

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

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DISTRIBUTION CENTER

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

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FIRST APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES BY HANIFY & KING PROFESSIONAL CORPORATION AS COUNSEL TO THE DEBTOR-IN-POSSESSION

To the Honorable William C. Hillman, Chief United States Bankruptcy Judge:

Pursuant to 11 U.S.C. §§ 328, 330 and 331, Fed. R. Bankr. P. 2016 and MLBR 2016-1, Hanify & King Professional Corporation (“H&K”), counsel to the debtor and debtor-in-possession, Essential.com, Inc. (“Debtor”), respectfully submits this First Application for Compensation and Reimbursement of Expenses (“Application”) in connection with the above-referenced proceeding for the period from June 8, 2001 through November 31, 2001 (“Application Period”). In support of this Application, H&K states as follows:

I. BACKGROUND

1. On June 29, 2001 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (“Code”) in this Court. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Code.

2. On July 10, 2001, the Debtor filed an application to employ H&K as its counsel. On July 19, 2001, the Court entered an Order approving the Debtor’s retention of H&K.

3. In accordance with the Court’s order dated November 28, 2001, establishing, among other things, the hearing on confirmation (the “Confirmation Hearing”) of the Joint Plan

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H&K
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of Liquidation (“Plan”), H&K files this Application. By this Application, H&K requests an Order approving the sum of \$193,396.50 on account of services rendered and \$26,842.05 on account of actual expenses incurred during the Applicable Period.

4. By this Application, H&K also requests an award of its anticipated fees and expenses through confirmation of the Plan up to \$15,000.00.

A. Case Overview

5. The Debtor was an online communications and energy marketplace that offered a broad range of services to residential and small business customers focusing largely on telecommunication services. The Debtor offered services in selected areas, including long distance and local telephone services, Internet access, electricity and home heating. The Debtor only resold services, buying different services at wholesale prices from its service providers, aggregating them online and reselling them to its customers at retail prices.

6. Prior to the Petition Date, the Debtor undertook efforts to sell all or substantially all of its business. The Debtor’s primary asset was its active data base of telecommunications customers consisting of over 70,000 households and small businesses (the “Customer Base”) that subscribed to its services. Prior to the Petition Date, the Debtor ceased soliciting new customers and initiated measures to reduce operations to the minimum level necessary to preserve its assets.

7. Immediately prior to its bankruptcy filing, the Debtor was negotiating with a third party for the acquisition of its Customer Base. At the same time, the Debtor initiated steps to reduce its workforce to critical employees to assist in the orderly wind-down of its business affairs, transition its Customer Base and monitor the billing and collection of its accounts receivables.

8. After the Petition Date, the Debtor, moved forward with the sale of its Customer Base to a third party. In this regard, H&K undertook steps to familiarize itself with the status of the Debtor's operations. H&K also actively negotiated the terms of the sale of the Customer Database. In this regard, H&K reviewed the relevant FCC, state and local telecommunications issues relating to the transfer of telecommunications customers.

9. Ultimately, this third party decided not to proceed with the purchase of the Customer Base. The Debtor immediately solicited new buyers for its Customer Base and began preparing a motion for the private sale of its Customer Base in anticipation of such a sale. Alternatively, the Debtor analyzed conducting a public auction of the Debtor's assets, including the Customer Base, either in their entirety or as part of defined asset groups in the event that it was unable to otherwise obtain offers.

10. Because of its operational losses and limited funds, the Debtor faced the complete shut down its operations, including disconnecting services to its Customer Base, if a sale of the Customer Base could not be accomplished. Therefore, it was imperative that the Debtor move quickly to negotiate, document and complete the sale of the Customer Base in order to assure that over 70,000 customers were not left without telecommunications services.

11. On July 25, 2001, the United States Trustee ("U.S. Trustee") filed a motion ("Motion to Convert") seeking to convert the Debtor's chapter 11 proceeding to a proceeding under chapter 7. The Debtor filed a response to the Motion to Convert providing detailed information on its post petition operations and expenses. After a hearing, with the assent of the U.S. Trustee, the Court continued the hearing on the Motion to Convert.

12. On July 26, 2001, the Debtor filed an emergency motion for the private sale ("Private Sale Motion") of its assets consisting substantially of the Customer Base. Pursuant to

the Private Sale Motion, the Debtor sought authority to sell, among other things, the Customer Base by private sale ("Private Sale") to certain third parties, Zone Telecom, Inc. ("Zone") and Broadview Networks, Inc. ("Broadview"). In the Private Sale Motion, the Debtor also requested authority to shut down that portion of the Customer Base that was not being acquired.

Contemporaneously with the Private Sale Motion, the Debtor filed a motion to shorten the time for objections and for notice of the Private Sale, and to establish certain bidding procedures and break up fee requirements. ("Bidding Procedures Motion").

