

IN THE UNITED STATES BANKRUPTCY COURT RECEIVED-PPSC

FOR THE DISTRICT OF DELAWARE

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

FIRST AMENDED DISCLOSURE STATEMENT FOR THE SECOND AMENDED JOINT PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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SCL

DPC The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia,
VMS 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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## IMPORTANT DATES

- Ballots must be received by July 2, 2004 at 4:00 p.m. eastern time.
- Objections to confirmation of the Plan must be filed by July 2, 2004, and served so that they are received by 4:00 p.m. eastern time on that date.
- The hearing on Confirmation of the Plan will take place beginning at 3:30 p.m. eastern time on July 13, 2004.

**THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERY FOR HOLDERS OF ALLOWED CLAIMS AGAINST THE DEBTORS AND THAT ACCEPTING THE PLAN IS IN THE BEST INTERESTS OF THE HOLDERS OF ALLOWED CLAIMS AGAINST THE DEBTORS. THE DEBTORS THEREFORE RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

**If you hold a Claim in Class 6 of the Plan, you are entitled to vote to accept or reject the Plan, and will have received a Ballot along with this Disclosure Statement. Your Ballot will also contain a box that you may check to opt out of granting an Optional Release in favor of PLC and various related parties. IF YOU OPT OUT OF GRANTING THE OPTIONAL RELEASE, OR IF YOU DO NOT SUBMIT A TIMELY BALLOT AT ALL, YOU WILL NOT GIVE THE OPTIONAL RELEASE AND YOU WILL NOT RECEIVE THE PLC INDIVIDUAL RELEASE CONSIDERATION, WHICH IS IN ADDITION TO YOUR DISTRIBUTION FROM THE DEBTORS' ESTATES ON YOUR CLAIM AND IS EQUAL TO THE DISTRIBUTION THAT YOU WILL RECEIVE ON YOUR CLAIM. IN OTHER WORDS, HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS WHO GRANT THE OPTIONAL RELEASE WILL RECEIVE DOUBLE THE AMOUNT THAT HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS WHO DO NOT GRANT THE OPTIONAL RELEASE WILL RECEIVE. Every Holder of a Claim in Class 6 (other than Claims that are subordinated pursuant to Bankruptcy Code § 510) is eligible to receive this additional consideration by granting the Optional Release, and it does not matter whether such Holder does not believe that it holds any Claims against PLC or any other party being released. The Debtors recommend that you vote in favor of the Plan and that you grant the Optional Release by returning a Ballot and that you not check the box to opt out of the Optional Release. Detailed information regarding the voting procedures is contained in Article V of this Disclosure Statement.**

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**LIST OF EXHIBITS**

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EXHIBIT B	BEST INTERESTS ANALYSIS
EXHIBIT C	CORPORATE STRUCTURE CHART
EXHIBIT D	PLC ENTITIES WITH THIRD PARTY CLAIMS
EXHIBIT E	GLOBAL SETTLEMENT AGREEMENT
EXHIBIT F	WAIVED CAUSES OF ACTION

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## **I. INTRODUCTORY INFORMATION**

### **Why You Are Receiving This Document**

The Bankruptcy Code requires that the party proposing a chapter 11 plan prepare and file with the Bankruptcy Court a document called a “disclosure statement.” This document is the First Amended Disclosure Statement for the Second Amended Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code, which was filed by the Debtors on May 13, 2004 (the “Plan”). The Bankruptcy Code requires a disclosure statement to contain information of a kind, and in sufficient detail, to enable parties who are affected by the Plan to vote intelligently for or against the Plan or object to the Plan, as the case may be. If you hold a Claim in Class 6 under the Plan, you have the right to vote to accept or reject the Plan. Holders of Claims in other Classes are being paid in full, in Cash, on or as soon as practicable after the Effective Date of the Plan, or their rights are not being affected by the Plan, so they are not entitled to vote. The Bankruptcy Court has reviewed this Disclosure Statement, and has determined that it contains adequate information and may be sent to you to solicit your vote on the Plan. Please note that any terms not specifically defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan, which is attached hereto as Exhibit A.

Chapter 11 of the Bankruptcy Code allows a debtor to propose a chapter 11 plan that provides for the continued use or disposition of its assets and treats claims against and interests in the debtor. A chapter 11 plan may provide for a debtor in possession to reorganize by continuing to operate, to liquidate by selling its assets or to implement a combination of both. The Plan in these Chapter 11 Cases is a plan of liquidation, which provides for a distribution of the proceeds resulting from the sale of substantially all of the Debtors’ assets to SAVVIS, Inc., formerly known as SAVVIS Asset Holdings, Inc. (“SAVVIS”) (the “363 Sale”) and of the Debtors’ other remaining assets. The Plan also provides for effecting such distribution on a consolidated basis, as a result of the substantive consolidation of all of the Debtors.

#### **A. EXECUTIVE SUMMARY OF THE DISCLOSURE STATEMENT**

This Disclosure Statement describes the six entities that make up the Debtors and discusses the events leading to the filing of the Debtors’ Chapter 11 Cases (in Article II) and describes the main events that have occurred in the Debtors’ Chapter 11 Cases (in Article III). The Disclosure Statement also summarizes the Plan’s contents and provides information relating to the Plan (in Article IV). The Disclosure Statement describes the chapter 11 voting procedures (in Article V) and the process the Bankruptcy Court will follow in determining whether to confirm the Plan (in Article VI). The Disclosure Statement outlines risk factors associated with the Plan (in Article VII), alternatives to the Plan (in Article VIII) and certain potential federal income tax consequences to Holders of Claims and Interests (in Article IX). Finally, the Disclosure Statement contains certain miscellaneous provisions (in Article X), and the recommendation of the Debtors that you vote to accept the Plan (in Article XI).

The Debtors were leading providers of Internet web hosting and network services throughout the United States. The Debtors created their businesses through a series of acquisitions between 1998 and 2001. The Debtors delivered quality service to their customers, but never achieved profitability owing to a variety of factors. In fact, as a result of the intense

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competition in the telecommunications and Internet market, weakened economic conditions and other factors, by 2003 the Debtors were suffering cash deficits in the range of \$1 million per day.

The Debtors are wholly-owned, indirect subsidiaries of Cable and Wireless plc (“PLC”), a public limited company headquartered in the United Kingdom and with worldwide operations. As a result of the continuing losses, which PLC had been funding, PLC announced in June of 2003 its intention to withdraw from the U.S. domestic market. PLC and the Debtors took steps to separate their businesses, and PLC continued to support the Debtors while the Debtors, through an independent board of directors and independent legal, financial, and restructuring advisors, analyzed their options for restructuring. Detailed information regarding the Debtors’ historical operations is contained in Article II of this Disclosure Statement.

The Debtors determined that a sale of their businesses as a going concern would generate the best return for their creditors, and they commenced an intensive process to market their assets. After an extensive due diligence period with several interested parties, the Debtors negotiated an asset purchase agreement with a “stalking horse bidder” and, accordingly, filed their Chapter 11 Cases to effectuate the sale of their assets to the stalking horse bidder or to a higher bidder who might be found through the chapter 11 sale process.

The Debtors took a number of actions in the Chapter 11 Cases to preserve their businesses through the time period during which a sale could be completed, and to reduce their operating losses during that period. The Debtors also obtained Bankruptcy Court approval to conduct an auction for the sale of their assets as a going concern. The auction was a great success, with seven bidders vying for the assets over a more than 30 hour period. The winning bidder at that auction, SAVVIS, submitted a bid valued at more than three times the amount expected to be generated by the sale to the stalking horse bidder.

The 363 Sale was approved by the Bankruptcy Court, and was consummated on March 5, 2004. The Debtors received total consideration from SAVVIS valued at approximately \$167 million. These funds are sufficient to pay all Secured Claims, Administrative Claims, and Priority Claims, and to pay a distribution to general unsecured creditors. Detailed information regarding the Debtors’ activities in the Chapter 11 Cases, including the 363 Sale, is contained in Article III of this Disclosure Statement.

The Debtors, the committee representing general unsecured creditors (the “Committee”), and PLC have engaged in extensive negotiations regarding the terms of the Plan to, among things, (1) govern the distribution of the proceeds of the 363 Sale and the Debtors’ other assets to creditors, and (2) settle causes of actions the Debtors may have against PLC. Both before and during the period of these negotiations, the Debtors and the Committee conducted an investigation into claims and causes of action the Debtors may have against PLC and/or any of its non-Debtor subsidiaries, as well as defenses that the Debtors may have to Claims that PLC and its non-Debtor subsidiaries have asserted against the Debtors. A summary of these investigations is included in Article III.I.3 of this Disclosure Statement.

These negotiations have resulted in a settlement (the “Global Settlement”) by and among the Debtors, the Committee and PLC. The Global Settlement was documented in a written

agreement dated April 29, 2004 (the "Global Settlement Agreement," which is attached to this Disclosure Statement as *Exhibit E*) and in the Plan.

The Global Settlement is subject to Bankruptcy Court approval to bind the Debtors, and the parties have decided to seek such approval through the Plan. The Global Settlement is multifaceted, but one of its central features is the agreement of PLC and certain related entities as defined in the Plan (the "PLC Group") to accept in satisfaction of their General Unsecured Claims (approximately \$4.9 billion) a payment on the Effective Date of the Plan of \$28.45 million plus a 50% interest in the funds that remain for payment to all General Unsecured Creditors. PLC has also agreed to transfer that 50% interest to other Holders of General Unsecured Claims insofar as those Holders grant the Optional Release described in Article IV of this Disclosure Statement.

The Debtors estimate that Holders of Allowed Claims in Class 6 (other than members of the PLC Group and Holders of subordinated Claims) will receive a distribution of approximately 13.75% on their Claims if they do not grant the Optional Release, and approximately 27.5% if they do. The additional 13.75% recovery is the PLC Individual Release Consideration as defined in the Plan.

The Plan also provides for the substantive consolidation of the Debtors' Estates. This means that all assets of all of the Debtors will be pooled, and will be used to pay the Claims against all of the Debtors. The Debtors will present evidence in support of their request for substantive consolidation at the confirmation hearing. Detailed information regarding the Plan, including the basis for the Debtors' request for substantive consolidation, is contained in Article IV of this Disclosure Statement.

**If you hold a Claim in Class 6 of the Plan, you are entitled to vote to accept or reject the Plan, and will have received a Ballot along with this Disclosure Statement. Your Ballot will also contain a box that you may check to opt out of granting an Optional Release in favor of PLC and various related parties. IF YOU OPT OUT OF GRANTING THE OPTIONAL RELEASE, OR IF YOU DO NOT SUBMIT A TIMELY BALLOT AT ALL, YOU WILL NOT GIVE THE OPTIONAL RELEASE AND YOU WILL NOT RECEIVE THE PLC INDIVIDUAL RELEASE CONSIDERATION, WHICH IS IN ADDITION TO YOUR DISTRIBUTION FROM THE DEBTORS' ESTATES ON YOUR CLAIM AND IS VALUED AT THE SAME AMOUNT OF DISTRIBUTION THAT YOU WILL RECEIVE ON YOUR CLAIM. IN OTHER WORDS, HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS WHO GRANT THE OPTIONAL RELEASE WILL RECEIVE DOUBLE THE AMOUNT THAT HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS WHO CHOOSE NOT TO GRANT THE OPTIONAL RELEASE WILL RECEIVE. Every Holder of an Allowed Claim in Class 6 (other than Claims that are subordinated pursuant to Bankruptcy Code § 510) is eligible to receive this additional consideration by granting the Optional Release, and it does not matter whether such Holder does not believe that it holds any Claims against PLC or any other party being released. The Debtors recommend that you vote in favor of the Plan and that you grant the Optional Release by returning a Ballot and that you not check the box to opt out of the Optional Release. Detailed information regarding the voting procedures is contained in Article V of this Disclosure Statement.**

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The Bankruptcy Code sets forth certain requirements that must be satisfied in order to confirm a chapter 11 plan. Among those requirements is that each creditor who does not accept the plan will receive at least as much under the plan as the creditor would have received in a chapter 7 liquidation. For a number of reasons described in Article VI of this Disclosure Statement and illustrated in *Exhibit B*, the Debtors believe that the Plan satisfies this test and the other requirements for confirmation.

The Debtors believe that the Plan is likely to be confirmed and consummated. As with any chapter 11 plan, however, this result cannot be absolutely assured. Article VII of this Disclosure Statement describes certain “Risk Factors” that creditors should consider in making their decision to vote for or against the Plan.

As discussed above, the Debtors have sold substantially all of their assets and are holding a fund of Cash for distribution to creditors. Therefore, the primary issue resolved by the Plan is how that Cash will be distributed to creditors and how the creditors will share in those distributions. As set forth above, the Plan provides for a distribution generally according to the priorities established under chapter 7 of the Bankruptcy Code, but will distribute more to Holders of General Unsecured Claims (other than the PLC Group) than would likely be available to them in a case under chapter 7. The only realistic alternatives to the Plan are an alternative plan of liquidation or conversion of the cases to chapter 7. In connection with either of these options, the Debtors’ Estates would likely have to engage in litigation with the PLC Group over the claims and defenses resolved by the Global Settlement. As described in Article VIII of this Disclosure Statement, the Debtors believe that their Plan represents the best alternative for creditors.

Article IX of this Disclosure Statement discusses certain federal income tax consequences of the Plan, including consequences to Holders of Claims against the Debtors. This section is not a substitute for your own careful tax planning, but does provide general information that you may find useful.

Article X of this Disclosure Statement describes the effect of the Plan on successors and assigns of certain persons and entities, and reserves certain rights of the Debtors.

Article XI of this Disclosure Statement briefly describes why the Debtors believe that you should vote in favor of the Plan.

All Holders of Claims should carefully review both the Disclosure Statement and the Plan before voting to accept or reject the Plan. Indeed, Holders of Claims should not rely solely on the Disclosure Statement but should also read the Plan. Moreover, the Plan provisions will govern if there are any inconsistencies between the Plan and the Disclosure Statement.



B. RISK FACTORS

Prior to deciding whether and how to vote on the Plan, each Holder of a Claim should consider carefully all of the information in the Disclosure Statement, and, in particular, should carefully consider the Risk Factors described in Article VII of this Disclosure Statement.

C. PERSON TO CONTACT FOR MORE INFORMATION

Any interested party desiring further information about the Plan should contact counsel for the Debtors: Jonathan P. Friedland, Esq., Kirkland & Ellis LLP, 200 East Randolph Street, Chicago, Illinois 60601, or via e-mail at [CWUSA\\_info@kirkland.com](mailto:CWUSA_info@kirkland.com).

D. DISCLAIMER

**THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN UNLESS SO SPECIFIED. IN DECIDING WHETHER TO VOTE TO ACCEPT THE PLAN, HOLDERS OF CLAIMS ENTITLED TO VOTE THEREON MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, BUT NOT LIMITED TO, ANY RISK FACTORS CITED HEREIN. THE CONTENTS OF THE DISCLOSURE STATEMENT MAY NOT BE DEEMED AS PROVIDING ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE. CLAIM AND INTEREST HOLDERS ARE URGED TO CONSULT WITH THEIR OWN ADVISORS WITH RESPECT TO THE DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY.**

**CERTAIN STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THE DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES AND RISKS DESCRIBED HEREIN.**

**THE DISCLOSURE STATEMENT AND THE PLAN ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING THE PLAN. NO REPRESENTATIONS HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT CONCERNING THE DEBTORS OR THE PLAN, EXCEPT AS EXPLICITLY SET FORTH IN THE DISCLOSURE STATEMENT.**

**THE DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN, AND IS NOT INTENDED TO REPLACE CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN. IT IS INTENDED TO AID AND SUPPLEMENT SUCH REVIEW. THE DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE PLAN (WHICH IS INCLUDED AS *EXHIBIT A* TO THE DISCLOSURE STATEMENT). IN THE EVENT OF A CONFLICT BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN WILL GOVERN. ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND TO READ CAREFULLY THE ENTIRE DISCLOSURE STATEMENT BEFORE DECIDING WHETHER TO VOTE TO ACCEPT THE PLAN.**

**THE DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE**

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**COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.**

**EXCEPT WHERE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND MAY NOT HAVE BEEN PREPARED IN ACCORDANCE WITH ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES.**

**ALTHOUGH THE ATTORNEYS, ACCOUNTANTS, ADVISORS AND OTHER PROFESSIONALS EMPLOYED BY THE DEBTORS HAVE ASSISTED IN PREPARING THE DISCLOSURE STATEMENT BASED UPON FACTUAL INFORMATION AND ASSUMPTIONS RESPECTING FINANCIAL, BUSINESS, AND ACCOUNTING DATA FOUND IN THE BOOKS AND RECORDS OF THE DEBTORS, THEY HAVE NOT INDEPENDENTLY VERIFIED SUCH INFORMATION AND MAKE NO REPRESENTATIONS AS TO THE ACCURACY THEREOF. THE ATTORNEYS, ACCOUNTANTS, ADVISORS AND OTHER PROFESSIONALS EMPLOYED BY THE DEBTORS SHALL HAVE NO LIABILITY FOR THE INFORMATION IN THE DISCLOSURE STATEMENT.**

**THE INFORMATION IN THE DISCLOSURE STATEMENT IS BEING PROVIDED SOLELY FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN OR OBJECTING TO CONFIRMATION. NOTHING IN THE DISCLOSURE STATEMENT MAY BE USED BY ANY PERSON FOR ANY OTHER PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE GLOBAL SETTLEMENT IS NOT ADMISSIBLE UNDER FEDERAL RULE OF EVIDENCE 408 AND IS NOT AN ADMISSION OF LIABILITY BY ANY ENTITY.**

**ALL EXHIBITS TO THE DISCLOSURE STATEMENT ARE INCORPORATED INTO AND MADE A PART OF THE DISCLOSURE STATEMENT AS IF SET FORTH IN FULL HEREIN.**

## II. GENERAL INFORMATION

### A. FORMATION OF THE DEBTORS

Cable & Wireless USA, Inc. (“CWUSA”) is the successor to TDX Systems, Inc., a District of Columbia corporation formed in 1975, primarily to provide voice services. Since that time, CWUSA has expanded its business to include web-hosting operations. To that end, CWUSA consummated several substantial acquisitions, beginning with the acquisition of MCI’s Internet business in 1998 (the “MCI Acquisition”), and the acquisitions of the hosting and content distribution company, Digital Island, Inc. in June 2001 (the “Digital Island Acquisition”). Digital Island, Inc. was renamed Cable & Wireless Internet Services, Inc. (“CWIS”). As described below, CWIS (then still known as Digital Island, Inc.) acquired substantially all of the business operations of EXDS, Inc., formerly Exodus Communications, Inc., in February 2002 (the “Exodus Acquisition” and, together with the MCI Acquisition and the Digital Island Acquisition, the “Acquisitions”).

#### (i) The MCI Acquisition

On September 14, 1998, CWUSA acquired the U.S. Internet business of MCI for an estimated price of \$1.750 billion. The business acquired was represented largely by customer lists and related contracts to provide voice and data services and peering arrangements. The assets purchased included an established wholesale customer base of 1,300 Internet service providers and 3,300 retail customers in addition to a web hosting business. The MCI Acquisition and subsequent capital investments gave CWUSA a nationwide backbone network of over 15,800 fiber miles capable of carrying inter-city voice, data and Internet traffic to more than 60 major metropolitan areas across the U.S.

#### (ii) The Digital Island and Exodus Acquisitions

On June 19, 2001, CWUSA acquired a controlling interest in Digital Island, Inc. (now known as CWIS) and on August 31, 2001, completed the 100% acquisition of this provider of managed Internet services to business customers for total consideration of \$334 million excluding cash acquired.

On February 1, 2002, CWIS purchased certain of the operating assets and substantially all of the business operations of EXDS, Inc., formerly Exodus Communications, Inc. and certain of its subsidiaries (the “Exodus Estates”) pursuant to an order authorizing the sale approved by the United States Bankruptcy Court for the District of Delaware on January 22, 2002 in connection with *In re: EXDS Inc. (f/k/a Exodus Communications, Inc.) et al.*, Case #01-10539. Specifically, in connection with the transaction, CWIS purchased the Exodus Estates’ interests in 28 Internet Data Centers (“IDCs”), equipment, intellectual property, accounts receivable, equity ownership interests in certain financing subsidiaries and other assets required to support the business operations. CWIS also acquired the Exodus Estates’ customer relationships including the rights and obligations under contracts assumed and assigned to CWIS by the Exodus Estates. As consideration for the Exodus Acquisition, CWIS paid approximately \$560 million in cash and assumed certain obligations and reimbursed certain expenses of the Exodus Estates subject to post-closing adjustments.



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## B. THE DEBTORS' CORPORATE STRUCTURE

The Debtors are the following entities: CWUSA, CWIS, Cable & Wireless USA of Virginia, Inc. ("CWVA"), Exodus Communications Real Property Managers I, LLC ("Exodus Managers"), Exodus Communications Real Property I, LLC ("Exodus LLC") and Exodus Communications Real Property I, LP ("Exodus LP").<sup>1</sup> Each of the Debtors is an indirect subsidiary of Cable and Wireless plc ("PLC"), a public limited company organized under the laws of England and Wales. For the past year, the Debtors conducted the bulk of their business through CWIS, a Delaware corporation. Prior to that, however, the Debtors' operations were housed in two main operating companies, CWUSA, a Delaware corporation, which operated the network business, and CWIS, a Delaware corporation, which operated the hosting business and held title to a parcel of real property in El Segundo, California.

Cable & Wireless Holdings, Inc. ("CW Holdings") is the parent corporation of CWUSA, and holds certain contracts related to employee obligations of the Debtors, but conducts no business operations. CW Holdings is not a Debtor. CW Holdings' assets include a trust account containing securities valued at \$1.3 million as of March 31, 2004, and intercompany loans receivable from the Debtors of approximately \$1.9 billion. The assets and liabilities of CW Holdings are dealt with in the Global Settlement Agreement and the Plan such that creditors of CW Holdings will be paid in full and the \$1.9 billion in Claims against the Debtors will be waived by CW Holdings.

CWUSA is the parent company of CWIS and of 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 Managers and (ii) CWIS and Exodus Managers are the members of the Debtor Exodus LLC. Exodus LLC held 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 LP. As of the Petition Date, Exodus LP did not maintain any operations or assets.

One domestic subsidiary of CWUSA, Exodus Federal Systems, Inc. ("Exodus Federal") did not commence a case under the Bankruptcy Code. Exodus Federal is an operating subsidiary wholly owned by CWIS. Exodus Federal is party to the General Services Administration schedule, under which CWIS contracts with the government to provide certain government agencies with hosting and related services. Exodus Federal did not file a bankruptcy petition along with the Debtors because the Debtors were concerned that a bankruptcy filing, without prior discussion with the government and without knowledge of who the buyer would be, could disrupt the government contracts to which it was a party.

One foreign subsidiary of CWUSA, C&W America (UK) Ltd., did not commence a case under the Bankruptcy Code. C&W America (UK) Ltd. is a corporation organized under the laws

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<sup>1</sup> A corporate structure chart is attached as *Exhibit C* to this Disclosure Statement.

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of England and Wales and a wholly owned operating subsidiary of CWUSA. C&W America (UK) Ltd. operated an Internet provider network servicing the Debtors' foreign customers and owned certain assets related to this network. The assets and operations of both Exodus Federal and C&W America (UK) Ltd. were included in the 363 Sale.

By an agreement dated October 21, 2003, a subsidiary of PLC agreed, at the request of the Debtors, to purchase certain of CWIS' foreign subsidiaries and to oversee the liquidation of certain others. Pursuant to the agreement, Cable & Wireless DI Holdings Limited purchased five foreign subsidiaries (and one domestic subsidiary) from the Debtors, including DI (Belgium) BVBA, DI B.V. (Netherlands), DI (Sweden) AB, DI (Europe) SA (Switzerland), DI (UK) Limited, and Cable & Wireless a-Services, Inc., a Delaware corporation, for the aggregate consideration of \$1.00. All of the foreign subsidiaries purchased were either insolvent or of little or no value after recognizing the expense of winding down the entities, and most or all of them were inactive. To the extent that value is later discovered or recovered in excess of the costs of winding down those entities, paying or compromising their obligations, and paying their advisors and other expenses, the agreement provides a mechanism by which the Debtors may recover such value. PLC has agreed that the right to recover such value will continue in favor of the Liquidating Trust for a period of one year after the Effective Date.

In addition, the purchaser agreed to use commercially reasonable efforts to oversee the liquidation, dissolution, or insolvency proceedings of certain other foreign subsidiaries, including DI Ireland, DI Hong Kong, and DI Germany. The purchaser is not required to expend more than a de minimis amount to perform its oversight duties, and it may cease such duties upon ten days prior written notice. The agreement was beneficial to the Debtors because it relieved them of the burden of managing the disposal of foreign subsidiaries, which had little or no value to the Debtors.

The Debtors executed another agreement, dated as of October 27, 2003, with Cable & Wireless DI Holdings Limited for the sale of Digital Island France SAS ("DI France") at a price equal to the value of DI France's assets. In exchange for the Debtors' interest in DI France, the purchaser also agreed to indemnify the Debtors for all liabilities relating to such interest up to \$7,000,000 in the aggregate. In addition, the purchaser waived intercompany receivables the Debtors may have owed DI France.

The Debtors' only remaining interest in any foreign entity is in Digital Island Japan KK. Any interest or value in this entity has either been sold to SAVVIS in connection with the 363 Sale or will be contributed to the Liquidating Trust.

### C. THE DEBTORS' DEBT STRUCTURE

As of December 31, 2003, the Debtors' books reflected intercompany loans from PLC and its subsidiaries (other than CW Holdings and its subsidiaries) amounting to approximately \$4.7 billion. As of December 31, 2003, the Debtors had net intercompany loans from CW Holdings and its subsidiaries amounting to approximately \$1.9 billion. The \$4.7 billion of intercompany loans between the Debtors and PLC and its subsidiaries includes amounts loaned under the PLC Credit Agreement as discussed below. The Committee has raised the possibility that these loans were actually equity infusions. The Global Settlement resolves this issue.

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Effective August 1, 2003, CWIS and CWUSA entered into, and CW Holdings, Exodus Managers, Exodus LLC, and Exodus LP, among others, guaranteed, a Credit Agreement with PLC (the “PLC Credit Agreement”), pursuant to which the Debtors could draw an additional \$174 million to fund continuing operations subject to certain terms and conditions. Such borrowings were secured by a first priority security interest in substantially all of the assets of the Debtors and also by the guarantees of the Debtors. The PLC Credit Agreement also incorporated approximately \$74.2 million already loaned by PLC for the June 4, 2003 through July 31, 2003 period on an unsecured basis. As of December 31, 2003, approximately \$51 million in secured debt was outstanding under the PLC Credit Agreement (including accrued and unpaid interest). As of that same date, approximately \$75.4 million of unsecured debt (including accrued and unpaid interest) was also outstanding under the PLC Credit Agreement. The Committee also raised the possibility that certain defenses to these Claims exist, which defenses will be resolved pursuant to the Global Settlement Agreement.

#### D. DESCRIPTION OF THE DEBTORS’ BUSINESS

The Debtors were leading Internet backbone providers, a status commonly referred to as a Tier 1 provider. A backbone is a high capacity network that connects multiple lower capacity networks. Tier 1 providers have the network scale and network traffic to offer customers connectivity to virtually all addresses on the Internet, either directly through their own Internet backbone or through cost-free, high-speed private connections to other Tier 1 Internet backbones. The Debtors’ communication infrastructure included a fiber optic network consisting of:

- 23,000 fiber route miles of cable in the U.S. with metro fiber infrastructure in 16 cities;
- 28 points of presence (“POPs”) in major cities — locations where the Debtors provide Internet access to end users;
- approximately 15 secure, operational world-class IDCs with fiber connections to their network in eight major metropolitan markets across the U.S. providing an estimated 1.2 million square feet in hosting capacity; and
- certain assets in foreign jurisdictions, as described in greater detail in Article II.D(vii) of this Disclosure Statement, below.

Through this network, the Debtors offered comprehensive suites of private line and managed Internet infrastructure services, including the following:

- dedicated data and broadband access services (access services allow customers to connect to the Internet), ranging from basic infrastructure products to higher-value managed services;
- basic Internet web hosting services including colocation services, where a customer retains responsibility for managing its own server;



- managed Internet web hosting services, where a customer's servers are hosted, managed and maintained by the Debtors;
- content distribution services (streaming) including single event, on demand and "Always Live" streaming services; and
- professional services such as design and installation of Internet operations, managed security solutions, security design and architecture, and security advisory and assessment services.

The Debtors were 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. As of the Petition Date, the Debtors provided services representing approximately 12-15% (when measured by revenue) of the competitive hosting market. As of the Petition Date, the Debtors derived approximately two-thirds of their revenues from the hosting services business operations and the remainder from the network business.

(i) Facilities

The Debtors were headquartered in Northern California and maintained primary network and sales operations in Reston, Virginia. The Debtors also maintained other offices and operations in 20 additional states throughout the United States, as well as in the District of Columbia. The Debtors' facilities included the approximately 15 IDCs described above. These latest-generation IDCs provided colocation services in a highly reliable and secure physical environment that kept customers' servers up and running without interruption 24 hours a day, 7 days a week. The Debtors also provided managed hosting services that allowed them to monitor and manage their customers' online operations in a manner that was cost-effective and highly reliable.

The Debtors' network business provided 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 housed the major network nodes that comprised the network, reaching all major markets across the country.

The Debtors leased the majority of their facilities and were party to over 110 non-residential real property leases as of the Petition Date. The Debtors also owned five parcels of real property, four of which were located in Santa Clara, California and one of which was located in El Segundo, California.

(ii) Employees and Labor Matters

As of the Petition Date, the Debtors employed approximately 1,570 employees, about 99% of whom were full-time employees. The average semi-monthly gross payroll for all of the Debtors' employees as of the Petition Date was approximately \$9 million. SAVVIS

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offered employment to a substantial portion of the Debtors' employees at the time of the 363 Sale. At the time of the 363 Sale, approximately one-half of the Debtors' former employees were located in Northern California and Virginia, with the remaining half located in the 20 additional states and the District of Columbia, and a handful of employees located internationally. None of the Debtors' former employees was subject to a collective bargaining agreement. As of April 1, 2004, the Debtors no longer had any employees other than temporary personnel provided by AP Services, LLC, an affiliate of AlixPartners, LLC, restructuring advisors to the Debtors ("AlixPartners").

The Debtors do not maintain or sponsor an employee pension benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The parent of the Debtors, CW Holdings, sponsors such a plan, entitled the Cable & Wireless Holdings, Inc. Retirement Income Plan (the "Pension Plan"). The Pension Plan is "frozen" (i.e., there are no current or future benefits accruing under the plan). The Debtors have no authority to terminate or otherwise amend or modify the Pension Plan, as such authority rests with CW Holdings. Any liabilities resulting from the termination of the Pension Plan would be joint and several liabilities of CW Holdings, the Debtors and any other members of CW Holdings' controlled group, as defined in section 4001(a)(14) of ERISA.

The Pension Benefit Guaranty Corporation ("PBGC") has filed proofs of claim asserting Claims against the Debtors for any unpaid minimum funding contributions, PBGC premiums, and unfunded benefits liabilities that would arise if CW Holdings were to fail to pay minimum funding contributions or PBGC premiums or if the Pension Plan were to be terminated by CW Holdings or the PBGC. All Claims filed by the PBGC are contingent upon events that have not yet occurred. The PBGC estimates that if the Pension Plan were to terminate, the unfunded benefits liability would be \$38,500,700. The PBGC asserts that the Debtors are jointly and severally liable for the Claims of the PBGC, if they arise, along with CW Holdings and any other member of CW Holdings' controlled group. The Debtors expect that the PBGC's claims will be withdrawn.

CW Holdings also offers a Supplemental Executive Retirement Plan ("SERP") to certain high-income employees. The SERP is a non-qualified plan, not falling within the guidelines of ERISA. The SERP is un-funded and, prior to the commencement of these Chapter 11 Cases, benefits were paid out of the Debtors' general funds. There are no assets held in trust by either CW Holdings or by the Debtors for beneficiaries under the SERP. As of the beginning of the last valuation period (for the plan year beginning October 1, 2003), the estimated total obligation for payments under the SERP was \$5.4 million. The program covers 40 prior employees not currently receiving payments and 6 prior employees in active payout.

