”) (collectively with Verizon, the “Incumbent Providers”), and others.

7. Following a hearing on the Debtor’s motion to sell all or substantially all of its assets, and after a competitive bidding process involving several interested bidders, the Court authorized a sale of the Debtor’s assets to USA for a purchase price of \$1,300,000 (the “Sale”). The sale to USA was consummated on August 10, 2001 (the “Closing Date”) pursuant to an asset purchase agreement (the “Asset Purchase Agreement”).

8. Subsequent to the Closing Date, USA asserted certain claims against the Debtor in connection with the Asset Purchase Agreement regarding certain pre and post-closing charges by the Incumbent Providers, certain accounts receivable, customer credits, and software. In an attempt to resolve these claims, the Debtor and USA entered into a settlement agreement (the “Settlement Agreement”).

9. Notwithstanding the Settlement Agreement, the dispute between the parties persisted, and USA eventually filed a complaint against the Plan Trustee (as amended, the “Complaint”). The Plan Trustee answered the Complaint, asserted counterclaims against USA, and filed his third party complaint (the “Third Party Complaint”) against Verizon and Qwest.

10. Throughout these proceedings, all of the parties have negotiated extensively in an effort to resolve this dispute. At the suggestion of the Court, the parties consensually submitted this dispute to mediation. Following several mediation sessions and lengthy negotiations by all parties-in-interest, the Plan Trustee, USA and Verizon have entered into an Agreement, attached hereto as Exhibit A, which resolves all open issues between the parties.

### The Proposed Settlement Agreement

11. The material terms of the Agreement are as follows:
- a. Claims By Verizon—upon Bankruptcy Court approval of the Agreement, Verizon shall be deemed to hold an Allowed prepetition general Unsecured Claim in the amount of \$650,000. Verizon shall accept in full and complete satisfaction of its Claim a one-time cash distribution in the amount of \$245,000. With the exception of the payment provided by this Agreement, Verizon shall receive no further distribution from the Debtor's estate pursuant to the Plan or otherwise.
  - b. Claims by USA—USA shall receive a payment in the amount of \$275,000 (the "USA Settlement Amount") in full and complete satisfaction of any and all claims against the Debtor's estate.
  - c. Qwest Deposit—if and to the extent certain funds formerly on-deposit with Qwest are actually recovered by the Plan Trustee, USA shall be entitled to a portion of the proceeds of the Qwest Deposit, net of attorneys' fees and expenses incurred in connection with the recovery, as follows: (i) the first \$25,000 shall be paid to USA; (ii) any additional funds shall be divided between USA and the Plan Trustee pro rata; and (iii) in the event that the Plan Trustee proposes to settle the Qwest Deposit claim for an amount less than \$25,000, either: (A) USA shall consent to the proposed settlement; or (B) the Plan Trustee shall assign his interest in the Qwest Deposit to USA.
  - d. Dismissal of Adversary Proceeding—Adversary Proceeding No. 02-1110, comprising the Amended Complaint, Third Party Complaint and all counterclaims, shall be dismissed with prejudice.
  - e. Mutual Releases—the parties shall each exchange mutual releases.

### The Compromise Is In The Best Interest Of The Debtor's Estate

12. Rule 9019 of the Federal Rules of Bankruptcy Procedure provides that

On motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indentured trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a). The primary purpose of a compromise or settlement is to avoid the necessity of determining sharply contested and dubious issues. See, e.g., Wil-Rud Corp. v.

Lynch (In re California Associated Prods. Co.), 183 F.2d 946, 949 (9th Cir. 1950). The policy of the law generally is to encourage settlement. See Florida Trailer & Equip. Co. v. Deal, 284 F.2d 567, 571 (5th Cir. 1960).

13. Courts traditionally defer to the trustee or debtor-in-possession when examining the reasonableness of a settlement. See, e.g., Newman v. Stein, 464 F.2d 689, 693 (2d Cir.1972) (“The responsibility of the bankruptcy judge ... is not to decide the numerous questions of law and fact raised ... but rather to canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’”); In re Media Cent., Inc., 190 B.R. 316 (E.D. Tenn. 1994) (court presumed trustee had subjected settlement to his independent review and analysis where trustee recommended approval of proposed compromise and settlement); see also 9 LAWRENCE P. KING, COLLIER ON BANKRUPTCY ¶ 9019.03[1] (15th ed.1993) (to minimize litigation and expedite the administration of a bankruptcy estate, “[c]ompromises are favored in bankruptcy.”).