13. After the filing the Private Sale Motion, the Debtor finalized an offer from a third party, Essex Communications, Inc. ("Essex"), to purchase the balance of its Customer Base. Accordingly, on July 30, 2001, the Debtor filed an amended Private Sale Motion incorporating the Essex offer.

14. Pursuant to the Private Sale Motion, the Debtor proposed to transfer the entire Customer Base for \$925,000. H&K dedicated substantial efforts to the discussions and negotiations surrounding each asset purchase agreement.

15. The Debtor received qualifying counteroffers for the sale of the Customer Base from: (i) United Systems Access, Inc. ("USA") which submitted a counteroffer for the entire Customer Base for \$1,100,000; and (ii) Eastern Telephone, Inc. ("Eastern") which submitted a counteroffer for certain segments of the Customer Base for \$535,000. The Debtor, with H&K's assistance, evaluated and compared the various offers and counteroffers.

16. An objection to the Private Sale was filed by the Attorney General's Office for the Commonwealth of Massachusetts (the "Mass AG"). H&K worked closely with the Mass AG to resolve its objection to the Private Sale. The result of these discussions was a stipulation ("AG Stipulation") between the Mass AG and the various bidders which was filed in open court on

August 9, 2001. The Mass AG would be an active participant throughout the Debtor's proceeding.

17. On August 9, 2001, the Court held a hearing ("Sale Hearing") on the Private Sale Motion. After conducting one round of sealed bidding, the Court entered an Order approving the sale of the Customer Base to USA for \$1,300,000. The next highest bid was a combination of bids from Zone, Broadview and Essex. The Debtor closed the Private Sale of the Customer Base to USA on the next day.

18. Simultaneously with the sale of the Debtor's Customer Base, H&K assisted and coordinated the public auction ("Public Auction") of the Debtor's remaining assets including its interests in its real property lease and certain furniture, fixtures and equipment leased or owned by the Debtor. Ultimately, the Debtor realized over \$100,000 from the Public Auction.

19. Another key focus of H&K's efforts throughout this proceeding were services designed to reduce the Debtor's operations to the minimum amount necessary to preserve the estate's assets. As of the Petition Date, the Debtor employed approximately 40 individuals to supervise the sale of its assets and wind-down of its operations. The Debtor's staff continued to generate substantial accounts receivable exceeding \$1,000,000 post-petition for the benefit of the estate.

20. H&K also drafted two motions to reject certain of the Debtor's software licenses, executory contracts, reseller agreements and brokerage contracts in order to minimize any potential administrative claims against the estate. The Debtor, with H&K's support, also dedicated substantial efforts to narrow disputes with Verizon Communications Inc. ("Verizon") and Qwest Communications Inc. ("Qwest") to insure the continuity of service to its Customer Base.

21. In this proceeding, H&K and the Debtor worked closely with the Official Committee of Unsecured Creditors (“Committee”) appointed by the U.S. Trustee. In concert with the Committee, H&K drafted, revised and filed the Plan and accompanying disclosure statement, (“Disclosure Statement”) which contemplate the liquidation of the Debtor’s remaining assets and the distribution of the proceeds to creditors. On November 28, 2001, after a hearing, the Court approved the Disclosure Statement and authorized the Debtor and Committee to solicit votes on the Plan. The Confirmation Hearing on the Plan is scheduled for December 21, 2001.

22. The success of this bankruptcy proceeding must be considered in light of the results achieved in the brief time since the Petition Date. In approximately six (6) months, in addition to addressing the usual issues arising in a bankruptcy proceeding, H&K has smoothly and efficiently overseen the wind-down and liquidation of the Debtor’s operation and assets. The prompt wind-down of the Debtor’s operations and the liquidation of its assets has benefited creditors by minimizing the costs of administering the estate. H&K’s efforts also helped to maintain the Debtor’s revenue generating operations during the pendency of the Private Sale. Further, the Debtor, with H&K’s assistance, seamlessly transferred over 70,000 telephone subscribers to an eventual buyer without any interruption in vital telecommunications services. With H&K’s assistance, the Debtor successfully balanced these conflicting needs and preserved the assets of the estate while also minimizing the costs of administering the estate.

23. General unsecured creditors are the direct beneficiaries of the Debtor’s successful liquidation. The Debtor and the Committee have estimated that unsecured non-priority creditors should receive a dividend in excess of fifty percent (50%) on account of their claims.

24. As is set forth more fully in the individual narratives below, in furtherance of the interests of creditors, H&K has rendered a substantial amount of services with respect to a variety of time sensitive issues.