Under the Global Settlement Agreement and the Plan, PLC will assure (i) continued funding of the Pension Plan, assuming that the PBGC has agreed that it will not terminate the Plan pursuant to sections 4041 or 4042 of ERISA on account of events occurring on or prior to the Effective Date; and (ii) payment of all claims relating to the SERP. In consultation with the Debtors and the Committee, PLC will use its reasonable and diligent efforts to negotiate an agreement with the PBGC embodying PLC's agreement to assure funding of the Pension Plan. The withdrawal (or disallowance) of the PBGC's Claims, to the extent asserted in the Debtors' Chapter 11 Cases, is a condition to the confirmation of the Plan.

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(iii) Customers

As of the Petition Date, the Debtors had over 4,300 domestic and international customers, including such household names as Merrill Lynch, Yahoo, GE, Microsoft, Google and Pearson. The Debtors had been doing business with many of their principal customers for a number of years, and sales to a customer were typically comprised of a number of different products and services. As is typical for their industry, the Debtors entered into contracts with their customers, which outlined the terms and conditions of service. Contracts typically were for a term of one (1) year and were renewed annually.

The Debtors offered certain features to their customers, which were consistent and customary for their industry. Such features and programs included promotional and incentive programs, maintenance contracts and billing credits and deductions. Promotional and incentive programs typically involved the provision of certain complementary services in exchange for a contract of a specific length. The Debtors often purchased annual maintenance contracts for customers who housed significant assets in the Debtors' IDCs. These contracts provided for the general servicing, maintenance and upkeep of the customer's hardware while it was located in the Debtors' facilities. The Debtors routinely issued billing credits and adjustments for payments in excess of the invoiced amount, the correction of erroneous or disputed items, credits to customers that could demonstrate they had experienced an interruption in service, and other miscellaneous items.

(iv) Competition

The major domestic and foreign markets for the services that were provided by the Debtors are highly competitive. Competition was based primarily on price, technology, quality, delivery and overall customer service. The Debtors' global competitors included a large number of other well-established suppliers. Competitors typically varied among each of the Debtors' products and geographic markets.

(v) Contracts

As of the Petition Date, the Debtors were party to certain contractual agreements critical to the delivery of their services and in their ongoing operations. As of the Petition Date, such contracts included over 110 leases and subleases of nonresidential real property, (67 of which have been rejected or are currently included in pending motions to reject since the commencement of the Chapter 11 Cases), contracts for over 14,000 circuits (of which 8,650 circuits have been rejected or are currently included in pending motions to reject since the commencement of the Chapter 11 Cases) and various other contracts including vendor contracts and equipment leases. The leased real properties housed substantially all of the Debtors' business operations, including, without limitation, the Debtors' principal technical and administrative facility in Northern Virginia, nearly all the Debtors' IDCs, colocation facilities, and other various technical support and sales offices located in approximately 20 states. In the 12 months prior to the Petition Date, the Debtors paid approximately \$190 million, in the aggregate, on account of rent and other non-rent expenses under their real property leases. Such leases and contracts formed a material part of the Debtors' operations.

(vi) Regulatory Issues

Certain of the Debtors' former lines of business are regulated by the Federal Communications Commission (the "FCC") and numerous state public utility commissions (the "State Commissions"). Both the FCC and State Commissions had issued licenses, permits or other similar authorizations to the Debtors, which entitled them to provide telecommunications services to the public. The FCC and State Commissions have rules, which require such license holders to obtain prior regulatory approval of a change in control of the company. The Debtors and/or SAVVIS filed appropriate applications and notifications with the FCC and State Commissions where required by law and, at this time, no applications are outstanding.

(vii) Foreign Affairs

The Debtors maintained assets in several of the foreign jurisdictions in which the Debtors conducted business, including England, Japan, and Hong Kong. These assets were comprised of equipment in Hong Kong, and two IDCs in England and Japan, which provided web hosting services, including colocation and managed hosting services to international customers in the affected regions. In order to support these IDCs, the Debtors owned or leased real property, owned office, operational and technical equipment, and employed a nominal number of employees at the IDC locations.

Additionally, shortly before the Petition Date, the Debtors established an internet provider network to support their internet provider customers in Europe. The network was comprised of four nodes, one in each of the United Kingdom, Germany, France and the Netherlands.<sup>2</sup> The Debtors' assets in these countries included owned operational and technical equipment. In relation to the network, the Debtors paid certain lease and other related costs, customs fees, tax obligations and wages for a nominal number of employees.

E. EVENTS PRECEDING AND FACTORS LEADING TO THE CHAPTER 11 CASES

(i) Recent Years

The Debtors pursued an acquisition strategy and invested heavily in the associated build-out of their network to grow their businesses and to attain the market position they held as of the Petition Date and, to an extent, to accommodate the anticipated demand for their products and services. The telecommunications and Internet sectors suffered drastic declines, however, 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

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<sup>2</sup> A node is a hub where fibers for the backbone network branch out to reach the Debtors' customers in metropolitan areas.

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.

The severity of the crisis in the telecommunications industry is exemplified by the significant number of telecommunications companies that have sought bankruptcy protection, a list that is heavily populated 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.

In addition to the effect of weakened telecommunications industry conditions in general, the Debtors had made significant capital expenditures 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.

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, among other things, the termination and sale of the Debtors' unprofitable and non-core voice services business.

#### (ii) The Separation

The Debtors continued to suffer significant negative cash flow, however, and received funding from PLC of approximately \$234 million in cash between January 2003 and May 2003 to provide liquidity to the Debtors and support their business operations. Following the introduction of a new senior management team at PLC in early 2003 and a subsequent review of strategy by that team, PLC determined that it would withdraw from the U.S. domestic market. On June 4, 2003, PLC announced 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.

On September 17, 2003, in accordance with the June 4, 2003 announcement, CW Holdings, 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 July 1, 2003 (the "Separation Agreement"). The Separation Agreement governed the separation of the Debtors' and their U.S.-based affiliates' (the "CWA Parties") operations from PLC's operations. To that end, the Separation Agreement established third-party relationships between the CWA Parties and PLC for certain services to be



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provided to each other, clarified ownership and use of certain assets and maintained the value of the Debtors to facilitate a sale of their businesses. More specifically, the Separation Agreement addressed four key areas of interconnectedness between the CWA Parties' and PLC's businesses, (a) customers, (b) assets, (c) employees and (d) services, as set forth below:

- (a) The Debtors and PLC had common customers. After detailed and complex negotiations, the CWA Parties and PLC allocated customers among themselves, applying objective criteria. Additionally, the parties agreed that, for any customers not specifically addressed in the Separation Agreement, the legal entity that serviced the customer contract pre-petition would service the customer contract post-petition. The Separation Agreement also included a limited agreement of the parties not to compete with respect to certain customer contracts and business activities.
- (b) Certain assets utilized in the CWA Parties' and PLC's respective businesses were owned in common or by entities other than those by which they were being used. Property, plant, equipment, network addresses, software and intellectual property were reviewed and allocated, applying objective criteria, to allow the CWA Parties and PLC to continue their ongoing operations uninterrupted.
- (c) In some cases, employees provided services for multiple entities or were employed by an entity other than that for which they provided services. The Separation Agreement transferred 73 employees from the CWA Parties to PLC and 7 employees from PLC to the CWA Parties, as required for each of their respective ongoing operations. Additionally, PLC agreed to pay for certain of the CWA Parties' employee benefits including (i) the key employee retention program (the "KERP"), (ii) the bonus plan for December 2003 (the "Bonus Plan") and (iii) the Pension Plan to the extent necessary to comply with any obligations PLC may have pursuant to applicable law.
- (d) The Separation Agreement set terms for the provision of services among the various CWA Parties and PLC.

The Global Settlement Agreement resolves certain claims and defenses to claims with respect to the Separation Agreement.

To provide an incentive to the Debtors' key employees, boost employee morale, and prevent a negative impact on the marketing of the Debtors' assets (which ultimately would preserve or increase the value received through such sale), PLC agreed under the Separation Agreement to pay for the KERP and Bonus Plan. To meet these obligations, prior to the Petition Date, PLC pre-funded approximately \$18.9 million into a third-party escrow account, which funds, none of which were assets or property of the Debtors' estates, were held in trust to be used solely for the benefit of the employees eligible to receive payments under the KERP and/or the Bonus Plan in accordance with the terms of those plans. As of April 29, 2004, three claims had been made on the account in accordance with the terms of the escrow agreement: \$362,904 was

transferred on December 30, 2003 for payments under the KERP; \$9,920,000 was transferred on February 24, 2004 for payments under the Bonus Plan; and \$6,677,572 was transferred on March 30, 2004 for remaining payments under the KERP. As of April 29, 2004, all payments under the KERP and the Bonus Plan had been made. The remaining KERP and Bonus Plan funds have been or are to be returned to PLC.

In connection with the Separation Agreement, CWUSA entered into an Asset Purchase Agreement, dated as of September 17, 2003, with Cable & Wireless America Systems, Inc. (the "Apollo Agreement"). Pursuant to the Apollo Agreement, the Debtors exchanged their 21.1% interest in the "Apollo" submarine cable systems and related network, including real property, for certain infeasible rights of use ("IRUs") in fiber optic cable and further consideration as detailed in the Apollo Agreement. The Debtors used the IRUs to carry network traffic over the Apollo undersea cable system, thus providing them with connectivity to Europe for the benefit of their customers.

Also on or about July 1, 2003, the boards of directors of the Debtors (the "Boards") were reconstituted. The new composition of the Boards from that time forward has included two independent directors (Mufit Cinali and Gardner L. Grant, Jr.) and one director who is a representative of PLC, Mike Grant (no relation to Gardner L. Grant, Jr.). Mufit Cinali and Gardner L. Grant, Jr. were selected after interviews with a number of candidates suggested by various sources.

Matters concerning PLC are acted on by a special committee of the Boards, comprised of the two independent directors, before going to the full Board.

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 the PLC Credit Agreement with PLC to fund the Debtors' operations and preserve value in the business while management and the Boards reviewed the Debtors' alternatives. The Debtors engaged AlixPartners as restructuring advisors to assist them in evaluating and implementing strategic and tactical options through the restructuring process. AlixPartners was actively involved in negotiating the PLC Credit Agreement and the Separation Agreement. AlixPartners prepared an analysis of a hypothetical liquidation of the Debtors to assist the Boards in determining the best course of action for the Debtors. The Boards considered all available alternatives, including a stand-alone reorganization.

In connection with the AlixPartners engagement, in November of 2003, John S. Dubel was appointed chief executive officer of CWUSA and CWIS. Mr. Dubel is a principal at AlixPartners and has more than 20 years of experience in turnaround and restructuring services for large and mid-size organizations in a variety of industries such as telecommunications, high tech and manufacturing. Mr. Dubel has previously served as chief restructuring officer for Acterna Corp. and the chief financial officer at WorldCom, Inc.

In October and November of 2003, Eric A. Simonsen was appointed chief financial officer and chief restructuring officer, respectively, of CWIS and CWUSA. Mr. Simonsen, a principal with AlixPartners, has over 35 years of business experience. Mr. Simonsen has led major asset disposals as well as raised significant equity and debt capital. His

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most recent assignment for AlixPartners was as chief financial officer at Genuity, Inc., an Internet hosting and network services company. Prior to that, Mr. Simonsen served as corporate controller at WorldCom, where he was responsible for the company's accounting restatement.

In addition to Mr. Dubel and Mr. Simonsen, AlixPartners has provided other temporary staff to assist the Debtors.

(iii) The Pre-petition Marketing and Sale Process

While the Debtors continued to analyze and consider all of their options, they actively pursued a sale beginning in June 2003. In the weeks following the June 4, 2003 announcement of PLC's intent to exit from its domestic web-hosting and Internet connectivity operations in the U.S. domestic market, PLC and its financial advisors, Greenhill & Co., LLC ("Greenhill") began the process of identifying potential purchasers of the Debtors' assets. On or about July 1, 2003, the Debtors retained their own investment bankers, The Blackstone Group ("Blackstone"), to analyze and advise them with respect to strategic alternatives 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 the Debtors' management, the investment bankers assembled a comprehensive information package to be used for marketing purposes.

The Debtors and their professionals, with the assistance of Greenhill, initially identified and then sent confidentiality agreements to more than 90 entities that had expressed an interest in acquiring the assets of the Debtors. Approximately two-thirds of the parties that were initially contacted regarding such a transaction executed confidentiality agreements. Upon delivery of an executed confidentiality agreement, the potential buyers were sent the information package, which provided additional detail regarding the Debtors' financial and business operations, including information regarding customers, product lines, strategies, historical and projected financial performance,<sup>3</sup> employees, real estate, various sales and marketing information, and overall company histories. Twenty-seven potential buyers submitted preliminary letters of interest expressing their interest in acquiring the assets of the Debtors and providing an initial value range for either individual businesses (i.e., the web hosting business or the network business) or the businesses 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.

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,

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<sup>3</sup> The financial information provided was presented on a pro forma basis to enable prospective buyers to evaluate the business on a stand-alone basis.

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operational and strategic information for review by the First Round Bidders. To further facilitate the due diligence efforts, the Debtors arranged for 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 presentations, followed by a question and answer session. First Round Bidders were also given the opportunity to tour one of the Debtors' IDCs in Santa Clara, California. 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.

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 Debtors' assets 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.

Immediately prior to the filing of these Chapter 11 Cases, and after prolonged and arms-length negotiations, the Debtors and Gores Asset Holdings, Inc. ("Gores") executed an asset purchase agreement (the "Gores APA"). Based on the value of the bid and the negotiated Gores APA, the Debtors, along with their professionals, determined, in their business judgment, that the offer from Gores was the highest and best offer for the Debtors' businesses as a whole at that time. Specifically, Gores offered a higher overall economic value, as well as the ability to consummate a deal quickly without financing contingencies and with minimal due diligence contingencies.

Under the terms of the Gores APA, approval of which was the subject of the Sale Motion (as defined in Article III.C of this Disclosure Statement, below) filed with the Bankruptcy Court on December 10, 2003, Gores offered to 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 transfer taxes), and \$75 million in a senior secured increasing rate note, as well as the assumption of specified pre-closing liabilities. The proposed purchase price was to be reduced if the Debtors did not achieve certain business performance targets, but the minimum consideration was to be \$50 million, plus the agreed payments of certain cure expenses and transfer taxes.

The Gores APA further required that the Debtors' assets be sold free and clear of liens and interests pursuant to Bankruptcy Code § 363. The Debtors commenced these Chapter 11 Cases to consummate the 363 Sale and thus protect the businesses of the Debtors and maximize value for all of their constituents. The Debtors sought an expedited sale process because the Debtors continued to require significant additional cash resources to fund their daily business operations. Furthermore, the value of the Debtors' businesses was 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.

(iv) Operating Losses

For the nine months ended December 31, 2003, the Debtors generated revenues of approximately \$428 million and had aggregate operating losses of approximately \$230 million. The losses included restructuring charges of approximately \$107 million for, among other things, payments made to severed employees, provisions recorded for contractual commitments that were no longer expected to benefit ongoing operations, and impairment of long lived assets. Net loss for the nine months ended December 31, 2003 was approximately \$209 million. This included intercompany interest charges of approximately \$108 million and credits of approximately \$122 million in reorganization benefit recognized after the Petition Date because of the benefits of the caps on lease termination liabilities under Bankruptcy Code § 502(b)(6).

F. THE CHAPTER 11 FILINGS AND RESTRUCTURING GOALS

The Debtors sought to maximize the recovery of all creditors by consummating a sale which provided consideration for the going-concern value of their businesses. To that end, the Debtors executed the Gores APA and conducted an auction process within the Chapter 11 Cases, ultimately selling substantially all of their assets to SAVVIS. The Debtors will, through the Plan, establish a Liquidating Trust to distribute the proceeds of the 363 Sale and proceeds of other property of the Estates in accordance with the terms of the Plan.

III. THE CHAPTER 11 CASES

On December 8, 2003 (the "Petition Date") the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. On the Petition Date, the automatic stay provisions of Bankruptcy Code § 362 stayed all actions and proceedings against the Debtors and all acts to obtain property from the Debtors. The Debtors continue to manage their financial affairs as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

A. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself, its creditors and its interest holders. Another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated interest holders in the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that comprises all of a debtor's legal and equitable interests as of the filing date. The Bankruptcy Code provides that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

Consummating a chapter 11 plan is the principal objective of a chapter 11 case. A chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a chapter 11 plan by the Bankruptcy Court makes the plan binding upon the debtor, any issuer of securities under the plan, any person or entity acquiring property under the plan and any creditor of or equity holder in the debtor, whether or not that creditor or equity

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holder (a) is impaired under or has accepted the plan or (b) receives or retains any property under the plan.

A chapter 11 plan may specify that certain classes of claims or interests are either to be paid in full upon the effective date of the plan or are to remain unaffected by the plan. These classes are referred to as “unimpaired” classes and, because of this favorable treatment, are conclusively presumed to accept the plan. Accordingly, it is not necessary to solicit votes from the holders of claims or interests in the unimpaired classes. A chapter 11 plan also may specify that certain classes will not receive any distribution of property or retain any claim against a debtor. Such classes are deemed not to accept the plan and, therefore, need not be solicited to vote to accept or reject the plan. Any class that is receiving a distribution of property under the plan but is not “unimpaired” will be solicited to vote to accept or reject the plan.

#### B. USE OF CASH COLLATERAL AND DEBTOR IN POSSESSION FINANCING

To finance the Debtors’ operations through the chapter 11 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”) and entered into a Revolving Credit and Guaranty Agreement, dated as of December 8, 2003, among the Debtors as borrowers, JPMorgan Chase Bank as administrative agent and collateral agent (the “Agent”), and PLC and the other lenders from time to time party thereto as lenders (the “DIP Lender”) (such agreement and the other loan documents executed in connection therewith, collectively, the “DIP Credit Agreement”). On the Petition Date, the Debtors filed a motion requesting authority to enter into the DIP Facility, and utilize cash collateral and borrow funds on an interim and final basis. The Bankruptcy Court approved the DIP Facility on January 16, 2004, following agreement among the Debtors, PLC and the Committee on certain modifications thereto. The DIP Facility was secured by substantially all of the Debtors’ tangible and intangible property (including, without limitation, accounts receivable, inventory, patents, copyrights, trademarks, tradenames and all other intellectual property, and the capital stock of all direct subsidiaries). Advances under the DIP Facility could have been used by the Debtors to pay post-petition operating expenses, certain pre-petition claims as approved by the Court, and other items necessary to the successful sale and wind-down of the Debtors’ businesses.

PLC agreed to extend credit to the Debtors on the terms set forth in the DIP Facility, including agreeing not to charge the Debtors certain fees in connection therewith. The availability of the DIP Facility helped stabilize the Debtors’ business operations and preserve the value of the Debtors’ estates by reassuring customers and vendors that the Debtors had the funding necessary to remain in operation through the consummation of the 363 Sale and repay trade credit extended post-petition. As a result, the Debtors enjoyed better than expected trade credit availability, with the result that, together with the Debtors’ cash on hand at the Petition Date and the cash funding provided under the SAVVIS APA (as defined in the following



section), no amounts were borrowed under the DIP Facility. On March 19, 2004, the Debtors terminated the DIP Facility in accordance with section 2.07 of the agreement.<sup>4</sup>

### C. THE BIDDING PROCEDURES MOTION AND SALE MOTION

As previously discussed, the Debtors' businesses were extensively marketed over the 6 months preceding the Petition Date, with more than 90 potentially interested parties contacted and 61 potential bidders executing confidentiality agreements and receiving a comprehensive detailed offering memorandum. An expeditious sale of the Debtors' assets was necessary because the Debtors continued to require significant additional cash resources to fund their daily business operations. Furthermore, the value of the Debtors' businesses was dependent upon maintaining important customer relationships and ensuring the seamless delivery of hosting and networking services to their customers pending the consummation of the proposed sale. Thus, the Debtors believed that an expeditious sale was the best way to preserve the value of the business and maximize recoveries of creditors in these Chapter 11 Cases.

To facilitate their sale efforts, immediately following the Petition Date, on December 10, 2003, the Debtors filed the following two motions relating to the sale of substantially all of their assets: (i) "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" (the "Sale Motion"); and (ii) "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").

Pursuant to the Bidding Procedures Motion, the Debtors requested the Bankruptcy Court to, among other things, approve bidding procedures and overbid protections (including a break-up fee, a termination fee and an expense reimbursement to be paid to Gores under certain specified circumstances in the event that Gores was not the ultimate purchaser), set a hearing date on the Sale Motion, and approve procedures for determining cure amounts in connection with the proposed assumption and assignment of certain executory contracts and unexpired leases. Four parties -- the Committee, the United States Trustee, the PBGC and Leucadia National Corporation -- filed objections to the proposed Bidding Procedures Motion. On December 22, 2003, the Bankruptcy Court held a hearing on, and ultimately approved the relief requested in, the Bidding Procedures Motion, as modified to reflect an agreement reached among the Debtors, PLC and the Committee.

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<sup>4</sup> PLC's agreement to provide the DIP Facility, and to do so without charging certain fees, constitute additional consideration for the release from the Estates, which is described in Article IV.B.(ii) of this Disclosure Statement.

In accordance with the Bidding Procedures Motion, the Debtors conducted an auction commencing on January 21, 2004 at the offices of Blackstone in New York, New York. As set forth in the Bidding Procedures Motion, seven qualified bidders (including Gores) participated in the auction. At the conclusion of the auction -- which lasted for more than 30 consecutive hours -- the Debtors, along with their professionals, determined, in their business judgment, that the offer from SAVVIS, which included, among other things, a cash purchase price of \$155 million (three times the minimum consideration contemplated by the Gores APA) and other consideration estimated at the time to be worth approximately \$12 million (in the form of the assumption of certain liabilities by SAVVIS and the payment of certain expenses), was the best and highest offer for the Debtors' assets. The Debtors and SAVVIS subsequently executed an asset purchase agreement (the "SAVVIS APA"), subject to Bankruptcy Court approval.

Pursuant to the Sale Motion, the Debtors sought an order of the Bankruptcy Court, approving the SAVVIS APA, and authorizing, among other things, the sale of substantially all of the Debtors' assets to SAVVIS free and clear of certain liens, claims, encumbrances, and other interests, and the assumption and assignment to SAVVIS of certain executory contracts and unexpired leases. In connection with the Sale Motion, over 70 formal objections and supplemental objections were filed with the Court, and additional informal objections were raised by parties, relating to the proposed asset sale to SAVVIS, the proposed assumption and assignment of contracts and leases under the SAVVIS APA, and/or the proposed cure amounts relating to such assumption and assignment. The Court entered an order (the "Sale Order") approving the SAVVIS APA and the 363 Sale to SAVVIS at a hearing held in Phoenix, Arizona on January 23, 2004 (the "Sale Hearing").

Pursuant to paragraph 16 of the Sale Order, certain parties that filed objections to the Sale Motion or were identified on the record at the Sale Hearing were deemed to reserve all rights with respect to such objections. The objections were continued to later omnibus hearing dates. Most of the objections were resolved by mutual consent of all applicable parties, and other objections -- which the Debtors believe are less than 20 in total as of the date hereof -- have been continued to the next applicable omnibus hearing date to enable such objecting parties, the Debtors and SAVVIS an opportunity to further investigate and negotiate an amicable resolution.

Pursuant to the SAVVIS APA, on January 28, 2004, SAVVIS began funding the Debtors' operations, which resulted in net contributions by SAVVIS on account of the Debtors' business operations of approximately \$15 million for the period of January 28, 2004 through March 4, 2004. The first stage of the closing, which involved, among other things, the deposit of the \$155 million cash purchase price into an escrow account and the effective date of the management of the Debtors' assets by SAVVIS, was completed on February 13, 2004. The 363 Sale was finally consummated, including the release from escrow of the \$155 million cash purchase price to the Debtors, on March 5, 2004. Notwithstanding the March 5, 2004 closing date, the Debtors and SAVVIS are continuing to effectuate a smooth transition of the business operations to SAVVIS, including the final transition of contracts that will be assumed and assigned to SAVVIS under the SAVVIS APA (which determination was made by SAVVIS on March 21, 2004 in accordance with the SAVVIS APA) and the rejection of contracts that will not be assumed and assigned, as well as the transition of assets and operations from discontinuing locations (which transition is expected to be completed under the SAVVIS APA by June 30, 2004).



D. SUMMARY OF OTHER SIGNIFICANT MOTIONS

1. Motion of the Debtors For An Order (I) Authorizing Them To: (A) Continue To Use Their Existing Cash Management System And Bank Accounts; (B) Provide Administrative Priority Status To Post-petition Intercompany Claims; and (C) Continue To Use Existing Checks And Business Forms; And (II) Approving a Limited waiver of Bankruptcy Code § 345(b) Deposit and Investment Requirements.

In order to preserve business as usual and avoid the unnecessary distractions that inevitably would be associated with any substantial disruption of the Debtors' centralized cash management system and existing bank accounts and to facilitate the Debtors' stabilization of their post-petition business operations, the Debtors requested authority to continue using their pre-petition cash management system, business forms and bank accounts. The Debtors also requested, in order to ensure each individual Debtor would not, at the expense of its creditors, fund the operations of another entity, that all intercompany claims against a Debtor by another Debtor or a non-debtor affiliate arising after the Petition Date as a result of ordinary course intercompany transactions through the cash management system be accorded administrative priority expense status. The Debtors also requested a limited waiver of Bankruptcy Code § 345(b) as it applied to the Debtors' cash management system so that the Debtors could continue to use their existing cash management system, including the existing overnight sweep investment features. The relief requested in the motion was granted on an interim basis by the Court on December 10, 2003. The Committee raised certain concerns regarding the cash management system, and the parties were able to arrive at an agreement that implemented enhanced controls and reporting requirements. The Bankruptcy Court entered a supplemental order on January 16, 2004, approving the Debtors' motion with respect to the requested limited waiver of Bankruptcy Code § 345. This relief minimized the disruption and expenses incurred in the Chapter 11 Cases and preserved the Debtors' going-concern value.

2. Motion Of The Debtors For An Order: (I) Authorizing The Debtors To Pay Certain Pre-petition Employee Obligations And To Continue Employee Benefit Plans And Programs Post-petition; (II) Authorizing Banks To Honor Checks For Payment Of The Foregoing; And (III) Granting Related Relief.

The Debtors believed that their employees were a valuable asset and that any delay in paying pre-petition or post-petition compensation or benefits to their employees would destroy the Debtors' relationship with their employees and irreparably harm employee morale at a time when the dedication, confidence and cooperation of Debtors' employees were most critical. As such, the Debtors filed a motion requesting the authority to continue all employee benefit plans and programs in the ordinary course of business, and requesting that applicable banks be authorized to honor any pre-petition outstanding checks related to the foregoing. On December 10, 2003, the Court granted the relief sought by the Debtors in the motion, with the exception that the Court gave the Debtors authority to pay only up to \$2 million in severance obligations, subject to any increase approved by the Court at the omnibus hearing scheduled for January 16, 2004. The Court entered a supplemental order on January 16, 2004, increasing the amount the Debtors were authorized to pay employees in severance obligations up to \$8.5

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million. The Debtors have paid approximately \$6.5 million in severance through April 30, 2004, and do not expect any further payments to be significant.

3. Motion of the Debtors For An Order (A) Prohibiting Utility Providers From Altering, Refusing Or Discontinuing Service, (B) Deeming Utilities Adequately Assured of Future Performance, And (C) Establishing Procedures For Determining Adequate Assurance Of Payment.

On December 8, 2003, the Debtors filed a motion requesting an order (a) prohibiting the Debtors' utility providers from altering, refusing, or discontinuing service to the Debtors, (b) finding adequate assurance of payment of future utility service, and (c) establishing procedures for determining requests for additional adequate assurance of payment for future utility services. On December 10, 2003, the Bankruptcy Court entered a bridge order prohibiting the Debtors utility providers from altering, refusing, or discontinuing service to the Debtors until the next scheduled hearing on January 16, 2004, at which time the Bankruptcy Court would consider the relief requested in the motion. On January 16, 2004, the Court entered an order granting the relief requested in the Debtors' motion.

4. Motion Of The Debtors For An Order: (I) Authorizing The Debtors To Pay Pre-petition Sales Taxes And Regulatory Fees And (II) Authorizing Banks And Service Providers To Honor And Process Checks And Transfers Related Thereto.

The Debtors requested an order granting the Debtors the authority to pay certain outstanding pre-petition taxes and other regulatory fees. This relief was necessary to avoid disruption to the Debtors' operations that could result from the non-payment of such taxes and fees, including the adverse morale and disruption that could result from liability imposed on the Debtors' directors and officers. The order entered by the Court permitted the Debtors to pay outstanding pre-petition amounts owing to taxing and regulatory authorities up to an aggregate amount of \$1.3 million. To date, the Debtors have paid a total of \$0.5 million under this authority.

5. Motion Of The Debtors For An Order Authorizing The Debtors To Continue Their Insurance Policies And To Pay Certain Pre-petition Obligations Relating Thereto.

The Debtors filed a motion requesting an order authorizing them to maintain and renew their existing insurance policies, pay any outstanding pre-petition amounts, reimburse third parties in connection with deductibles or pre-petition occurrences, pay any retrospective adjustments, and obtain and pay for any new insurance policies as necessary. The motion was granted on December 10, 2003, and the order permitted the Debtors to continue to take advantage of policies entered into pre-petition, which were expected to have lower premiums than new, equivalent policies that the Debtors would have been forced to obtain.

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6. Motions Of The Debtors Establishing Procedures related to the Rejection Of Executory Contracts And Unexpired Leases Of Nonresidential Real Property.

On January 16, 2004, the Bankruptcy Court entered an order establishing procedures governing the rejection of executory contracts and unexpired leases. This relief helped facilitate the efficient administration of these Chapter 11 Cases.

On April 7, 2004, the Bankruptcy Court approved and established procedures requested by the Debtors related to security deposits held by counterparties to rejected leases.

On March 11, 2004, the Bankruptcy Court approved an extension to June 30, 2004, of the deadline under Bankruptcy Code § 365(d)(4) which requires that a debtor in possession reject, assume or assume and assign all nonresidential real property leases within sixty days of the commencement of a voluntary chapter 11 case.

7. Motions Of The Debtors For An Order Authorizing The Rejection Of Certain Unexpired Nonresidential Real Property Leases And The Abandonment Of Related Personal Property.

Since the Petition Date, the Debtors have filed seven motions to reject approximately 67 unexpired leases of nonresidential real property, together with related subleases (collectively, the "Rejected Leases"), and to abandon certain personal property and equipment located at certain of those locations that was of de minimis value. Each of the Rejected Leases related to properties that the Debtors vacated and in some cases, such properties were vacated for more than a year. By rejecting the Rejected Leases, the Debtors sought to save approximately \$3.5 million a month -- or over \$116,000 per day (including any offsetting income from the subleases) -- in administrative costs associated with the continued occupancy of the premises subject to the leases.

In addition, the property that the Debtors sought to abandon pursuant to the motions consisted primarily of office furniture (such as desks, chairs, cages and dividers) and obsolete or excess telecommunications equipment (such as mechanical, electrical and plumbing equipment, phone systems, security cameras and scanners) that were (a) of no value or benefit to the Debtors' estates, and/or (b) burdensome insofar as the costs of removal and storage of such property were likely to exceed the net proceeds realizable from the sale of such property.

To date, the Bankruptcy Court has entered six orders approving the rejection of the Rejected Leases and abandonment of certain property and equipment, subject to notice and an opportunity for interested parties to submit objections to all or part of the relief granted.

8. Motion Of The Debtors For An Order Authorizing The Debtors To Honor Pre-petition Obligations To Foreign Vendors, Service Providers And Governments.

