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9  
10 UNITED STATES BANKRUPTCY COURT  
11  
12 NORTHERN DISTRICT OF CALIFORNIA  
13  
14 SAN FRANCISCO DIVISION

15 In re:  
16 YIPES COMMUNICATIONS, INC., et al.,<sup>1</sup>  
17 Debtors.

18 Chapter 11  
19 Jointly Administered Under:  
20 Case No. 02-30750 DM

21 **MOTION TO (1) SELL SUBSTANTIALLY  
22 ALL ASSETS OF THE DEBTORS FREE  
23 AND CLEAR OF LIENS, CLAIMS, AND  
24 INTERESTS, AND (2) ASSUME AND  
25 ASSIGN OR, ALTERNATIVELY, REJECT  
26 CERTAIN EXECUTORY CONTRACTS  
27 AND LEASES**

28 [DECLARATIONS OF HENRY C.  
KEVANE, KURT E. JOHNSON, ERIC  
CARLSON AND PROMOD HAQUE  
FILED CONCURRENTLY]

**B.L.R. 6004-1 Disclosure:**

**See next page for lienholders  
affected by this Motion**

**Hearing:**  
Date: June 10, 2002  
Time: 9:30 a.m.  
Place: United States Bankruptcy Court  
235 Pine Street, 22nd Floor  
San Francisco, CA  
Honorable Dennis Montali

Federal Tax I.D. No.: 77-0434300

<sup>1</sup> The debtors are the following entities: Yipes Communications, Inc, a California corporation ("Yipes"), Yipes Web Services, Inc., a California corporation ("Web Services"), Yipes Communications Group, Inc., a Delaware corporation ("Yipes Group"), Yipes Properties, Inc., a California corporation ("Yipes Properties"), Yipes Transmission, Inc., a California corporation ("Yipes Transmission"), and Yipes Transmission Virginia, Inc., a Virginia corporation ("Yipes Virginia").

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**B.L.R. 6004-1 Disclosure: Sale Free and Clear of Lienholders' Liens**

The parties listed below are referenced in the Motion as possible "Lienholders" whose property rights are (or may be) affected by the sale of the Acquired Assets to the Purchasers pursuant to the Motion. Identification of a party listed below as a Lienholder does not constitute an admission that such party holds or may assert a security interest in any Debtor's property and is without prejudice to any Debtor's right to avoid or contest the nature, validity or extent of any interests purportedly held by any of the Lienholders.

**Equipment**

Comdisco, Inc.	Extreme Networks Credit Corp	Finova Capital Corporation
Key Equipment Finance	Leasetec Corporation	Technology Credit Corp.

**Co-Location Providers/Landlords/Storage & Warehouse Providers**

**Co-Location Providers**

811 10 <sup>th</sup> Avenue	ACSI Network Technologies, Inc.	Apollo Communication International Group
City of Longmont	Clear Blue	ColloHouse II, LLC -- Layer One, Inc.
Colo4Dallas	Comfluent	Con Edison Communications LLC
CyrusOne	e.spire Communications, Inc.	Equinix, Inc.
Exodus Communications, Inc.	Genuity Telecom	ICG Choice.com
InterNAP Network Services Corp.	Level 3 Communications, Inc.	Meridian Telesis
PAIX Telecommunications	Platt River Power Authority	RACO
Switch & Data Facilities Company LLC		

**Landlords**

CEP – Sansome Investors LLC/SRM Associates	EOP Operating Limited Partnership	Equitable Life Assurance Society of the U.S. c/o Fox Realty
Manrock LLC c/o Brickman Associates	WRC Properties, Inc.	

**Storage & Warehouse Providers**

Diversified Technologies	Madison Self Storage	Nationwide Distribution Logistics
NY Logistics	Plantation Self Storage	Public Storage
Shurgard Storage	Storage USA	Texan Storage
U-Stor Mor		