B. Application by H&K

25. On July 10, 2001, H&K filed an application to be employed as counsel to the Debtor. On July 19, 2001, H&K's employment was approved by the Bankruptcy Court. A copy of the Order authorizing H&K's employment is attached as Exhibit A.

26. H&K received a retainer from the Debtor in the amount of \$50,000 for its services in this case. H&K has not sought nor been awarded any prior interim allowance of fees or expenses in this case.

27. In accordance with MLBR 2016-1(a), a statement containing the full names, initials, rates and total amount of services provided by each attorney or paraprofessional who provided services in this matter is attached as Exhibit B. A biographical description of each H&K attorney and paralegal who provided services is attached as Exhibit C.

28. Detailed summaries by category of the services rendered by H&K as counsel to the Debtor during the Application Period are attached Exhibits D-K. These categories are as follows:

1. Services Relating to Initial Pleadings (Exhibit D)
2. Services Relating to the Private Sale of the Debtor's Customer Base (Exhibit E)
3. Services Relating to the Public Auction of the Debtor's Remaining Assets (Exhibit F)
4. Services Related to Transition of the Customer Database (Exhibit G)
5. Services Relating to the Wind-Down of Operations (Exhibit H)
6. Services Relating to Employment Issues (Exhibit I)

7. Services Relating to Drafting and Filing the Joint Plan and Disclosure Statement (Exhibit J)

8. Miscellaneous Services (Exhibit K)

Incorporated within each of Exhibits D-K is a summary sheet complying with MLBR 2016-1(d).

28. During the Application Period, H&K has expended a total of 898.50 hours in this matter for total requested compensation of \$193,396.50 at its customary and usual hourly rates.

The compensation sought by H&K reflects an average hourly rate of approximately \$215.24.

29. During the Application Period, H&K incurred expenses totaling \$26,842.05. A summary of the expenses incurred for which reimbursement is herein sought is attached as Exhibit L. Reimbursement for expenses and all other disbursements in this case is sought in accordance with MLBR 2016-1 and In re Bank of New England, 134 B.R. 450 (Bankr. D. Mass. 1991).

30. H&K submits that the compensation for the services rendered and reimbursement of expenses incurred in this matter is reasonable based on (i) the time and labor required, (ii) the complexity of the legal questions presented, (iii) the skill required to perform the legal services, (iv) the customary compensation in this District, (v) the experience and ability of the attorneys providing services and (vi) the results achieved.

31. Pursuant to MLBR 2016-1(d), a narrative description of the services performed by H&K follows.

Category 1
Services Relating to Initial Pleadings
(Exhibit D)

This category of services relates to H&K's initial review of the Debtor's operations, financial structure, assets and liabilities, preparation of initial pleadings, and preparation of the debtor's chapter 11 Schedules and Statement of Affairs.

Prior to the filing of the petition, H&K was required to become knowledgeable with regard to all aspects of the Debtor's operations in order to provide informed legal advice and assistance to the Debtor. H&K had to quickly become familiar with a myriad of issues arising from the Debtor's operations to provide informed advice and prepare necessary to achieve the expeditious liquidation of the Debtor's assets. These services included frequent conferences with the Debtor.

In this regard, H&K conducted an analysis of the Debtor's assets and liabilities and preliminarily reviewed the status of its two real property leases and its leases for certain office equipment and furniture. H&K also reviewed various executive employment contracts between the Debtor and certain of its employees.

In order to provide continuity of services to its customers, H&K advised the Debtor with respect to a motion for continuation of payments to its telecommunications providers in the ordinary course of business ("Telecommunications Motion"). By the Telecommunications Motion, the Debtor sought to quickly address critical issues regarding the Debtor's continued operation and the impact of potentially large administrative claims against the estate.

First, the Debtor's continued operation depended mainly on continuing service from its two main providers, Qwest and Verizon. The temporary or permanent discontinuation of services from Qwest or Verizon would have irreparably disrupted the Debtor's business operations and, as a result, fundamentally undermined the Debtor's sale efforts.

Second, the Telecommunications Motion was necessary because of the significant penalties the estate would have potentially incurred under applicable federal and state telecommunications laws if the Debtor had been forced to terminate services to over 70,000 households and small business. The resulting fines and penalties from the cancellation of the

Debtor's services would have significantly increased the potential for large administrative claims against the Debtor's estate.

To assist the Debtor with respect to the Telecommunications Motion, H&K reviewed certain telecommunication contracts and reseller agreements between the Debtor and Qwest and Verizon. Thereafter, H&K drafted and filed the Telecommunications Motion. Qwest and Verizon objected to the Telecommunications Motion and the Court scheduled a hearing on the Telecommunications Motion for August 2, 2001. H&K initiated certain discussions and negotiations with Qwest and Verizon regarding the continued provision of services pending the sale of the Customer Base. After substantial negotiations with H&K's participation, the Debtor entered into separate stipulations ("Telecommunications Stipulations") with Qwest and Verizon. The Telecommunications Stipulations allowed the Debtor to receive services without the need for significant deposits as initially demanded by Qwest and Verizon. The Court entered ultimately approved the Telecommunications Stipulations.