The Debtors requested an order authorizing them to honor pre-petition obligations to certain foreign entities. On December 10, 2003, the Bankruptcy Court entered an order approving the Debtors' motion, allowing the Debtors to honor any pre-petition amounts outstanding to foreign entities up to an aggregate amount of \$2.12 million. The relief helped the Debtors maintain crucial relationships with foreign vendors and service providers, ensured

continuity in the Debtors' foreign operations and preserved the Debtors' foreign assets. To date, the Debtors have paid less than \$50,000 under this authority.

9. Motion For An Order Authorizing The Debtors To Honor Certain Pre-petition Obligations To Customers And To Otherwise Continue In The Ordinary Course Of Business Customer Programs And Practices.

The Debtors requested an order authorizing the Debtors to perform obligations and to pay certain Claims arising under their customer service programs. The order of the Court granting the motion on December 10, 2003, allowed the Debtors to continue to honor their pre-petition customer programs and to make cash disbursements on account of any pre-petition customer programs up to an aggregate amount of \$1 million. This relief enabled the Debtors to maintain their current promotions, incentive programs, and billing credit procedures during the pendency of the Chapter 11 Cases.

10. Motion of the Debtors Pursuant to 11 U.S.C. §§ 105 and 363 For An Order Authorizing the Continued Use of Binswanger Advisory Services, Inc. as Facilities Managers to the Debtors on a Post-Petition Basis.

The Debtors filed a motion requesting authorization to continue to use Binswanger Advisory Services, Inc. as facilities managers throughout the pendency of these Chapter 11 Cases. On January 16, 2004, the Bankruptcy Court entered an order, allowing the Debtors to continue to pay Binswanger for its services under its services agreement. The relief requested allowed Binswanger to continue to provide crucial temporary personnel to assist the Debtors in the management of their facilities, project construction, bill reconciliation and payment, and additional services.

11. Professional Retention Applications and Interim Compensation Procedures Motion

The Debtors also filed applications to retain certain professionals (the "Professionals") to represent and assist them in the Chapter 11 Cases along with a motion establishing interim compensation procedures for these Professionals. By a motion filed on December 8, 2003, the Debtors requested entry of an order establishing procedures for interim compensation and reimbursement of expenses on a monthly basis for certain of the above-listed professionals, once retained. On January 16, 2004, the Bankruptcy Court entered an order approving the Interim Compensation Procedures Motion. Many of the Professionals have been intimately involved with negotiating and developing the Plan, and all of these Professionals have continued to provide vital services throughout the duration of the Chapter 11 Cases. On January 16, 2004, the Bankruptcy Court entered orders authorizing the retention of, (a) Kirkland & Ellis LLP and Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C. as co-counsel for the Debtors, (b) Bankruptcy Services, LLC as notice, claims and solicitation agent for Debtors, (c) The Blackstone Group, L.P. as investment bankers to the Debtors, (d) AP Services, LLC as crisis managers to the Debtors, (e) Keen Realty, LLC as special real estate consultant to the Debtors, (f) Kelly Drye & Warren LLP as special regulatory counsel to the Debtors, and (g) Sitrick and Company, Inc. as corporate communications consultants to the Debtors. On March 11, 2004, the Bankruptcy Court entered orders approving the retention of Kekst and Company, Incorporated as

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public relations and corporate communications consultants to the Debtors (replacing Sitrick and Company, Inc. in this role) and PriceWaterhouseCoopers LLP as Tax Compliance and Advisory Consultants to the Debtors. PriceWaterhouseCoopers LLP and the Debtors have since agreed to terminate its agreement for such services.

12. Motion of the Debtors For An Order Authorizing And Approving Procedures For The Sale Or Abandonment of the Debtors' De Minimis Assets.

By motion filed on December 8, 2003, the Debtors requested an order authorizing and approving uniform procedures for the sale and abandonment of certain of the Debtors' de minimis assets during the pendency of the Chapter 11 Cases. On January 16, 2004, the Bankruptcy Court entered an order granting the relief requested in the Debtors' motion. The Debtors file reports on a monthly basis with the Bankruptcy Court reporting asset sales under this authority and are timely in such filings. Through March 5, 2004, proceeds from the sales of assets under this authority amounted to \$105,003.

13. Motion of the Debtors For An Order Authorizing The Debtors To Retain, Employ And Compensate Certain Professionals Utilized By The Debtors In The Ordinary Course of Business.

By motion filed on December 8, 2003, the Debtors requested entry of an order authorizing them to retain, employ and compensate certain professionals utilized by the Debtors in the ordinary course of business during the pendency of the Chapter 11 Cases in an amount not to exceed \$40,000 per month per professional and \$620,000 in the aggregate for all payments to the ordinary course professionals in any given month. The Court approved the Debtors' motion on January 16, 2004. The Debtors are required to file quarterly reports with the Bankruptcy Court describing the compensation paid to the professionals employed under this authority, and all such reports have been filed in a timely manner.

14. Motion for Entry of an Order Directing Joint Administration of Related Chapter 11 Cases.

On the Petition Date, the Debtors filed a motion seeking joint administration of these Chapter 11 Cases and the consolidation thereof for procedural purposes only, which relief was granted by the Bankruptcy Court on December 10, 2003.

15. Motion of the Debtors for an Order Authorizing Rejection of Certain Executory Contracts.

Since the Petition Date, the Debtors have filed eight motions to reject: (i) Service Order contracts pursuant to which the Debtors leased over 6,400 inactive and unprofitable circuits and excess circuits (i.e., capacity through which no customer data flowed and for which there was no anticipated use), thereby saving the estates in excess of \$3.4 million per month in administrative expenses; (ii) Service Order contracts pursuant to which the Debtors leased, but effectively terminated, approximately 2,250 inactive and unprofitable circuits and excess circuits to ensure that the Debtors no longer accrued over \$1.7 million in recurring monthly charges in the event that it was ever determined that such contracts were in full force and effect; and (iii) 130 other contracts with third parties, pursuant to which the Debtors paid approximately \$600,000 per

month. The Bankruptcy Court entered multiple orders approving the rejection of many of these contracts and leases, subject to notice and an opportunity for interested parties to submit objections to all or part of the relief granted, and three motions are pending.

16. Motion of the Debtors For An Order Fixing A Time Within Which To File A Disclosure Statement Pursuant To Federal Rule Of Bankruptcy Procedure 3016(b)

The Debtors filed their Plan along with their bankruptcy petitions on December 8, 2003. By motion filed on the same date, the Debtors requested entry of an order authorizing them to file their Disclosure Statement by December 22, 2003. By order dated December 10, 2003, the Court granted the motion. The Debtors' original Disclosure Statement was filed on December 22, 2003, and the Debtors also filed their First Amended Plan on the same date. The Debtors filed their Second Amended Plan and an accompanying Disclosure Statement on May 3, 2004. This First Amended Disclosure Statement amends and supersedes the Disclosure Statement dated May 3, 2004.

The Debtors have complied with their reporting requirements pursuant to guidelines promulgated by the Office of the United States Trustee by filing their monthly operating reports on a timely basis.

E. APPOINTMENT OF THE CREDITORS' COMMITTEE

The Office of the United States Trustee appointed an official unsecured creditors' committee (the "Committee") on December 18, 2003. The initial members of the Committee were chosen from the Debtors' largest unsecured creditors, and included SBC Telecommunications, Inc. as agent for Pacific Bell, Southwestern Bell, etc.; AboveNet Communications, Inc.; Nortel Networks, Inc.; MA-Wyman Street; Alcatel USA; L&B Tysons Commerce Center, Inc.; and Vanderbilt Holdings, LLC. The Committee retained Winston & Strawn, LLP and Young, Conway, Stargatt & Taylor as its legal counsel, and Chanin & Co. as its financial advisors to assist it in representing the interests of unsecured creditors in the Chapter 11 Cases. On February 19, 2004, the Bankruptcy Court entered orders authorizing the retention of such professionals. The Debtors have consulted and continue to consult with the Committee and its professionals concerning the Plan and the administration of the Chapter 11 Cases.

F. LITIGATION AND THE AUTOMATIC STAY

The nature and scope of the Debtors' business operations are such that they are frequently involved in litigation. The automatic stay imposed by Bankruptcy Code § 362(a) enjoins all or almost all litigation against the Debtors unless and until the stay is lifted as to a particular piece of litigation by the Bankruptcy Court. Most or all of the claims asserted in litigation brought against the Debtors will, when the litigation is resolved, be treated as General Unsecured Claims under the Plan.

G. CLAIMS PROCESS AND CLAIMS BAR DATES

In chapter 11, claims against a debtor are established either as a result of being listed in a debtor's schedules (as other than disputed contingent or unliquidated) or through assertion by a creditor in a timely filed proof of claim. Claims asserted by creditors are either allowed or



disallowed. If allowed, a claim will be recognized and treated pursuant to the plan. If disallowed, a creditor will have no right to obtain any recovery on or otherwise enforce the claim.

(i) Filing of Schedules of Liabilities

The Debtors filed their Schedules with the Bankruptcy Court on December 23, 2003. Pursuant to Bankruptcy Code § 1111(a), a proof of claim is deemed filed under Bankruptcy Code § 501 if that Claim is included in the Schedules filed under Bankruptcy Code §§ 521 or 1106(a)(2) and is deemed filed in the amount listed on the Schedules (except if the Claim is scheduled as disputed, contingent or unliquidated, in which case the scheduling of the Claim does not establish a valid Claim). When a Claim is scheduled as disputed, contingent or unliquidated, the Claim must be asserted by the Holder on or before the Bar Date by timely filing a proof of claim. If a proof of claim is not filed in a timely manner on or before the applicable Bar Date, the Claim shall be deemed to be barred and/or otherwise disallowed.

Pursuant to the Plan, the Debtors reserve the right to amend their Schedules during the Chapter 11 Cases. The Debtors will notify Holders of Claims of amendments to the Schedules that affect such Holders.

(ii) Bar Date for Nongovernmental Entities to File Proofs of Claim

On or about January 8, 2004, the Bankruptcy Court entered an Order (the "Bar Date Order") which, among other things, established February 11, 2004, as the Bar Date for all non-governmental entities holding Claims against the Debtors (other than Claims arising from the rejection of executory contracts and unexpired leases, Claims held by CW Holdings or any direct or indirect subsidiaries of the Debtors, and other Claims specified in the Bar Date Order), approved the form and manner of notice to be provided with respect to the Bar Date, and directed the Debtors to mail and publish notices of the Bar Date within 5 days after the entry of the Bar Date Order.

Prior to January 12, 2004, the Debtors mailed (a) the Bar Date notice approved by the Bankruptcy Court, (b) an exhibit customized for each recipient to reflect the Claim(s), if any, scheduled by the Debtors, including which Debtor the Claim(s) is/are scheduled against, the amount scheduled and status as secured, priority, unsecured, contingent, unliquidated and/or disputed, and (c) one blank proof of claim form. In addition, the Debtors published notice of the Bar Date in The Wall Street Journal (National Edition), The Washington Post, and the San Francisco Chronicle on January 14, 2004.

As of March 31, 2004, approximately 1,270 parties had filed approximately 1,806 proofs of claim asserting Claims against the Debtors. These proofs of claim, together with the approximately \$1.9 billion of claims held by CW Holdings total more than \$7 billion. The proofs of claim include 43 filed by PLC and its subsidiaries and affiliates totaling \$4.9 billion. The Debtors believe the aggregate amount of Claims against the Debtors that ultimately will be allowed is significantly less than the amounts asserted in the proofs of claim filed in these Chapter 11 Cases. The Debtors have commenced a detailed review of the Claims and have begun the process of preparing objections to certain Claims. To that end, the Debtors have filed

two non-substantive objections to Claims, the first of which is the subject of an order entered by the Bankruptcy Court on April 8, 2004.

(iii) Bar Date for Governmental Units To File Proofs of Claim

The Bankruptcy Court also set a claims Bar Date of June 7, 2004 for all governmental entities holding Claims against the Debtors. If Holders of Claims that are governmental entities do not file their proofs of claim by the Bar Date, and they are not listed in a Debtor's Schedules, as holding a liquidated, undisputed, non-contingent Claim, they will be barred from asserting any Claims against the Debtors or the Liquidating Trust or receiving any distribution under the Plan.

(iv) Deadline for Filing Administrative Claims of Non-Professionals

Except as may be otherwise expressly provided in the Plan, requests for payment of Allowed Administrative Claims, excluding Administrative Claims incurred in the ordinary course of business, must be filed with the Bankruptcy Court and served no later than the Administrative Bar Date, which is 30 days after the Confirmation Date. Holders of Allowed Administrative Claims that are required to file with the Bankruptcy Court a proof of claim pursuant to Article V.B of the Plan and that do not file a proof of claim by the Administrative Bar Date, shall be forever barred from asserting such Claims against the Debtors or the Liquidating Trust.

(v) Deadline for Filing Administrative Expense Claims for Professionals

Professionals or other entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 503, 506 or 1103 for services rendered before the Effective Date must file with the Bankruptcy Court and serve an application for final allowance of compensation and reimbursement of expenses no later than 60 days after the Effective Date.

(vi) Claims Objection Process

Prior to the Effective Date, the Debtors may amend the Schedules or file an objection to any Claim or Interest as to which a proof of claim or proof of interest has been filed. From and after the Effective Date, the Liquidating Trust may settle or compromise any Disputed Claims without approval of the Bankruptcy Court and shall have the authority to amend the Schedules, and to file, contest, settle, compromise, withdraw or litigate to judgment objections to Claims.

## H. EXCLUSIVE PLAN PROPOSAL AND ACCEPTANCE RIGHTS

Bankruptcy Code § 1121 provides a debtor with an initial period of 120 days after the commencement of a chapter 11 case during which it has the exclusive right to file a chapter 11 plan and, if the debtor files a plan during that 120 days, an extension of such period to an initial period of 180 days after the commencement of the chapter 11 case (the "Exclusive Period"). In addition, pursuant to Bankruptcy Code § 1121(d), the Bankruptcy Court may, upon a showing of cause, reduce or increase the length of a debtor's Exclusive Period.



Because the Debtors filed their original Plan within the initial 120 days of the Chapter 11 Cases, the Exclusive Period would expire 180 days after the commencement of the Chapter 11 Cases, on June 7, 2004, but may be extended by the Bankruptcy Court. On May 11, 2004, the Bankruptcy Court entered an order extending the Exclusive Period to October 5, 2004.

## I. CAUSES OF ACTION

Causes of Action (as very broadly defined in Article I.A.14 of the Plan) may be pursued by the Debtors prior to the Effective Date and by the Liquidating Trust after the Effective Date, subject to the terms of the Plan. Resulting recoveries will contribute to the distributions to Holders of General Unsecured Claims. With very few exceptions, all of the Debtors' Causes of Action are preserved pursuant to Article IX.E of the Plan. Readers of this Disclosure Statement are referred to Article IX.E of the Plan. In addition to Causes of Action that the Debtors may have under other state and federal laws, the Bankruptcy Code creates certain causes of action that allow a debtor to recover transfers it has made prior to its bankruptcy filing. The most common causes of action are those to recover preferences and fraudulent transfers.

1. Preferences: A debtor may recover a transfer of property it made prior to its bankruptcy filing if that transfer: (a) was in payment of a pre-existing debt; (b) allowed the transferee to receive more than it would have received had the transfer not been made and the debtor had been liquidated under chapter 7 of the Bankruptcy Code; and (c) was made during the 90 days immediately prior to its bankruptcy filing (or, if the transferee was an insider, during the one year immediately prior to the bankruptcy filing). There are certain defenses to preference actions. For example, a transfer made in the ordinary course of the debtor's and transferee's business and according to ordinary business terms may not be recoverable. Furthermore, if the transferee gave, subsequent to the transfer, new value to the debtor (and for which the transferee was not paid), the new value constitutes an offset against the amount of any recovery. There are additional defenses as well. Bankruptcy Code § 547 delineates each of the elements of an action to recover a preferential transfer as well as all of the statutory defenses thereto. If a transfer is recovered by the debtor, the transferee has a general unsecured claim against the debtor to the extent of the recovery.

2. Fraudulent Transfers: Under the Bankruptcy Code and under various state laws, a debtor may recover a transfer of property it made (a) with actual intent to hinder, delay or defraud a creditor; or (b) while insolvent or that rendered it insolvent if and to the extent the debtor received less than reasonably equivalent value for such property. Transfers made up to six years prior to the bankruptcy filing may be recovered under some state statutes.

The Debtors' Schedules and statements of financial affairs include a listing of payments made in the 90 days immediately preceding the Petition Date and a listing of all payments to insiders, including payments to PLC. A preliminary analysis of such payments has been made at this time and, while the Debtors cannot estimate potential recoveries from possible litigation surrounding such payments, if any, the Debtors believe such recoveries to be minimal.

3. Potential Causes of Action Against PLC: On December 18, 2003, the Debtors commenced an investigation of potential affirmative causes of action against, and potential defenses to Claims of, PLC and its non-Debtor subsidiaries. The Committee conducted its own

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investigation of the same matters. Each investigation analyzed, among other things, potential actions for piercing the corporate veil and to recover any preferential and/or fraudulent transfers, as well as potential recharacterization and equitable subordination actions.

The Debtors conducted over three dozen witness interviews. Witnesses included current and former employees of the Debtors, AlixPartners representatives who are currently temporary employees at the Debtors, the Debtors' attorneys involved in the drafting and negotiation of the Separation Agreement and the PLC Credit Agreement, and the current members of the CWIS and CWUSA Boards of Directors. These witness interviews covered a broad range of topics, including (among others) the historical and current relationship between the Debtors and PLC and its subsidiaries; PLC's withdrawal from the U.S. domestic hosting and Internet provider services business; inter-company loans and funding transactions; the negotiation and execution of the Separation Agreement and the Apollo Agreement; the negotiation and execution of the PLC Credit Agreement; and PLC's pre-petition and post-petition purchases of claims.

The Debtors also reviewed (and produced to the Committee) thousands of pages of documents from their files. In addition, both the Debtors and the Committee received and reviewed thousands of pages from PLC's files (obtained through informal voluntary discovery). The Debtors had extensive discussions with counsel for PLC and counsel for the Committee regarding such documents and their investigation.

PLC and its non-Debtor subsidiaries have filed 43 proofs of claim in the aggregate amount of approximately \$4.9 billion. In the absence of a waiver, subordination, or recharacterization of the PLC Group's General Unsecured Claims, all other Holders of General Unsecured Claims would recover only one cent on the dollar if the funds were distributed in accordance with the provisions of the Bankruptcy Code under absolute priority, as the PLC Group's asserted \$4.9 billion of General Unsecured Claims are highly dilutive to other Holders of General Unsecured Claims (estimated to total \$180.9 million plus the Claims that the PBGC would assert in respect of the Pension Plan if the Global Settlement did not occur). The Global Settlement also has the effect of eliminating \$1.9 billion in Claims asserted by CW Holdings, which would further dilute recoveries to other Holders of General Unsecured Claims.

It is estimated that under the Global Settlement, Holders of General Unsecured Claims other than members of the PLC Group will receive 13.75% of the amount of their Allowed Claims. In addition, it is estimated that Holders of General Unsecured Claims other than members of the PLC Group who elect not to opt out of the Optional Release outlined in Article III.B of the Plan will receive an additional 13.75%, resulting in a total recovery for such Holders of an estimated 27.5% of the amount of their Allowed Claims. To achieve a comparable recovery absent the Global Settlement would require a high degree of success through litigation against PLC.

After considering all relevant factors, including the results of their investigation, the Debtors believe the Global Settlement is in the best interest of the Estates. Litigation would be costly and time consuming given the complexity of the funding transactions – which occurred over a multi-year period– and the fact that many of the employees involved in the loan transactions are no longer employed at PLC or the Debtors. Moreover, many witnesses are located outside of the United States, which would result in still further expense and delay. On

balance, the Debtors also believe, based on their investigation of the facts, review of the applicable law, and application of the facts to the law, that PLC may have meritorious Claims and defenses, and thus there is a material risk that litigation would ultimately be unsuccessful in whole or in part.

Under a recharacterization theory, claims of a party who appears to be a creditor can be recharacterized, and treated as, equity infusions instead of claims. The law regarding recharacterization is particularly scarce – yet at the same time is in a rapid state of development. This is significant because the Debtors are of the view that perhaps their best legal basis upon which to attack PLC rests on a recharacterization argument. The Debtors analyzed potential recharacterization claims under the factors set forth in In re AutoStyle Plastics, Inc., 269 F.3d 726 (6<sup>th</sup> Cir. 2001), and its progeny. **These factors include:** (1) the names given to the instruments, if any, evidencing the indebtedness; (2) the presence or absence of a fixed maturity date and schedule of payments; (3) the presence or absence of a fixed rate of interest and interest payments; (4) the source of repayments; (5) the adequacy or inadequacy of capitalization; (6) the identity of interest between the creditor and the stockholder; (7) the security, if any, for the advances; (8) the corporation's ability to obtain financing from outside lending institutions; (9) the extent to which the advances were subordinated to the claims of outside creditors; (10) the extent to which the advances were used to acquire capital assets; and (11) the presence of a sinking fund to provide repayments. *Id.* at 750. Several of these issues are highly fact-intensive. The Debtors estimate that litigation over them would take a period of many months, if not years. Difficulties could be encountered not only in obtaining documentary support for litigation claims that might be asserted, but also in locating supporting witnesses and corroborative evidence.

Significantly, each of the four purported loan transactions between PLC and the Debtors, which provide the basis for the PLC Group's General Unsecured Claims, would be analyzed separately by the Bankruptcy Court for purposes of potential recharacterization. In view of the magnitude of each of the PLC Group's General Unsecured Claims, and the highly dilutive impact of each Claim to other Holders of General Unsecured Claims, the Debtors would have to successfully recharacterize virtually all of the purported loan transactions between PLC and the Debtors in order to significantly increase the recovery of the other Holders of General Unsecured Claims as compared with that estimated to be achieved under the Global Settlement and the Plan. In the Debtors' view, the likelihood of achieving this level of success in a litigation context is highly uncertain.

The Debtors also believe that the Global Settlement is appropriate under the legal standards bankruptcy courts use in determining whether to approve settlements and compromises. In their discretionary review of proposed compromises of estate assets, bankruptcy courts must “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996). The Court of Appeals for the Third Circuit recognizes four criteria that a bankruptcy court should consider in striking this balance: (a) the probability of success in litigation; (b) the likely difficulties in collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors. *Id.*; see also Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968); In re Marvel Entertainment Group, Inc., 222 B.R. 243, 249 (D. Del. 1998).



In addition to the foregoing considerations, bankruptcy courts must examine “all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise,” Anderson, 390 U.S. at 424, with the ultimate goal of determining whether the proposed compromise is fair, reasonable, and in the interest of the estate. See In re Louise’s, Inc., 211 B.R. 798, 801 (D.Del. 1997).

The Debtors and the Committee both believe that the terms of the Global Settlement (which are discussed in greater detail in other sections of this Disclosure Statement) strike an appropriate balance between the range of possible outcomes of potential litigation. The Global Settlement is the product of thorough analyses of, among other things, the relative strengths and weaknesses of the parties’ positions, the uncertainties related to the continued litigation of the parties’ numerous disputes, the costs related to such continued litigation and the benefits of an expeditious resolution that will permit, among other things, a significant and speedy distribution under the Plan. As such, the Debtors and the Committee both believe that the Global Settlement is fair, reasonable and in the best interests of the Holders of General Unsecured Claims other than the members of the PLC Group.

#### **IV. THE PLAN OF LIQUIDATION**

The Plan provides for the distribution of the proceeds of the 363 Sale and the Debtors’ other remaining assets according to the priorities established by the Bankruptcy Code. It also provides for the members of the PLC Group to accept in satisfaction of all of their General Unsecured Claims (approximately \$4.9 billion) for a payment on the Effective Date of the Plan of \$28.45 million plus a 50% interest in the funds that remain for payment to all General Unsecured Creditors, which 50% interest will be transferred in whole or in part to other Holders of General Unsecured Claims if they execute the Optional Release. The Plan will distribute much more to General Unsecured creditors (other than the PLC Group), than would likely be available to them in a case under chapter 7. The Plan also provides for the substantive consolidation of the Debtors’ Estates, which is described in some detail in Article IV.B(iv) of this Disclosure Statement.

The chapter 7 liquidation scenario is illustrated in detail in the best interests analysis attached hereto as *Exhibit B*, and shows that Holders of General Unsecured Claims would receive an estimated distribution of 1.0% on their Claims. The Plan will provide distributions to Holders of General Unsecured Claims (other than members of the PLC Group) of an estimated 13.75% on their Claims, and an additional distribution of 13.75% to Holders of General Unsecured Claims that agree to give the Optional Release, for a total for these releasing Holders of 27.5%.

The statements contained in this Disclosure Statement include summaries of the Plan’s provisions and of those documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the Plan’s terms and provisions nor those of the documents referred to herein, and reference is made to the Plan, attached hereto as *Exhibit A*, and to those documents for the full and complete statements of these terms and provisions.

The Plan itself and the operative documents referred to therein control the actual treatment of Claims against, and Interests in, the Debtors and will, upon the Effective Date, bind all Holders of Claims against, and Interests in, the Debtors and their Estates, the Liquidating Trust and other parties-in-interest. In the event of any conflict between this Disclosure Statement on the one hand and the Plan or any other operative document referred to therein on the other hand, the terms of the Plan and the other operative documents will control.

A. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

Class	Claim	Treatment	Voting Rights
Unclassified	Administrative Expense Claims	Paid in full on the Effective Date or as soon as practicable thereafter.	Not entitled to vote.
Unclassified	Priority Tax Claims	Paid in full on the Effective Date or a soon as practicable thereafter.	Not entitled to vote.
Class 1	Priority Non-Tax Claims	<i>Unimpaired.</i> Paid in full.	Conclusively presumed to accept the Plan; not entitled to vote.
Class 2	PLC Secured Claims	<i>Unimpaired.</i> To the extent not previously paid, paid in full on the Effective Date.	Conclusively presumed to accept the Plan; not entitled to vote.
Class 3	Other Secured Claims	<i>Unimpaired.</i> To the extent not previously paid, each Holder is to receive on the Effective Date at the Debtors' election one of the following treatments such that they shall be rendered unimpaired pursuant to Bankruptcy Code § 1124: (a) the payment of such Holder's Allowed Other Secured Claim in full, in Cash; (b) the sale or disposition proceeds of the property securing any Allowed Other Secured Claim to the extent of the value of its interest in such property; (c) the surrender to the Holder or Holders of any Allowed Other Secured Claim of the property securing such Claim; or (d) such other distributions as shall be necessary to satisfy the requirements of chapter 11 of the Bankruptcy Code for such Claim	Conclusively presumed to accept the Plan; not entitled to vote.



Class	Claim	Treatment	Voting Rights
		to be reinstated or rendered unimpaired under Bankruptcy Code § 1124. The Holder of each Other Secured Claim will retain its lien securing such Claim to the extent of the Allowed amount of such Claim until its Other Secured Claim is paid in full.	
Class 4	Ironsides Drive Tax Claim	<i>Unimpaired.</i> To the extent not previously paid, the Holder of this Claim will be paid in full with interest at the Tax Rate on the Effective Date of the Plan.	Conclusively presumed to accept the Plan; not entitled to vote.
Class 5	Walsh Avenue Tax Claim	<i>Unimpaired.</i> To the extent not previously paid, the Holder of this Claim will be paid in full with interest at the Tax Rate on the Effective Date of the Plan.	Conclusively presumed to accept the Plan; not entitled to vote.
Class 6	General Unsecured Claims	<i>Impaired.</i> Each Holder of a General Unsecured Claim, other than any member of the PLC Group and any Holder of a Claim that is subordinated pursuant to Bankruptcy Code § 510, will receive its Pro Rata Share of a 50% interest in the Unsecured Creditor Fund. Holders of General Unsecured Claims, other than members of the PLC Group and Holders of subordinated Claims, who consent to the Optional Releases provided for in the Plan will also receive the PLC Individual Release Consideration described in Article III.B.5(b) of the Plan. PLC, on behalf of the PLC Group as a whole, shall receive the PLC Fixed Recovery on the Effective Date plus the PLC Unsecured Creditor Fund Interest on account of all its General Unsecured Claims. Holders of Claims that are subordinated under Bankruptcy Code § 510 shall receive no distribution. As is	Entitled to vote.

Class	Claim	Treatment	Voting Rights
		<p>shown in <i>Exhibit B</i> to this Disclosure Statement, it is estimated that Holders of Allowed Claims in Class 6 (other than members of the PLC Group and Holders of subordinated Claims) will receive a distribution of approximately 13.75% on their Claims if they do not grant the Optional Release, and approximately 27.5% if they do. The additional 13.75% recovery is the PLC Individual Release Consideration as defined in the Plan. <b>HOLDERS OF CLASS 6 CLAIMS WHO DO NOT SUBMIT A TIMELY BALLOT OR WHO SUBMIT A BALLOT BUT CHOOSE NOT TO GRANT THE OPTIONAL RELEASE WILL NOT RECEIVE THE PLC INDIVIDUAL RELEASE CONSIDERATION.</b></p>	
Class 7	Interests	<i>Impaired.</i> Receives no distribution and all Interests shall be cancelled upon the Effective Date.	Deemed to reject the Plan; not entitled to vote.

**B. MEANS FOR IMPLEMENTATION OF THE PLAN**

**(i) Plan Funding**

The Debtors recently completed a sale of substantially all of their assets to SAVVIS under the 363 Sale. The proceeds thereof, and all of the Debtors' other remaining assets, shall be distributed in the following order (1) first, to repay the secured debt owing under the PLC Credit Agreement and any other pre-petition Secured Claims to the extent not already paid, and (2) second, to the Estates. The net proceeds of the 363 Sale and the Debtors' funds on hand shall be used by the Liquidating Trust to make the distributions provided for in the Plan.

The Unsecured Creditor Fund shall be comprised of the following: (a) the Causes of Action; (b) proceeds of the 363 Sale; (c) proceeds of the disposition of any remaining assets; and (d) any other Cash on hand available after payment in full of all Allowed Administrative Claims; Priority Tax Claims; Priority Non-Tax Claims; the PLC Secured Claims; Other Secured Claims; the Ironside Drive Tax Claim; the Walsh Avenue Tax Claim; and the PLC Fixed Recovery. Any

amounts expended in connection with the administration of the Liquidating Trust, including but not limited to, objections to General Unsecured Claims or pursuit of Causes of Action, shall be funded out of the Unsecured Creditor Fund.

The Unsecured Creditor Fund will be held and administered as a portion of the Liquidating Trust. An initial distribution from the Liquidating Trust to Holders of General Unsecured Claims will be made as soon as practicable after the Effective Date, and subsequent distributions will be made from time to time thereafter as Disputed Claims are resolved and as proceeds are received from pursuit of Causes of Action. As described in Articles IV.B.(iii) and IV.E of this Disclosure Statement, all post-Effective Date distributions to creditors will be made from the Liquidating Trust, which shall be solely responsible for such obligations.

## (ii) Global Settlement

The Global Settlement includes several related components, described below. First, the PLC Group shall provide the “PLC Release Consideration.” Second, the Releasors shall provide the releases described in this section. Third, the Debtors and the Committee shall refrain from pursuing Causes of Action against certain parties if requested to do so by PLC. Fourth, the CWA Entities and C&W Entities (as such terms are defined in the Separation Agreement) shall waive their respective claims against each other, if any, under the Separation Agreement. Readers may refer to Article III.B of the Plan for a more detailed description of the Global Settlement.

Pursuant to Bankruptcy Code § 1123(b)(3)(A) and Bankruptcy Rule 9019, the Plan constitutes an application for approval of a compromise and settlement of any and all claims and causes of action (the “Global Settlement,” a copy of the Global Settlement Agreement is attached as *Exhibit E* to this Disclosure Statement) of (a) the Debtors, the Estates and anyone claiming a right in a derivative capacity on their behalf (the “Debtor Claimants”); and (b) any Holder of a Claim who submits a Ballot but does not choose to opt-out of granting the Optional Release (as described in below) by checking the appropriate box on the Ballot<sup>5</sup> (the “Third Party Claimants” and, together with the Debtor Claimants, the “Releasors”) against PLC and all its direct and indirect subsidiaries, their officers, directors, and affiliates, and each of their present and former parent corporations and direct and indirect subsidiaries or affiliates, together with each of their present and former shareholders, present and former officers, directors, and employees, present or former attorneys and present and former advisors or consultants (excluding, for all purposes, Exodus Federal Systems, Inc.) (collectively, the “Released Parties”).

