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November 20, 2001

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COMMISSION
CLERK

ALL CREDITORS OF
ACTEL INTEGRATED COMMUNICATIONS, INC.

Re: *In Re Actel Integrated Communications, Inc.*
(Our file no. 94673-00)

D11408-TX

Dear Counsel:

I have enclosed Cisco Systems Capital Corporation's *Ex Parte* Motion to Lift Stay to Permit Recovery of Non-Estate Property, which I have filed today in the record of the referenced matter.

Please feel free to call me if you have any questions.

Sincerely,



Matthew T. Brown

Enclosures

APP
CAF
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JONES, WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE L.L.P.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

In re)
) CASE NO. 01-12901
ACTEL INTEGRATED)
COMMUNICATIONS, INC.,)
) SECTION "A"
Debtor.)
) Chapter 7
)
JUDGE T. M. BRAHNEY III

Jointly Administered With

ACTEL PROPERTIES, INC. CASE NO. 01-12901

**CISCO SYSTEMS CAPITAL CORPORATION'S EX PARTE MOTION
TO LIFT STAY TO PERMIT RECOVERY OF NON-ESTATE PROPERTY**

NOW INTO COURT, through undersigned counsel, comes Cisco Systems Capital Corporation ("Cisco Capital"), and moves, pursuant to 11 U.S.C. § 362(d)(2), to lift the automatic stay to permit Cisco Capital to recover certain of its property, which is currently in the constructive possession of Dwayne P. Smith, Chapter 7 Trustee ("Trustee") for the Debtor, Actel Integrated Communications, Inc. ("Debtor").

JURISDICTION AND PROCEDURE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).
3. This matter is governed by Federal Rules of Bankruptcy Procedure 4001 and 9014.

GENERAL ALLEGATIONS

4. Before the Debtor initiated this bankruptcy proceeding, Cisco Capital leased to the Debtor certain high-tech communications equipment pursuant to that certain Master Agreement to Lease Equipment No. 2552, dated as of November 23, 1999 (the "Master Lease Agreement") and a series of associated Schedules. A copy of the Master Lease Agreement and its component Schedules is attached as Exhibit "A."

5. Pursuant to the Master Lease Agreement, Cisco Capital leased and delivered to the Debtor personal property having a value substantially in excess of \$10 million, including computer switches, routers, and other communications equipment (collectively the "Equipment"). The component Schedules of the Master Lease Agreement, included as part of attached Exhibit "A," describe the Equipment.

6. The Equipment leased by the Debtor pursuant to the Master Lease Agreement and its associated Schedules was purchased by, and is the property of, Cisco Capital. It is not, and has never been, the property of the Debtor or the Debtor's estate.

7. Because the Debtor failed to make rent payments required under the Master Lease Agreement, Cisco Capital canceled and terminated the Master Lease Agreement and all associated leases on or about March 30, 2001 – more than a week before the Debtor filed its bankruptcy petition. The Debtor failed, however, to return the Equipment to Cisco Capital.

8. On April 11, 2001, the Debtor filed its bankruptcy petition. And in July 2001, Cisco Capital orally advised the Trustee's counsel that the Equipment was the property of Cisco Capital and demanded its return. Cisco Capital later made written demand for the Equipment and provided to the Trustee copies of (among other things) the

Master Lease Agreement, the Schedules, and evidence of the pre-petition cancellation of the Master Lease Agreement. The Trustee initially offered to return some, but not all, of the Equipment to Cisco Capital; the Trustee failed, however, to return any of the Equipment to Cisco Capital.

9. On September 25, 2001, DB Capital Partners, Inc. (“DB”),¹ a creditor of the Debtor’s estate, sought relief from the automatic stay so that it could seize and sell the Debtor’s equipment to satisfy the Lenders’ asserted lien on property of the Debtor. Because the Debtor still had possession of Cisco Capital’s Equipment, Cisco Capital entered a partial objection to the lifting of the stay. With this partial objection, Cisco Capital formally advised the Court, the Trustee, and DB that certain property in the Debtor’s possession – the Equipment – in fact belonged to Cisco Capital.