As part of the Debtor's initial pleadings, H&K also drafted an application to be employed as counsel. The Court authorized H&K's employment.

As part of its initial responsibilities, H&K compiled a service list consisting of the Debtor's landlords, various creditors, federal and state attorneys general, federal and state taxing authorities and public utilities commissions. H&K also drafted the procedural motions required to obtain hearings on the Initial Pleadings and provided service of the Initial Pleadings to all parties in interest. H&K attended the hearings scheduled by the Bankruptcy Court on these issues.

This category also includes H&K's assistance to the Debtor in responding to the U.S. Trustee's Motion to Convert. H&K aided the Debtor in the successful response to the Motion to Convert by providing quick, accurate and timely responses to the U.S. Trustee's requests for

detailed information. Additionally, the Debtor with H&K's assistance provided the U.S Trustee with an affidavit from one of the Debtor's officers detailing the Debtor's finances.

In this category, H&K also counseled the Debtor as to the various reports and information to be provided to the U.S. Trustee. H&K advised the Debtor regarding the initial formation meeting assembled by the U.S. Trustee in order to secure representatives for the Committee. H&K also advised the Debtor regarding its compliance with the U.S. Trustee's operating guidelines, including the Debtor's attendance at the Section 341(a) meeting. H&K also prepared for and attended the Debtor's 341 meeting.

With respect to the preparation of the Debtor's Schedules and Statement of Affairs, H&K advised the Debtor regarding the information required and the presentation thereof. H&K counseled the Debtor regarding secured, unsecured and priority debt, asset valuation, the nature of disputed or unliquidated claims and other matters characteristic of chapter 11 cases of this size. H&K reviewed drafts of the Schedules and Statement of Affairs with the Debtor, advised the Debtor regarding revisions and responded to questions that arose during the preparation process.

In rendering services relating to this category, H&K attorneys and paralegals expended 87.00 hours for requested compensation at their customary and usual hourly rates of \$18,204.00, an average hourly rate of \$209.24.

Category 2
Services Relating to the Private Sale of the Debtor's Customer Base
(Exhibit E)

The services in this category relate to the sale of the Debtor's Customer Base and associated intellectual property through the Private Sale Motion.

In early July of 2001, H&K participated in frequent negotiations with both Zone and Broadview regarding the sale of the Customer Database including the terms and conditions of purchase and sale agreements thereto. H&K assisted the Debtor in negotiating and drafting two separate asset purchase agreements to provide for the sale of certain parts of the Customer Base to Zone and Broadview for a total, in the aggregate, of \$800,000. Simultaneously with the Zone and Broadview negotiations, H&K's drafted the Private Sale Motion and a form of Notice of the Private Sale.

In this category of services, H&K drafted the Bidding Procedures Motion requesting the Court to establish bidding procedures relating to the Private Sale Motion as required by MLBR 6004-1. The Bidding Procedures Motion requested that the Court shorten the notice period and time for objections and counteroffers to the Private Sale. Additionally, H&K drafted a motion requesting an emergency hearing ("Emergency Hearing Motion") on the Bidding Procedures Motion.

On July 26, 2001, the Debtor filed the Private Sale Motion, the Bidding Procedures Motion and the Emergency Hearing Motion. The Court allowed the Emergency Hearing Motion and scheduled a hearing on the Bidding Procedures Motion. H&K arranged for service of the notice of the hearing by facsimile or telephone to over 100 hundred creditors and parties in interest.

Subsequent to filing the Private Sale Motion, the Debtor located a third bidder, Essex, which was interested in a portion of the Customer Base. The Debtor, with the assistance of H&K, had numerous negotiations with Essex regarding the terms of the sale of the balance of the Customer Database including the negotiation of the terms of a purchase and sale agreement thereto. In light of Essex's offer, H&K drafted a motion to amend the Private Sale Motion.

On July 30, 2001, H&K participated in an initial hearing on the Bidding Procedures Motion that was continued until August 1, 2001. H&K arranged for notice to all creditors and parties in interest of the new hearing date. On August 1, 2001, H&K participated in the continued hearing at which the Court approved certain sale and bidding procedures requested in the Bidding Procedures Motion. Thereafter, H&K finalized and arranged for service of the Notice of Private Sale Motion.

On August 7, 2001, the Mass AG filed an objection to the Private Sale Motion. H&K worked closely with the Mass AG to resolve its objection. The result of H&K's and the Mass AG's efforts was a stipulation ("AG Stipulation") between the Mass AG, the Debtor, and all of the bidders that was submitted to the Court on August 9, 2001.