On the Effective Date and pursuant to the Plan, the Releasors unconditionally and irrevocably release the Released Parties from any and all direct, indirect or derivative claims, obligations, suits, judgments, damages, rights, causes of action, liabilities, claims or rights of

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<sup>5</sup> Holders of Class 6 Claims that are subordinated pursuant to Bankruptcy Code § 510 will not receive a distribution under the Plan and are not eligible to receive the PLC Individual Release Consideration for granting the Optional Release. Therefore, the Holder of such a Claim shall not be deemed to have granted the Optional Release even if such Holder submits a Ballot without checking the opt-out box.

contribution and indemnification, and all other controversies of every type, kind, nature, description or character whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part upon any act or omission, transaction, event or other occurrence taking place from the beginning of the world to the Effective Date arising from or relating in any way, directly or indirectly, to the Debtors, their assets, operations or liabilities, the Chapter 11 Cases, the Plan, or the Disclosure Statement; *provided, however*, that the Releasors shall not be deemed to have released any rights to enforce the terms of the Plan or their rights to distributions thereunder. **BY RETURNING A BALLOT WITHOUT CHECKING THE BOX TO OPT OUT OF THE OPTIONAL RELEASE, THE RELEASORS CONSENT TO AND GRANT THIS RELEASE AND ACKNOWLEDGE THAT THEY MAY HAVE CLAIMS OR LOSSES OF WHICH THEY ARE NOT CURRENTLY AWARE, OR THEY MAY HAVE UNDERESTIMATED.** The consideration for the releases was given in part in exchange for the release of such claims. The Releasors hereby waive any rights or benefits under California Civil Code Section 1542, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with debtor

and any rights or benefits under similar laws. The Confirmation Order shall specifically provide for the foregoing releases, other than any claim of a Third Party Claimant based upon an express written guarantee by PLC in favor of a Third Party Claimant of lease obligations of the Debtors to such Third Party Claimant. Notwithstanding any of the foregoing, the Debtor Claimants are not releasing any right of setoff, recoupment or defensive counterclaim they may have against the Claims of the Non-Participating PLC Affiliates<sup>6</sup> or any direct or indirect subsidiary of a Debtor.

On the Effective Date, the Releasors shall be permanently enjoined from commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind, asserting any setoff, right of subrogation, contribution, indemnification or recoupment of any kind, directly or indirectly, or proceeding in any manner in any place inconsistent with the releases granted to the Released Parties pursuant to the Plan. The Confirmation Order shall specifically provide for such injunction.

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<sup>6</sup> *Non-Participating PLC Affiliates* means (a) Cable & Wireless Jamaica Ltd.; Cable & Wireless Bermuda, Ltd.; Cable & Wireless (Barbados) Limited; Cable & Wireless Panama S.A.; and Cable & Wireless IDC Inc.; and (b) Digital Island (Belgium) BVBA; Digital Island B.V.; Digital Island Sweden AB; Digital Island (Europe) S.A.; DI (UK) Limited; Digital Island (UK) Limited; Digital Island (Hong Kong) Limited; and Digital Island GmbH.

The consideration the members of the PLC Group shall provide, or have provided, in exchange for the releases described in this section (the “PLC Release Consideration”) includes the following:

- The agreement of the members of the PLC Group to accept in satisfaction of all of their General Unsecured Claims (and to waive any claims they have against CW Holdings on the Effective Date) for (i) a fixed payment of \$28.45 million on the Effective Date (the “PLC Fixed Recovery”); and (ii) a 50% interest in the Unsecured Creditor Fund, which 50% interest will be subject to reduction in accordance with the following paragraph (the totality of the members of the PLC Group’s final interest in the Unsecured Creditor Fund, after taking into account any such reductions, being “PLC’s Unsecured Creditor Fund Interest”);
- The agreement of the members of the PLC Group to transfer to the Liquidating Trust for the benefit of each Holder of an Allowed General Unsecured Claim, other than any member of the PLC Group (and other than CW Holdings, any Debtor and any direct or indirect subsidiary of any Debtor [except any Non-Participating PLC Affiliate]), who consents to the Optional Release, without representation or warranty as to value or any other matter, an additional share of the Unsecured Creditor Fund equal to such Holder’s Pro Rata Distribution Factor multiplied by the 50% interest in the Unsecured Creditor Fund of the PLC Group (as to each such Holder, the “PLC Individual Release Consideration”)<sup>7</sup> *provided, however,* that the total amount paid on account of a General Unsecured Claim shall not exceed the Allowed amount of such Claim;
- The PLC Group’s agreement to extend credit in the DIP Facility, and PLC Group’s agreement not to charge the Debtors fees in connection therewith;
- The PLC Group’s agreement to provide transition services to the Purchaser in the 363 Sale in order to facilitate such sale; and
- PLC’s agreement, upon certain conditions set forth in the Global Settlement Agreement, to (a) assure (i) funding of the Cable & Wireless Holdings, Inc. Retirement Income Plan (the “Pension Plan”), assuming that the Pension Benefit Guaranty Corporation has agreed that it will not terminate the Pension Plan pursuant to sections 4041 or 4042 of ERISA on account of events occurring on or prior to the Effective Date; and (ii) payment of all claims relating to the Cable & Wireless Holdings, Inc. Supplemental Executive Retirement Plan covering certain former employees of the Debtors; (b) cause all members of the PLC Group to waive all claims they may have against CW Holdings; and (c) cause its relevant

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<sup>7</sup> Pro Rata Distribution Factor is a term defined in the Plan. The amount of each Holder’s PLC Individual Release Consideration is determined, under this formula, according to the amount of the Holder’s Allowed Claim against the Debtors. Holders that consent to the Optional Release will receive the PLC Individual Release Consideration whether or not they actually possess any claims against the Released Parties.



subsidiaries to consent, as shareholder(s) and creditor(s) of CW Holdings, to the release of all of CW Holdings' Claims against the Debtors.

The releases and injunctions granted in favor of the Released Parties are integral parts of the settlement and are necessary to confirm the Plan. The PLC Individual Release Consideration constitutes the consideration for the releases from the Third Party Claimants. Because all elements of the PLC Release Consideration will result in distributions to creditors of the Debtors, the entire PLC Release Consideration constitutes the consideration for the releases from the Debtor Claimants. The fact that the members of the PLC Group are providing the PLC Release Consideration in return for the releases shall not be construed as an admission or evidence that the Releasers have valid claims against any of the Released Parties. **HOLDERS THAT CONSENT TO THE OPTIONAL RELEASE WILL RECEIVE THE PLC INDIVIDUAL RELEASE CONSIDERATION WHETHER OR NOT THEY ACTUALLY POSSESS ANY CLAIMS AGAINST THE RELEASED PARTIES.**

PLC's Secured Claims are allowed by the Plan in the amount of \$50,795,396, and shall be paid, to the extent not already paid, on the Effective Date. The General Unsecured Claims held by the members of the PLC Group in the approximate amount of \$4.9 billion are being compromised in accordance with the foregoing paragraphs and the members of the PLC Group shall receive no distribution on account of their General Unsecured Claims except as provided therein.

PLC shall have the right to direct the Debtors and the Committee to refrain from pursuing any Cause of Action against certain parties, as listed on Exhibit F to this Disclosure Statement.

On the Effective Date and pursuant to the Plan, the CWA Entities (as defined in the Separation Agreement) and the C&W Entities (as defined in the Separation Agreement) each waive and release all claims and causes of action they have or may now or in the future have against one another arising under the Separation Agreement or the agreements or instruments related thereto.

(iii) Administrative Trustee and the Liquidating Trust

On or before the Effective Date, the Committee, with the consent of the Debtors, shall appoint one Administrative Trustee to serve as such pursuant to the Liquidating Trust Agreement attached as an exhibit to the Plan Supplement. The Administrative Trustee shall serve as the trustee of the Liquidating Trust. The Liquidating Trust shall administer the Unsecured Creditor Fund and the distributions to be made to Holders of Claims under this Plan that are not paid on the Effective Date. In addition, the Liquidating Trust shall administer and prosecute all Causes of Action, and shall distribute all proceeds thereof in accordance with the Plan to Holders of Class 6 Claims. The expenses of the Liquidating Trust shall be paid from its funds and shall not constitute an Administrative Claim. The rights and obligations of the Liquidating Trust are further described and governed in the Liquidating Trust Agreement. The Committee shall continue with all rights, powers and authority through the Effective Date. On the Effective Date, the Committee shall be dissolved. Any and all litigation commenced by the Debtors and/or the Committee which may be pending as of the Effective Date is assigned, substituted and transferred to the Liquidating Trust.

As of the Effective Date, any and all remaining assets of the Debtors and their Estates, including: (a) any assets identified above as belonging to the Unsecured Creditor Fund, (b) all Cash and (c) all Causes of Action, shall be transferred to, and vest in, the Liquidating Trust, as set forth in detail in the Liquidating Trust Agreement. All such assets shall constitute the "Trust Estate." For all United States federal income tax purposes, all parties will treat the transfer of such assets to the Liquidating Trust as a transfer of such assets to the beneficiaries of the Liquidating Trust followed by a transfer of such assets by such beneficiaries to the Liquidating Trust, with the beneficiaries being treated as the grantors and owners of the Liquidating Trust. Accordingly, because a grantor trust is treated as a pass-through entity for United States federal income tax purposes, generally no tax should be imposed on the Liquidating Trust as a result of the transfer of assets thereto nor on income earned or gain recognized by the Liquidating Trust. Instead, the beneficiaries of the Liquidating Trust may be taxed on their allocable share of such net income or gain in each taxable year of the Liquidating Trust, and will be responsible for paying the taxes associated with such income or gain whether or not they received any distributions from the Liquidating Trust in such taxable year.

(iv) Substantive Consolidation

(a) *Substantive Consolidation.* The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors for voting, confirmation and distribution purposes. On the Effective Date, (i) all guaranties of any Debtor of the payment, performance or collection of another Debtor shall be eliminated and cancelled, (ii) any obligation of any Debtor and all guarantees thereof executed by one or more of the other Debtors shall be treated as a single obligation and any obligation of two or more Debtors, and all multiple Impaired Claims against such entities on account of such joint obligations, shall be treated and Allowed only as a single Impaired Claim against the consolidated Debtors, and (iii) each Claim filed or to be filed against any Debtor shall be deemed filed against the consolidated Debtors and shall be deemed a single Claim against and a single obligation of the consolidated Debtors. In addition, the assets of all Debtors will be available to satisfy Claims of creditors of any Debtors

Unless the Bankruptcy Court has approved the substantive consolidation of the Chapter 11 Cases by a prior order, the Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Debtors as provided in section II.D of the Plan. If no objection to substantive consolidation is timely filed and served by any Holder of an Impaired Claim affected by the Plan as provided herein on or before the deadline for objection to confirmation of the Plan, the substantive consolidation order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. If any such objections are timely filed and served, a hearing with respect to the substantive consolidation of the Chapter 11 Cases and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

(b) *Discussion of Substantive Consolidation*

(I) *General Description.* Substantive consolidation of the estates of multiple debtors in a bankruptcy case effectively combines the assets and liabilities of the multiple debtors for certain purposes under a plan. The effect of consolidation is the pooling

of the assets of, and claims against, the consolidated debtors; satisfying liabilities from a common fund; and combining the creditors of the debtors for purposes of voting on chapter 11 plans. In re Augie/Restivo Baking Co., 860 F.2d 515, 518 (2d Cir. 1988). There is no statutory authority specifically authorizing substantive consolidation. The authority of a bankruptcy court to order substantive consolidation is derived from its general equitable powers under Bankruptcy Code § 105(a), which provides that the court may issue orders necessary to carry out the provisions of the Bankruptcy Code. In re DRW Property Co., 54 B.R. 489, 494 (Bankr. N.D. Tex. 1985). Nor are there statutorily prescribed standards for substantive consolidation. Instead, judicially developed standards control whether substantive consolidation should be granted in any given case.

(II) Legal Standards for Substantive Consolidation. The determination of the propriety of substantive consolidation must be made on a case-by-case basis. E.g., FDIC v. Colonial Realty Co., 966 F.2d 57 (2d Cir. 1992). In deciding whether to consolidate, a number of earlier cases relied on the presence or absence of certain “elements” that are similar to factors relevant to piercing the corporate veil under applicable state law. E.g., In re Gulfco Inv. Corp., 593 F.2d 921 (10th Cir. 1979). More recent cases, however, while not ignoring these elements, have applied a less mechanical approach. Thus, for example, the Second Circuit Court of Appeals, in In re Augie/Restivo, concluded that the extensive list of elements and factors frequently cited and relied upon by other courts in determining the propriety of substantive consolidation are “merely variants on two critical factors,” namely, “(1) whether creditors dealt with the entities as a single economic unit and ‘did not rely on their separate identity in extending credit, ...’ or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors ....” 860 F.2d at 518. The Eleventh Circuit, in Eastgroup Properties v. Southern Motel Assoc., Ltd., 935 F.2d 245 (11th Cir. 1991), viewed those elements and factors “as examples of information that may be useful to courts charged with deciding whether there is substantial identity between the entities to be consolidated and whether consolidation is necessary to avoid some harm or to realize some benefit.” *Id.* at 250. Under the Eastgroup test, a proponent of substantive consolidation must show that there is substantial identity between the entities to be consolidated and that consolidation is necessary to avoid some harm or realize some benefit. Once the proponent makes this showing, a presumption arises that creditors have not relied solely on the credit of one of the entities involved, and the burden shifts to an objecting creditor to show that (i) it has relied on the separate credit of one of the entities to be consolidated and (ii) it will be prejudiced by substantive consolidation. Eastgroup, 935 F.2d at 251; Reider v. FDIC (In re Reider), 31 F.3d 1102, 1108 (11th Cir. 1994).

Regardless of which of the “two similar but not identical tests ... for assessing the propriety of substantive consolidation in the corporate context” is applied, In re Reider, 31 F.3d at 1107, the “elements” enumerated in the earlier cases remain relevant, but not necessarily dispositive, as to whether substantive consolidation should be granted. These elements include:

- the degree of difficulty in segregating and ascertaining the individual assets and liabilities of the entities to be consolidated;
- the presence or absence of consolidated financial statements among the entities to be consolidated;

- the commingling of assets and business functions among the entities to be consolidated;
- the unity of interests and ownership among the various entities;
- the existence of parent and intercorporate guarantees on loans to the various entities; and
- the transfer of assets to and from the various entities without formal observance of corporate formalities.

In re Vecco Constr. Indus., 4 B.R. 407, 410 (Bankr. E.D. Va. 1980).

(III) *Factual Basis for and Result of a Substantive Consolidation of the Debtors' Estates.* The facts and circumstances surrounding the historical business operations of the Debtors support substantive consolidation of the Debtors' Estates in these Chapter 11 Cases. The Debtors' operations in the United States are the result of numerous successive mergers, acquisitions and corporate reorganizations that effectively consolidated the assets, employees and operations of CWUSA and CWIS. The joint enterprise became known internally (within the Debtors, CW Holdings, Exodus Federal, and PLC) and externally (to customers and vendors) as Cable & Wireless America ("CWA").

The financial statements of CWUSA and CWIS have always been reported on a consolidated basis through their ultimate parent company, PLC. Each of the Debtor entities and Exodus Federal are either direct or indirect subsidiaries of CWUSA. CWVA and CWIS are direct wholly-owned subsidiaries of CWUSA. Exodus Federal, Exodus Managers, Exodus LLC and Exodus LP are direct wholly-owned subsidiaries of CWIS, each of which was organized and operated for a specific purpose for the benefit of CWA. CW Holdings, CWUSA, CWIS and their subsidiaries have shared substantially all employees including, without limitations, employees who performed executive management, legal, financial and business planning, accounting, product and company marketing, real estate, vendor purchasing, employee network support, customer care, customer billing and collections, and sales and account management functions for the benefit of the CWA operations as a whole, as well as outside accounting, law firms and other professionals and consultants who rendered services to CWA as a whole. In addition, CWUSA and CWIS had common officers and board members for about one year preceding the Petition Date, and had overlapping officers and board members preceding that time.

The cash management system for the Debtors is effectively centralized and consolidated. While CWUSA and CWIS maintain some separate bank accounts and books and records, the Debtors' finance, budgeting, accounting and purchasing operations have been consolidated for a period of at least 9-12 months preceding the Petition Date. Substantially all costs and expenses associated with the Debtors' hosting and network businesses were processed and captured only on CWIS' accounting records for at least nine months preceding the bankruptcy. In addition, prior to that time there were significant shared system, employee and operational overhead costs associated with both the hosting and network businesses that were often captured and reflected in only one of the Debtors' financial records. Therefore, the



separate accounts or books and records of any single Debtor or group of Debtors do not accurately reflect a complete financial picture associated with either the hosting business or the network business.

In addition, all decisions affecting accounting, financial or cash management systems were made by a core group of individuals. Funds were moved between the Debtors' accounts as-needed to meet short and long term cash requirements. As an outgrowth of this consolidated cash management system, intercompany loans were routinely made by and between CWIS and CWUSA in the ordinary course of business, and oftentimes one of the Debtors paid obligations on behalf of the collective CWA enterprise without apportioning charges to other Debtors. Payroll for both CWIS and CWUSA employees was funded and administered through a certain CWIS account. Moreover, the Debtors, CW Holdings, and Exodus Federal have no fixed asset registry that tracks which Debtor owns an asset. For approximately one year preceding the Petition Date, all asset acquisitions were consolidated and funneled through CWIS, regardless of which business ultimately benefited or used an asset.

All obligations under the PLC Credit Agreement are cross-guaranteed and cross-indemnified by CWUSA and CWIS. All distributions under the PLC Credit Agreement flowed through CWIS for the benefit of all of the Debtors' operations. Moreover, from the customer's perspective, the Debtors' marketing efforts underscored the unified nature of their businesses. For approximately one year preceding the Petition Date, CWUSA and CWIS had a consolidated marketing group with one budget, which developed and launched a unified messaging and marketing campaign focused on establishing the Debtors' brand name and identity in the U.S. as "Cable & Wireless America." The Debtors utilized the same marketing materials, and employed joint sales and product pricing strategies to cross-sell network and hosting services and products, regardless of whether CWUSA or CWIS technically owned a particular network or hosting asset. All of the Debtors were represented in PLC's public filings, including their annual reports and SEC filings, as the single business unit "Cable & Wireless America."

Substantive consolidation is an equitable remedy that a bankruptcy court may be asked to apply in chapter 11 cases involving affiliated debtors. Substantive consolidation involves the pooling of the assets and liabilities of the affected debtors. All of the debtors in the substantively consolidated group are treated as if they were a single corporate and economic entity. Consequently, a creditor of one of the substantively consolidated debtors is treated as a creditor of the substantively consolidated group of debtors, and issues of individual corporate ownership of property and individual corporate liability on obligations are ignored. Substantive consolidation of two or more debtors' estates generally results in the consolidation of the assets and liabilities of the debtors, the elimination of multiple and duplicative creditor claims, joint and several liability claims and guarantees and the payment of allowed claims from a common fund. The Debtors believe that substantive consolidation is warranted in light of the criteria established by the courts in ruling on the propriety of substantive consolidation in other cases.



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C. ACCEPTANCE OR REJECTION OF THE PLAN

(i) Voting

Class 6 is entitled to vote to accept or reject the Plan. By operation of law, each Unimpaired Class of Claims and Interests is conclusively presumed to have accepted the Plan and, therefore, is not entitled to vote to accept or reject the Plan. Classes 1, 2, 3, 4, and 5 are conclusively presumed to have accepted the Plan. Class 7 is deemed to have rejected the Plan.

(ii) Acceptance by Impaired Classes

An Impaired Class of Claims shall have accepted the Plan if (a) the Holders (other than any Holder designated under Bankruptcy Code § 1126(e)) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have timely and properly voted to accept the Plan and (b) the Holders (other than any Holder designated under Bankruptcy Code § 1126(e)) of more than one-half in number of the Allowed Claims actually voting in such Class have timely and properly voted to accept the Plan.

(iii) Cramdown

The Debtors will request confirmation of the Plan, as it may be modified from time to time, under Bankruptcy Code § 1129(b) with respect to the Class of Interests, which is deemed to have rejected the Plan.

D. PROCEDURES FOR RESOLVING DISPUTED CLAIMS

(i) Characterization of Disputed Claims

Pursuant to Bankruptcy Code § 1111(a), a proof of claim is deemed filed under Bankruptcy Code § 501 if that Claim is included in the Schedules filed under Bankruptcy Code § 521 or § 1106(a)(2) and is deemed filed in the amount listed on the Schedules, except if the Claim is scheduled as disputed, contingent or unliquidated. Such a disputed, contingent or unliquidated Claim must be asserted by its Holder on or before the Bar Date by timely filing of a proof of claim. If a proof of claim is not filed in a timely manner on or before the Bar Date the Claim shall be deemed to be barred and/or otherwise disallowed.

(ii) Prosecution of Objections to Claims

From and after the Effective Date, the Liquidating Trust may settle or compromise any Disputed Claims without approval of the Bankruptcy Court and shall have the exclusive authority to file objections, contest, settle, compromise, withdraw or litigate to judgment objections to Claims.

(iii) Estimation of Claims

Pursuant to the Plan, the Liquidating Trust may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code § 502(c) regardless of whether the Debtors or the Liquidating Trust have previously objected to

such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors (and, after the Effective Date, the Liquidating Trust) may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court, except that after the Effective Date, the Liquidating Trust may compromise, settle or resolve any such Claims without further Bankruptcy Court approval.

(iv) Amendments to Claims

Unless otherwise provided herein, a Holder of a Claim may not amend its proof of claim after the Confirmation Date without the agreement of the Debtors or the Administrative Trustee, as applicable. Unless otherwise provided herein, an amended Claim Filed after the Confirmation Date shall be deemed disallowed in full without any action by the Debtors or Administrative Trustee to the extent that such amended Claim modifies or supplements any prior Claims of the applicable Holder.

(v) Payments and Distributions on Disputed Claims

Pursuant to the Plan and notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Liquidating Trust in its sole discretion, no partial payments and no partial disbursements will be made with respect to a Disputed Claim until the resolution of such Disputed Claim, in whole or in part, by settlement or Final Order. Subject to the provisions of Article V of the Plan, as soon as practicable after a Disputed Claim becomes an Allowed Claim, the Holder of such an Allowed Claim will receive all payments and distributions to which such Holder is entitled under the Plan. Notwithstanding the foregoing, any Person or Entity who holds both an Allowed Claim(s) and a Disputed Claim(s) will receive the appropriate payment or distribution on the Allowed Claim(s), although, except as otherwise agreed by the Liquidating Trust in its sole discretion, no payment or distribution will be made on the Disputed Claim(s) until such dispute is resolved by settlement or Final Order. The Liquidating Trust shall be authorized to establish a reserve in respect of any Disputed Claim(s).

(vi) Objections to Claims not Entitled to Distributions

Certain Claims and all Interests are not entitled to any distribution under the Plan. As a result, the Debtors do not intend to object to any such Claims or Interests since the allowance or disallowance of such Claims or Interests will have no impact on the Debtors or their estates. Pursuant to the Plan, however, the Debtors reserve (on their own behalf and on the behalf of the Liquidating Trust) the right to file objections to such Claims and Interests at any time they deem appropriate, if ever, up until the closing of these Chapter 11 Cases.

E. PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN

(i) Timing of Distributions

An initial distribution from the Unsecured Creditor Fund will be made as soon as practicable (in the discretion of the Administrative Trustee) after the Effective Date, and subsequent distributions will be made from time to time thereafter as Disputed Claims are resolved and as proceeds are received from pursuit of Causes of Action.

(ii) Interest on Claims

Unless otherwise specifically provided for or contemplated in the Plan or Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on any Claims. However, interest shall accrue and be allowable on any oversecured Claims to the extent permitted under Bankruptcy Code § 506(b).

(iii) Delivery of Distributions

The Liquidating Trust shall make all distributions required to be made under the Plan. The Liquidating Trust may employ or contract with other entities to assist in or make the distributions required by the Plan. The Liquidating Trust shall bear the sole responsibility for the obligation to make distributions under this Plan.

(iv) Holding and Investment of Undeliverable and Unclaimed Distributions

If the distribution to any Holder of an Allowed Claim is returned as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Liquidating Trust is notified in writing of such Holder's then current address.

(v) After Distributions Become Deliverable

The Liquidating Trust shall make all distributions that have become deliverable as soon as practicable after such distribution has become deliverable.

(vi) Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable or unclaimed distribution within one year after the Effective Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed distribution against any of the Debtors, the Liquidating Trust, and the Administrative Trustee. In such cases, any Cash for distribution on account of such Claims for undeliverable or unclaimed distributions shall become the property of the Liquidating Trust to be distributed in accordance with the terms of the Plan and the Liquidating Trust Agreement.

(vii) Record Date for Distributions

The Liquidating Trust and any designees shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim or Interest that occurs after the close of business on the Effective Date, and each of them shall be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims and Interests who are Holders of such Claims or Interests or participants therein, as of the close of business on the Effective Date. The Liquidating Trust and any designees shall instead be entitled to recognize and deal, for all purposes under the Plan, with only those Holders identified on proofs of claim or the Schedules as of the Effective Date or stated on any official register as of the close of business on the Effective Date.

(viii) Means of Cash Payment

Cash payments made pursuant to the Plan shall be in U.S. dollars and shall be made by the means agreed to by the payer or the payee or, in the absence of an agreement, at the option and in the sole discretion of the Liquidating Trust, by (1) checks drawn on or (2) wire transfer from a domestic bank selected by the Liquidating Trust. Cash payments to foreign creditors may be made, at the option of the Liquidating Trust, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

(ix) Withholding and Reporting Requirements

In connection with the Plan and all distributions thereunder, the Liquidating Trust shall comply with all tax withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. For tax purposes, distributions received in respect of a Claim will be allocated first to the principal amount of the Claim with any excess allocated, if applicable, to unpaid interest that accrued on such Claim. The Liquidating Trust shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (1) each Holder of an Allowed Claim or Interest that is to receive any distribution under the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution, and (2) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trust for the payment and satisfaction of such tax obligations or has, to the Liquidating Trust's satisfaction, established an exemption therefrom. Any amount to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as undeliverable pursuant to Article VI.C of the Plan.

(x) Setoffs and Recoupments

The Liquidating Trust may, pursuant to Bankruptcy Code § 553 or applicable non-bankruptcy law, but shall not be required to, set off against or recoup from any Claim on which payments are to be made pursuant to the Plan, any Claims of any nature whatsoever the Liquidating Trust may have against the Holder of such Claim that is not released under



Articles III.B or IX of the Plan; *provided, however*, that neither the failure to do so nor the allowance of any Claim shall constitute a waiver or release by the Debtors or the Liquidating Trust of any such Claim the Debtors or the Liquidating Trust may have against such claimant.

(xi) Fractional Dollars; De Minimis Distributions

No payment of a fraction of a dollar will be made under the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. No Distribution will be made on account of any Allowed Claim to the Holder of any such Allowed Claim if the amount of such Distribution for the Allowed Claim is less than \$75.00. The Liquidating Trust will maintain records of interim distributions accrued and unpaid on account of each Allowed Claim so that, when the amounts accrued with respect to a particular Claim reach or exceed \$75.00, all accrued and unpaid amounts will be distributed with respect to that Claim.

F. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

(i) Treatment of Executory Contracts and Unexpired Leases

As authorized by Bankruptcy Code § 1123(b)(2), all of the Debtors' executory contracts and unexpired leases (whether or not previously listed by the Debtors in their respective Schedule G), will be deemed rejected as of the Effective Date under the Plan, except for any executory contract or unexpired lease (a) that has been assumed, assumed and assigned, or rejected pursuant to a Final Order of the Bankruptcy Court entered prior to the Confirmation Date, (b) as to which a motion for approval of the assumption or assumption and assignment of such contract or lease has been filed and served prior to the Confirmation Date and ultimately becomes a Final Order authorizing such assumption or assumption and assignment, or (c) listed to be assumed or assumed and assigned in an Exhibit or Schedule to the Plan Supplement.

Pursuant to Bankruptcy Rule 3002(c)(4), entities (and only such entities) that are party to an executory contract or unexpired lease rejected pursuant to the Plan will be entitled to file a proof of claim, by no later than thirty (30) days following the Confirmation Date, for damages alleged to have been suffered or to be suffered due to such rejection (a "Rejection Claim"). Entities (and only such entities) that are a party to an executory contract or unexpired lease that is either (a) the subject of a motion to reject that has been filed and served prior to the Confirmation Date and that is ultimately approved by Final Order of the Bankruptcy Court, or (b) the subject of a motion to assume or assume and assign that ultimately is denied by Final Order of the Bankruptcy Court will be entitled to file a Rejection Claim by no later than thirty (30) days after the later of (i) the date of the entry of an order by the Bankruptcy Court approving such rejection or denying such assumption or assumption and assignment (except as otherwise may be required as set forth in such order), and (ii) the Confirmation Date. Notwithstanding anything else to the contrary in the Plan, the opportunity afforded an Entity whose executory contract or unexpired lease is rejected pursuant to the Plan or otherwise to file a proof of claim on or before such date as prescribed herein shall in no way apply to entities that may assert a claim on account of an executory contract or unexpired lease that was previously rejected by the Debtors for which a prior bar date was established. Any person or entity that has a claim for



damages as a result of the rejection of an executory contract or unexpired lease that does not file a proof of claim in accordance with the terms and provisions of the Plan will be forever barred from asserting that claim against any of the Debtors or any property of the Estates.

(ii) Cure of Defaults of Assumed Executory Contracts and Unexpired Leases

Subject to the limitations of Bankruptcy Code § 502(b), any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default, shall be satisfied, pursuant to Bankruptcy Code § 365(b)(1), by payment of the default amount in Cash on the Effective Date or on such other terms as the parties to such executory contracts or unexpired leases and the Debtors or the Liquidating Trust may otherwise agree. In the event of a dispute regarding: (1) the nature and amount of any cure payments, (2) the ability of the applicable Entity to provide “adequate assurance of future performance” (within the meaning of Bankruptcy Code § 365) under the contract or lease to be assumed or (3) any other matter pertaining to assumption, the cure payments required by Bankruptcy Code § 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption. The Confirmation Order shall provide for notices of proposed assumptions and proposed cure amounts to be sent to applicable third parties and for procedures for objecting thereto and resolution of disputes by the Bankruptcy Court.