10. At the same time, the Trustee filed a Motion to Abandon Property, seeking to abandon the remainder of the Debtor’s tangible assets. The Court heard both motions on October 4. And by Orders entered October 9, 2001 (“October 9 Orders”), the Court (1) lifted the automatic stay to permit DB and the Lenders to seize and sell the Debtor’s remaining tangible assets, and (2) authorized the Trustee to abandon the Debtor’s remaining tangible assets. Because each of the October 9 Orders relates only to assets owned by the Debtor’s estate, however, and not to non-estate assets in the Debtor’s constructive possession, these Orders do not authorize Cisco Capital to recover its

¹ DB Capital Partners, Inc. acts as Collateral Agent for DB Capital Investors, L.P., Sandler Capital Partners V, L.P., and Sandler Capital Partners V FTE, L.P. (the “Lenders”). Upon information and belief, DB in its capacity as Collateral Agent asserts that the Lenders hold secured claims against Debtor and an affiliate and that DB is entitled to seize and sell substantially all of the Debtor’s tangible property in satisfaction of the Lenders’ secured claim.

Equipment.

11. In early October 2001, Cisco Capital believed that the Equipment was in the constructive possession of the Trustee and DB. Cisco Capital demanded that DB turn over possession of the Equipment to Cisco Capital.

12. At this time, counsel for Cisco Capital also asked counsel for DB, in writing, whether the Equipment was being properly stored, insured, and preserved. Cisco Capital was led to believe that DB had possession of the Equipment and that it was being preserved. DB refused, however, to turn over possession of the Equipment to Cisco Capital and contended that it had a superior claim to the Equipment.

13. On November 5, 2001, Cisco Capital filed an Adversary Complaint in this bankruptcy (Adversary No. 01-1511) against DB and the Trustee, asserting claims of replevin and conversion, and also seeking a judgment declaring the Equipment to be the property of Cisco Capital. In the Adversary Complaint, Cisco Capital demanded the return of the Equipment and damages for its wrongful distraint.

14. The next day, DB's counsel advised counsel for Cisco Capital that DB did not have possession of the Equipment and claimed no interest in the Equipment. DB also asked that Cisco Capital dismiss the Adversary Complaint, in return for DB's abandonment of any claim against the Equipment.

15. Cisco Capital immediately began to try to locate all the Equipment and, in an abundance of caution, has prepared the instant Motion to have the Court approve Cisco Capital's recovery of its Equipment, as it is in the Debtor's constructive possession.

16. Based on the initial information Cisco Capital has discovered, the Equipment is presently located in various warehouses and offices in Alabama, Mississippi, Florida, Georgia, and possibly other locations.

**ALLEGATIONS REQUIRED FOR *EX PARTE* RELIEF,
PURSUANT TO FED. R. BANKR. P. 4001(a)(2)**

17. Fed. R. Bankr. P. 4001(a)(2) permits *ex parte* relief from the automatic stay pursuant to 11 U.S.C. § 362(a) only if “(A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant’s attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required.”

18. The Equipment, like all high-technology items, depreciates rapidly. See Affidavit of Michael R. Hicks, attached as Exhibit “B.” As a result of this depreciation, Cisco Capital suffers additional harm each day that it is prevented from recovering the Equipment. Id. Accordingly, the passage of time results in irreparable harm to Cisco Capital.

19. Moreover, the Equipment, upon information and belief, is currently scattered in warehouses and office buildings in at least four states. Upon information and belief, rent for some or all of these warehouses is past due. Accordingly, the Equipment may have become, or soon become, subject to lessor’s privileges or other rights and liens in favor of the owners of these warehouses.

20. Undersigned counsel hereby certifies that it has given actual notice of this Motion to counsel for DB and the Trustee, who have indicated their consent to the granting of this Motion by signing the attached Consent Order.

21. Moreover, in an abundance of caution, Cisco Capital has served this Motion, without exhibits, upon the United States Trustee and all parties on the Court's mailing matrix for this proceeding.