After filing the Private Sale Motion, H&K coordinated requests from bidders for information regarding the Debtor. As a result of these efforts, by the bid deadline, the Debtor had received two qualifying counteroffers for the sale of the Customer Base. H&K prepared bid summaries for the Court and other parties to be used at the Sale Hearing. The Debtor, with H&K's assistance, evaluated and compared the various offers for the Customer Base. Additionally, H&K contacted several of the bidders to gain more information regarding the nature of their bids and potential contingencies.

H&K devoted substantial efforts to prepare and participate in the hearing ("Sale Hearing") on the Private Sale Motion on August 9, 2001. Prior to the Sale Hearing, H&K prepared a form of Order with respect to the Private Sale. At the Sale Hearing, the Bankruptcy Court conducted an auction of the Customer Base. After one round of sealed bidding, USA submitted the highest bid for the Customer Base of \$1,300,000. The next highest bid was a combination of bids from Broadview, Zone and Essex. Accordingly, the Court authorized the

Debtor to sell the Customer Base to USA. After the Sale Hearing, an issue arose with respect to certain additional contingencies in the USA offer. H&K participated in the successful negotiations to resolve this issue.

In rendering services in this category, H&K attorneys and paralegals expended 296.60 hours for requested compensation at their customary and usual hourly rates of \$66,036.50, an average hourly rate of \$222.64.

Category 3
Services Relating to the Public Auction of Personal Property
(Exhibit F)

The services in this category relate to the Public Auction of certain furniture, fixtures and equipment and the Debtor's leasehold interest in a real property lease.

In connection with the Private Sale, the Debtor began the final wind down of its operations. In this regard, the Debtor, in consultation with H&K, decided to conduct a Public Auction of its remaining assets. Accordingly, H&K drafted a motion for authority to conduct a public auction of furniture, fixtures, and equipment ("Public Auction Motion") located at the Debtor's Burlington, Massachusetts headquarters and also located at an offsite secure facility. The Debtor, with H&K's support, employed Paul E. Saperstein Co. ("Auctioneer") to act as the auctioneer. H&K drafted both the Public Auction Motion and the application to employ the Auctioneer ("Auctioneer Application"). Additionally, H&K had numerous discussions with both the Debtor and the Auctioneer regarding the potential values of the assets to be sold. H&K also participated in discussions with the Committee regarding the Public Auction.

On August 8, 2001, the Debtor filed both the Public Auction Motion and the Auctioneer Application. The Court approved the Auctioneer Application on August 16, 2001. Pursuant to the

Public Auction Motion, the Debtor also solicited bids for the Debtor's interest in its lease for its Burlington, Massachusetts headquarters ("Burlington Lease").

H&K dedicated efforts to assure that the Public Auction would be conducted rapidly to minimize any potential administrative costs against the estate. H&K also consulted with the Auctioneer regarding advertising for the Public Auction including the drafting of a description of the Burlington Lease. Further, H&K responded to inquiries from certain equipment lessors regarding the sale of their property as part of the Public Sale. In this regard, a controversy arose with an equipment lessor, Comdisco Inc. ("Comdisco"), which objected to certain equipment being included in the Public Auction. The Debtor, with H&K's support, responded to Comdisco's objection and entered into discussions and negotiations with Comdisco.

On September 5, 2001, the Bankruptcy Court held a hearing on the Public Auction Motion and authorized the Debtor to conduct the Public Auction on September 6, 2001. H&K prepared for and attended the hearing on the Public Auction Motion as well as preparing a form of Order with respect to the same. Due to the number of issues relating to the sale of the Debtor's equipment, including the claims of Comdisco, H&K also attended the Public Auction. The Debtor obtained in excess of \$100,000 from the Public Auction after payment of the Auctioneer's fees and expenses. Since no bids were received for the Burlington Lease, the Debtor rejected the Burlington Lease effective on September 13, 2001.

In rendering services relating to this category, H&K attorneys and paralegals expended 45.80 hours for requested compensation at their customary and usual hourly rates of \$10,542.00, an average hourly rate of \$230.17.

Category 4
Services Relating to the Transition of Customer Base
(Exhibit G)

The services in this category relate to the transition of the Debtor's Customer Base to USA and include the negotiation of a management agreement with USA ("USA Management Agreement"), the collection of the Debtor's outstanding accounts receivable and an adversary proceeding commenced by the Debtor against USA.