**Local Municipalities &  
 Taxing Authorities**

1			
2	California Board of Equalization	California Franchise Tax Board	City & County of Denver
3	City & County of San Francisco	City of Alpharetta	City of Atlanta
4	City of Aurora	City of Bothell	City of Cambridge
5	City of Chicago	City of Coral Gables	City of Englewood
6	City of Everett	City of Florida City	City of Fort Collins
7	City of Houston, TX	City of Issaquah	City of Kirkland
8	City of Longmont	City of Loveland	City of Miami
9	City of Miramar	City of North Lauderdale	City of North Miami Beach
10	City of Oakland	City of Palo Alto	City of Pembroke Pines
11	City of Philadelphia	City of Plantation	City of Pompano Beach
12	City of Redmond	City of Renton	City of Riverside
13	City of Rolling Meadows	City of Roswell	City of San Diego
14	City of Santa Clara	City of Seattle	City of Tacoma
15	City of Tukwila	City of Wilton Manors	Colorado Department of Revenue
16	Colorado Secretary of State	Commissioners of Montgomery County	Comptroller of Maryland
17	Connecticut Secretary of the State	D.C. Treasurer Office of Tax and Revenue	Delaware Secretary of State
18	Denver County Assessor	Florida Department of Revenue	Florida Department of State
19	Fulton County Tax Commissioner	Georgia Department of Revenue	Georgia Secretary of State
20	Illinois Department of Revenue	Los Angeles County Tax Collector	Maryland State Department of Assessments & Taxation
21	Massachusetts Department of Revenue	Miami Dade County Tax Collector	New Jersey Division of Taxation
22	New York Department of State	New York State Sales Tax	PA Department of Revenue
23	State of Connecticut - Department of Revenue Services	Texas Department of Revenue	Treasurer of Virginia
24	Treasurer, State of Maine	Treasurer, Township of Lower	Virginia Department of Taxation
25	Washington State Department of Revenue		
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1 The above-captioned debtors (hereinafter referred to as the “Debtors”) hereby move this  
2 Court for an order pursuant to sections 105, 326, 363, 365, 554, 1121 and 1146 of Title 11 of the  
3 United States Code (the “Bankruptcy Code”) and Rules 2002, 4001, 6004, 6006, 6007 and 9019  
4 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the sale (the  
5 “Proposed Sale” or “Sale”) of substantially all of the Debtors’ assets, as more fully set forth  
6 below. For ease of reference, the following defined terms shall apply to this Motion:

- 7 • **“Investor”** means a holder of preferred stock in Yipes Group;
- 8 • **“Noteholder”** means a holder of a note under the Note Purchase  
9 Agreement;
- 10 • **“Note Purchase Agreement”** means the *Amended and Restated*  
11 *Convertible Note Purchase Agreement* dated as of March 5, 2002, among  
12 Yipes Group and the Noteholders;
- 13 • **“DIP Lender”** means a lender under the DIP Loan;
- 14 • **“DIP Loan”** means the *Debtor-in-Possession Term Credit and Security*  
15 *Agreement* dated as of April 10, 2002, as amended;
- 16 • **“Purchasers”** mean PHX Communications, Inc. (“PHX”) and PHX  
17 Holdings, Inc. (“Holdings”);
- 18 • **“Purchase Agreement”** means the *Asset Purchase Agreement* dated as  
19 of May 21, 2002, as it may be amended from time to time, by and between  
20 the Debtors and the Purchasers in substantially the form attached as  
21 **Exhibit A** to this Motion;
- 22 • **“Acquired Assets”** means those assets (including assigned contracts and  
23 leases) of the Debtors that are acquired by the Purchasers under the  
24 Purchase Agreement;
- 25 • **“Norwest Parties”** mean those DIP Lenders that have formed or will own  
26 the Purchasers;
- 27 • **“Lead Bidder”** means Purchasers;
- 28 • **“Buyer”** means either the Lead Bidder or another prevailing bidder at the  
29 auction; and
- **“Sellers”** means the Debtors.

///



1 The Debtors request that the Court approve and authorize (i) the Sale of the Acquired  
2 Assets (which are substantially all of the Debtors' assets) to the Purchasers free and clear of all  
3 identified liens, claims and interests, except as specifically provided herein and the Purchase  
4 Agreement, with such liens, claims, and interests to attach to the proceeds of the Sale (the "Sale  
5 Proceeds") with the same validity (or invalidity) and priority as existed prior to the Sale, (ii) the  
6 assumption by the pertinent Debtor and the assignment to the Purchasers or, alternatively, the  
7 rejection, of certain executory contracts and unexpired leases listed on **Exhibit B** attached hereto  
8 (the "Assigned Contracts"),<sup>2</sup> and (iii) certain related relief (*e.g.*, (x) the appointment of a  
9 responsible officer in the estates of the regulated debtors, Yipes Transmission and Yipes Virginia,  
10 (y) the modification of the automatic stay with respect to the exercise of the Purchasers' proposed  
11 security interest in the stock and assets of the foregoing regulated debtors, and (z) the right of the  
12 Purchasers to request abandonment of an asset of the foregoing regulated debtors).

