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August 7, 2001

**BY HAND**

Clerk's Office  
United States Bankruptcy Court  
Thomas P. O'Neill Federal Building  
10 Causeway Street  
Boston, MA 02222-1074

Re: **Essential.com, Inc.**  
**Chapter 11 Case No. 01-15339-WCH**

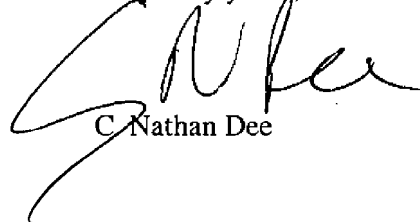
Dear Sir or Madam:

Enclosed for filing please find the following documents:

1. Expedited Determination Requested For Motion For Order Authorizing (I) The Payment Of Prepetition Customer Refunds and (II) Limiting Notice With Respect To Creditors Holding Suchclaims; and,
2. Certificate of Service.

Kindly file these documents and return a time-stamped copy to the awaiting messenger.  
Thank you in advance for your assistance.

Very truly yours,

  
C. Nathan Dee

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG \_\_\_\_\_  
OPC \_\_\_\_\_  
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3. On July 18, 2001, the United States Trustee appointed an official committee of unsecured creditors (the "Committee").

4. The Debtor, which launched its Internet site in June of 1999, is in the business of reselling telecommunications services to small businesses and consumers. The Debtor has been in the business of reselling telecommunications services, including long distance and local voice telephone service, and dial-up internet service, since 1995.

5. As of the Petition Date, the Debtor had approximately 70,000 active subscribers in its customer base (the "Customer Base") that consists predominantly of households and small businesses. The individuals and businesses that make up the Customer Base rely on the Debtor, in many instances, for local and long distance telephone services.

6. The Debtor has explored various alternatives for reorganization during the pendency of the case, including the potential sale of all or substantially all of its assets. The Debtor's primary asset is its active Customer Base of over 70,000 households and businesses that subscribe to its services.

7. The Debtor has decided that the sale of all or part of the company's Customer Base would allow it to realize the most value from its remaining assets and offer the best return for its creditors.

8. On August 1, 2001, the Court approved the notice, counter offer and bidding procedures and scheduled the sale of the Debtor's Customer Base for August 9, 2001.

## **II. Return Of Customer Refunds**

9. Historically, the Debtor's electronic payment process occasionally experienced minor billing errors resulting in the overpayment of small amounts of money by customers for services rendered by the Debtor. The Debtor's normal business practice to resolve a customer's disputed bill would be to review the claim filed by the customer and, if a minor billing error

occurred, the Debtor would then credit the customer's account or issue a refund check in order to reconcile the customer's account.

10. The Debtor now seeks authority under Section 105(a) of the Code to pay, in full, without interruption and in its discretion, certain undisputed unsecured claims, the Customer Refunds, arising prior to the Petition Date and relating to refunds for amounts inadvertently charged to its customers credit cards. -

11. The Customer Refunds were incurred in the ordinary course of business when the Debtor inadvertently charged its customers' credit cards for services for which the customer had already paid.

12. Among the Debtor's most valuable assets are its relationships and reputation with its customers. The relationships and the Debtor's reputation were developed in part through customer service aimed at guaranteeing customer satisfaction and fostering customer loyalty. The relationships and the Debtor's reputation will both be damaged if the Debtor is not able to pay the Customer Refunds. Moreover, adverse publicity would likely ensue if the Customer Refunds are not paid. Such publicity could impair the pending post-petition sale of the Customer Base by reducing the value of the Debtor's most valuable asset, its Customer Base. Furthermore, failure to pay such small, undisputed customer claims could expose the Debtor to administrative and regulatory actions by State Public Service Commissions and Attorneys General under applicable consumer protection statutes and regulations.

13. The average Customer Refund is small, typically around \$40.00. Additionally, some or all of the Customer Refunds arguably may be entitled to the status of priority unsecured claims under Section 507(a)(6).

14. There are approximately 175 parties owed Customer Refunds. To the extent the Court grants this motion, such parties' claims will be honored and they will likely cease to be creditors in this bankruptcy proceeding. In light of the large number of individuals owed

Customer Refunds and their potentially brief involvement in this bankruptcy proceeding, the Debtor also seeks court authority to remove the holders of Customer Refunds from the Creditor Matrix after they have been paid. Given the Debtor's intention to honor the Customer Refunds, the cost to the Debtor's bankruptcy estate of including such creditors in the Creditor Matrix, and its concomitant effect on other creditors, far outweighs the right to notice which may attach to holders of Customer Refunds.

15. For the foregoing reasons, the Debtor submits that the payment of the Customer Refunds in the ordinary course of business is justified and essential.

16. The Debtor therefore requests that it be authorized to pay the Customer Refunds in the ordinary course of business and without further approval from the Bankruptcy Court.

### **III. Notice**

17. The Debtor requests that notice of this motion and of any hearing thereon be limited to the United States Trustee, counsel to the creditors committee, the Debtor's 20 largest creditors and other parties who have requested notice. The Debtor believes that limiting notice in this fashion provides sufficient notice to interested parties in light of the need for immediate action on this motion and the nature of the relief requested.

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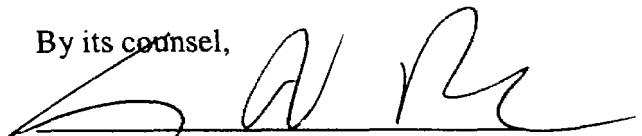
**WHEREFORE**, the Debtor respectfully requests that the Court:

- (i) Find that the notice of this motion described above is sufficient under the circumstances;
- (ii) Waive the requirement that the Debtor continue to list the recipients of Customer Refunds as creditors;
- (ii) Authorize the Debtor to pay the Customer Refunds in the ordinary course of business and without further Court approval; and
- (iv) Grant such other and further relief to the Debtor as is just and proper.

Respectfully submitted,

ESSENTIAL.COM, INC.,

By its counsel,



Harold B. Murphy (BBO #362610)

C. Nathan Dee (BBO #646621)

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Dated: August 6, 2001

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

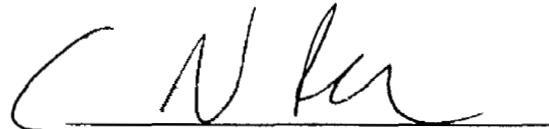
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In re:	)	
	)	
ESSENTIAL.COM, INC.	)	Chapter 11
	)	Case No. 01-15339-WCH
Debtor.	)	
	)	

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**CERTIFICATE OF SERVICE**

I, C. Nathan Dee, hereby certify that on August 7, 2001, I caused to be served a copy of the *Expedited Determination Requested For Motion For Order Authorizing (I) The Payment Of Pre-petition Customer Refunds and (II) Limiting Notice With Respect to Creditors Holding Suchclaims* by first class mail, postage prepaid mail, unless otherwise indicated, to the parties listed on the attached list.



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Dated: August 7, 2001  
::ODMA\PCDOCS\DOCS\310698\1

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