G. CONFIRMATION AND CONSUMMATION OF THE PLAN

(i) Conditions Precedent to Confirmation

The Plan shall not be confirmed unless and until the following conditions have been satisfied in full or waived by the Debtors, the Committee, and PLC:

- (a) The Confirmation Order shall be in form and substance satisfactory to the Debtors, the Committee, and PLC, which Confirmation Order shall approve all provisions, terms and conditions of this Plan; and
- (b) No amendments, modifications, supplements or alterations (including alterations or interpretations pursuant to Article XI.E of the Plan), shall have been made to the Plan, the Plan Supplement or any document delivered in connection therewith, without the express written consent of the Committee and PLC, which consent may be granted, withheld, or conditioned in the Committee’s and PLC’s sole discretion; and
- (c) PLC shall have agreed, conditioned upon the occurrence of the Effective Date, to assure funding of the Pension Plan, and all Claims against the Debtors held by the Pension Benefit Guaranty Corporation shall have been withdrawn, conditioned upon the occurrence of the Effective Date, or disallowed;
- (d) PLC shall have agreed, conditioned upon the occurrence of the Effective Date, to assure payment of all claims relating to the

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Cable & Wireless Holdings, Inc. Supplemental Executive Retirement Plan covering certain former employees of the Debtors;

- (e) PLC shall have caused all members of the PLC Group to waive, conditioned upon the occurrence of the Effective Date, all claims they may have against CW Holdings; and to cause their relevant subsidiaries to consent, as shareholder(s) and creditor(s) of CW Holdings, to the release of all of CW Holdings' Claims against the Debtors, and CW Holdings shall have waived, conditioned upon the occurrence of the Effective Date, any Claims it has against the Debtors; and
  - (f) Class 6 shall have accepted the Plan, determined without including any acceptance of the Plan by any Insider.
- (ii) Conditions Precedent to the Effective Date of the Plan

The Effective Date shall not occur unless and until the following conditions have been satisfied in full or waived by the Debtors, the Committee, and PLC:

- (a) The Confirmation Order shall have been entered on or before October 23, 2004, and shall have become a Final Order in form and substance reasonably satisfactory to the Debtors, the Committee, and PLC and shall provide among other things that:
  - (1) The Debtors and the Liquidating Trust are authorized to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases and other agreements or documents created in connection with the Plan; and
  - (2) The provisions of the Plan, the Plan Supplement and any document delivered in connection therewith are not severable and are mutually dependent; and
  - (3) **The provisions of the Confirmation Order** are not severable and are mutually dependent; and
  - (4) **The Effective Date of the Plan** shall occur no later than November 15, 2004; and
- (b) All actions, documents and agreements, including the Liquidating Trust Agreement, necessary to implement the Plan shall have been effected or executed;

## H. EFFECT OF PLAN CONFIRMATION

### (i) Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests and their respective successors and assigns, the Liquidating Trust, Releasors, Released Parties, PLC and all other parties in interest in these Chapter 11 Cases.

### (ii) Injunction

*Except as otherwise provided in the Plan, all entities that have held, hold or may hold Claims against or Interests in the Debtors are, as of the Effective Date, permanently enjoined from taking any actions against any of the Debtors or the Liquidating Trust or any of their property on account of such Claims or Interests including, but not limited to, (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any lien or encumbrance; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors or the Liquidating Trust; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that (a) nothing contained in the Plan shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan and (b) the injunction described in this paragraph shall not prevent any party from pursuing claims or causes of action that, while nominally against a Debtor or Debtors, seek recovery only against third parties, such as insurers.*

*By accepting distributions pursuant to the Plan, each Holder of an Allowed Claim will be deemed to have specifically consented to the Injunction set forth in Article IX.B of the Plan, which is described in the preceding paragraph.*

### (iii) Exculpation

Upon entry of the Confirmation Order, the Debtors, the Committee, PLC, the Liquidating Trust, the Agent and their respective directors, officers, members, employees, advisors, attorneys, affiliates, subsidiaries or agents shall not have or incur any liability to any holder of a Claim or Interest, any other parties in interest in the Chapter 11 Cases, for any act or omission in connection with, related to, or arising out of, the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Debtors, any Committee, PLC, the Liquidating Trust, the Agent and each of their respective directors, officers, members, employees, advisors, attorneys, affiliates, subsidiaries and agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

(iv) Injunction Related to Exculpation

**Under the terms of the Plan, the Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan, including, but not limited to, the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in Article IX.C of the Plan, which is described in the preceding paragraph.**

(v) Preservation of Rights of Action and Settlement of Causes of Action

(a) Preservation of Rights of Action

Except as otherwise provided in the SAVVIS APA, the order approving the SAVVIS APA, the Plan (including Article III.B of the Plan), the Confirmation Order or any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code § 1123(b), to the maximum extent permitted under the Bankruptcy Code, the Liquidating Trust shall retain all Causes of Action, including, but not limited to, the Causes of Action listed in the Plan Supplement. The Liquidating Trust may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Causes of Action except as provided herein.

(b) Settlement of Causes of Action

At any time after the Confirmation Date and before the Effective Date, the Debtors may settle any or all retained Causes of Action with the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019. After the Effective Date, the Liquidating Trust may settle any or all Causes of Action without approval of the Bankruptcy Court.

I. RETENTION OF JURISDICTION

Pursuant to Bankruptcy Code §§ 105(c) and 1142 and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain non-exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (i) Allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;
- (ii) Resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any of the Debtors is a party or with respect to which the Debtors or the Liquidating Trust may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

- (iii) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
- (iv) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving the Debtors or the Liquidating Trust that may be pending on the Effective Date;
- (v) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
- (vi) Resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;
- (vii) Modify the Plan before or after the Effective Date pursuant to Bankruptcy Code § 1127 or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;
- (viii) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code §§ 330, 331, 503(b) and 1103; *provided, however*, that from and after the Effective Date, the payment of fees and expenses of the Liquidating Trust, including counsel fees, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;
- (ix) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;
- (x) Hear and determine Causes of Action by or on behalf of the Debtors or the Liquidating Trust;
- (xi) Hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code §§ 346, 505 and 1146;

- (xii) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Plan are enjoined or stayed;
- (xiii) Determine any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
- (xiv) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
- (xv) Hear and determine all matters related to the property of the Debtors or the Liquidating Trust from and after the Confirmation Date;
- (xvi) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code; and
- (xvii) Enter an order closing the Chapter 11 Cases.

#### J. SUMMARY OF OTHER PROVISIONS OF THE PLAN

##### (i) Payment of Statutory Fees and Compliance with Reporting Obligations

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. All fees payable subsequent to the Effective Date under section 1930(a)(6) of title 28 of the United States Code shall be paid by the Liquidating Trust. All post-confirmation reporting requirements shall also be complied with, including the reporting of disbursement activity.

##### (ii) Retiree Benefits

Debtors do not maintain, contribute to or have any liability with respect to any post-employment health, life or other welfare-type benefits for retirees or current or former employees, other than as required by Section 4980B of the IRC or Part 6 of Subtitle B of Title I of ERISA. Thus, Debtors will not need to continue payment of any “retiree benefits” within the meaning of Bankruptcy Code §§ 1114 and 1129(a)(13).

##### (iii) Dissolution of Committees

Upon the Effective Date, the Committee shall dissolve, except with respect to any appeal of an order in the Chapter 11 Cases and applications for professional fees, and Committee members shall be released and discharged from all rights, duties and liabilities arising from, or related to, the Chapter 11 Cases.



(iv) Amendment or Modification of the Plan

In accordance with Bankruptcy Code § 1127 and, to the extent applicable, subject to Bankruptcy Code §§ 1122, 1123 and 1125, the Debtors reserve the right to alter, amend or modify the Plan at any time prior to the Confirmation Date. After the Confirmation Date but prior to the substantial consummation of the Plan, the Debtors or the Liquidating Trust may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not adversely change the treatment of the Claim of such Holder. No such alteration, amendment or modification shall be effective without the consent of both the Committee and PLC.

(v) Invalidity of Plan Provisions

If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

(vi) Successors and Assigns

The Plan shall be binding upon and inure to the benefit of the Debtors and their successors and assigns, including, without limitation, the Liquidating Trust. The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

(vii) Plan Supplement

The Plan Supplement, which shall include certain exhibits, lists or documents to be negotiated and executed in connection with the Plan, shall be Filed not later than ten (10) days prior to the Confirmation Hearing. Upon such Filing, the Plan Supplement shall become a part of the Plan. Upon its Filing, the Plan Supplement will be posted on the website maintained by the Notice Agent at [www.bsillc.com](http://www.bsillc.com), and may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Interests may obtain a copy of the Plan Supplement upon written request to the Notice Agent. The documents contained in the Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

(viii) Notices

Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

To the Debtors:

Cable & Wireless USA, Inc.  
c/o AlixPartners  
9 West 57<sup>th</sup> Street  
Suite 3420  
New York, New York 10019  
Attn: John Dubel

With a copy to:

KIRKLAND & ELLIS LLP  
777 South Figueroa Street  
Los Angeles, CA 90017-5800  
Attn: Bennett Spiegel  
Tel: (213) 680-8400  
Fax: (212) 680-8500

KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, IL 60601-6636  
Attn: Jonathan Friedland  
Tel: (312) 861-2000  
Fax: (312) 861-2200

To the Notice Agent:

Cable & Wireless USA, Inc. Claims  
Processing  
c/o Bankruptcy Services, LLC,  
757 Third Avenue, 3rd Floor  
New York, NY 10017  
(overnight mail, hand delivery or courier)

or

Cable & Wireless USA, Inc. Claims  
Processing,  
P.O. Box 5283, FDR Station  
New York, NY 10150-5283  
(regular mail)

To the Committee:

and

Winston & Strawn, LLP  
200 Park Avenue  
New York, NY 10166-4193  
Attn: David Neier  
Tel: (212) 294-6700  
Fax: (212) 294-4700

Winston & Strawn, LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543  
Attn: Eric Sagerman  
Tel: (213) 615-1700  
Fax: (213) 615-1750

To the PLC Group:

Cable and Wireless plc  
124 Theobalds Road  
London, WC1 X8RX  
Attn: Andrew Garard, Group General Counsel

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attn: Philip Mindlin  
Douglas K. Mayer

**Please refer to Article V of this Disclosure Statement for voting instructions, including the address to which Ballots with respect to the Plan should be sent.**

(ix) Governing Law

Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit or schedule to the Plan or Plan Supplement or any contract, instrument, release, indenture or other agreement or document entered into in connection with this Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

(x) Tax Liability

The Debtors and the Liquidating Trust are hereby authorized to request an expedited determination under Bankruptcy Code § 505(b) of the tax liability of the Debtors for all taxable periods ending after the Petition Date through, and including, the Effective Date.

(xi) Saturday, Sunday or Legal Holiday

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

(xii) Filing of Additional Documents

On or before substantial consummation of the Plan, the Debtors and/or the Liquidating Trust shall be entitled to File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

## V. VOTING PROCEDURES

Holders of Claims that are Impaired by the Plan have a right to vote to accept or reject the Plan. On May 11, 2004, the Bankruptcy Court entered an “order (A) scheduling a confirmation hearing; (B) establishing a plan objection deadline and a voting deadline; (C) approving the form and manner of notices; (D) setting the voting record date; (E) approving the form of ballots, voting instructions, and notice of non-voting status; and (F) approving voting and tabulation procedures, including special procedures to allow the tabulation of votes by parties to rejected contracts and leases” (the “Solicitation Procedures Order”). The Solicitation Procedures Order sets forth specific procedures that govern the solicitation and tabulation of votes to accept or reject the Plan.

The following briefly summarizes the procedures set forth in the Solicitation Procedures Order. Further information regarding voting information will be contained in the “notice of (A) hearing to consider confirmation of plan of liquidation; (B) deadline for filing objections to confirmation; (C) voting record date and voting deadline; and (D) injunction provisions of the plan of liquidation” (“Confirmation Hearing Notice”) that accompanies this Disclosure Statement. The Solicitation Procedures Order will be posted on the website maintained by the Notice Agent (which is also the “Solicitation Agent” described in the Solicitation Procedures Motion) at [www.bsillc.com](http://www.bsillc.com), and a copy may be obtained by calling the Notice and Claims Agent at (866) 222-1116. Holders of Claims and Interests are also encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys.

The Ballots that are being sent to Holders of Impaired Claims along with this Disclosure Statement contain more detailed information regarding the voting process and the tabulation of votes. Again, parties that wish to view the Solicitation Procedures Order should go to [www.bsillc.com](http://www.bsillc.com) or contact the Solicitation Agent.

The Disclosure Statement, accompanied by a Ballot to be used for voting on the Plan, is being distributed to Holders of Claims in Class 6. The Debtors contend that only Holders in this Class are entitled to vote to accept or reject the Plan and may do so by completing the Ballot and returning it in the envelope provided.

All ballots accepting or rejecting the Plan (“Ballots”) must be received by Bankruptcy Services, LLC (the “Solicitation Agent”) by 4:00 p.m., prevailing eastern time, on July 2, 2004 (the “Voting Deadline”) at the following address:

Bankruptcy Services, LLC  
757 Third Avenue  
Third Floor  
New York, New York 10017  
Attention: Cable & Wireless Solicitation Agent

To ensure that its vote is counted, each Holder of a Claim must:

- (i) Complete a Ballot;

- (ii) Indicate the Holder's decision either to accept or reject the Plan in the boxes provided in the respective Ballot; and
- (iii) Sign and return the Ballot to the address set forth on the envelope provided therewith.

The Court may extend or waive the period during which votes will be accepted, in which case the Voting Deadline for such solicitation shall mean the last time and date to which such solicitation is extended.

The Ballots being distributed to Holders of Claims in Class 6 will contain a box that such Holders may check if they wish to opt out of the Optional Release described in Article III.B of the Plan. **HOLDERS OF CLASS 6 CLAIMS WHO CHECK THE BOX, OR WHO DO NOT SUBMIT A TIMELY BALLOT, WILL FOREGO THEIR RIGHT TO RECEIVE THE PLC INDIVIDUAL RELEASE CONSIDERATION AND WILL BE DEEMED NOT TO HAVE GRANTED THE OPTIONAL RELEASE. HOLDERS OF CLASS 6 CLAIMS WHO RETURN A BALLOT BUT DO NOT CHECK THE BOX WILL BE DEEMED TO HAVE GRANTED THE OPTIONAL RELEASE, AND WILL RECEIVE THEIR SHARE OF THE PLC INDIVIDUAL RELEASE CONSIDERATION.** Holders of Allowed Claims in Class 6 are eligible to receive the PLC Individual Release Considerations whether or not they believe that they hold valid claims against PLC, so long as they return a Ballot and do not check the box to opt out of the release.

IF YOU HAVE ANY QUESTIONS ON VOTING PROCEDURES, PLEASE CALL THE SOLICITATION AGENT TOLL FREE AT 1-866-222-1116.

## VI. CONFIRMATION REQUIREMENTS

### A. THE CONFIRMATION HEARING

Bankruptcy Code § 1128(a) requires the Bankruptcy Court to hold a hearing on confirmation of the Plan (the "Confirmation Hearing"). Bankruptcy Code § 1128(b) provides that any party-in-interest may object to confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing for July 13, 2004, at 3:30 p.m. eastern time. The Debtors will provide appropriate notice of the Confirmation Hearing as well as of the applicable deadlines for filing, among other things, objections to the Plan.

As set forth in the Solicitation Procedures Order, objections to confirmation must be filed on or before July 2, 2004 and must be served so that they are received by 4 p.m. eastern time on July 2, 2004.

**THE BANKRUPTCY COURT WILL NOT CONSIDER OBJECTIONS TO CONFIRMATION UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE SOLICITATION PROCEDURES ORDER.**



## B. STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Bankruptcy Code § 1129 have been satisfied. If so, the Bankruptcy Court will enter the Confirmation Order. The Debtors believe that the Plan satisfies or will satisfy the applicable requirements, as follows:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors, as Plan proponents, will have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment (i) made before the Confirmation of the Plan is reasonable, or (ii) subject to the approval of the Bankruptcy Court as reasonable if it is to be fixed after the confirmation of the Plan.
- Either each Holder of an Impaired Claim or Interest has accepted the Plan, or will receive or retain under the Plan on account of that Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that the Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code.
- Each Class of Claims or Interests has either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of each impaired Class pursuant to Bankruptcy Code § 1129(b).
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Allowed Administrative Expense Claims, Allowed Priority Tax Claims (except as they may be treated under Bankruptcy Code § 1129(a)(9)(C)), and Allowed Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as practicable.
- At least one Class of Impaired Claims or Interests will accept the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of that Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successors thereto under the Plan unless such a liquidation or reorganization is proposed in the Plan.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee, will be paid as of the Effective Date.

(i) Best Interests of Creditors Test/Best Interests Analysis

Bankruptcy Code § 1129(a)(7) (commonly called the “Best Interests Test”) requires that, as of the Effective Date, each Holder of an Impaired Claim or Impaired Interest either (a) accepts the Plan or (b) receives or retains under the Plan property of a value that is not less than the value that the Holder would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. The first step in meeting this test is to determine the proceeds that the hypothetical liquidation of the Debtors’ assets and properties would generate in the context of a chapter 7 liquidation. The gross amount available would be the sum of the proceeds from liquidating the Debtors’ assets plus the cash held by the Debtors at the time the chapter 7 case commenced. The amount of any Claims secured by these assets, the costs and expenses of the liquidation, and any additional administrative expenses and priority claims that may result from the termination of the Debtors’ businesses and the use of chapter 7 for the purposes of a hypothetical liquidation would reduce the amount of these proceeds. Any remaining net cash would be allocated to creditors and stockholders in strict priority in accordance with Bankruptcy Code § 726.

The Debtors believe that the Plan will produce a greater recovery for Holders of Claims and Interests than would be achieved in a chapter 7 liquidation. The Debtors’ management, with the assistance of AlixPartners, has prepared a best interests analysis on the Debtors’ behalf, which is set forth in *Exhibit B* attached hereto (the “Best Interests Analysis”), to assist Holders of Claims and Interests in determining whether to accept or reject the Plan. This Best Interests Analysis estimates the proceeds that would be realized from a liquidation of the Debtors’ assets under chapter 7 of the Bankruptcy Code as of the anticipated Effective Date. As a result of the 363 Sale, substantially all of the Debtors’ assets have been reduced to Cash. Accordingly, the proceeds available in a chapter 7 liquidation will not vary significantly from the proceeds available under the Plan. The Plan, however, is based on the Global Settlement, under which the members of the PLC Group are accepting in satisfaction of all of their General Unsecured Claims the treatment described in the Plan and elsewhere in this Disclosure Statement. For this reason, the Plan provides greater distributions to creditors than would be available in a chapter 7 liquidation, as further illustrated in *Exhibit B*. In addition, a conversion to chapter 7 itself would likely prompt certain other events to occur that may create a larger number of unsecured creditors and subject the chapter 7 estates to additional claims and administrative expenses, including (i) the statutory fees an independent chapter 7 trustee would receive for any distributions made, and (ii) the costs incurred by professionals for the chapter 7 estate which would likely be over and above those incurred by professionals of the Liquidating Trust (which professionals are expected to be a combination of the professionals utilized by the Debtors and the Committee, who are already familiar with the Debtors and the Claims in these Chapter 11 Cases). Any such claims and/or administrative expenses related to a chapter 7 liquidation would increase the total amount of Claims against the Debtors and would dilute any potential recoveries to other Holders of General Unsecured Claims. No attempt has been made to estimate such additional Claims. The Best Interests Analysis is based upon projected assets and liabilities of the Debtors as of the Effective Date, and incorporates estimates and assumptions developed by the Debtors, which are subject to potentially material changes and uncertainties not within the Debtors’ control.

(ii) Feasibility

Bankruptcy Code § 1129(a)(11) requires that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successors to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan. The Plan proposed by the Debtors provides for a liquidation of the Debtors' minimal remaining non-Cash assets and a distribution of Cash to creditors in accordance with the priority scheme of the Bankruptcy Code as supplemented by the terms of the Plan. The ability of the Estates to make the distributions described in the Plan does not depend on future earnings of the Debtors. The Debtors have more Cash on hand than they estimate will be necessary to pay all Secured Claims, Administrative Claims, and Priority Claims. The funds remaining after payment of those Claims, whatever such funds turn out to be, will be distributed to Holders of General Unsecured Claims according to the formula described in Article IV of this Disclosure Statement. Accordingly, the Plan is feasible and meets the requirements of Bankruptcy Code § 1129(a)(11).

(iii) Acceptance by an Impaired Class

The Bankruptcy Code requires, as a condition to confirmation, that, subject to certain exceptions, each Class of Claims or Interests that is Impaired under the Plan accept the Plan. A Class that is not Impaired under the Plan is conclusively presumed to have accepted the Plan and, therefore, solicitation of acceptances with respect to such Class is not required. A Class is "Impaired" unless the Plan (a) leaves unaltered the legal, equitable and contractual rights to which the Claim or Interest entitles the Holder of that Claim or Interest; (b) cures any default and reinstates the original terms of the obligation; or (c) provides that, on the consummation date, the Holder of the Claim or Interest receives Cash equal to the allowed amount of that Claim or, with respect to any Interest, any fixed liquidation preference to which the Interest Holder is entitled or any fixed price at which the Debtors may redeem the security. Only Class 6 and Class 7 are impaired by the Plan in these Chapter 11 Cases. Only Class 6 is entitled to vote with respect to the Plan and the Plan cannot be confirmed unless Class 6 accepts the Plan. Class 7 is deemed to reject the Plan, but the Debtors believe that the Plan meets the Bankruptcy Code's requirements for confirmation notwithstanding Class 7's deemed rejection.

## VII. RISK FACTORS

**ALL INTERESTED PARTIES SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.**

### A. CERTAIN BANKRUPTCY CONSIDERATIONS

*Parties in interest may object to the Debtors' classification of Claims.* Bankruptcy Code § 1122 provides that a chapter 11 plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other Claims or Interests in such class. The Debtors believe that the classification of claims and interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

*The Debtors may not be able to secure confirmation of the Plan.* There can be no assurance that the Debtors will receive the requisite acceptances to confirm the Plan. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting creditor or equity holder of the Debtors might challenge the adequacy of this Disclosure Statement or contend that the balloting procedures and results are not in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met. Bankruptcy Code § 1129 sets forth the requirements for confirmation and requires, among other things, that the value of distributions to non-accepting Holders of Claims and Interests within a particular class under the Plan will not be less than the value of distributions such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. While there can be no assurance that these requirements will be met, the Debtors believe that the Plan does satisfy these tests.

*The confirmation of the Plan is also subject to certain conditions as described herein.* While the Debtors believe that those conditions will be met, they cannot give absolute assurance they will occur. If the conditions are not met, a waiver of the conditions by the Debtors, the Committee and PLC would be required in order to confirm the Plan. If the Plan is not confirmed, it is unclear whether another liquidation of the Debtors could be implemented and what distributions Holders of Claims or Interests ultimately would receive with respect to their Claims or Interests. If an alternative plan could not be agreed to, it is possible that the Debtors would have to convert their cases to chapter 7, in which case it is likely that Holders of Claims and Interests would receive substantially less favorable treatment than they would receive under the Plan.

*The Debtors may object to the amount or classification of a Claim.* The Debtors reserve the right to object to the amount or classification of any Claim or Interest. The estimates set forth in this Disclosure Statement cannot be relied on by any creditor or equity holder whose Claim or Interest is subject to an objection. Any such Claim or Interest Holder may not receive its specified share of the estimated distributions described in this Disclosure Statement.

**THESE RISK FACTORS CONTAIN CERTAIN STATEMENTS THAT ARE “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. THESE STATEMENTS ARE SUBJECT TO A NUMBER OF ASSUMPTIONS, RISKS AND UNCERTAINTIES, MANY OF WHICH ARE BEYOND THE CONTROL OF DEBTORS, INCLUDING THE IMPLEMENTATION OF THE PLAN, NATURAL DISASTERS AND UNUSUAL WEATHER CONDITIONS, TERRORIST ACTIONS OR ACTS OF WAR, ACTIONS OF GOVERNMENTAL BODIES, AND OTHER MARKET CONDITIONS. HOLDERS OF CLAIMS AND INTERESTS ARE CAUTIONED THAT THE FORWARD-LOOKING STATEMENTS SPEAK AS OF THE DATE MADE AND ARE NOT GUARANTEES OF FUTURE PERFORMANCE. ACTUAL RESULTS OR DEVELOPMENTS MAY DIFFER MATERIALLY FROM THE EXPECTATIONS EXPRESSED OR IMPLIED IN THE FORWARD-LOOKING STATEMENTS, AND DEBTORS UNDERTAKE NO OBLIGATION TO UPDATE ANY SUCH STATEMENTS.**

## VIII. ALTERNATIVES TO THE PLAN

The Debtors believe that the Plan affords the Holders of Claims the potential for the greatest realization on their Claims and, therefore, is in the best interest of such Holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) continuation of the pending Chapter 11 Cases; (b) alternative plans of liquidation; and (c) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

### A. CONTINUATION OF THE CHAPTER 11 CASES

If the Debtors remain in chapter 11 and the Plan as currently proposed is not confirmed within the time period projected, the Debtors could continue to manage their property, now consisting primarily of Cash, as debtors-in-possession. In this situation, the Debtors would remain in chapter 11 without a business to operate, incurring expenses but not generating revenues. The Cash currently held by the Debtors and available for distribution under the Plan will continue to be reduced by the expenses of remaining under the protections of chapter 11 of the Bankruptcy Code for an extended period of time. A prolonged continuation of the Chapter 11 Cases could significantly reduce the recoveries received by creditors under any future plan of liquidation due primarily to the reduction of amounts available for distribution to creditors by the administrative expenses incurred to maintain the Estates and to negotiate a modified Plan with its creditor constituents.

### B. ALTERNATIVE PLANS OF LIQUIDATION

If the Plan is not confirmed, it is possible that the Debtors could propose a different plan of liquidation, or that any other party in interest in the Chapter 11 Cases could attempt to formulate and propose a different plan or plans on such terms as it may desire, once the Debtors' Exclusive Period expires or is terminated. Such alternative plan would still have to meet the requirements of confirmation.

### C. CHAPTER 7 LIQUIDATION

In a chapter 7 case, a trustee would be elected or appointed to liquidate the Debtors' assets. The proceeds of the liquidation would be distributed to the respective Holders of Claims against the Debtors in accordance with the priorities established by the Bankruptcy Code. The proceeds of the liquidation would consist of the proceeds from an orderly liquidation of the assets of the Debtors and Cash. In addition, were the Estates to be liquidated pursuant to chapter 7, additional administrative expenses and potential unsecured Claims would significantly dilute any potential recovery to the Holders of General Unsecured Claims.

In a chapter 7 case, the amount distributed to unsecured creditors depends upon the net estate available after all the Debtors' assets have been converted to Cash. The Cash realized from the liquidation of the assets would be distributed first to secured creditors, to the extent of the value of their collateral. A secured creditor whose collateral is insufficient to pay its secured claim in full would be entitled to assert an unsecured claim for its deficiency and share with other unsecured creditors. Thereafter, any remaining funds would be distributed in accordance with the priorities of the Bankruptcy Code. The amount of liquidation value available to unsecured creditors and Interest holders would be further reduced by: (1) costs and expenses of



liquidation, including compensation of the chapter 7 trustee; (2) all unpaid administrative expenses and priority claims incurred by the Debtors in the Chapter 11 Cases that are allowed in the chapter 7 case; and (3) any other costs or claims arising from the chapter 7 case.

The Best Interests Analysis, attached as *Exhibit B* and discussed in Article VI.B(i) of this Disclosure Statement, projects that unsecured creditors of the Debtors would receive an estimated distribution of 1.0% on their Claims in a chapter 7 case. Reference is made to the Best Interests Analysis for valuation amounts and for a description of the procedures followed, the factors considered and the assumptions made in preparing the analysis. The Best Interests Analysis is an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation. Any such liquidation would take place in the future under circumstances that cannot be predicted; the amount of such proceeds is therefore highly speculative. The actual amounts of claims against the estate could vary significantly from the Debtors' estimate. Therefore, the actual net proceeds available to unsecured creditors and equity holders could vary materially from the amounts in *Exhibit B*.

## **IX. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and to Holders of Claims and Interests. This discussion is based on the Internal Revenue Code of 1986, as amended (the "IRC"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the IRS as in effect on the date hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims (including Claims within the same Class) and Interests, the Holders' status and method of accounting (including Holders within the same Class) and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Furthermore, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the Holders of Claims and Interests.

This summary does not apply to Holders of Claims and Interests that are not United States persons (as defined in the IRC) or that are otherwise subject to special treatment under U.S. federal income tax law (including, for example, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies, regulated investment companies, investors that hold the instruments as part of a straddle or hedging, constructive sale, integrated or conversion transactions for U.S. federal income tax purposes or investors whose functional currency is not the U.S. dollar). The following discussion assumes that Holders of Claims and Interests hold their instruments as "capital assets" within the meaning of IRC section 1221. Moreover, this summary does not purport to cover all aspects of U.S. federal income taxation that may apply to Debtors and Holders of Claims and Interests based upon their particular circumstances. Additionally, this

summary does not discuss any tax consequences that may arise under state, local, or foreign tax law.

If a partnership holds Claims or Interests, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. Partners in partnerships that hold Claims or Interests should consult their tax advisors.

**THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PERSONAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR AN INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.**

A. CONSEQUENCES TO THE DEBTORS

Pursuant to the Plan, the Debtors will transfer the consideration received in the 363 Sale and their remaining assets to the Liquidating Trust. The Plan provides that the Debtors will be liquidated and dissolved. As a result, the Debtors' net operating losses, capital losses and other tax attributes will not be available to the Debtors or to the Liquidating Trust following the Effective Date.

B. FEDERAL INCOME TAX TREATMENT OF THE LIQUIDATING TRUST

(i) Classification of the Liquidating Trust

Pursuant to the Plan, the Debtors will transfer all the consideration received in the 363 Sale (after payment of the Allowed Secured Claims of PLC) and their remaining assets to the Liquidating Trust, which will become obligated to make distributions in accordance with the Plan. The Plan provides, and this discussion assumes, that the Liquidating Trust will be treated for federal income tax purposes as a "liquidating trust," as defined in Treasury Regulation section 301.7701-4(d), and will therefore be taxed as a grantor trust, of which the beneficiaries will be treated as the owners and grantors thereof. Accordingly, because a grantor trust is treated as a pass-through entity for federal income tax purposes, no tax should be imposed on the Liquidating Trust itself or on the income earned or gain recognized by the Liquidating Trust. Instead, the beneficiaries (i.e., holders of Allowed Claims) will be taxed on their allocable shares of such net income or gain in each taxable year (determined in accordance with the Liquidating Trust Agreement), whether or not they receive any distributions from the Liquidating Trust in such taxable year.

Although the Liquidating Trust has been structured with the intention of complying with guidelines established by the IRS in Rev. Proc. 94-45, 1994-2 C.B. 684, for the formation of liquidating trusts, it is possible that the IRS could require a different characterization of the Liquidating Trust, which could result in different and possibly greater tax liability to the Liquidating Trust and/or the Holders of Allowed Claims. No ruling has been or will be requested from the IRS concerning the tax status of the Liquidating Trust and there can be no assurance the IRS will not require an alternative characterization of the Liquidating Trust. If the Liquidating Trust were determined by the IRS to be taxable not as a liquidating trust, as

described in Treasury Regulation section 301.7701-4(d), the taxation of the Liquidating Trust and the transfer of assets by the Debtors to the Liquidating Trust could be materially different than is described herein and could have a material adverse effect on the Holders of Allowed Claims.

(ii) Tax Reporting

The Administrative Trustee will file tax returns with the IRS for the Liquidating Trust as a grantor trust in accordance with Treasury Regulation section 1.671-4(a). The Administrative Trustee will also send to each beneficiary of the Liquidating Trust a separate statement setting forth the beneficiary's allocable share of items of income, gain, loss, deduction or credit and will instruct the beneficiary to report such items on such beneficiary's federal income tax return.

(iii) Reserve for Disputed Claims

The Administrative Trustee may establish a reserve on account of any distributable amounts required to be set aside on account of Disputed Claims. Amounts from the reserve shall be distributed from time to time as Disputed Claims are resolved in the same manner as if the Disputed Claims had been Allowed Claims on the Effective Date. To the extent required, the Liquidating Trust will pay taxes on the taxable net income or gain allocable to Holders of Disputed Claims on behalf of such Holders and, when such Disputed Claims are ultimately resolved, Holders whose Disputed Claims are determined to be Allowed Claims will receive distributions from the Liquidating Trust net of taxes which the Liquidating Trust had previously paid on their behalf.

C. CONSEQUENCES TO HOLDERS OF CLAIMS

The federal income tax consequences of the Plan to a Holder of a Claim will depend upon several factors, including but not limited to: (i) the origin of the Holder's Claim, (ii) whether the Holder is a resident of the United States for tax purposes (or falls into any of the special classes of taxpayers excluded from this discussion as noted above), (iii) whether the Holder reports income on the accrual or cash basis method, (iv) whether the Holder has taken a bad debt deduction or worthless security deduction with respect to its Claim and (v) whether the Holder receives distributions under the Plan in more than one taxable year. **HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT UNDER THE PLAN OF THEIR PARTICULAR CLAIMS.**

(i) Gain or Loss Recognized by Holders of Claims

Generally, a Holder of an Allowed Claim will recognize gain or loss equal to the difference between the "amount realized" by such Holder and such Holder's adjusted tax basis in the Allowed Claim. The "amount realized" is equal to the sum of the Cash and the fair market value of any other consideration received under the Plan in respect of a Holder's Claim, including, to the extent such Holder is a beneficiary of the Liquidating Trust, the fair market value of each such Holder's proportionate share of the assets transferred to the Liquidating Trust on behalf of and for the benefit of such Holder (to the extent that such Cash or other property is



not allocable to any portion of the Allowed Claim representing accrued but unpaid interest (see discussion below)).