13 This Motion is based upon the following memorandum of points and authorities and the  
14 Declarations of Henry C. Kevane (the "Kevane Declaration"), Kurt E. Johnson (the "Johnson  
15 Declaration"), Promod Haque (the "Haque Declaration") and Eric Carlson (the "Carlson  
16 Declaration") filed concurrently herewith. A proposed form of order granting the relief requested  
17 by this Motion is attached as **Exhibit C** to this Motion. This Motion is further based upon the  
18 pleadings and records filed in these Chapter 11 cases, and upon such other argument and evidence  
19 presented to the Court at or before the hearing on the Motion.

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27 <sup>2</sup> On May 21, 2002, the Debtors served the non-debtor parties to the proposed Assigned Contracts with a  
28 separate notice and motion (the "Contracts Notice") of the Debtors' intent to assume and assign to the  
Lead Bidder, or alternatively reject, each such party's executory contractor unexpired lease as required  
under Bankruptcy Rules 2002(a)(2) and 6006 and B.L.R. 6006-1.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 A. General Background Information.

5 On March 21, 2002, Yipes filed a voluntary chapter 11 petition for relief under the  
6 Bankruptcy Code. On April 11, 2002, Web Services filed its voluntary chapter 11 petition for  
7 relief under the Bankruptcy Code. On April 19, 2002, Yipes Group, Yipes Properties, Yipes  
8 Transmission and Yipes Virginia each filed respective voluntary chapter 11 petitions for relief  
9 under the Bankruptcy Code.

10 Yipes, Yipes Properties, Yipes Transmission and Web Services are each wholly owned  
11 subsidiaries of Yipes Group, a holding company incorporated in Delaware. Yipes Virginia is a  
12 wholly owned subsidiary of Yipes Transmission. Each of the Debtors has continued in the  
13 possession of its properties and the management of its business as a debtor in possession  
14 pursuant to sections 1107 and 1108 of the Bankruptcy Code.

15 Yipes is the principal operating entity of the corporate family. It is a leading provider of  
16 managed Ethernet services to approximately 400 corporate and government customers in major  
17 metropolitan areas such as San Francisco, Chicago, San Diego and New York. Yipes Group's  
18 primary assets are its 100% ownership interest in Yipes Properties, Yipes Transmission and  
19 Web Services and selected patents and service marks. Yipes Transmission and Yipes Virginia  
20 are regulated entities that, among other properties and rights, own or lease certain conduit  
21 laterals that are used to connect the fiber optic strands to the buildings where Yipes' customers  
22 are located (Yipes' customers are tenants in these buildings). Yipes Properties is a non-  
23 operating subsidiary of Yipes Group which owns selected intellectual property rights that are  
24 also used in the delivery of services by Yipes.

25 B. Overview of Purchase Agreement.

26 The Acquired Assets being purchased by the Purchasers include virtually all of the  
27 Debtors' assets and property used in connection with the delivery of Ethernet services by Yipes  
28 to its customers located in the nine core markets of San Francisco, Chicago, Houston, Dallas,

1 Denver, New York, Philadelphia, San Diego and Seattle. The Purchase Agreement refers to the  
2 delivery of Yipes' services in these markets as the **Core Business**. The Acquired Assets also  
3 include, among other assets identified in Section 1(d) of the Purchase Agreement, the following  
4 property of the Debtors, *whether or not* related to the Core Business: (a) the stock of Yipes  
5 Transmission and Yipes Virginia, (b) the Debtors' rights under any of the Assigned Contracts or  
6 related to any of the Assumed Liabilities (such as liabilities related to operating equipment of  
7 the Debtors that is being purchased by the Purchasers), and (c) certain potential claims or causes  
8 of action held by the estates of the Debtors against the Noteholders. Last, the Purchase  
9 Agreement provides that the Purchasers may, together with one or more co-bidders, jointly bid  
10 for the Acquired Assets **and** other property of the estates related to the delivery of Ethernet  
11 services by Yipes to its customers located in the five **non-core** markets of Atlanta, Boston,  
12 Miami, Pittsburgh and Washington, D.C. (the foregoing property is referred to as the **Non-Core**  
13 **Assets** in the Purchase Agreement). As described in greater detail below, certain specified  
14 property of the Debtors, defined as the **Excluded Assets**, are being retained by the estates.