22. No other party or creditor of the Debtor has expressed any claim or right to the Equipment.

23. Based on the allegations of Paragraphs 17-22 above, and in accordance with Fed. R. Bankr. P. 4001(a)(2), Cisco Capital asks the Court to consider this Motion *ex parte* and to grant relief forthwith.

RELIEF SOUGHT

24. Cisco Capital moves the Court to lift the automatic stay to permit Cisco Capital to recover the Equipment from the constructive possession of the Debtor.

25. As the Trustee agrees, the Equipment is not, and was never, the property of the Debtor or the Debtor's estate; however, Cisco Capital seeks to lift the stay in an abundance of caution, because the Debtor has constructive possession of the Equipment.

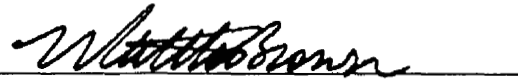
WHEREFORE, Cisco Capital prays for relief as follows:

(1) that the Court enter an Order lifting the stay and permitting Cisco Capital to recover its Equipment, which is described in the Master Lease Agreement and Schedules 1-10 associated therewith, from the Debtor's constructive possession, wherever the Equipment may be located;

- (2) that this relief be granted *ex parte*, and on an expedited basis;
- (3) that, in light of the irreparable harm alleged above, the Court dispense with the 10-day Stay of Order provided in Fed. R. Bankr. P. 4001(a)(3) and permit Cisco Capital to proceed immediately with its recovery efforts; and
- (4) for all other equitable or legal relief to which Cisco Capital may be entitled.

Respectfully submitted,

Dated: November 20, 2001



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**Attorneys for Cisco Systems Capital
Corporation**

CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of November, 2001, a copy of the above and foregoing has been served, by U.S. Mail or hand delivery, on the following persons: (1) the United States Trustee and (2) all persons listed on the attached mailing matrix.



Matthew T. Brown

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

In re)	
)	CASE NO. 01-12901
ACTEL INTEGRATED)	
COMMUNICATIONS, INC.,)	
)	SECTION "A"
Debtor.)	Chapter 7
)	JUDGE T. M. BRAHNEY III

Jointly Administered With

ACTEL PROPERTIES, INC.	CASE NO. 01-12901
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CONSENT ORDER

CONSIDERING Cisco Systems Capital Corporation's *Ex Parte* Motion to Lift the Stay to Permit Recovery of Non-Estate Property, and finding good cause;

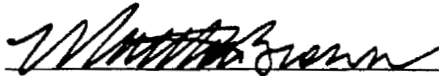
IT IS HEREBY ORDERED that the Motion is GRANTED. The automatic stay provided by 11 U.S.C. § 362 is hereby lifted to permit Cisco Systems Capital Corporation to recover its Equipment, which is described in the Master Agreement to Lease Equipment No. 2552, dated as of November 23, 1999, and Schedules 1-10 associated therewith, from the Debtor's constructive possession, wherever the Equipment may be located.

IT IS FURTHER ORDERED that the 10-day Stay of Order provided in Fed. R. Bankr. P. 4001(a)(3) is hereby dispensed with, and Cisco Systems Capital Corporation is hereby permitted to proceed immediately with its efforts to recover the Equipment that it leased to the Debtor.

SIGNED this _____ day of _____, 2001,
at New Orleans, Louisiana.

UNITED STATES BANKRUPTCY JUDGE

AGREED AND APPROVED AS TO FORM:



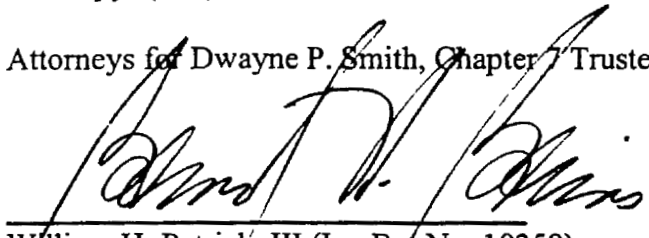
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