After the Sale Hearing, the Debtor and USA took steps to finalize the sale of the Customer Base. H&K's corporate department extensively negotiated the final terms and conditions of the asset purchase agreement and management agreement ("Purchase Agreement") with USA. On August 10, 2001, the conditions of the Private Sale were memorialized in the Purchase Agreement. Pursuant to the Purchase Agreement, USA was required to, among other things, collect on behalf of the Debtor outstanding accounts receivable due from customers for both billed and unbilled services for the period prior to August 10, 2001. In return for these services, USA would receive a commission from the Debtor.

After the sale of the Customer Base to USA, a dispute arose between the Debtor and USA. This dispute focused on USA's collection of outstanding receivables due to the Debtor under the Purchase Agreement. H&K assisted the Debtor in reviewing the terms of the Purchase Agreement and in subsequent discussions with USA to attempt to narrow the issues. In this regard, H&K drafted certain demand letters to USA.

Despite attempts to resolve this dispute through other means, the Debtor determined it necessary to protect its interests by commencing an adversary proceeding against USA ("USA Litigation") in the Bankruptcy Court. In this regard, H&K drafted and filed both a complaint ("Complaint") and a motion for a temporary restraining order ("TRO Motion") against USA in

the USA Litigation. By the Complaint, the Debtor, with H&K's assistance, sought to compel USA's compliance with terms of the Purchase Agreement. Through the TRO Motion, H&K, sought to enjoin USA from taking any actions or disposing of any of its assets outside the ordinary course of its business. On October 1, 2001 the Court scheduled a hearing on the TRO Motion. H&K provided service of the TRO Motion to all required parties. H&K also prepared for and attended the hearings on the TRO Motion.

After commencement of the USA Litigation, H&K dedicated further efforts to resolve the dispute. In this regard, the Debtor, with H&K's support, negotiated a settlement agreement with USA. The settlement agreement required H&K to have frequent discussions with both the Debtor and USA's counsel regarding the terms thereof. Additionally, in light of these discussions, H&K drafted and filed two separate motions for extensions of time for USA to respond to the Complaint.

In rendering services relating to this category, H&K attorneys and paralegals expended 137.40 hours for requested compensation at their customary and usual hourly rates of \$33,352.00 an average hourly rate of \$242.74.

Category 5
Services Relating to Liquidation of Other Assets and Wind-Down of Operations
(Exhibit H)

The services in this category relate to the wind-down of the Debtor's operations including the collection and liquidation of miscellaneous assets of the Debtor.

In this category, H&K dedicated substantial efforts to responding to inquiries from state attorney generals ("AGs") and public utilities commission ("PUCs") regarding the impact of the Private Sale on the Debtor's telecommunications licenses and other regulatory concerns. H&K also responded to certain concerns raised by the AGs and PUCs relating to the potential

disruption of telecommunications services during the transition of the Debtor's Customer Base. This category also relates to H&K's efforts regarding outstanding customer billing issues.

In this category of services, H&K advised the Debtor with respect to the vacating of its Burlington Office and secure server facility. Additionally, H&K assisted the Debtor in the evaluation and rejection of numerous software licenses, executory contracts, reseller agreements and brokerage contracts related to its operations and Customer Base. In this regard, H&K drafted and filed two separate motions to reject certain executory contracts and leases. The Court allowed both of these motions.

In this category, H&K also attended to outstanding issues regarding the Burlington Lease. On July 19, 2001, the Debtor's landlord, Burlington Woods Office Trust No. 1 ("Landlord"), filed a *Motion for Relief From Stay and Motion for an Order Directing the Assumption or Rejection of Lease, Payment of Rents and Charges* ("Landlord Motion"). H&K filed a response to the Landlord Motion and subsequently entered into discussions and negotiations with counsel to the Landlord. As a result of H&K's efforts, the parties entered into a stipulation ("Burlington Stipulation") which was subsequently approved by the Court. Additionally, H&K drafted a motion to extend the time to assume or reject the Burlington Lease and to establish a procedure for the payment of post-petition rent ("Lease Rejection Motion"). The Lease Rejection Motion provided the Debtor with a mechanism to reject the Burlington Lease after the Public Auction in order to minimize any potential administrative claims against the estate especially as the payments pursuant to the lease exceeded \$70,000 per month. After a hearing, the Lease Rejection Motion was approved by the Court. H&K prepared for and attended the hearing on the Lease Rejection Motion.

As part of the Debtor's wind-down, H&K also filed an application to employ Testa, Hurwitz & Thibault ("THT") as special corporate counsel to the Debtor. The Court approved the Debtor's employment of THT.

H&K also prepared and filed a motion for an Order fixing a bar date for proofs of claim ("Bar Date Motion") and approving a form of notice. The Committee assented to the Bar Date Motion that was subsequently allowed by the Court. H&K supervised service of the Bar Date on all parties to this proceeding.