The transfer of the proceeds of the 363 Sale to the Liquidating Trust by the Debtors should be treated for federal income tax purposes as a transfer of such Liquidating Trust Assets directly to the Holders of Allowed Claims to the extent they are beneficiaries of the Liquidating Trust, followed by a deemed transfer of such Liquidating Trust Assets by such beneficiaries to the Liquidating Trust. As a result of such treatment, such Holders of Allowed Claims will be required to take into account the fair market value of their pro rata share, if any, of the proceeds of the 363 Sale transferred on their behalf to the Liquidating Trust in determining the amount of gain realized and required to be recognized upon consummation of the Plan on the Effective Date. In addition, since a Holder's share of the assets held in the Liquidating Trust may change depending upon the resolution of Disputed Claims, the Holder may be prevented from recognizing any loss in connection with consummation of the Plan until all such Disputed Claims have been resolved. The Administrative Trustee will provide the Holders of Allowed Claims with valuations of the assets transferred to the Liquidating Trust on behalf of and for the benefit of such Holders and such valuations should be used consistently by the Liquidating Trust and such Holders for all federal income tax purposes. **HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR ALLOWED CLAIMS.**

(ii) Distributions in Discharge of Accrued but Unpaid Interest

Pursuant to the Plan, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to any allowed accrued but unpaid interest. However, there is no assurance that the IRS will respect such allocation for federal income tax purposes. Holders of Allowed Claims not previously required to include in their taxable income any accrued but unpaid interest on an Allowed Claim may be treated as receiving taxable interest to the extent the consideration they receive under the Plan is allocable to accrued but unpaid interest. Holders previously required to include in their taxable income any accrued but unpaid interest on an Allowed Claim may be entitled to recognize a deductible loss, to the extent that such accrued but unpaid interest is not satisfied under the Plan. **HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR ALLOWED CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED BUT UNPAID INTEREST.**

(iii) Character of Gain or Loss; Tax Basis; Holding Period

The character of any gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss recognized by a Holder of Allowed Claims under the Plan will be determined by a number of factors, including, but not limited to, the status of the Holder, the nature of the Allowed Claim in such Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period of the Allowed Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Allowed Claim. The Holder's aggregate tax basis for any consideration received under the Plan will

generally equal the amount realized in the exchange (less any amount allocable to interest as described in the preceding paragraph). The holding period for any consideration received under the Plan will generally begin on the day following the receipt of such consideration.

#### D. CONSEQUENCES TO HOLDERS OF INTERESTS

Pursuant to the Plan, all Interests in all of the Debtors are being extinguished. A Holder of any Interest extinguished under the Plan should generally be allowed a “worthless stock deduction” in an amount equal to the Holder’s adjusted basis in the Holder’s Interest. A “worthless stock deduction” is a deduction allowed to a Holder of a corporation’s stock for the taxable year in which such stock becomes worthless. If the Holder held the Interest as a capital asset, the loss will be treated as a loss from the sale or exchange of such capital asset. Capital gain or loss will be long-term if the Interest was held by the Holder for more than one year and otherwise will be short-term.

#### E. LIMITATION ON USE OF CAPITAL LOSSES

Holders of Claims and Interests who recognize capital losses as a result of the exchange under the Plan will be subject to limits on their use of capital losses. For noncorporate Holders, capital losses may be used to offset any capital gains (without regard to holding periods) plus the lesser of (1) \$3,000 (\$1,500 for married individuals filing separate returns) or (2) the excess of the capital losses over the capital gains. For corporate Holders, losses from the sale or exchange of capital assets may only be used to offset capital gains. Holders who have more capital losses than can be used in a tax year may be allowed to carry over the excess capital losses for use in succeeding tax years. Noncorporate Holders may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income (see described immediately above) for an unlimited number of years. Corporate Holders may only carry over unused capital losses for the five years following the capital loss year, but are allowed to carry back unused capital losses to the three years preceding the capital loss year.

#### F. BACKUP WITHHOLDING

Under the backup withholding rules, a Holder of Claims may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless that Holder (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax.

Debtors will withhold all amounts required by law to be withheld from payments of interest and dividends. Debtors will comply with all applicable reporting requirements of the IRC.

**AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, LOCAL AND OTHER TAX**



CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT SUCH HOLDER'S TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

#### X. MISCELLANEOUS PROVISIONS

Certain additional miscellaneous information regarding the Plan and the Chapter 11 Cases is set forth below.

##### A. SUCCESSORS AND ASSIGNS

The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

##### B. RESERVATION OF RIGHTS

None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtors with respect to the Holders of Claims or Interests prior to the Effective Date.

#### XI. RECOMMENDATION

The Debtors believe that the Plan is preferable to the alternatives described herein because it provides for a larger distribution to Holders of Claims than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to the Holders of Claims. In short, the Plan returns more to unsecured creditors than any realistic alternative and returns it more quickly. There is very little risk that the Plan cannot be carried out if it is accepted by unsecured creditors. *Accordingly, the Debtors recommend that Holders of Claims entitled to vote on the Plan support confirmation of the Plan and vote to accept the Plan, and that they not check the box to opt out of the Optional Release.*

Dated: May 13, 2004

CABLE & WIRELESS USA, INC.

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

CABLE & WIRELESS INTERNET  
SERVICES, INC.

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

CABLE & WIRELESS USA OF  
VIRGINIA, INC.

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

EXODUS COMMUNICATIONS REAL  
PROPERTY MANAGERS I, LLC,

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

(signatures continued on following page)

EXODUS COMMUNICATIONS REAL  
PROPERTY I, LLC

By: Exodus Communications Real  
Property Managers I, LLC, its  
managing member

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

and

By: Cable & Wireless Internet  
Services, Inc., its member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

(signatures continued on following page)

EXODUS COMMUNICATIONS  
REAL PROPERTY I, LP

By: Exodus Communications Real  
Property Managers I, LLC, its  
general partner

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer  
and Chief Financial Officer

and

By: Exodus Communications Real  
Property I, LLC, its limited partner

By: Exodus Communications Real  
Property Managers I, LLC, its  
managing member

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer  
and Chief Financial Officer

and

By: Cable & Wireless Internet  
Services, Inc., its member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

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CO-COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION



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**EXHIBIT A**

**SECOND AMENDED JOINT PLAN OF LIQUIDATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE**

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
)  
CABLE & WIRELESS USA, INC., *et al.*,<sup>1</sup> ) Case No. 03-13711 (CGC)  
) (Jointly Administered)  
Debtors. )

**SECOND AMENDED JOINT PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Co-Counsel for the Debtors and Debtors in Possession

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<sup>1</sup> 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.

**JOINT PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The Debtors propose the following joint chapter 11 plan of liquidation pursuant to section 1121(a) of title 11 of the United States Code:

**I. Introduction**

**A. Plan Defined Terms.** Unless the context otherwise requires, the terms specified below have the following meanings (such meanings to be applicable equally to both the singular and plural unless otherwise noted):

1. *Administrative Bar Date* means the last date for filing proofs of claim by non-Professionals relating to any Administrative Claim, which date shall be 30 days after the Confirmation Date.

2. *Administrative Claim* means a Claim entitled to priority pursuant to Bankruptcy Code § 507(a)(1), including, but not limited to: (a) any actual, necessary costs and expenses incurred after the Petition Date and prior to the Effective Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services, and payments for inventories, leased equipment, and premises) and Claims of governmental units for taxes (including tax audit Claims related to tax years commencing after the Petition Date, but excluding Claims relating to tax periods, or portions thereof, ending on or before the Petition Date); (b) compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses Allowed by the Bankruptcy Court under Bankruptcy Code §§ 330, 331, 503(b) or 1103 to the extent incurred prior to the Effective Date; and (c) all fees and charges assessed prior to the Effective Date against the Estates under section 1930, chapter 123 of title 28 of the United States Code.

3. *Administrative Trustee* means the administrative trustee of the Liquidating Trust who shall be appointed pursuant to Article III.C of this Plan.

4. *Affiliate* means any Person that is an “affiliate” of any of the Debtors within the meaning of Bankruptcy Code § 101(2).

5. *Agent* has the meaning specified in Article I.A.29 of this Plan.

6. *Allowed* means, with reference to any Claim against or Interest in the Debtors, (i) any Claim which has been listed by the Debtors in the Debtors’ Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent, and for which no contrary proof of claim or objection to claim has been timely filed; (ii) any Claim or Interest allowed by the terms of this Plan; (iii) any Claim, or portion thereof, or Interest which is not Disputed; (iv) any Claim or Interest that is compromised, settled or otherwise resolved pursuant to a Final Order of the Bankruptcy Court; or (v) any Claim or Interest which, if Disputed, has been Allowed by a Final Order or has ceased to be Disputed; provided, however, that Claims allowed pursuant to an order of the Bankruptcy Court solely for the purpose of voting to accept or reject the Plan shall not be considered Allowed Claims hereunder.

7. *Ballot* means each of the ballot forms distributed to each Holder of an Impaired Claim on which the Holder is to indicate acceptance or rejection of this Plan.

8. *Bankruptcy Code* means title 11 of the United States Code, as may be amended from time to time, as applicable to the Chapter 11 Cases.

9. *Bankruptcy Court* means the United States Bankruptcy Court for the District of Delaware, or such other court having jurisdiction over the Chapter 11 Cases or any proceeding within, or appeal of an order entered in, the Chapter 11 Cases.

10. *Bankruptcy Rules* mean the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Cases, including the local rules of the Bankruptcy Court, if any.

11. *Bar Date* means the last date for filing proofs of Claim or Interest as set forth in any order or orders entered by the Bankruptcy Court, as applicable to the particular Claim or Interest at issue.

12. *Business Day* means any day on which commercial banks are open for business and not authorized to close, in the City of New York.

13. *Cash* means legal tender of the United States of America and equivalents thereof in any form of payment including checks, drafts and wire transfers.

14. *Causes of Action* means, except as otherwise provided in the SAVVIS APA, the order approving the SAVVIS APA, the Plan, the Confirmation Order or any document, instrument, release or other agreement entered into in connection with the Plan, all claims, actions, choses in action, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, controversies, variances, trespasses, damages, judgments, third-party claims, counterclaims and cross claims (including, but not limited to, all claims in any avoidance, recovery, subordination or other actions against Insiders and/or any other Persons under the Bankruptcy Code, including Bankruptcy Code §§ 510, 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553) of the Debtors, the Debtors in Possession and/or the Estates (collectively, "Suits") (including, but not limited to, those actions listed in the Disclosure Statement and the Plan Supplement) that are or may be pending on the Effective Date or instituted by the Liquidating Trust after the Effective Date against any Person based on law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted, known or unknown. In no event shall the term "Causes of Action" include Suits released under this Plan.

15. *Chapter 11 Cases* mean the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court.

16. *Claim* means a "claim" as defined in Bankruptcy Code § 101(5).

17. *Class* means a category of Holders of Claims or Interests, as described in Article II of this Plan.

18. *Committee* means the committee appointed to represent the interests of unsecured creditors in the Chapter 11 Cases pursuant to Bankruptcy Code § 1102.
19. *Confirmation Date* means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.
20. *Confirmation Hearing* means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Bankruptcy Code § 1129, as such hearing may be adjourned or continued from time to time.
21. *Confirmation Order* means the order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code § 1129.
22. *CW Holdings* means Cable & Wireless Holdings, Inc.
23. *CWIS* means Cable & Wireless Internet Services, Inc.
24. *CWVA* means Cable & Wireless USA of Virginia, Inc.
25. *CWUSA* means Cable & Wireless USA, Inc.
26. *Debtor Claimants* has the meaning specified in Article III.B.1 of this Plan.
27. *Debtors* means the following entities which filed chapter 11 petitions: Cable & Wireless USA, Inc., Cable & Wireless Internet Services, Inc., Cable & Wireless USA of Virginia, Inc., Exodus Communications Real Property Managers I, LLC, Exodus Communications Real Property I, LLC, and Exodus Communications Real Property I, LP.
28. *Debtors in Possession* means the Debtors in their capacity as debtors in possession in the Chapter 11 Cases pursuant to Bankruptcy Code §§ 1101, 1107(a) and 1108.
29. *DIP Credit Agreement* means the Revolving Credit and Guaranty Agreement, dated as of December 8, 2003, among the Debtors as borrowers, JPMorgan Chase Bank as administrative agent and collateral agent (the “Agent”), and PLC and the other lenders from time to time party thereto as lenders, and the other loan documents executed in connection therewith.
30. *DIP Facility* means the lending facility established under the DIP Credit Agreement.
31. *Disclosure Statement* means that certain first amended disclosure statement for the second amended joint plan of liquidation under chapter 11 of the Bankruptcy Code, as amended, supplemented or otherwise modified, from time to time, relating to the Plan, including, without limitation, any exhibits and schedules thereto, that is prepared and distributed in accordance with the Bankruptcy Code, Bankruptcy Rules and other applicable law.
32. *Disputed* means, with respect to any Claim or Interest, any Claim or Interest: (a) listed on the Schedules as unliquidated, disputed or contingent; (b) as to which either



the Debtors or the Liquidating Trust has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules or which is otherwise disputed by the Debtors in accordance with applicable law, which objection, request for estimation or dispute has not been settled, waived withdrawn or determined by a Final Order; or (c) during the period prior to the deadline fixed by the Plan or the Bankruptcy Court for objecting to such Claim or Interest, such Claim or Interest exceeds the amount listed on the Schedules other than as unliquidated, disputed or contingent.

33. *Effective Date* means the first Business Day on which each condition specified in Article VIII.B of this Plan shall have been satisfied or waived.

34. *Entity* means an “entity” as defined in Bankruptcy Code § 101(15).

35. *Environmental Claims* means those claims for environmental matters relating to any Debtor that arose, accrued or otherwise relate directly or indirectly to events prior to the Petition Date, including, without limitation, environmental costs expended pre-petition by any entity, whether governmental or private, and claims by governmental and private entities with respect to post-petition cleanup of property with respect to releases, discharges, contamination or other events that initially occurred prior to the Petition Date.

36. *Estates* mean the estates of all Debtors in the Chapter 11 Cases created pursuant to Bankruptcy Code § 541.

37. *Exodus LLC* means Exodus Communications Real Property I, LLC.

38. *Exodus LP* means Exodus Communications Real Property I, LP.

39. *Exodus Managers* means Exodus Communications Real Property Managers I, LLC.

40. *File, Filed or Filing* means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

41. *Final Order* means an order of the Bankruptcy Court or any other court of competent jurisdiction (i) as to which the time to appeal, petition for certiorari or move for reargument, reconsideration or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument, reconsideration or rehearing is pending; or (ii) if an appeal, writ of certiorari, reargument, reconsideration or rehearing thereof has been sought, such order has been affirmed by the highest court to which such order was appealed or from which certiorari was sought, reargument, reconsideration or rehearing has been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for reargument, reconsideration or rehearing has expired; provided, however, that a possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be, but has not been, filed with respect to such order, shall not cause such order not to be a Final Order.

42. *General Unsecured Claim* means any Claim against any of the Debtors that arose or accrued prior to the Petition Date and is not a Priority Non-Tax Claim, a Priority Tax Claim, or a Secured Claim.

43. *Global Settlement* has the meaning specified in Article III.B.1 of this Plan.

44. *Holder* means an Entity holding a Claim or any authorized agent who has completed, executed and delivered a Ballot in accordance with the applicable voting instructions.

45. *Impaired* means, when used in reference to a Claim or Interest, a Claim or Interest that is “impaired” within the meaning of Bankruptcy Code § 1124.

46. *Insider* means any Person that is an “insider” of any of the Debtors within the meaning of Bankruptcy Code § 101(31).

47. *Interest* means any equity interest including, but not limited to, all issued, unissued, authorized or outstanding shares of stock or other equity interest together with any warrants, options or contractual rights to purchase or acquire such equity interests at any time and all rights arising with respect thereto and Claims which Holders of equity interests may have relating to the purchase, sale or otherwise that relate to the ownership of the equity interest.

48. *Ironside Drive Tax Claim* means the Secured Claims held by the Santa Clara California Tax Collector with respect to the property located at 4650/4700 Ironside Drive in Santa Clara, California.

49. *Liquidating Trust* means the entity created pursuant to Article III.C of this Plan and a Liquidating Trust Agreement to receive, upon the Effective Date, the assets that are to be distributed to Holders of Allowed Claims, and that will be solely responsible for making post Effective Date disbursements under the Plan and litigating or settling Disputed Claims.

50. *Liquidating Trust Agreement* has the meaning specified in Article III.C of this Plan.

51. *Non-Participating PLC Affiliates* means (a) Cable & Wireless Jamaica Ltd.; Cable & Wireless Bermuda, Ltd.; Cable & Wireless (Barbados) Limited; Cable & Wireless Panama S.A.; and Cable & Wireless IDC Inc.; and (b) Digital Island (Belgium) BVBA; Digital Island B.V.; Digital Island Sweden AB; Digital Island (Europe) S.A.; DI (UK) Limited; Digital Island (UK) Limited; Digital Island (Hong Kong) Limited; and Digital Island GmbH.

52. *Notice Agent* means Bankruptcy Services, LLC, or such other firm retained pursuant to 28 U.S.C. section 156(c) in connection with the Chapter 11 Cases.

53. *Optional Release* means the release that a Third Party Claimant may give as described in Article III.B of this Plan.

54. *Other Secured Claim* means a Secured Claim other than the PLC Secured Claims, the Ironside Drive Tax Claim, and the Walsh Avenue Tax Claim.

55. *Person* means a “person” as defined in Bankruptcy Code § 101(41).
56. *Petition Date* means December 8, 2003, the date on which the Debtors commenced the Chapter 11 Cases.
57. *Plan* means this second amended joint chapter 11 plan of liquidation under chapter 11 of the Bankruptcy Code, including the Plan Supplement and all supplements, appendices, exhibits and schedules thereto, as amended, supplemented or otherwise modified from time to time.
58. *Plan Supplement* means the compilation of documents and forms of documents specified in this Plan to be Filed as set forth in Article XI.G of this Plan as such may be altered, amended, supplemented, restated, modified or replaced from time to time.
59. *PLC* means Cable and Wireless plc.
60. *PLC Credit Agreement* means the pre-petition Credit Agreement effective as of August 1, 2003, by and among CWUSA and CWIS as borrowers, Exodus Managers, Exodus LLC and Exodus LP, among others, as guarantors, and PLC as lender, pursuant to which the Debtors owed approximately \$50 million in secured debt and in excess of \$72 million in unsecured debt as of the Petition Date.
61. *PLC Fixed Recovery* has the meaning specified in Article III.B.5(a) of this Plan.
62. *PLC Group* means PLC and all its direct and indirect subsidiaries, except the Non-Participating PLC Affiliates and CW Holdings, the Debtors and their direct and indirect subsidiaries.
63. *PLC Individual Release Consideration* has the meaning specified in Article III.B.5(b) of this Plan.
64. *PLC Release Consideration* has the meaning specified in Article III.B.5 of this Plan.
65. *PLC Secured Claims* means the Secured Claims owing to PLC under the PLC Credit Agreement.
66. *PLC’s Unsecured Creditor Fund Interest* has the meaning specified in Article III.B.5(a) of this Plan.
67. *Priority Non-Tax Claim* means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under Bankruptcy Code § 507(a).
68. *Priority Tax Claim* means any unsecured tax Claim held by a governmental unit entitled to a priority in right of payment under Bankruptcy Code § 507(a)(8).

69. *Professional* means any professional employed in the Chapter 11 Cases pursuant to Bankruptcy Code §§ 327 or 1102 or to be compensated pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 503(b)(2) or (4) or 1103.

70. *Pro Rata Distribution Factor* means with respect to any Holder of an Allowed General Unsecured Claim, the amount of such Allowed General Unsecured Claim divided by the total amount of (a) all Allowed General Unsecured Claims (other than Allowed General Unsecured Claims owned by any member of the PLC Group, CW Holdings, any of the Debtors, or any direct or indirect subsidiary of any of the Debtors [except any Non-Participating PLC Affiliate]) and (b) all Disputed General Unsecured Claims (other than Disputed General Unsecured Claims owned by any member of the PLC Group, CW Holdings, any of the Debtors, or any direct or indirect subsidiary of any of the Debtors [except any Non-Participating PLC Affiliate]) until such Claims are disallowed.

71. *Pro Rata Share* means with respect to an Allowed General Unsecured Claim other than one held by a member of the PLC Group, a proportionate share, so that the ratio of the consideration distributed on account of any such Claim to the consideration distributed on account of all such Claims is the same as the ratio such single Claim bears to the total amount of all such Claims (plus Disputed General Unsecured Claims (other than ones held by any member of the PLC Group) until such Claims are disallowed).

72. *Purchaser* means SAVVIS.

73. *Rejection Claim* has the meaning specified in Article VII.A of this Plan.

74. *Released Parties* has the meaning specified in Article III.B.2 of this Plan.

75. *Releasors* has the meaning specified in Article III.B.2 of this Plan.

76. *SAVVIS* means SAVVIS, Inc., formerly known as SAVVIS Asset Holdings, Inc.

77. *SAVVIS APA* means the Amended and Restated Asset Purchase Agreement dated as of January 23, 2004, by and among CWUSA and CWIS, as sellers, and SAVVIS, as buyer.

78. *Schedules* (and, with a correlative meaning, *Scheduled*) mean the schedules of assets and liabilities and the statements of financial affairs, if any, Filed by the Debtors pursuant to Bankruptcy Code § 521 and the Bankruptcy Rules, as such Schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

79. *Secured Claim* means an Allowed Claim that was secured pre-petition by a valid, perfected, and unavoidable lien as of the Petition Date on property in which the Estate of any Debtor has an interest or that is subject to setoff under Bankruptcy Code § 553, to the extent of the value of the Claim Holder's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code § 506(a) or, in the case of setoff, pursuant to Bankruptcy Code § 553. A Claim that meets this

definition but which exceeds the value of the Claim Holder's interest in the Estate's interest in the applicable property, or which exceeds the amount subject to setoff, as applicable, shall be a General Unsecured Claim to such extent.

80. *Separation Agreement* means the Separation Agreement between CW Holdings, CWUSA and CWIS on the one hand, and PLC and Cable & Wireless Americas Operations, Inc. on the other hand, signed on September 17, 2003.

81. *Tax Rate* means (a) as to the Internal Revenue Service, the interest rate equal to the underpayment rate specified in 26 U.S.C. § 6621 (determined without regard to 26 U.S.C. § 6621(c)) as of the Effective Date, and (b) as to all other taxing authorities, a fixed annual interest rate of four percent 4 %.

82. *Third Party Claimant* has the meaning specified in Article III.B.2 of this Plan.

83. *363 Sale* has the meaning specified in Article III.A of this Plan.

84. *Trust Estate* shall have the meaning specified in Article III.C of this Plan.

85. *Unimpaired* means, when used in reference to a Claim or Interest, a Claim or Interest that is not "impaired" within the meaning of Bankruptcy Code § 1124.

86. *Unsecured Creditor Fund* has the meaning specified in Article III.A of this Plan.

87. *Voting Deadline* means the voting deadline date for voting to accept or reject this Plan, as specified in the confirmation hearing notice approved by the Bankruptcy Court and mailed to all Holders of Allowed Claims.

88. *Walsh Avenue Tax Claim* means the Secured Claims held by the Santa Clara California Tax Collector with respect to the property located at 2401/2403 Walsh Avenue in Santa Clara, California.

**B. Rules of Interpretation and Computation of Time.** For purposes of this Plan: (1) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter gender; (2) except as may expressly be provided otherwise in this Plan, any reference in this Plan to a contract, instrument, release, indenture, agreement or other document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and shall refer to such document as from time to time amended, modified or supplemented in accordance with its terms; (3) any reference in this Plan to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented; (4) unless otherwise specified, all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (5) the words "herein" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (6) captions and headings to Articles and



Sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the interpretation of, this Plan; (7) the word “including” means “including without limitation”; (8) the rules of construction set forth in Bankruptcy Code § 102 shall apply; and (9) any term used in capitalized form in this Plan that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

## **II. Classification and Treatment of Claims and Interests**

**A. Summary.** The categories of Claims and Interests listed below classify Allowed Claims and Allowed Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan. Except as otherwise provided in the Plan or the Confirmation Order or required by Bankruptcy Code § 506(b) or Bankruptcy Code § 1124, (1) Allowed Claims do not include interest on such Claims that accrues after the Petition Date, and (2) any post-petition interest that is payable in respect of a Priority Tax Claim shall be calculated at the applicable Tax Rate. The chart set forth below is intended only as a summary description of the treatment of the described Claims and Interests. Articles II.B.-D of this Plan control to the extent of any inconsistency between the provisions thereof and this summary.

<b>Class</b>	<b>Claim</b>	<b>Treatment</b>	<b>Voting Rights</b>
Unclassified	Administrative Expense Claims	Paid in full on the Effective Date or as soon as practicable thereafter.	Not entitled to vote.
Unclassified	Priority Tax Claims	Paid in full on the Effective Date or a soon as practicable thereafter.	Not entitled to vote.
Class 1	Priority Non-Tax Claims	<i>Unimpaired.</i> Paid in full.	Conclusively presumed to accept the Plan; not entitled to vote.
Class 2	PLC Secured Claims	<i>Unimpaired.</i> To the extent not previously paid, paid in full on the Effective Date.	Conclusively presumed to accept the Plan; not entitled to vote.
Class 3	Other Secured Claims	<i>Unimpaired.</i> To the extent not previously paid, each Holder is to receive on the Effective Date at the Debtors’ election one of the following treatments such that they shall be rendered unimpaired pursuant to Bankruptcy Code § 1124: (a) the payment of such Holder’s Allowed Other Secured Claim in full, in Cash; (b) the sale	Conclusively presumed to accept the Plan; not entitled to vote.

Class	Claim	Treatment	Voting Rights
		<p>or disposition proceeds of the property securing any Allowed Other Secured Claim to the extent of the value of its interest in such property; (c) the surrender to the Holder or Holders of any Allowed Other Secured Claim of the property securing such Claim; or (d) such other distributions as shall be necessary to satisfy the requirements of chapter 11 of the Bankruptcy Code for such Claim to be reinstated or rendered unimpaired under Bankruptcy Code § 1124. The Holder of each Other Secured Claim will retain its lien securing such Claim to the extent of the Allowed amount of such Claim until its Other Secured Claim is paid in full.</p>	
Class 4	Ironside Drive Tax Claim	<p><i>Unimpaired.</i> To the extent not previously paid, the Holder of this Claim will be paid in full with interest at the Tax Rate on the Effective Date of the Plan.</p>	<p>Conclusively presumed to accept the Plan; not entitled to vote.</p>
Class 5	Walsh Avenue Tax Claim	<p><i>Unimpaired.</i> To the extent not previously paid, the Holder of this Claim will be paid in full with interest at the Tax Rate on the Effective Date of the Plan.</p>	<p>Conclusively presumed to accept the Plan; not entitled to vote.</p>
Class 6	General Unsecured Claims	<p><i>Impaired.</i> Each Holder of a General Unsecured Claim, other than any member of the PLC Group and any Holder of a Claim that is subordinated pursuant to Bankruptcy Code § 510, will receive its Pro Rata Share of a 50% interest in the Unsecured Creditor Fund. Holders of General Unsecured Claims, other than members of the PLC Group and Holders of subordinated Claims, who consent to the Optional Releases provided for in the Plan will also receive the PLC</p>	<p>Entitled to vote.</p>

Class	Claim	Treatment	Voting Rights
		Individual Release Consideration described in Article III.B.5(b) of this Plan. PLC, on behalf of the PLC Group as a whole, shall receive the PLC Fixed Recovery on the Effective Date plus the PLC Unsecured Creditor Fund Interest on account of all its General Unsecured Claims. Holders of Claims that are subordinated under Bankruptcy Code § 510 shall receive no distribution.	
Class 7	Interests	<i>Impaired.</i> Receives no distribution and all Interests shall be cancelled upon the Effective Date.	Deemed to reject the Plan; not entitled to vote.

**B. Administrative Claims.** In full satisfaction, payment and discharge thereof, each Allowed Administrative Claim of the Debtors shall be paid in full, in Cash on the later of the Effective Date or the date on which such Administrative Claim is Allowed, or in each case as soon thereafter as practicable, except to the extent that the Debtors or the Liquidating Trust and any Holder of an Allowed Administrative Claim agree to a different treatment.

**C. Priority Tax Claims.** Each Allowed Priority Tax Claim shall be paid in full in Cash on the Effective Date or as soon as practicable thereafter.

**D. Classification, Treatment and Voting.** In full satisfaction, payment and discharge thereof, the Allowed Claims against and Allowed Interests in the Debtors shall be classified and receive the treatment specified below. Each Holder of an Allowed Claim or Allowed Interest in an Impaired Class of Claims or Interests shall be entitled to vote separately to accept or reject the Plan.

1. Class 1 - Priority Non-Tax Claims.

(a) Classification: Class 1 consists of all Holders of Allowed Claims entitled to priority pursuant to Bankruptcy Code § 507(a) other than Allowed Administrative Claims and Priority Tax Claims.

(b) Treatment: *Unimpaired.* Paid in full.

(c) Voting: *Unimpaired.* Conclusively presumed to accept the Plan; not entitled to vote.

2. Class 2 - PLC Secured Claims.

(a) Classification: Class 2 consists of Holders of Secured Claims against the Debtors under the PLC Credit Agreement.

(b) Treatment: *Unimpaired*. To the extent not previously paid, PLC shall be paid on account of its PLC Secured Claims in full, in Cash, on the Effective Date.

(c) Voting: *Unimpaired*. Conclusively presumed to accept the Plan; not entitled to vote.

3. Class 3 - Other Secured Claims.

(a) Classification: Class 3 consists of all Holders of Secured Claims against the Debtors not in Class 2, 4 or 5.

(b) Treatment: *Unimpaired*. To the extent not previously paid, each Holder is to receive on the Effective Date one of the following treatments at the Debtors' election such that they shall be rendered unimpaired pursuant to Bankruptcy Code § 1124: (a) the payment of such Holder's Allowed Other Secured Claim in full, in Cash; (b) the sale or disposition proceeds of the property securing any Allowed Other Secured Claim to the extent of the value of its interest in such property; (c) the surrender to the Holder or Holders of any Allowed Other Secured Claim of the property securing such Claim; or (d) such other distributions as shall be necessary to satisfy the requirements of chapter 11 of the Bankruptcy Code for such Claim to be reinstated or rendered unimpaired under Bankruptcy Code § 1124. The Holder of each Other Secured Claim will retain its lien securing such Claim to the extent of the Allowed amount of such Claim until its Other Secured Claim is paid in full.

(c) Voting: *Unimpaired*. Conclusively presumed to accept the Plan; not entitled to vote.

4. Class 4 - Ironside Drive Tax Claim.

(a) Classification: Class 4 consists of the Tax Collector of Santa Clara, California, in its capacity as the Holder of the Ironside Drive Tax Claim.

(b) Treatment: *Unimpaired*. To the extent not previously paid, the Holder of this Claim will be paid in full with interest at the Tax Rate on the Effective Date of the Plan.

(c) Voting: *Unimpaired*. Conclusively presumed to accept the Plan; not entitled to vote.

5. Class 5 - Walsh Avenue Tax Claim.

(a) Classification: Class 5 consists of the Tax Collector of Santa Clara, California, in its capacity as the Holder of the Walsh Avenue Tax Claim.

(b) Treatment: *Unimpaired*. To the extent not previously paid, the Holder of this Claim will be paid in full with interest at the Tax Rate on the Effective Date of the Plan.