14. Courts have recognized four criteria that a bankruptcy court should consider in striking the balance between “the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal ... (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996) (citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968)).

15. Here, consideration of these four factors clearly supports approval of the Agreement. Through the proposed resolution of this dispute, the Plan Trustee will avoid the

significant expense and uncertainty of litigating the complex claims and counterclaims raised by and among the Plan Trustee, USA and Verizon, and any further proceedings which may result therefrom, to a conclusion. Under the settlement reached by the parties, USA's and Verizon's claims against the Debtor's estate will be fixed at an agreed amount, with distributions combined totaling \$520,000. In return, USA and Verizon have agreed to reduce the total amount of their claims asserted against the estate by more than \$3,000,000. Given the uncertainty of the outcome of the estate's counterclaims against USA and claims and defenses against Verizon, and the expense of litigating these issues to a conclusion, the proposed compromise is clearly in the best interest of the Debtor, its estate and its creditors.

WHEREFORE, for all of the foregoing reasons, the Plan Trustee respectfully requests that this Court enter an Order, substantially in the form attached hereto, approving the proposed Agreement, and granting such other and further relief as is just and necessary.

Respectfully submitted,

CHARLES A. DALE III,  
Plan Trustee of Essential.com, Inc.,

By his attorneys,

/s/  
Alex F. Mattera (BBO# 641760)  
GADSBY HANNAH LLP  
225 Franklin Street  
Boston MA 02110  
Telephone: (617) 345-7000  
Facsimile: (617) 345-7050

Dated: April 20, 2004

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(Eastern Division)

In re	)	
	)	
ESSENTIAL.COM, INC.,	)	Chapter 11
	)	Case No. 01-15339-WCH
Debtor.	)	
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UNITED SYSTEMS ACCESS, INC.,	)	
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Plaintiff,	)	
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v.	)	Adversary Proceeding
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	)	
Defendants.	)	
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CHARLES A. DALE, III, PLAN	)	
TRUSTEE OF ESSENTIAL.COM, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DOMESTIC OPERATING	)	
SUBSIDIARIES OF VERIZON	)	
COMMUNICATIONS, INC., AND	)	
QWEST COMMUNICATIONS CORP.,	)	
	)	
Defendants.	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is entered into this 20th day of April, 2004, by and among Charles A. Dale III, in his capacity as the duly-appointed plan trustee (the "Plan Trustee") of Essential.com, Inc. (the "Debtor"), United Systems Access, Inc. ("USA"), and

the Operating Telephone Company Subsidiaries of Verizon Communications Inc.<sup>1</sup> (collectively, “Verizon”).

#### RECITATIONS

WHEREAS, on June 29, 2001 (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Massachusetts;

WHEREAS, On July 18, 2001, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) consisting of three of the Debtor’s unsecured creditors;

WHEREAS, prior to the Petition Date, the Debtor was engaged in the business of providing utility services, including local and long-distance telephone services and limited electrical utility services, to subscribers. Subscribers could then manage their utility services via online internet access at a central website maintained by the Debtor. Underlying telecommunications services were provided, through the Debtor, by companies such as Verizon and Qwest Communications Corporation (“Qwest”) (collectively with Verizon, the “Incumbent Providers”), and others;

WHEREAS, following the Petition Date, but prior to a sale of the Debtor’s assets, the Debtor and Verizon entered into a stipulation to provide for the continued provision of services by Verizon to the Debtor (the “Verizon Stipulation”);

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<sup>1</sup> The Operating Telephone Company Subsidiaries of Verizon Communications Inc. include without limitation: Verizon Delaware Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New York Inc., Verizon New Jersey Inc., Verizon North Inc., Verizon Pennsylvania Inc., Verizon Washington, DC Inc., and Verizon West Virginia Inc.



WHEREAS, the Debtor entered into a similar stipulation with Qwest to provide for the continued provision of services by Qwest to the Debtor (the "Qwest Stipulation") (collectively with the Verizon Stipulation, the "Stipulations");

WHEREAS, the Debtor made an initial adequate protection payment to Qwest and related parties in the amount of \$600,000. The Qwest Stipulation required Qwest's counsel to hold in escrow \$100,000 of those funds pending future reconciliation of actual charges and payments;

WHEREAS, upon information and belief, the \$100,000 was not held by Qwest's counsel, but instead posted internally at Qwest as a security deposit (the "Qwest Deposit");

WHEREAS, the Verizon Stipulation required the Debtor to make certain advance payments to Verizon and for Verizon to provide a reconciliation of actual charges incurred, and payments made by, the Debtor at the end of every 90-day period;

WHEREAS, the Qwest Stipulation requires the Debtor to make certain advance payments to Qwest and for Qwest to provide a reconciliation of actual charges incurred and payments made by the Debtor every four weeks;

WHEREAS, the Court approved both Stipulations with Verizon and Qwest on August 9, 2001;

WHEREAS, the Debtor made two payments to Verizon under the Verizon Stipulation and believes it made all payments to Qwest required by the terms of the Qwest Stipulation through and including the sale of the Debtor's assets.