H&K, on behalf of the Debtor, participated in discussions and negotiations with Simplexity, Inc. ("Simplexity") in order to secure the release of a Letter of Credit issued on behalf of the Debtor in the amount of \$340,000. In this regard, H&K dedicated efforts to reviewing the documents relating to the sale of the Debtor's subsidiary Sundial Marketplace Corporation ("Sundial") to Simplexity. The terms of the Sundial transaction specified that Simplexity was to assume certain of the Debtor's obligations towards Sundial including, among other things, the provision of a substitute Letter of Credit to serve as a guaranty for Sundial's commercial lease; the Debtor, in return, would gain the release of its Letter of Credit. As a result of H&K's efforts, the Debtor received the return of the full amount of the Letter of Credit to the Debtor.

H&K continues to dedicate efforts to assist the Debtor with the collection and liquidation of certain other assets. In this regard, the Debtor, with H&K's support, is currently involved in negotiations with both Verizon and Qwest to recover payments made to them post-petition by the Debtor. Further, H&K is assisting the Debtor in matters relating to the collection of certain accounts receivable not part of transactions with USA. In that regard, H&K drafted an application to employ Allen Daniel Associates, Inc. as a collection agent for the Debtor, which was allowed by the Court.

In rendering services relating to this category, H&K attorneys and paralegals expended 142.80 hours for requested compensation at their customary and usual hourly rates of \$27,717.00, an average hourly rate of \$194.10.

Category 6
Services Related to Employment Issues
(Exhibit I)

The services in this category relate to certain employee issues.

Immediately following the Petition Date, the Debtor consulted H&K with respect to a plan for the retention of key employees. In this regard, H&K advised the Debtor on the implementation of a Key Employee Retention Program (“KERP”) in order to provide certain critical employees with an incentive to remain with the Debtor, to aid in the maximization of the value of its assets and to assist in the winding down of operations. The KERP also provided that certain officers of the Debtor with employment and severance agreements would release any claims thereunder in return for participating in the KERP.

H&K also prepared a supplemental motion for authorization to implement key employee retention program (“KERP Supplement”) in response to an objection by the Committee. H&K, on behalf of the Debtor, provided information on the reasonableness and necessity for the KERP especially as it served to reduce potential administrative claims from employees. H&K prepared for and attended several hearings on the KERP, which was ultimately not authorized by the Court.

H&K also advised the Debtor with respect to the employment contract of Paul Lewis (“Lewis Agreement”) which, if not rejected, could have potentially resulted in an administrative claim against the estate. Accordingly, on August 15, 2001, H&K drafted and filed a motion to reject the Lewis Agreement. Subsequently, H&K, on behalf of the Debtor, and counsel to Lewis engaged in discussions and settlement negotiations the result of which was a stipulation (“Lewis,

Stipulation”) providing for the rejection of the Lewis Agreement in exchange for the Debtor’s simultaneous rejection of a certain noncompetition agreement between Lewis and the Debtor. The Lewis Stipulation was allowed by the Court.

H&K also advised the Debtor with respect to administrative claims filed by two former officers of the Debtor relating to their employment agreements (“Officer Claims”). H&K discussed the Officer Claims with the Committee as a result of which it was agreed that the Committee would be responsible for any objections thereto. Accordingly, H&K prepared a statement by the Debtor with respect to the Officer Claims. H&K also had certain limited participation in the resolution of the Officers Claims, including preparing for and attendance at the hearings on the Officer Claims.

In rendering these services related to this category, H&K attorneys and paralegals expended 49.30 hours for requested compensation at their customary and usual hourly rates of \$10,240.50, an average hourly rate of \$207.72.

Category 7
Services Relating to the Drafting and Filing of the Plan and Disclosure Statement
(Exhibit J)

The services in this category relate to the drafting and filing of the Plan and accompanying Disclosure Statement. After the Private Sale of the Debtor’s Customer Base and the Public Auction of the Debtor’s remaining assets, H&K participated in discussions with the Committee on the formulation of the Plan providing for the liquidation of the Debtor’s assets and establishment of a plan trustee to disburse the proceeds to creditors. The Debtor, with H&K’s assistance, agreed to undertake primary responsibility for the drafting of the Disclosure Statement and the Committee assumed responsibility for drafting the Plan.

In preparing the Disclosure Statement, H&K reviewed the Debtor's corporate records in order to provide a background of the Debtor, drafted a detailed account of the events since the Petition Date, reviewed financial data regarding post-petition revenues and expenses and the financial status of the estate, completed an analysis of available funds and the anticipated amount of secured, priority and unsecured claims in the case, assessed wind-down expenses, and other information necessary for full and complete disclosure. H&K also analyzed alternative liquidation scenarios and incorporated that analysis in the Disclosure Statement. H&K consulted with and discussed the Disclosure Statement and Plan with the Debtor. H&K also prepared an analysis of the potential dividend to be received by unsecured creditors. This analysis was subsequently incorporated in the Disclosure Statement.