(c) Voting: *Unimpaired*. Conclusively presumed to accept the Plan; not entitled to vote.

6. Class 6 - General Unsecured Claims.

(a) Classification: Class 6 consists of all Holders of Allowed General Unsecured Claims against the Debtors.

(b) Treatment: *Impaired*. Each Holder of a General Unsecured Claim, other than any member of the PLC Group and any Holder of a Claim that is subordinated pursuant to Bankruptcy Code § 510, will receive its Pro Rata Share of a 50% interest in the Unsecured Creditor Fund. Holders of General Unsecured Claims, other than members of the PLC Group and Holders of subordinated Claims, who consent to the Optional Releases provided for in the Plan will also receive the PLC Individual Release Consideration described in Article III.B.5(b) of this Plan. PLC, on behalf of the PLC Group as a whole, shall receive the PLC Fixed Recovery on the Effective Date plus the PLC Unsecured Creditor Fund Interest on account of all its General Unsecured Claims. Holders of Claims that are subordinated under Bankruptcy Code § 510 shall receive no distribution.

(c) Voting: *Impaired*. Entitled to vote.

7. Class 7 - Interests.

(a) Classification: Class 7 consists of all Holders of Interests.

(b) Treatment: *Impaired*. Receives no distribution. Existing Interests are cancelled upon the Effective Date.

(c) Voting: *Impaired*. Deemed to reject the Plan; not entitled to vote.

### III. Means for Implementation

**A. Plan Funding.** The Debtors recently completed a sale of substantially all of their assets to SAVVIS under the 363 Sale. The proceeds thereof, and all of the Debtors' other remaining assets, shall be distributed in the following order (1) first, to repay the secured debt owing under the PLC Credit Agreement and any other pre-petition Secured Claims to the extent not already paid, and (2) second, to the Estates. The net proceeds of the 363 Sale and the Debtors' funds on hand shall be used to make the distributions provided for in the Plan.

The Unsecured Creditor Fund shall be comprised of the following: (a) the Causes of Action; (b) proceeds of the 363 Sale; (c) proceeds of the disposition of any remaining assets; and (d) any other Cash on hand available after payment in full of all Allowed Administrative Claims; Priority Tax Claims; Priority Non-Tax Claims; the PLC Secured Claims; Other Secured Claims;



the Ironside Drive Tax Claim; the Walsh Avenue Tax Claim; and the PLC Fixed Recovery. Any amounts expended in connection with the administration of the Liquidating Trust, including but not limited to, objections to General Unsecured Claims or pursuit of Causes of Action shall be funded out of the Unsecured Creditor Fund.

The Unsecured Creditor Fund will be held and administered as a portion of the Liquidating Trust. An initial distribution from the Liquidating Trust to Holders of General Unsecured Claims will be made as soon as practicable after the Effective Date, and subsequent distributions will be made from time to time thereafter as Disputed Claims are resolved and as proceeds are received from pursuit of Causes of Action. As described in Article VI of this Plan, all post-Effective Date distributions to creditors will be made from the Liquidating Trust, which shall be solely responsible for such obligations.

## **B. Global Settlement**

1. The Global Settlement includes several related components. First, the PLC Group shall provide the “PLC Release Consideration” as described in Article III.B.5 of this Plan. Second, the Releasors shall provide the releases described in Article III.B.3 of this Plan. Third, the Debtors and the Committee shall refrain from pursuing Causes of Action against certain parties if requested to do so by PLC, as described in Article III.B.8 of this Plan. Fourth, the CWA Entities and C&W Entities (as such terms are defined in the Separation Agreement) shall waive their respective claims against each other, if any, under the Separation Agreement, as described in Article III.B.9 of this Plan.

2. Pursuant to Bankruptcy Code § 1123(b)(3)(A) and Bankruptcy Rule 9019, the Plan constitutes an application for approval of a compromise and settlement of any and all claims and causes of action (the “Global Settlement,” a copy of which is attached as *Exhibit E* to the Disclosure Statement) of (a) the Debtors, the Estates and anyone claiming a right in a derivative capacity on their behalf (the “Debtor Claimants”); and (b) any Holder of a Claim who submits a Ballot but does not choose to opt-out of granting the Optional Release (as described in Article III.B.3 of this Plan) by checking the appropriate box on the Ballot<sup>2</sup> (the “Third Party Claimants” and, together with the Debtor Claimants, the “Releasors”) against PLC and all its direct and indirect subsidiaries, their officers, directors, and affiliates, and each of their present and former parent corporations and direct and indirect subsidiaries or affiliates, together with each of their present and former shareholders, present and former officers, directors, and employees, present or former attorneys and present and former advisors or consultants (excluding, for all purposes, Exodus Federal Systems, Inc.) (collectively, the “Released Parties”).

3. On the Effective Date, the Releasors hereby unconditionally and irrevocably release the Released Parties from any and all direct, indirect or derivative claims,

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<sup>2</sup> Holders of Class 6 Claims that are subordinated pursuant to Bankruptcy Code § 510 will not receive a distribution under the Plan and are not eligible to receive the PLC Individual Release Consideration for granting the Optional Release. Therefore, the Holder of such a Claim shall not be deemed to have granted the Optional Release even if such Holder submits a Ballot without checking the opt-out box.

obligations, suits, judgments, damages, rights, causes of action, liabilities, claims or rights of contribution and indemnification, and all other controversies of every type, kind, nature, description or character whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part upon any act or omission, transaction, event or other occurrence taking place from the beginning of the world to the Effective Date arising from or relating in any way, directly or indirectly, to the Debtors, their assets, operations or liabilities, the Chapter 11 Cases, the Plan, or the Disclosure Statement; *provided, however*, that the Releasors shall not be deemed to have released any rights to enforce the terms of the Plan or their rights to distributions thereunder. **BY RETURNING A BALLOT WITHOUT CHECKING THE BOX TO OPT OUT OF THE OPTIONAL RELEASE, THE RELEASORS CONSENT TO AND GRANT THIS RELEASE AND ACKNOWLEDGE THAT THEY MAY HAVE CLAIMS OR LOSSES OF WHICH THEY ARE NOT CURRENTLY AWARE, OR THEY MAY HAVE UNDERESTIMATED.** The consideration for the releases was given in part in exchange for the release of such claims. The Releasors hereby waive any rights or benefits under California Civil Code Section 1542, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with debtor

and any rights or benefits under similar laws. The Confirmation Order shall specifically provide for the foregoing releases, other than any claim of a Third Party Claimant based upon an express written guarantee by PLC in favor of a Third Party Claimant of lease obligations of the Debtors to such Third Party Claimant. Notwithstanding any of the foregoing, the Debtor Claimants are not releasing any right of setoff, recoupment or defensive counterclaim they may have against the Claims of the Non-Participating PLC Affiliates or any direct or indirect subsidiary of a Debtor.

**4. On the Effective Date, the Releasors shall be permanently enjoined from commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind, asserting any setoff, right of subrogation, contribution, indemnification or recoupment of any kind, directly or indirectly, or proceeding in any manner in any place inconsistent with the releases granted to the Released Parties pursuant to the Plan. The Confirmation Order shall specifically provide for such injunction.**

5. The consideration the members of the PLC Group shall provide, or have provided, in exchange for the releases described in this Article III.B of this Plan (the "PLC Release Consideration") includes the following:

(a) The agreement of the members of the PLC Group to accept in satisfaction of all of their General Unsecured Claims and to waive any claims they have against CW Holdings on the Effective Date for (i) a fixed payment of \$28.45 million on the Effective Date (the "PLC Fixed Recovery"); and (ii) a 50% interest in the Unsecured

Creditor Fund, which 50% interest will be subject to reduction in accordance with Article III.B.5(b) of this Plan (the totality of the members of the PLC Group's final interest in the Unsecured Creditor Fund, after taking into account any such reductions, being "PLC's Unsecured Creditor Fund Interest");

(b) The agreement of the members of the PLC Group to transfer to the Liquidating Trust for the benefit of each Holder of an Allowed General Unsecured Claim, other than any member of the PLC Group (and other than CW Holdings, any Debtor and any direct or indirect subsidiary of any Debtor [except any Non-Participating PLC Affiliate]), who consents to the Optional Release, without representation or warranty as to value or any other matter, an additional share of the Unsecured Creditor Fund equal to such Holder's Pro Rata Distribution Factor multiplied by the 50% interest in the Unsecured Creditor Fund of the PLC Group (as to each such Holder, the "PLC Individual Release Consideration")<sup>3</sup> *provided, however*, that the total amount paid on account of a General Unsecured Claim shall not exceed the Allowed amount of such Claim;

(c) The PLC Group's agreement to extend credit in the DIP Facility, and the PLC Group's agreement not to charge the Debtors fees in connection therewith;

(d) The PLC Group's agreement to provide transition services to the Purchaser in the 363 Sale in order to facilitate such sale; and

(e) PLC's agreement, upon certain conditions set forth in the Global Settlement Agreement, to (a) assure (i) funding of the Cable & Wireless Holdings, Inc. Retirement Income Plan (the "Pension Plan"), assuming that the Pension Benefit Guaranty Corporation has agreed that it will not terminate the Pension Plan pursuant to sections 4041 or 4042 of ERISA on account of events occurring on or prior to the Effective Date; and (ii) payment of all claims relating to the Cable & Wireless Holdings, Inc. Supplemental Executive Retirement Plan covering certain former employees of the Debtors; (b) cause all members of the PLC Group to waive all claims they may have against CW Holdings; and (c) cause its relevant subsidiaries to consent, as shareholder(s) and creditor(s) of CW Holdings, to the release of all of CW Holdings' Claims against the Debtors.

6. The releases and injunctions granted in favor of the Released Parties are integral parts of the settlement and are necessary to confirm the Plan. The PLC Individual Release Consideration constitutes the consideration for the releases from the Third Party Claimants. Because all elements of the PLC Release Consideration will result in distributions to creditors of the Debtors, the entire PLC Release Consideration constitutes the consideration for the releases from the Debtor Claimants. The fact that the members of the PLC Group are

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<sup>3</sup> The amount of each Holder's PLC Individual Release Consideration is determined, under this formula, according to the amount of the Holder's Allowed Claim against the Debtors. Holders that consent to the Optional Release will receive the PLC Individual Release Consideration whether or not they actually possess any claims against the Released Parties.

providing the PLC Release Consideration in return for the releases shall not be construed as an admission or evidence that the Releasors have valid claims against any of the Released Parties.

7. PLC's Secured Claims are hereby allowed in the amount of \$50,795,396, and shall be paid, to the extent not already paid, on the Effective Date. The General Unsecured Claims held by the members of the PLC Group in the approximate amount of \$4.9 billion are being compromised in accordance with Article III.B.5(a) of this Plan and the members of the PLC Group shall receive no distribution on account of their General Unsecured Claims except as provided therein.

8. PLC shall have the right to direct the Debtors, the Committee, and the Administrative Trustee to refrain from pursuing any Cause of Action against parties listed on Exhibit F to the Disclosure Statement.

9. On the Effective Date, the CWA Entities (as defined in the Separation Agreement) and the C&W Entities (as defined in the Separation Agreement) each hereby waive and release all claims and causes of action they have or may now or in the future have against one another arising under the Separation Agreement or the agreements or instruments related thereto.

**C. Administrative Trustee and the Liquidating Trust.** On or before the Effective Date, the Committee, with the consent of the Debtors, shall appoint one Administrative Trustee to serve as such pursuant to a Liquidating Trust Agreement (the "Liquidating Trust Agreement") to be attached as an exhibit to the Plan Supplement. The Administrative Trustee shall serve as the trustee of the Liquidating Trust. The Liquidating Trust shall administer the Unsecured Creditor Fund and the distributions to be made to Holders of Claims under this Plan that are not paid on the Effective Date. In addition, the Liquidating Trust shall administer and prosecute all Causes of Action, and shall distribute all proceeds thereof in accordance with the Plan to Holders of Class 6 Claims. The expenses of the Liquidating Trust shall be paid from its funds and shall not constitute an Administrative Claim. The rights and obligations of the Liquidating Trust are further described and governed in the Liquidating Trust Agreement. The Committee shall continue with all rights, powers and authority through the Effective Date. On the Effective Date, the Committee shall be dissolved. Any and all litigation commenced by the Committee which may be pending as of the Effective Date is assigned, substituted and transferred to the Liquidating Trust.

As of the Effective Date, any and all remaining assets of the Debtors and their Estates, including: (a) any assets identified in Article III.A, above, as belonging to the Unsecured Creditor Fund, (b) all Cash and (c) all Causes of Action, shall be transferred to, and vest in, the Liquidating Trust, as set forth in detail in the Liquidating Trust Agreement. All such assets shall constitute the "Trust Estate." For all United States federal income tax purposes, all parties will treat the transfer of such assets to the Liquidating Trust as a transfer of such assets to the beneficiaries of the Liquidating Trust followed by a transfer of such assets by such beneficiaries to the Liquidating Trust, with the beneficiaries being treated as the grantors and owners of the Liquidating Trust. Accordingly, because a grantor trust is treated as a pass-through entity for United States federal income tax purposes, generally no tax should be imposed on the Liquidating Trust as a result of the transfer of assets thereto nor on income earned or gain

recognized by the Liquidating Trust. Instead, the beneficiaries of the Liquidating Trust may be taxed on their allocable share of such net income or gain in each taxable year of the Liquidating Trust, and will be responsible for paying the taxes associated with such income or gain whether or not they received any distributions from the Liquidating Trust in such taxable year.

**D. Substantive Consolidation.** The Plan shall serve as a motion seeking entry of an order substantively consolidating the Debtors' Chapter 11 Cases. If the substantive consolidation motion is granted, the Chapter 11 Cases shall be substantively consolidated for all purposes, and the assets and liabilities of the Debtors shall be pooled and all Claims shall be satisfied from the assets of a single consolidated estate. Any Claims against one or more of the Debtors based upon a guaranty, indemnity, co-signature, surety or otherwise shall be treated as a single Claim against the consolidated estates of the Debtors and shall be entitled to distributions under the Plan only with respect to such single Claim. Any Claims held by one Debtor against any other Debtor shall be extinguished on the Effective Date and no distribution will be made with respect to such Claims under the Plan.

#### **IV. Acceptance or Rejection of the Plan**

**A. Voting.** Class 6 is entitled to vote to accept or reject the Plan. By operation of law, each Unimpaired Class of Claims and Interests is conclusively presumed to have accepted the Plan and, therefore, is not entitled to vote to accept or reject the Plan. Classes 1, 2, 3, 4, and 5 are conclusively presumed to have accepted the Plan. Class 7 is deemed to have rejected the Plan.

**B. Acceptance by Impaired Classes.** An Impaired Class of Claims shall have accepted the Plan if (a) the Holders (other than any Holder designated under Bankruptcy Code § 1126(e)) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have timely and properly voted to accept the Plan and (b) the Holders (other than any Holder designated under Bankruptcy Code § 1126(e)) of more than one-half in number of the Allowed Claims actually voting in such Class have timely and properly voted to accept the Plan.

**C. Cramdown.** The Debtors will request confirmation of the Plan, as it may be modified from time to time, under Bankruptcy Code § 1129(b) with respect to the Class of Interests, which is deemed to have rejected the Plan.

#### **V. Procedures For Resolving Disputed Claims**

**A. Characterization of Disputed Claims.** Pursuant to Bankruptcy Code § 1111(a), a proof of claim is deemed filed under Bankruptcy Code § 501 if that Claim is included in the Schedules filed under Bankruptcy Code § 521 or Bankruptcy Code § 1106(a)(2) and is deemed filed in the amount listed on the Schedules, except if the Claim is scheduled as disputed, contingent or unliquidated. Such a disputed, contingent or unliquidated Claim must be asserted by its Holder on or before the Bar Date by timely filing of a proof of claim. If a proof of claim is not filed in a timely manner on or before the Bar Date the Claim shall be deemed to be barred and/or otherwise disallowed.

**B. Deadline for Filing Administrative Claims of Non-Professionals.** Except as may be otherwise expressly provided in the Plan, written requests for payment of Allowed



Administrative Claims, excluding Administrative Claims incurred in the ordinary course of business, must be Filed and served no later than the Administrative Bar Date. Holders of Allowed Administrative Claims that are required to File written requests for payment pursuant to this Article V.B and that do not File such written requests by the Administrative Bar Date, shall be forever barred from asserting such Claims against the Debtors or the Liquidating Trust.

**C. Deadline for Filing Administrative Expense Claims for Professionals.** Professionals or other entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 503, 506 or 1103 for services rendered before the Effective Date shall file with the Bankruptcy Court and serve an application for final allowance of compensation and reimbursement of expenses no later than 60 days after the Effective Date.

**D. Prosecution of Objections to Claims.** From and after the Effective Date, the Liquidating Trust may settle or compromise any Disputed Claims without approval of the Bankruptcy Court and shall have the exclusive authority to file objections, contest, settle, compromise, withdraw or litigate to judgment objections to Claims.

**E. Estimation of Claims.** The Liquidating Trust may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code § 502(c) regardless of whether the Debtors or the Liquidating Trust have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors (and, after the Effective Date, the Liquidating Trust) may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court, except that after the Effective Date, the Liquidating Trust may compromise, settle or resolve any such Claims without further Bankruptcy Court approval.

**F. Amendments to Claims.** Unless otherwise provided herein, a Holder of a Claim may not amend its proof of claim after the Confirmation Date without the agreement of the Debtors or the Administrative Trustee, as applicable. Unless otherwise provided herein, an amended Claim Filed after the Confirmation Date shall be deemed disallowed in full without any action by the Debtors or Administrative Trustee to the extent that such amended Claim modifies or supplements any prior Claims of the applicable Holder.

**G. Payments and Distributions on Disputed Claims.** Notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Liquidating Trust in its sole discretion, no partial payments and no partial disbursements will be made with respect to a Disputed Claim until the resolution of such Disputed Claim, in whole or in part, by settlement or Final Order. Subject to the provisions of this Article V, as soon as practicable after a Disputed Claim becomes an Allowed Claim, the Holder of such an Allowed Claim will receive all

payments and distributions to which such Holder is entitled under the Plan. Notwithstanding the foregoing, any Person or Entity who holds both an Allowed Claim(s) and a Disputed Claim(s) will receive the appropriate payment or distribution on the Allowed Claim(s), although, except as otherwise agreed by the Liquidating Trust in its sole discretion, no payment or distribution will be made on the Disputed Claim(s) until such dispute is resolved by settlement or Final Order. The Liquidating Trust shall be authorized to establish a reserve in respect of any Disputed Claim(s).

**H. Objections to Claims not Entitled to Distributions.** Certain Claims and all Interests are not entitled to any distribution under the Plan. As a result, the Debtors do not intend to object to any such Claims or Interests since the allowance or disallowance of such Claims or Interests will have no impact on the Debtors or their estates. However, the Debtors reserve (on their own behalf and on the behalf of the Liquidating Trust) the right to file objections to such Claims and Interests at any time they deem appropriate, if ever, up until the closing of these Chapter 11 Cases.

## **VI. Provisions Governing Distributions**

**A. Timing of Distributions.** An initial distribution from the Unsecured Creditor Fund will be made as soon as practicable (in the discretion of the Administrative Trustee) after the Effective Date, and subsequent distributions will be made from time to time thereafter as Disputed Claims are resolved and as proceeds are received from pursuit of Causes of Action.

**B. Interest on Claims.** Unless otherwise specifically provided for or contemplated in the Plan or Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on any Claims. However, interest shall accrue and be allowable on the PLC Secured Claims to the extent permitted under Bankruptcy Code § 506(b).

**C. Delivery of Distributions.** The Liquidating Trust shall make all distributions required to be made under the Plan. The Liquidating Trust may employ or contract with other entities to assist in or make the distributions required by the Plan. The Liquidating Trust shall bear the sole responsibility for the obligation to make distributions under this Plan.

1. **Holding and Investment of Undeliverable and Unclaimed Distributions.** If the distribution to any Holder of an Allowed Claim is returned as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Liquidating Trust is notified in writing of such Holder's then current address.

2. **After Distributions Become Deliverable.** The Liquidating Trust shall make all distributions that have become deliverable as soon as practicable after such distribution has become deliverable.

3. **Failure to Claim Undeliverable Distributions.** Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable or unclaimed distribution within one year after the Effective Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed distribution against any of the Debtors, the Liquidating Trust, and the Administrative Trustee. In such cases, any Cash for

distribution on account of such Claims for undeliverable or unclaimed distributions shall become the property of the Liquidating Trust to be distributed in accordance with the terms of the Plan and the Liquidating Trust Agreement.

**D. Record Date for Distributions.** The Liquidating Trust and any designees shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim or Interest that occurs after the close of business on the Effective Date, and each of them shall be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims and Interests who are Holders of such Claims or Interests or participants therein, as of the close of business on the Effective Date. The Liquidating Trust and any designees shall instead be entitled to recognize and deal, for all purposes under the Plan, with only those Holders identified on proofs of claim or the Schedules as of the Effective Date or stated on any official register as of the close of business on the Effective Date.

**E. Means of Cash Payment.** Cash payments made pursuant to the Plan shall be in U.S. dollars and shall be made by the means agreed to by the payer or the payee or, in the absence of an agreement, at the option and in the sole discretion of the Liquidating Trust, by (1) checks drawn on or (2) wire transfer from a domestic bank selected by the Liquidating Trust. Cash payments to foreign creditors may be made, at the option of the Liquidating Trust, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**F. Withholding and Reporting Requirements.** In connection with the Plan and all distributions thereunder, the Liquidating Trust shall comply with all tax withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. For tax purposes, distributions received in respect of a Claim will be allocated first to the principal amount of the Claim with any excess allocated, if applicable, to unpaid interest that accrued on such Claim. The Liquidating Trust shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (1) each Holder of an Allowed Claim or Interest that is to receive any distribution under the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution, and (2) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trust for the payment and satisfaction of such tax obligations or has, to the Liquidating Trust's satisfaction, established an exemption therefrom. Any amount to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as undeliverable pursuant to Article VI.C hereof.

**G. Setoffs and Recoupments.** The Liquidating Trust may, pursuant to Bankruptcy Code § 553 or applicable non-bankruptcy law, but shall not be required to, set off against or recoup from any Claim on which payments are to be made pursuant to the Plan, any Claims of any nature whatsoever the Liquidating Trust may have against the Holder of such Claim that is not released under Articles III.B or IX of this Plan; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the

Debtors or the Liquidating Trust of any such Claim the Debtors or the Liquidating Trust may have against such claimant.

**H. Fractional Dollars; De Minimis Distributions.** No payment of a fraction of a dollar will be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. No Distribution will be made on account of any Allowed Claim to the Holder of any such Allowed Claim if the amount of such Distribution for the Allowed Claim is less than \$75.00. The Liquidating Trust will maintain records of interim distributions accrued and unpaid on account of each Allowed Claim so that, when the amounts accrued with respect to a particular Claim reach or exceed \$75.00, all accrued and unpaid amounts will be distributed with respect to that Claim.

## **VII. Treatment of Executory Contracts and Unexpired Leases**

**A. Treatment of Executory Contracts and Unexpired Leases.** As authorized by Bankruptcy Code § 1123(b)(2), all of the Debtors' executory contracts and unexpired leases (whether or not previously listed by the Debtors in their respective Schedule G), shall be deemed rejected as of the Effective Date, except for any executory contract or unexpired lease (a) that has been assumed, assumed and assigned, or rejected pursuant to a Final Order of the Bankruptcy Court entered prior to the Confirmation Date, (b) as to which a motion for approval of the assumption or assumption and assignment of such contract or lease has been filed and served prior to the Confirmation Date and ultimately becomes a Final Order authorizing such assumption or assumption and assignment, or (c) listed to be assumed or assumed and assigned in an Exhibit to the Plan Supplement.

Pursuant to Bankruptcy Rule 3002(c)(4), entities (and only such entities) that are party to an executory contract or unexpired lease rejected pursuant to the Plan shall be entitled to file a proof of claim, by no later than thirty (30) days following the Confirmation Date, for damages alleged to have been suffered or to be suffered due to such rejection (a "Rejection Claim"). Entities (and only such entities) that are a party to an executory contract or unexpired lease that is either (a) the subject of a motion to reject that has been filed and served prior to the Confirmation Date and that is ultimately approved by Final Order of the Bankruptcy Court, or (b) the subject of a motion to assume or assume and assign that ultimately is denied by Final Order of the Bankruptcy Court shall be entitled to file a Rejection Claim by no later than thirty (30) days after the later of (i) the date of the entry of an order by the Bankruptcy Court approving such rejection or denying such assumption or assumption and assignment (except as otherwise may be required as set forth in such order), and (ii) the Confirmation Date. Notwithstanding anything else to the contrary herein, the opportunity afforded an Entity whose executory contract or unexpired lease is rejected pursuant to the Plan or otherwise to file a proof of claim on or before such date as prescribed herein shall in no way apply to entities that may assert a claim on account of an executory contract or unexpired lease that was previously rejected by the Debtors for which a prior bar date was established. Any person or entity that has a claim for damages as a result of the rejection of an executory contract or unexpired lease that does not file a proof of claim in accordance with the terms and provisions of the Plan will be forever barred from asserting that claim against any of the Debtors or any property of the Estates.

**B. Cure of Defaults of Assumed Executory Contracts and Unexpired Leases.** Subject to the limitations of Bankruptcy Code § 502(b), any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default, shall be satisfied, pursuant to Bankruptcy Code § 365(b)(1), by payment of the default amount in Cash on the Effective Date or on such other terms as the parties to such executory contracts or unexpired leases and the Debtors or the Liquidating Trust may otherwise agree. In the event of a dispute regarding: (1) the nature and amount of any cure payments, (2) the ability of the applicable Entity to provide “adequate assurance of future performance” (within the meaning of Bankruptcy Code § 365) under the contract or lease to be assumed or (3) any other matter pertaining to assumption, the cure payments required by Bankruptcy Code § 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption. The Confirmation Order shall provide for notices of proposed assumptions and proposed cure amounts to be sent to applicable third parties and for procedures for objecting thereto and resolution of disputes by the Bankruptcy Court.

### **VIII. Confirmation and Consummation of the Plan**

**A. Conditions Precedent to Confirmation.** The Plan shall not be confirmed unless and until the following conditions have been satisfied in full or waived by the Debtors, the Committee, and PLC:

1. The Confirmation Order shall be in form and substance satisfactory to the Debtors, the Committee, and PLC, which Confirmation Order shall approve all provisions, terms and conditions of this Plan; and

2. No amendments, modifications, supplements or alterations (including alterations or interpretations pursuant to Article XI.E of this Plan), shall have been made to the Plan, the Plan Supplement or any document delivered in connection therewith, without the express written consent of the Committee and PLC, which consent may be granted, withheld, or conditioned in the Committee’s and PLC’s sole discretion; and

3. PLC shall have agreed, conditioned upon the occurrence of the Effective Date, to assure funding of the Pension Plan, and all Claims against the Debtors held by the Pension Benefit Guaranty Corporation shall have been withdrawn, conditioned upon the occurrence of the Effective Date, or disallowed;

4. PLC shall have agreed, conditioned upon the occurrence of the Effective Date, to assure payment of all claims relating to the Cable & Wireless Holdings, Inc. Supplemental Executive Retirement Plan covering certain former employees of the Debtors;

5. PLC shall have caused all members of the PLC Group to waive, conditioned upon the occurrence of the Effective Date, all claims they may have against CW Holdings; and to cause their relevant subsidiaries to consent, as shareholder(s) and creditor(s) of CW Holdings, to the release of all of CW Holdings’ Claims against the Debtors, and CW Holdings shall have waived, conditioned upon the occurrence of the Effective Date, any Claims it has against the Debtors; and



6. Class 6 shall have accepted the Plan, determined without including any acceptance of the Plan by any Insider.

**B. Conditions Precedent to the Effective Date of the Plan.** The Effective Date shall not occur unless and until the following conditions have been satisfied in full or waived by the Debtors, the Committee, and PLC:

1. The Confirmation Order shall have been entered on or before October 23, 2004, and shall have become a Final Order in form and substance reasonably satisfactory to the Debtors, the Committee, and PLC and shall provide among other things that:

(a) The Debtors and the Liquidating Trust are authorized to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases and other agreements or documents created in connection with the Plan; and

(b) The provisions of the Plan, the Plan Supplement and any document delivered in connection therewith are not severable and are mutually dependent; and

(c) The provisions of the Confirmation Order are not severable and are mutually dependent; and

(d) The Effective Date of the Plan shall occur no later than November 15, 2004; and

2. All actions, documents and agreements, including the Liquidating Trust Agreement, necessary to implement the Plan shall have been effected or executed.

## **IX. Effect of Plan Confirmation**

**A. Binding Effect.** The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests and their respective successors and assigns, the Liquidating Trust, Releasers, Released Parties, PLC and all other parties in interest in these Chapter 11 Cases.

**B. Injunction.** Except as otherwise provided in this Plan, all entities that have held, hold or may hold Claims against or Interests in the Debtors are, as of the Effective Date, permanently enjoined from taking any actions against any of the Debtors or the Liquidating Trust or any of their property on account of such Claims or Interests including, but not limited to, (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any lien or encumbrance; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors or the Liquidating Trust; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; *provided, however, that (a) nothing contained in this Plan shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of this Plan and (b) the injunction set forth in this*

*paragraph shall not prevent any party from pursuing claims or causes of action that, while nominally against a Debtor or Debtors, seek recovery only against third parties, such as insurers.*

**By accepting distributions pursuant to the Plan, each Holder of an Allowed Claim will be deemed to have specifically consented to the Injunction set forth in this Article IX.B.**

**C. Exculpation.** Upon entry of the Confirmation Order, the Debtors, the Committee, PLC, the Liquidating Trust, the Agent and their respective directors, officers, members, employees, advisors, attorneys, affiliates, subsidiaries or agents shall not have or incur any liability to any holder of a Claim or Interest, any other parties in interest in the Chapter 11 Cases, for any act or omission in connection with, related to, or arising out of, the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Debtors, any Committee, PLC, the Liquidating Trust, the Agent and each of their respective directors, officers, members, employees, advisors, attorneys, affiliates, subsidiaries and agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**D. Injunction Related to Exculpation.** The Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan, including, but not limited to, the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in Article IX.C of this Plan.

**E. Preservation of Rights of Action and Settlement of Causes of Action.**

1. Preservation of Rights of Action. Except as otherwise provided in the SAVVIS APA, the order approving the SAVVIS APA, the Plan (including Article III.B of this Plan), the Confirmation Order or any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code § 1123(b), to the maximum extent permitted under the Bankruptcy Code, the Liquidating Trust shall retain all Causes of Action, including, but not limited to, the Causes of Action listed in the Plan Supplement. The Liquidating Trust may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Causes of Action except as provided herein.

2. Settlement of Causes of Action. At any time after the Confirmation Date and before the Effective Date, notwithstanding anything in this Plan to the contrary, the Debtors may settle any or all retained Causes of Action with the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019. Notwithstanding the foregoing and anything in this Plan to the contrary, after the Effective Date, the Liquidating Trust may settle any or all Causes of Action without approval of the Bankruptcy Court.

**X. Retention of Jurisdiction**

**A. Retention of Jurisdiction.** Pursuant to Bankruptcy Code §§ 105(c) and 1142 and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the

Bankruptcy Court will retain non-exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

2. Resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any of the Debtors is a party or with respect to which the Debtors or the Liquidating Trust may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

3. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

4. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving the Debtors or the Liquidating Trust that may be pending on the Effective Date;

5. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

6. Resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;

7. Modify the Plan before or after the Effective Date pursuant to Bankruptcy Code § 1127 or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

8. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code §§ 330, 331, 503(b) and 1103; *provided, however*, that from and after the Effective Date, the payment of fees and expenses of the Liquidating Trust, including counsel fees, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

9. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;
10. Hear and determine Causes of Action by or on behalf of the Debtors or the Liquidating Trust;
11. Hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code §§ 346, 505 and 1146;
12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Plan are enjoined or stayed;
13. Determine any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
14. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
15. Hear and determine all matters related to the property of the Debtors or the Liquidating Trust from and after the Confirmation Date;
16. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code; and
17. Enter an order closing the Chapter 11 Cases.