15 **C. Overview of Sale Process.**

16 The Johnson Declaration generally describes the Debtors' efforts, prior to the  
17 commencement of these cases, to secure financing or pursue strategic options for the Yipes  
18 business. For instance, beginning in the first half of 2001, the Debtors discussed various  
19 financing alternatives with investment banks in order to obtain the additional funding to continue  
20 their operations. None of these "outside" financing options proved viable so the Debtors turned  
21 their attention to securing additional funding from existing investors. This additional "inside"  
22 round of financing eventually culminated in the \$55 million escrow made available by the  
23 Investors pursuant to the Note Purchase Agreement. As of March 21, 2002, the balance under the  
24 Note Purchase Agreement, which is secured by substantially all of the Debtors' assets, totaled  
25 approximately \$9 million. Although the Note Purchase Agreement provided for the availability  
26 of \$55 million, the release of these funds was tied to the satisfaction of various conditions,  
27 including reductions in the Debtors' "burn rate" to fiber and internet transit providers, among  
28 others.

1 In mid-March 2002, the Noteholders determined that certain conditions related to further  
2 release of funds under the Note Purchase Agreement had not, or would not have, been satisfied  
3 and, therefore, curtailed additional disbursements to the Debtors. The cessation of funding,  
4 coupled with the threat of imminent service termination by one of the Debtors' fiber providers,  
5 resulted in the commencement of Yipes' chapter 11 case.

6 Following the commencement of the Chapter 11 cases, the Debtors determined that a sale  
7 of substantially all of their assets was the best option to maximize a return to creditors and  
8 preserve the going concern value of the estates. Accordingly, the Debtors immediately embarked  
9 on a comprehensive sale process. This sale process was expedited because of the constraints  
10 imposed by the DIP Loan – once again, the Debtors' ongoing "burn rate" necessitated a quick  
11 sale because the DIP Lenders were unwilling to fund a bridge to a sale until the assets and  
12 liabilities to be sold were adjusted to conform to existing (drastically reduced) market rates.

13 Yipes engaged Ernst & Young Corporate Finance LLC ("EYCF") as its financial advisors  
14 to, among other things, prepare a confidential offering memorandum, identify prospective buyers  
15 or investors, manage the Sale process and negotiate and structure the Sale. During the Sale  
16 process, the Debtors and EYCF spent hundreds of hours marketing the Debtors and their assets.  
17 EYCF solicited 163 parties concerning a sale of the Debtors. Of those parties, 51 expressed  
18 further interest and received a non-disclosure agreement preparatory to additional due diligence.  
19 EYCF received executed non-disclosure agreements from 33 parties and delivered the offering  
20 memorandum to these parties. Six parties, after reviewing the memorandum, proceeded with due  
21 diligence and visited the Debtors' data room. During each interested party's visit to the data  
22 room, management was made available to answer questions and provide presentations to the  
23 extent requested. Interested parties are expected to continue their due diligence through the  
24 deadline for qualified alternative bids on May 30, 2002, pursuant to the Court's sale procedures  
25 order entered on May 17, 2002 (the "Amended Procedures Order").

26 **D. The Bidding Procedures**

27 On May 1, 2002, the Court entered an order (the "Procedures Order") approving the  
28 Debtors' bidding procedures in connection with the Sale. On May 17, 2002, the Court entered the

1 Amended Procedures Order to modify certain dates and deadlines in connection with the Sale  
2 process. The Amended Procedures Order provides for, among other things, overbid procedures in  
3 the event the Debtors receive one or more qualified alternative bids on or prior to May 30, 2002.  
4 The Amended Procedures Order also authorizes the Debtors to conduct an auction or series of  
5 auctions (the "Auction") for the Acquired Assets, and any additional property of the Debtors'  
6 estates. Pursuant to the Amended Procedures Order, the Court approved the Debtors' amended  
7 bidding procedures (the "Amended Bidding Procedures") and permitted the Debtors to (a) to  
8 conduct the Auction on June 5 and 6, 2002, according to certain bidding procedures, and (b)  
9 reimburse the Lead Bidder for its actual and reasonable expenses incurred in connection with the  
10 Sale. The Court also scheduled the hearing to consider the Sale on June 10, 2002, at 9:30 a.m.  
11 (the "Sale Hearing"). A copy of the Amended Procedures Order, with the attached amended  
12 bidding procedures, was served on the Debtors' creditors, equity security holders, parties to  
13 executory contracts and unexpired leases and the other parties in interest.