WHEREAS, Verizon and Qwest each filed general unsecured claims against the Debtor for services provided prior to the Petition Date (with respect to Verizon, the "Verizon Claims");

WHEREAS, following a hearing on the Debtor's motion to sell all or substantially all of its assets, and after a competitive bidding process involving several interested bidders, the Court authorized a sale of the Debtor's assets to USA for a purchase price of \$1,300,000 (the "Sale");

WHEREAS, the sale to USA was consummated on August 10, 2001 (the "Closing Date") pursuant to an asset purchase agreement (the "Asset Purchase Agreement");

WHEREAS, between the Petition Date and the Closing Date, the Plan Trustee submits that the actual telecommunications charges incurred by the estate were significantly less than the amount of the payments made to Verizon and Qwest. Therefore, as of the Closing Date, the Plan Trustee submits that the Debtor's estate had accumulated substantial credit balances with Verizon and Qwest;

WHEREAS, after the Closing Date, USA continued to use the Verizon and Qwest accounts established by the Debtor prior to the Closing Date and continued to make payments to Verizon and/or Qwest pursuant to the terms of the Verizon Stipulation;

WHEREAS, the Plan Trustee contends that the payments made by USA to Verizon and Qwest were substantially less than the amount of the actual post-Closing Date charges it incurred, thereby consuming the credit balance owed to the estate and creating a significant deficit;

WHEREAS, subsequent to the Closing Date, USA alleged that customers which it did not purchase from the Debtor continued to receive services through facilities provided by the Incumbent Providers. USA asserted that the Incumbent Providers billed USA and expected payment for these excess customers (the "Excess Customer Charges"). USA contends that it made payments on behalf of such Excess Customer Charges to the Incumbent Providers;

WHEREAS, USA alleges the Incumbent Providers collected charges from USA for services rendered to the Debtor prior to the Closing Date (the "Pre-Closing Charges");

WHEREAS, USA has also asserted claims against the estate on account of certain accounts receivable, customer credits, and software;

WHEREAS, the Debtor and USA entered into a written settlement agreement on or about December 7, 2001, to completely resolve their claims, counterclaims and defenses (the "Settlement Agreement");

WHEREAS, the Court approved the Settlement Agreement by Order dated January 3, 2002;

WHEREAS, on November 2, 2001, the Committee and the Debtor filed a Joint Plan of Liquidation (the "Plan") and Disclosure Statement in this case;

WHEREAS, on December 21, 2001, the Court entered an order confirming the Plan. Pursuant to the terms of the Plan, Charles A. Dale III was appointed as Plan Trustee;

WHEREAS, on March 27, 2002, USA filed its Complaint against the Debtor and the Plan Trustee seeking to recover damages resulting from alleged payments of Excess Customer Charges and Pre-Closing Charges;

WHEREAS, on May 10, 2002, the Plan Trustee filed his Answer to the Complaint;

WHEREAS, on May 10, 2002, the Plan Trustee filed his Third-Party Complaint against Verizon and Qwest;

WHEREAS, the Plan Trustee contends it holds claims against Verizon, including claims on account of unapplied credits to which the estate is allegedly entitled;

WHEREAS, the Counts against Qwest contained in the Third-Party Complaint were dismissed with prejudice in connection with a stipulation by which Qwest's unsecured claim was allowed;

WHEREAS, the Plan Trustee subsequently amended his answer to include counterclaims against USA;

WHEREAS, on March 5, 2003, USA moved for leave to amend the Complaint (as amended, the "Amended Complaint");

WHEREAS, the Plan Trustee answered the Amended Complaint;

WHEREAS, on or about June 27, 2003, USA moved for partial summary judgment on its Amended Complaint;

WHEREAS, on August 13, 2003, the Court denied USA's motion for partial summary judgment;

WHEREAS, all of the parties have negotiated extensively in an effort to resolve this dispute and participated consensually in mediation;

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and undertakings contained herein, the parties hereby stipulate and agree as follows:

1. Claims By Verizon:
  - a. Upon Bankruptcy Court approval of this Agreement, Verizon shall be deemed to hold an Allowed prepetition general Unsecured Claim in the amount of \$650,000. The Verizon Claims shall be deemed to be amended in accordance herewith.
  - b. Verizon shall accept in full and complete satisfaction of its Claim a one-time cash distribution in the amount of \$245,000. Such distribution shall be made when the Order approving this Stipulation becomes final and non-appealable.