## **XI. Miscellaneous Provisions**

**A. Payment of Statutory Fees and Compliance with Reporting Obligations.** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. All fees payable subsequent to the Effective Date under section 1930(a)(6) of title 28 of the United States Code shall be paid by the Liquidating Trust. All post-confirmation reporting requirements shall also be complied with, including the reporting of disbursement activity.

**B. Retiree Benefits.** Debtors do not maintain, contribute to or have any liability with respect to any post-employment health, life or other welfare-type benefits for retirees or current or former employees, other than as required by Section 4980B of the IRC or Part 6 of Subtitle B of Title I of ERISA. Thus, Debtors will not need to continue payment of any “retiree benefits” within the meaning of Bankruptcy Code §§ 1114 and 1129(a)(13).

**C. Dissolution of Committees.** Upon the Effective Date, the Committee shall dissolve, except with respect to any appeal of an order in the Chapter 11 Cases and applications

for professional fees, and Committee members shall be released and discharged from all rights, duties and liabilities arising from, or related to, the Chapter 11 Cases.

**D. Amendment or Modification of the Plan.** In accordance with Bankruptcy Code § 1127 and, to the extent applicable, subject to Bankruptcy Code §§ 1122, 1123 and 1125, the Debtors reserve the right to alter, amend or modify the Plan at any time prior to the Confirmation Date. After the Confirmation Date but prior to the substantial consummation of the Plan, the Debtors or the Liquidating Trust may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not adversely change the treatment of the Claim of such Holder. No such alteration, amendment or modification shall be effective without the consent of, prior to the Effective Date, both the Committee and PLC and, after the Effective Date, both the Liquidating Trust and PLC.

**E. Invalidity of Plan Provisions.** If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**F. Successors and Assigns.** The Plan shall be binding upon and inure to the benefit of the Debtors and their successors and assigns, including, without limitation, the Liquidating Trust. The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

**G. Plan Supplement.** The Plan Supplement, which shall include certain exhibits, lists or documents to be negotiated and executed in connection with the Plan, shall be Filed not later than ten (10) days prior to the Confirmation Hearing. Upon such Filing, the Plan Supplement shall become a part of the Plan. Upon its Filing, the Plan Supplement will be posted on the website maintained by the Notice Agent at [www.bsillc.com](http://www.bsillc.com), and may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Interests may obtain a copy of the Plan Supplement upon written request to the Notice Agent. The documents contained in the Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

**H. Notices.** Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:



To the Debtors:

Cable & Wireless USA, Inc.  
c/o AlixPartners  
9 West 57<sup>th</sup> Street  
Suite 3420  
New York, New York 10019  
Attn: John Dubel

With a copy to:

KIRKLAND & ELLIS LLP  
777 South Figueroa Street  
Los Angeles, CA 90017-5800  
Attn: Bennett Spiegel  
Tel: (213) 680-8400  
Fax: (212) 680-8500

KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, IL 60601-6636  
Attn: Jonathan Friedland  
Tel: (312) 861-2000  
Fax: (312) 861-2200

To the Notice Agent:

Cable & Wireless USA, Inc. Claims  
Processing  
c/o Bankruptcy Services, LLC,  
757 Third Avenue, 3rd Floor  
New York, NY 10017  
(overnight mail, hand delivery or courier)

or

Cable & Wireless USA, Inc. Claims  
Processing,  
P.O. Box 5283, FDR Station  
New York, NY 10150-5283  
(regular mail)

To the Committee:

Winston & Strawn, LLP  
200 Park Avenue  
New York, NY 10166-4193  
Attn: David Neier  
Tel: (212) 294-6700  
Fax: (212) 294-4700

and

Winston & Strawn, LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543  
Attn: Eric Sagerman  
Tel: (213) 615-1700  
Fax: (213) 615-1750

To the PLC Group:

Cable and Wireless plc  
124 Theobalds Road  
London, WC1 X8RX  
Attn: Andrew Garard, Group General Counsel

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attn: Philip Mindlin  
Douglas K. Mayer

**I. Governing Law.** Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit or schedule to the Plan or Plan Supplement or any contract, instrument, release, indenture or other agreement or document entered into in connection with this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

**J. Tax Liability.** The Debtors and the Liquidating Trust are hereby authorized to request an expedited determination under Bankruptcy Code § 505(b) of the tax liability of the Debtors for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**K. Saturday, Sunday or Legal Holiday.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**L. Filing of Additional Documents.** On or before substantial consummation of the Plan, the Debtors and/or the Liquidating Trust shall be entitled to File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

Dated: May 13, 2004

CABLE & WIRELESS USA, INC.

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

CABLE & WIRELESS INTERNET  
SERVICES, INC.

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

CABLE & WIRELESS USA OF  
VIRGINIA, INC.

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

EXODUS COMMUNICATIONS REAL  
PROPERTY MANAGERS I, LLC,

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

(signatures continued on following page)

EXODUS COMMUNICATIONS REAL  
PROPERTY I, LLC

By: Exodus Communications Real  
Property Managers I, LLC, its  
managing member

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

and

By: Cable & Wireless Internet  
Services, Inc., its member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer

(signatures continued on following page)

EXODUS COMMUNICATIONS  
REAL PROPERTY I, LP

By: Exodus Communications Real  
Property Managers I, LLC, its  
general partner

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer  
and Chief Financial Officer

and

By: Exodus Communications Real  
Property I, LLC, its limited partner

By: Exodus Communications Real  
Property Managers I, LLC, its  
managing member

By: Cable & Wireless Internet  
Services, Inc., its sole member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer  
and Chief Financial Officer

and

By: Cable & Wireless Internet  
Services, Inc., its member

By: /s/ Eric A. Simonsen  
Name: Eric A. Simonsen  
Title: Chief Restructuring Officer and  
Chief Financial Officer



## EXHIBIT B

### BEST INTERESTS ANALYSIS

The Debtors believe that the Plan meets the “best interest of creditors” test as set forth in Bankruptcy Code § 1129(a)(7), which requires that each Holder of an Impaired Claim or Interest either (i) accept the Plan or (ii) receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Chapter 7 sets forth the provisions of the Bankruptcy Code under which debtors’ estates are liquidated under the control of an independent trustee. In the typical case commenced under chapter 7, a debtor ceases business operations and the chapter 7 trustee liquidates the assets of the debtor’s estate.

The analysis set forth in this Exhibit B (“Best Interest Analysis”) was prepared by management and the Debtors’ professionals and reflects the estimated proceeds, net of liquidation-related costs that would be realized if the Debtors were to be liquidated in accordance with Chapter 7 of the Bankruptcy Code, and compares that to the proceeds that would be realized under the Plan. On March 5, 2004, the Debtors consummated the 363 Sale of substantially all of their assets to SAVVIS. Therefore, the assets of the Estates consist primarily of Cash, certain marketable securities, receivables from related entities for which settlement is expected in Cash, and anticipated proceeds from any Causes of Action.

The Debtors believe the Plan provides greater recovery on account of Claims held by all Holders of Allowed General Unsecured Claims other than the members of the PLC Group (the “Non-PLC General Unsecured Claims”) than they would receive in liquidation under chapter 7. The recovery to Holders of Allowed Non-PLC General Unsecured Claims contemplated by the Plan is substantially increased by the Global Settlement. Absent the Global Settlement, all Holders of General Unsecured Claims would receive a minimal recovery after giving effect to the priorities governing such distributions, primarily because the General Unsecured Claims of the PLC Group (“PLC General Unsecured Claims”) of approximately \$4.9 billion and the General Unsecured Claims of CW Holdings in the approximate amount of \$1.9 billion (which Claims will be released as part of the Global Settlement), would greatly dilute the expected Allowed Non-PLC General Unsecured Claims of approximately \$180.9 million. The six Claims filed by the PBGC, which are not included in the \$180.9 million, would also be likely to be asserted in a chapter 7 case and would further dilute recoveries.

Under the Plan, Holders of Allowed Non-PLC General Unsecured Claims will receive their Pro Rata Share of a 50% interest in the Unsecured Creditor Fund. In addition, such Holders that elect not to opt out of granting the Optional Release to the Released Parties (which parties include the members of the PLC Group) will receive the PLC Individual Release Consideration. Granting the Optional Release significantly increases the recovery to these Holders of Allowed General Unsecured Claims. As demonstrated below, the value of the recoveries to Holders of Allowed Non-PLC General Unsecured Claims is significantly increased by the Global Settlement embodied in the Plan both through increasing such Holders’ share in the Unsecured Creditor Fund as well as through the creation of the PLC Individual Release Consideration.

The Best Interest Analysis assumes that proceeds would be distributed in accordance with Bankruptcy Code § 726. If a chapter 7 liquidation were pursued for the Debtors, the amount of liquidation value available to unsecured creditors would be reduced first, by the costs of the liquidation including fees and expenses of the trustee appointed to manage the liquidation and the fees and expenses of other professionals retained by the trustee to assist with the liquidation, second, by the claims of secured creditors to the extent of the value of their collateral except as described herein, and, third, by the priority and administrative costs and expenses of the chapter 7 estates, including unpaid operating expenses incurred during the Chapter 11 Cases and any accrued and unpaid professional fees allowed in the Chapter 11 Cases.

In a liquidation under chapter 7, the Estates would likely incur additional administrative costs that would further deplete the pool of assets that would otherwise be available for distribution to creditors. For example, an independent chapter 7 trustee receives a statutory fee on all distributions made. Similarly, a chapter 7 trustee and the trustee's attorneys and accountants would add costs above and beyond the costs likely to be incurred by professionals for the Liquidating Trust, currently contemplated to consist of representatives and professionals of the Debtors and the Committee. A chapter 7 trustee and its professionals would have to expend significant amounts of time and effort to learn the matters that are familiar to the professionals already involved in the Debtors' Chapter 11 Cases. In addition, the trustee and its professionals would incur expenses in connection with the pursuit of litigation engendered by the Claims resolution process, including any litigation of Claims or Causes of Action embodied in the Global Settlement. No attempt has been made to estimate the costs of such litigation, although the Debtors believe that the pursuit of such litigation would be lengthy and would likely be very expensive. Likewise, the Best Interest Analysis assumes no recoveries from the pursuit of such Causes of Action. All of these fees and costs would be entitled to administrative priority and would be paid before any distributions to Holders of General Unsecured Claims. This additional cost would reduce overall creditor recoveries.

The Debtors also believe that the value of any distributions to each Class of Allowed Claims in a liquidation under chapter 7 would be less than the value of distributions under the Plan because such distributions in a chapter 7 case would be delayed for a substantial period of time. There is a risk that distribution of the proceeds under chapter 7 might not occur for one or more years after the chapter 7 cases are commenced because of the need to resolve claims and prepare for distributions. Incorporating the time value of distributions into the Best Interest Analysis would further lower the estimated recoveries as presented, partially mitigated by interest income on Cash held by the Estate.

Finally, the Debtors believe that the conversion of the Chapter 11 Cases to chapter 7 cases would likely prompt certain other events to occur, including the termination of the Pension Plan and the SERP. As previously noted, responsibility for payments under these plans is being assumed by the PLC Group as part of the Global Settlement. Such events would likely create a larger number of unsecured creditors and would subject the chapter 7 estates to what could be considerable additional claims for damages. Such claims could materially increase the amount of General Unsecured Claims against the Debtors and would dilute any potential recoveries to other Holders of General Unsecured Claims. No attempt has been made to estimate additional General Unsecured Claims that may result from such events under a chapter 7 scenario. For example, there are six Claims asserted by the Pension Benefit Guaranty Corporation, which must

be withdrawn or disallowed under the Plan, may be Allowed in whole or in part if the Pension Plan is terminated under chapter 7. These Claims have been excluded from the Best Interest Analysis.

The Best Interest Analysis necessarily contains an estimate of the amount of Claims that will ultimately become Allowed Claims. Estimates for various classes of Allowed Claims are based solely upon the Debtors' continuing review of the Claims filed in these Chapter 11 Cases and the Debtors' books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Allowed Claims at the projected levels set forth in this Best Interest Analysis. Allowed Claims could be more or less than the Debtors' estimates, and variations from the Debtors' estimates will affect the Debtors' estimate of what each Holder of an Allowed General Unsecured Claim will recover on account of its Claim.

### Best Interest Analysis

<i>(\$ in millions)</i>	Estimated Claim (\$)	Chapter 7 Liquidation		Proposed Plan		Note
		Recovery	%	Recovery	%	
Gross Recovery Value				\$202.5		A
Chapter 7 Trustee & Professional Fees				10.1	0.0	B
Value Available to Satisfy Secured Claims				192.4	202.5	
PLC Secured Claims	\$51.7	51.7	100%	51.7	100%	C
Other Secured Claims	0.6	0.6	100%	0.6	100%	C
Value Available to Satisfy Administrative and Priority Claims				140.1	150.2	
Administrative Expense Claims	55.9	55.9	100%	55.9	100%	D
Priority Tax Claims	14.5	14.5	100%	14.5	100%	D
Priority Non-Tax Claims	1.0	1.0	100%	1.0	100%	D
Value Available to Satisfy Secured Tax Claims				68.7	78.8	
Ironside Drive Tax Claim	0.4	0.4	100%	0.4	100%	E
Walsh Avenue Tax Claim	0.3	0.3	100%	0.3	100%	E
<b>Value Available to Satisfy General Unsecured Claims</b>				<b>\$68.0</b>	<b>\$78.1</b>	
<b>Recovery to Holders of General Unsecured Claims</b>						
PLC General Unsecured Claims	\$4,896.1	\$47.7	1.0%	\$28.4	0.6%	F, I
CW Holdings General Unsecured Claims	1,900.0	18.5	1.0%	NA	NA	G, I
Non-PLC General Unsecured Claims *	180.9	1.8	1.0%	49.7	27.5%	H, I

\*Excludes the Claims asserted by the PBGC for termination liability associated with the Pension Plan. If a termination of the Pension Plan occurred in a chapter 7 scenario and the Claim for such termination was Allowed, recoveries to Holders of General Unsecured Claims in a chapter 7 liquidation would be reduced, although by less than 0.1%.

#### *Note A – Gross Recovery Value*

Gross Recovery Value of \$202.5 million consists primarily of Cash proceeds from the consummation of the 363 Sale of \$155 million and \$44 million held by the Estates as of January 28, 2004, when SAVVIS assumed funding responsibility for the Debtors' operations. Other

miscellaneous assets include certain publicly traded marketable securities held by the Debtors valued at current market prices and certain receivables which the Debtors expect to collect.

*Note B – Chapter 7 Trustee & Professional Fees*

Chapter 7 trustee and professional fees include those fees associated with the appointment of a Chapter 7 trustee calculated in accordance with Bankruptcy Code § 326 and the work of legal and accounting professionals hired by the trustee. These fees are estimated based on historical experience in other similar cases at 5% of the Gross Recovery Value.

*Note C – Secured Claims*

Secured Claims of \$52.3 million consist of the PLC Secured Claim and Other Secured Claims. The PLC Secured Claim reflects \$51.7 million owed under the PLC Credit Agreement. The Debtors have requested authority from the Bankruptcy Court to repay the PLC Secured Claim prior to the Effective Date as part of the Global Settlement and to minimize the interest expense accruing under such obligation. The Debtors estimate Other Secured Claims of \$0.6 million. Secured Claims that remain unpaid as of the Effective Date will be paid in full under the Plan.

*Note D – Administrative Expense Claims, Priority Tax Claims and Priority Non-Tax Claims*

Administrative Expense Claims include any Claims entitled to administrative expense status under the Bankruptcy Code. Administrative Expense Claims of \$55.9 million represent the Debtors' forecast of such amounts and include unpaid post-petition operating expenses, accrued and unpaid professional fees and miscellaneous other costs of the 363 Sale. Priority Tax Claims of \$14.5 million represent the Debtors' estimates of the amounts owed for taxes that will ultimately be eligible for priority status under the Bankruptcy Code. Priority Non-Tax Claims are estimated to be de minimis based on an analysis of the Claims filed in these Chapter 11 Cases.

Administrative Expense Claims, Priority Tax Claims and Priority Non-Tax Claims will be paid in full under the Plan.

*Note E – Ironside Drive Tax Claims and Walsh Avenue Tax Claims*

The Ironside Drive Tax Claims and the Walsh Avenue Tax Claims are the Secured Claims for unpaid taxes held by the Santa Clara California Tax Collector with respect to the properties located respectively at 4650/4700 Ironside Drive and 2401/2403 Walsh Avenue in Santa Clara, California. The Debtors estimate the Ironside Drive Tax Claim is approximately \$400,000 and the Walsh Avenue Tax Claim is approximately \$300,000.

The Plan provides that these Claims will be paid in full under the Plan.

*Note F – PLC General Unsecured Claims*

PLC General Unsecured Claims represents all Unsecured Claims of the PLC Group, which the Debtors estimate total \$4,896.1 million and include Claims arising from monies disbursed to the Debtors under historical loan agreements including \$75 million loaned on an unsecured basis

under the PLC Credit Agreement, Claims arising from trade relationships between the Debtors and the PLC Group in the ordinary course, Claims purchased by PLC from third parties and Claims arising under letters of credit and guarantees extended by PLC to creditors of the Debtors prior to the commencement of these Chapter 11 Cases. Pursuant to the terms of the Global Settlement, the PLC General Unsecured Claims will be satisfied by payment of the PLC Fixed Recovery plus the PLC Unsecured Creditor Fund Interest on account of such Claims.

*Note G – CW Holdings General Unsecured Claims*

CW Holdings General Unsecured Claims represent intercompany receivables owed to CW Holdings by the Debtors in the approximate amount of \$1.9 billion, arising under historical loan agreements and from certain limited trade activities. In a chapter 7 scenario, the \$1.9 billion would share in recoveries to Holders of General Unsecured Claims and would dilute such recoveries substantially. Under the Global Settlement and the Plan, CW Holdings will waive its Claims against the Debtors in their entirety.

*Note H – Non-PLC General Unsecured Claims*

Non-PLC General Unsecured Claims of \$180.9 million represents the Debtors' estimate of what they believe Allowed Non-PLC General Unsecured Claims will be, based on an analysis of the Claims filed and scheduled as of April 23, 2004, and generally includes amounts owed to trade creditors and parties to executory contracts as of the Petition Date, and amounts estimated as damages for the rejection of certain executory contracts in these Chapter 11 Cases. For purposes of this Best Interest Analysis, the Claims asserted by the PBGC have been excluded as the Debtors believe that such Claims are contingent at this time and pursuant to the Global Settlement, the PLC Group will assume responsibility for payments under the Pension Plan.

*Note I – Total Recovery to Holders of General Unsecured Claims*

Under the chapter 7 scenario, distributions are governed by the priorities embodied in Bankruptcy Code § 726. Under such scenario, the proceeds that remain after payment of priority and administrative expenses and claims and secured claims are distributed pro rata to holders of unsecured claims. The Debtors estimate that Holders of General Unsecured Claims would receive a recovery of approximately 1.0% under a chapter 7 scenario.

The Plan provides for distributions to creditors pursuant to a Global Settlement wherein the PLC Group agrees to exchange their \$4.9 billion of General Unsecured Claims for the PLC Fixed Recovery of \$28.45 million plus a 50% interest in the Unsecured Creditor Fund, valued at \$24.8 million. The PLC Group has further agreed to make available to Holders of Non-PLC General Unsecured Claims who elect not to opt out of granting the Optional Releases, its 50% interest in the Unsecured Creditor Fund. Holders of Non-PLC General Unsecured Claims who opt out of granting the Optional Release will not receive their share of the PLC Group's 50% interest in the Unsecured Creditor Fund, which share will be retained by Holders of the PLC General Unsecured Claims. Thus, Holders of Non-PLC General Unsecured Claims who do not opt out of granting the Optional Releases will receive a significantly higher recovery than each Holder would receive under the absolute priority rule governing such distributions or than Holders who do elect to opt out of granting the Optional Releases. Under the Global Settlement and the Plan,

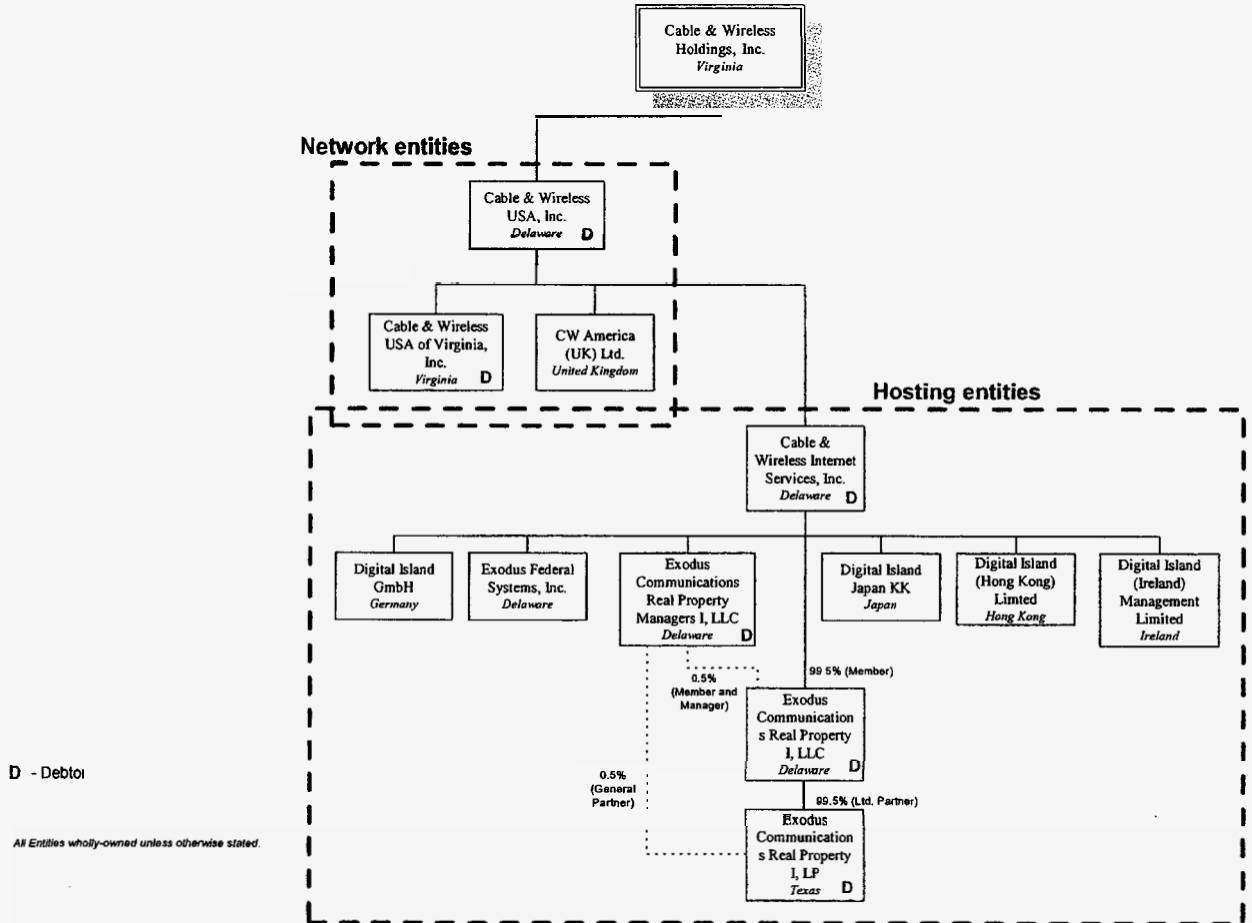


CW Holdings will also waive its \$1.9 billion Claim against the Debtors, further increasing recoveries to Holders of Non-PLC General Unsecured Claims.

The Debtors estimate that Holders of Allowed Non-PLC General Unsecured Claims will recover approximately 13.75% under the Plan if they opt out of granting the Optional Releases and will recover approximately 27.5% if they do not elect to opt out of granting the Optional Releases. This is compared to the 1.0% they could expect to recover in a chapter 7 liquidation. The Debtors therefore believe that the Plan meets the “best interest of creditors test” as set forth in Bankruptcy Code § 1127(a)(7).

# EXHIBIT C

## CABLE & WIRELESS' US CORPORATE STRUCTURE



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## EXHIBIT D

### PLC ENTITIES WITH THIRD PARTY CLAIMS

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#### **Entities with Third Party Ownership**

Cable & Wireless Jamaica Ltd.  
Cable & Wireless Bermuda, Ltd.  
Cable & Wireless (Barbados) Limited  
Cable & Wireless Panama  
Cable & Wireless Panama S.A.  
Cable & Wireless IDC Inc.

#### **Digital Island Subsidiaries in Liquidation**

Digital Island (Belgium) BVBA  
Digital Island B.V.  
Digital Island Sweden AB  
Digital Island (Europe) S.A.  
DI (UK) Limited  
Digital Island (UK) Limited  
Digital Island (Hong Kong) Limited  
Digital Island GmbH

**EXHIBIT E**  
**GLOBAL SETTLEMENT AGREEMENT**

**Cable and Wireless plc**  
**124 Theobalds Road**  
**London, WC1 X8RX**

**GLOBAL SETTLEMENT AGREEMENT**

April 29, 2004

David Neier, Esq.  
Winston & Strawn  
200 Park Avenue  
New York, New York 10166-4193

John S. Dubel  
c/o AlixPartners  
9 West 57<sup>th</sup> Street  
Suite 3420  
New York, New York 10019

Re: In re Cable and Wireless USA, Inc. et al.  
(Case No. 03-13711)

Gentlemen:

This letter agreement (this “Global Settlement Agreement” or the “Agreement”) is made and entered into as of April 29, 2004 and sets forth certain terms and conditions pursuant to which Cable & Wireless USA, Inc., a debtor-in-possession in a chapter 11 case pending in the District of Delaware, and its debtor subsidiaries<sup>1</sup> (collectively, the “Debtors”) will settle all potential claims they have or may have against Cable and Wireless plc (“PLC”) and certain other related parties as delineated in the Plan (as defined below), and upon which the official creditors’ committee in the Debtors’ chapter 11 cases (the “OCC”) will support such settlement (the “Global Settlement”).

The Global Settlement will be implemented through confirmation of the plan of liquidation attached hereto as Exhibit A (the “Plan”) pursuant to a disclosure statement that will be in a form acceptable to PLC and the OCC (the “Disclosure Statement”).

During the period commencing on the date of this Agreement and continuing until the termination of this Agreement as provided for in Paragraph 7 hereof, the Debtors, PLC and the OCC (collectively, the “Parties”) agree as follows:

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<sup>1</sup> 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.

1. The Parties will use their reasonable and diligent efforts to seek prompt confirmation and consummation of the Plan, and will take such other actions (beyond those contemplated by the Plan and related documents) and execute such other documents (in addition to the Plan and related documents) as may be reasonably necessary to consummate the Plan; provided that the Parties shall not be obligated by this sentence to take such additional non-contemplated actions or execute such additional documents if doing so would result in a more-than-de minimis risk of additional material liability or expense. The Parties agree that they will not take any action directly or indirectly inconsistent with the terms and conditions of this Agreement or that would unreasonably delay confirmation or consummation of the Plan or approval of the Disclosure Statement. PLC and the OCC further agree that they will support the Debtors' motion to extend exclusivity (Docket #1108) and will not seek or support an early termination of exclusivity as so extended.
2. The OCC will include in the solicitation materials accompanying the Disclosure Statement a letter supporting the Plan and encouraging creditors not to opt out of the individual release provisions therein. No provision of this Agreement obligates the individual members of the OCC to vote for or against the Plan. The OCC agrees that it will provide a copy of the solicitation letter to the Debtors and PLC prior to its incorporation into any solicitation package for reasonable comment.
3. Under the Plan, PLC will assure (i) funding of the Cable & Wireless Holdings, Inc. Retirement Income Plan (the "Pension Plan"), assuming that the Pension Benefit Guaranty Corporation (the "PBGC") has agreed that it will not terminate the Pension Plan pursuant to sections 4041 or 4042 of ERISA on account of events occurring on or prior to the Effective Date;<sup>2</sup> and (ii) payment of all claims relating to the Cable & Wireless Holdings, Inc. Supplemental Executive Retirement Plan ("SERP") covering certain former employees of the Debtors.
4. The obligations under paragraph 3 above are conditioned on Cable & Wireless Holdings, Inc. ("Holdings") having transferred to PLC the assets held in account number 894-95S90 at Merrill, Lynch & Co., except for \$100,000.00 to be available for liabilities of Holdings other than (i) those owing on account of the Pension Plan or on account of the SERP (each to be paid by PLC) and (ii) for health, welfare, and severance related expenses (each to be paid by the Debtors pursuant to the authority previously granted to them by the Bankruptcy Court).
5. In consultation with the Debtors and the OCC, PLC will use its reasonable and diligent efforts to negotiate an agreement with the PBGC embodying PLC's agreement to assure payment of the Pension Plan obligation. The Parties acknowledge that the withdrawal (or expungement) of the PBGC's claims, to the extent asserted in the Debtors' chapter 11 cases, is a condition to the confirmation of the Plan. In addition, PLC shall cause its relevant subsidiaries to consent, as

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<sup>2</sup> Capitalized terms not defined herein have the same meaning ascribed to them in the Plan.

shareholder(s) and creditor(s) of Holdings, to the release of all of Holdings' claims against the Debtors.

6. On April 23, 2004, the Debtors filed a motion seeking permission from the bankruptcy court to pay to PLC, not later than May 14, 2004 all amounts due and owing on account of the secured claims under the pre-petition Credit Agreement dated as of August 1, 2003 between certain of the Debtors and PLC (Docket #1109).<sup>3</sup> Each of the Debtors and the OCC agree that none of them will take any actions directly or indirectly inconsistent with the motion or the relief sought therein. The obligations of PLC under this Agreement are expressly conditioned upon the payment by the Debtors of PLC's secured claim in full by May 14, 2004, and failure by the Debtors to pay PLC's secured claim in full by May 14, 2004 shall result in PLC having the right, in its sole and absolute discretion, to terminate this Agreement upon written notice to the Debtors and the OCC.
7. This Agreement and the rights and obligations of the Parties hereunder (other than any liability for breach prior to termination) shall terminate if (a) all of the Parties consent in writing to such termination or (b) the Plan has not been confirmed in substantially the form attached as Exhibit A by October 23, 2004. PLC shall also have the right, in its sole and absolute discretion, to terminate this Agreement after giving written notice thereof to the Debtors and the OCC, if PLC is not paid in full on its secured claim by May 14, 2004. In the event of a termination, no provision of this Agreement nor any payment of PLC's secured claim, shall operate to constitute a waiver of any rights held by the Parties or defenses to the secured claim which may exist as of the date hereof except that the OCC hereby agrees that it waives and relinquishes any right to challenge the perfection of liens on PLC's secured claims other than with respect to borrowings aggregating approximately \$21 million.
8. This Agreement is governed by and construed in accordance with the federal bankruptcy laws and the internal laws of the State of Delaware, without regard to any conflicts of law provision which would require the application of the law of any other jurisdiction. By its execution and delivery of this Agreement, each of the Parties hereby irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding against it with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, may be brought in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). By execution and delivery of this Agreement, each of the Parties irrevocably accepts and submits itself to the nonexclusive jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding.
9. In the event that any provision of this Agreement conflicts with any provision of the Plan, the terms of the Plan shall supersede the terms of this Agreement.

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<sup>3</sup> The Motion controls over this Agreement, in the event of any inconsistency.



10. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators and representatives.
11. No provision in this Agreement is intended to benefit any entity not a party to the Agreement, and there shall be no third party beneficiaries to the Agreement.
12. This Agreement and the exhibits attached hereto supersede all prior negotiations with respect to the subject matter hereof.
13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Sincerely,

/s/ Andrew Garard

Andrew Garard  
for Cable and Wireless plc and each other  
member of the PLC Group as defined in the  
Plan

AGREED AND ACCEPTED

/s/ David Neier

David Neier, Esq.  
Winston & Strawn  
for the Creditors' Committee

/s/ John Dubel

John Dubel  
for the each of the Debtors:

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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**EXHIBIT F**  
**WAIVED CAUSES OF ACTION**

None