H&K also reviewed and provided comments to a draft of the Plan prepared by the Committee. The Plan filed with the Bankruptcy Court reflects the efforts the Debtor and the Committee to put forth a consensual plan of reorganization that best serves the interests of unsecured creditors. The Plan provides for the liquidation of all of the assets of the Debtor and the distribution of the proceeds therefrom to creditors in accordance with priorities established by the Bankruptcy Code. The Plan also provides for a mandatory distribution to the Debtor's unsecured creditors on the initial distribution date, a date within forty-five (45) days of the Plan's effective date, and a minimum distribution to unsecured creditors.

On November 28, 2001, after a hearing, the Court approved the Disclosure Statement and authorized the Debtor and Committee to solicit votes on the Plan. Prior to the hearing, H&K prepared a form of Order approving the Disclosure Statement, and a form ballot for creditors and parties in interest to use to accept or reject the Plan. Additionally, H&K attended to service of

the Ballot, Plan and Disclosure Statement on all creditors and parties in interest. The Confirmation Hearing on the Plan is scheduled for December 21, 2001.

In rendering services relating to this category, H&K attorneys expended 100.20 hours for requested compensation at their customary and usual hourly rates of \$20,833.00, an average hourly rate of \$207.91.

Category 8
Miscellaneous Services
(Exhibit K)

This category details general services which are customarily and usually performed by H&K in cases of this size and complexity and are not included in any of the other categories.

The services rendered in the category include: (i) providing information to hundreds of creditors and employees regarding the status of the case; (ii) responding to various motions filed by other parties; (iii) assembly and maintenance of service list composed of over 100 parties in interest; (iv) interaction with the Committee; (v) communications with the U.S. Trustee regarding the status of the case; (vi) providing general advice and strategy on a wide variety of issues; (vii) conferring with the Debtor on a regular basis to discuss issues as they arose and helping to devise a strategy for handling the issues, (viii) reviewing and updating the docket for the case on a regular basis, in order to monitor upcoming hearing dates, deadlines for objections, and pending orders, (ix) maintaining a client account to hold deposits from bidders for various assets and arranging for the return of the deposits to losing bidders, (x) preparing this Application, and (xi) dealing with general administrative issues which customarily arise in regard to a debtor in case of this size and complexity.

Additionally, H&K also aided in the back up of the Debtor's computer records and the transition of the Debtor's files and information to USA and the accountants employed by the

Committee. In this regard, H&K also drafted a motion to destroy or abandon certain of the Debtor's books and records no longer necessary for its operations which was allowed by the Court.

In rendering these miscellaneous services, H&K attorneys and paralegals expended 39.40 hours for requested compensation at their customary and usual hourly rates of \$6,470.00, an average hourly rate of \$164.21.

II. ANTICIPATED FEES AND EXPENSES THROUGH CONFIRMATION

By this Application, H&K also seeks an award of its anticipated fees and expenses through confirmation of the Plan up to the amount of \$15,000.

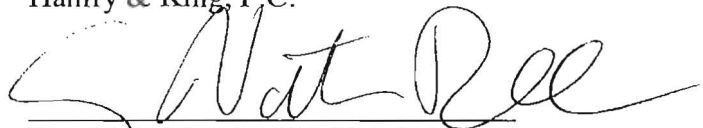
The Confirmation Hearing is scheduled for December 21, 2001. The Plan provides that the Effective Date is the first business day after which the Confirmation Order becomes a Final Order. Under the Plan, after the Effective Date, the Plan Trustee (as defined in the Plan) will assume control of the Debtor's estate. H&K requests authority to deliver an invoice for payment to the Plan Trustee for its services rendered and expenses incurred after the Application Period and, provided that such invoice does not exceed \$15,000, the Plan Trustee is authorized to pay such invoice without the requirement of further Court approval.

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WHEREFORE, Hanify & King Professional Corporation respectfully moves this Court for an Order:

- (i) Approving the amount of fees and expenses in the Application;
- (ii) Approving payment to H&K in the amount of \$193,396.50 in fees and 26,842.05 in expenses;
- (iii) Authorizing the payment to H&K of its anticipated fees and expenses of up to \$15,00.00 through confirmation of the Plan;
- (iv) Authorizing and compelling the Debtor to pay H&K such amounts; and
- (v) Providing such other and further relief as is just and appropriate.

Hanify & King, P.C.



Harold B. Murphy (BB0# 363610)

Alex M. Rodolakis (BBO#567781)

C. Nathan Dee (BBO#646261)

HANIFY & KING

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Dated: December 11, 2001

**COPIES OF EXHIBIT'S A-L WILL BE
FORWARDED UPON REQUEST**

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