- c. With the exception of the payment provided by this Agreement, Verizon shall receive no further distribution from the Debtor's estate pursuant to the Plan or otherwise.
  - d. USA agrees to issue appropriate disconnect notices and otherwise terminate the accounts of remaining Essential.com customers identified by Verizon, estimated at ten in number, and agreed upon by Verizon and USA.
2. Claims By USA:
- a. USA shall receive a payment in the amount of \$275,000 (the "USA Settlement Amount") in full and complete satisfaction of any and all claims against the Debtor's estate. Such payment shall be made when the Order approving this Stipulation becomes final and non-appealable.
  - b. Upon receipt by USA of the USA Settlement Amount, USA shall assign all of its right, title and interest in and to the Qwest Deposit to the Plan Trustee.
  - c. If and to the extent actually recovered by the Plan Trustee, USA shall be entitled to a portion of the proceeds of the Qwest Deposit, net of attorneys' fees and expenses incurred in connection with the recovery, as follows:
    - i. The first \$25,000 shall be paid to USA;
    - ii. Any additional funds shall be divided between USA and the Plan Trustee pro rata;
    - iii. In the event that the Plan Trustee proposes to settle the Qwest Deposit claim for an amount less than \$25,000, either:
      - 1. USA shall consent to the proposed settlement; or
      - 2. The Plan Trustee shall assign his interest in the Qwest Deposit to USA.
  - d. The Plan Trustee shall use his best efforts to recover the Qwest Deposit for the benefit of the estate and USA, provided, however, that the Plan Trustee shall have no obligation to incur legal or other professional fees or to commence litigation to recover the Qwest Deposit.

3. Dismissal of Adversary Proceeding: Adversary Proceeding No. 02-1110, comprising the Amended Complaint, Third Party Complaint and all counterclaims, shall be dismissed with prejudice.

4. Releases:

- a. Excepting only the rights, claims and responsibilities which arise under the express terms of this Agreement, the Plan Trustee hereby releases and forever discharges USA and Verizon, together with their respective officers, directors, agents, employees, successors and assigns, of and from any and all other claims, debts, demands, rights, causes of action and liabilities of any nature and description (including, without limitation, current or future claims for any additional monies claimed to be owed under any tariff, the filed rate doctrine, for retroactive refunds or for refunds of non-recurring charges), known or unknown, at law or in equity or in bankruptcy (including, without limitation, under Chapter 5 of the Bankruptcy Code) or otherwise which the Plan Trustee, the Debtor and/or its bankruptcy estate now have or ever had against either USA or Verizon from the beginning of the world to the date upon which the Bankruptcy Court's Order approving this Agreement becomes final and is no longer subject to appeal.
- b. Excepting only the rights, claims and responsibilities which arise under the express terms of this Agreement, USA for itself and each of its

officers, directors, agents, employees, successors and assigns hereby releases and forever discharges:

- (i) the Plan Trustee, the Debtor and its bankruptcy estate, together with their respective officers, directors, agents, employees, successors and assigns, of and from any and all other claims, debts, demands, rights, causes of action and liabilities of any nature and description, known or unknown, both in law and equity which USA now has or ever had from the beginning of the world to the date upon which the Bankruptcy Court's Order approving this Agreement becomes final and is no longer subject to appeal; and
  
- (ii) Verizon, together with its respective officers, directors, agents, employees, successors and assigns, of and from any and all other claims, debts, demands, rights, causes of action and liabilities of any nature and description (including, without limitation, current or future claims for any additional monies claimed to be owed under any tariff, the filed rate doctrine, for retroactive refunds or for refunds of non-recurring charges), known or unknown, at law or in equity or in bankruptcy (including, without limitation, under Chapter 5 of the Bankruptcy Code) or otherwise which USA now has or ever had related to the Verizon Stipulation, the Sale, the Asset Purchase Agreement, USA's management of Essential.com's

business, USA's operation of Essential.com accounts prior to USA's becoming Verizon's customer of record for such accounts, this Adversary Proceeding and the Settlement Agreement. Nothing in this release shall affect any liabilities of USA to Verizon (or credits to which USA may be entitled) on any account for which USA is or was Verizon's customer of record.

- c. Excepting only the rights, claims and responsibilities which arise under the express terms of this Agreement, Verizon for itself and each of its officers, directors, agents, employees, successors and assigns hereby releases and forever discharges:
- (i) the Plan Trustee, the Debtor and its bankruptcy estate, together with their respective officers, directors, agents, employees, successors and assigns, of and from any and all other claims, debts, demands, rights, causes of action and liabilities of any nature and description, known or unknown, both in law and equity which Verizon now has or ever had from the beginning of the world to the date upon which the Bankruptcy Court's Order approving this Agreement becomes final and is no longer subject to appeal; and
  - (ii) USA, together with its respective officers, directors, agents, employees, successors and assigns, of and from any and all other



claims, debts, demands, rights, causes of action and liabilities of any nature and description (including, without limitation, current or future claims for any additional monies claimed to be owed under any tariff, the filed rate doctrine, for retroactive refunds or for refunds of non-recurring charges), known or unknown, at law or in equity or in bankruptcy (including, without limitation, under Chapter 5 of the Bankruptcy Code) or otherwise which Verizon now has or ever had related to the Verizon Stipulation, the Sale, the Asset Purchase Agreement, USA's management of Essential.com's business, USA's operation of Essential.com accounts prior to USA's becoming Verizon's customer of record for such accounts, this Adversary Proceeding and the Settlement Agreement. Nothing in this release shall affect any liabilities of USA to Verizon (or credits to which USA may be entitled) on any account for which USA is or was Verizon's customer of record.

- d. Nothing in these releases or in this Agreement shall affect any liabilities of USA to Verizon (or credits to which USA may be entitled) on any account for which USA is or was Verizon's customer of record.

5. The Recitals in this Agreement are for the sake of clarity and context, are not admissions by any party, and are not part of this Agreement. Nothing in the Recitals or in this Agreement is intended to be an admission by the parties of any wrongdoing or liability.

6. This Agreement shall become binding and effective in accordance with its terms on the first business day following the date upon which the Bankruptcy Court's Order Approving this Agreement becomes final and is no longer subject to appeal.


IN WITNESS WHEREOF, the undersigned set forth their hands and seals as of the \_\_\_\_ day of April, 2004.

CHARLES A. DALE III,  
Plan Trustee of Essential.com, Inc.,

UNITED SYSTEMS ACCESS, INC.,  
d/b/a USA Networks, Inc.,

By his attorneys,

By its attorneys,



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Charles A. Dale III (BBO# 558839)  
Alex F. Mattera (BBO# 641760)  
GADSBY HANNAH LLP  
225 Franklin Street  
Boston, Massachusetts 02110  
Telephone: (617) 345-7000  
Facsimile: (617) 345-7050

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Jerrold A. Crouter  
Drummond, Woodsum & MacMahon  
245 Commercial Street  
P.O. Box 9781  
Portland, Maine 04104  
Telephone: (207) 772-1941  
Facsimile: (207) 772-3627

OPERATING TELEPHONE COMPANY SUBSIDIARIES  
OF VERIZON COMMUNICATIONS INC.,

By its attorneys,

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Darryl S. Laddin  
Andrew B. Flake  
Arnall Golden Gregory LLP  
1201 West Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309  
Telephone: (404) 873-7026  
Facsimile: (404) 873-7027

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IN WITNESS WHEREOF, the undersigned set forth their hands and seals as of the \_\_\_\_\_ day of April, 2004.

CHARLES A. DALE III,  
Plan Trustee of Essential.com, Inc.,

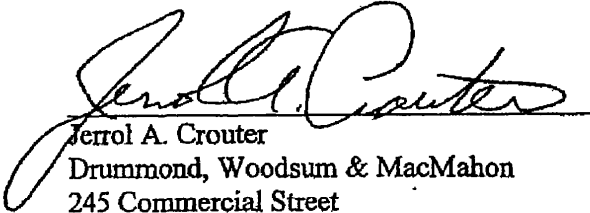
By his attorneys,

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Charles A. Dale III (BBO# 558839)  
Alex F. Mattera (BBO# 641760)  
GADSBY HANNAH LLP  
225 Franklin Street  
Boston, Massachusetts 02110  
Telephone: (617) 345-7000  
Facsimile: (617) 345-7050

UNITED SYSTEMS ACCESS, INC.,  
d/b/a USA Networks, Inc.,

By its attorneys,



---

Jerrol A. Crouter  
Drummond, Woodsum & MacMahon  
245 Commercial Street  
P.O. Box 9781  
Portland, Maine 04104  
Telephone: (207) 772-1941  
Facsimile: (207) 772-3627

OPERATING TELEPHONE COMPANY SUBSIDIARIES  
OF VERIZON COMMUNICATIONS INC.,

By its attorneys,

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Andrew B. Flake  
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IN WITNESS WHEREOF, the undersigned set forth their hands and seals as of the \_\_\_\_ day of April, 2004.

CHARLES A. DALE III,  
Plan Trustee of Essential.com, Inc.,

By his attorneys,

UNITED SYSTEMS ACCESS, INC.,  
d/b/a USA Networks, Inc.,

By its attorneys,

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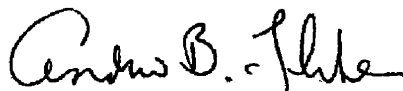
Charles A. Dale III (BBO# 558839)  
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By its attorneys,



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UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF MASSACHUSETTS  
 (Eastern Division)

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Plaintiff,	)	Adversary Proceeding
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TRUSTEE OF ESSENTIAL.COM, INC.,	)	
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SUBSIDIARIES OF VERIZON	)	
COMMUNICATIONS, INC., AND	)	
QWEST COMMUNICATIONS CORP.,	)	
	)	
Defendants.	)	
	)	

**ORDER APPROVING SETTLEMENT AGREEMENT  
 PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

Upon the motion (the “Motion”) dated April 20, 2004, of Charles A. Dale III, the duly-appointed plan trustee (the “Plan Trustee”) of Essential.com, Inc. (the “Debtor”), for an order approving the settlement agreement (the “Agreement”) by and among the Plan Trustee, United

Systems Access, Inc. (“USA”), and the Operating Telephone Company Subsidiaries of Verizon Communications Inc. (collectively, “Verizon”), pursuant to the terms set forth in the Motion; and, due notice of the Motion having been given; and, the Court being satisfied, based on the representations made in the Motion, that the relief requested in the Motion is warranted and in the best interest of the Debtor’s estate; and, after due deliberation, sufficient cause appearing therefor and for the reasons set forth on the record; it is

ORDERED:

1. The Motion is granted;
2. The proposed Agreement between the Plan Trustee, USA and Verizon is hereby approved in its entirety.
3. The Plan Trustee is hereby authorized to take such actions as are necessary to consummate the compromise contemplated by the Agreement, the Motion and this Order.

SO ORDERED this \_\_\_\_\_ day  
of \_\_\_\_\_, 2004

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Honorable William C. Hillman  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(Eastern Division)

_____ )	
In re )	
)	
ESSENTIAL.COM, INC., )	Chapter 11
)	Case No. 01-15339-WCH
Debtor. )	
_____ )	
UNITED SYSTEMS ACCESS, INC., )	
)	
Plaintiff, )	
)	
v. )	Adversary Proceeding
)	Case No. 02-1110
ESSENTIAL.COM, INC., <u>et al.</u> , )	
)	
Defendants. )	
_____ )	
CHARLES A. DALE, III, PLAN )	
TRUSTEE OF ESSENTIAL.COM, INC., )	
)	
Plaintiff, )	
)	
v. )	
)	
DOMESTIC OPERATING )	
SUBSIDIARIES OF VERIZON )	
COMMUNICATIONS, INC., AND )	
QWEST COMMUNICATIONS CORP., )	
)	
Defendants. )	
_____ )	

**CERTIFICATE OF SERVICE**

I, Alex F. Mattera, hereby certify that on this 20<sup>th</sup> day of April, 2004, I have caused to be served a copy of the following documents upon the parties named on the attached list via regular mail, postage prepaid :

1. Settlement Agreement;
2. Plan Trustee's Motion to Approve Settlement Agreement Pursuant to Federal Rule of Bankruptcy Procedure 9019;
3. Proposed Order Approving Debtor's Motion to Compromise Controversy with Farmers Bank & Trust Company Pursuant to Federal Rule of Bankruptcy Procedure 9019.

/s/ Alex F. Mattera  
Alex F. Mattera

Dated: April 20, 2004