14 If the Debtors receive a timely qualified alternative bid to the bid submitted by the Lead  
15 Bidder, the Debtors intend to conduct the Auction on June 5 and 6, 2002. At the conclusion of  
16 the Auction, the Debtors, in consultation with the Official Committee of Unsecured Creditors (the  
17 "Committee") appointed in the Yipes Chapter 11 case, will determine the highest and best offer  
18 for the Acquired Assets. In the event the Proposed Sale to the Buyer does not close within three  
19 business days following the date of entry of an order approving the Motion, the Debtors are  
20 authorized to sell the Acquired Assets to the next highest bidder at the final price submitted by  
21 such bidder at the Auction.

22 **E. Summary Of The Proposed Sale.**

23 **1. The Purchasers.**

24 The Purchasers are new acquisition vehicles which have been formed, and will be  
25 capitalized, by certain (if not all) of the Norwest Parties. Some of the Norwest Parties, in turn,  
26 were also Noteholders and Investors. Three of the Norwest Parties (Norwest Venture, Sprout  
27 Venture Capital and New Enterprise Associates) own approximately 60.9% of the preferred stock  
28 of Yipes Group. In addition, representatives or designees of these three parties were also

1 members of the board of directors of Yipes Group. Based on the foregoing connections and  
2 relationships, the Purchasers may be considered “insiders” of the Debtors as that term is defined  
3 under Section 101(31) of the Bankruptcy Code. The transactions contemplated by the Purchase  
4 Agreement were, however, the result of difficult, arms’ length negotiations between Debtors’  
5 management and the Norwest Parties. For reasons set forth more fully below and in the Carlson,  
6 Johnson and Haque Declarations, the Debtors believe that the Purchasers qualify as “good faith”  
7 purchasers under Section 363(m) of the Bankruptcy Code.

8 **2. The Purchase Price.**

9 The Purchase Price offered by the Lead Bidder under Section 2.1 of the Purchase  
10 Agreement is a combination of (i) cash; (ii) assumption of liabilities; and (iii) a credit bid against  
11 the outstanding balance under the DIP Loan (the Purchasers will be authorized, through  
12 assignment or other conveyance from the DIP Lenders, to exercise this credit bid). The value of  
13 the Lead Bidder’s offer is, presently, difficult to precisely quantify and may be subject to change  
14 depending on fluctuations in the balance owed under the DIP Agreement, the addition or deletion  
15 of Assigned Contracts (which affects, in turn, the potential distribution to unsecured creditors), or  
16 the addition of Co-Bid Consideration (as defined in Sections 1.4 and 2.1(e) of the Purchase  
17 Agreement) on account of a possible joint bid for the Acquired Assets and the Non-Core Assets.  
18 For purposes of this Motion, however, the Debtors have assumed that the loan balance under the  
19 DIP Agreement, as of June 10, 2002, will be \$8.2 million. The estimated aggregate value of the  
20 Purchase Price offered by the Lead Bidder, therefore, is estimated to be **approximately**  
21 **\$19,200,000**. This amount is the sum of the anticipated balance under the DIP Loan, the \$9  
22 million balance under the Note Purchase Agreement and \$2 million in cash consideration. The  
23 consideration for the Purchased Assets (the “Purchase Price”) consists of:

- 24 a. Cash Consideration (Sections 2.1(c) and (d) of Purchase Agreement).  
25 \$2,001,000 (\$1,001,000 million of which will be escrowed pending the  
26 satisfaction of certain regulatory conditions attached to the delivery of assets  
27 and rights held by Yipes Transmission and Yipes Virginia).  
28

1 b. Assumed Liabilities (Section 2.1(a) of Purchase Agreement).<sup>3</sup>

2 (i) The assumption by the Debtors and assignment to the Purchasers of  
3 the **Assigned Contracts** identified on the schedules attached hereto as  
4 Exhibit B, subject to the Purchaser's right to amend such schedules to  
5 delete an Assigned Contract therefrom or add an executory contract or  
6 unexpired lease thereto. The Purchasers are obligated to satisfy any  
7 Cure Amounts (as defined under Section 1.3(a) of the Purchase  
8 Agreement) due under the Assigned Contracts. If an agreement is  
9 deleted from Exhibit B, such agreement will be rejected at the Sale  
10 Hearing effective upon the dates proposed in the Contract Notice. If an  
11 agreement is added to Exhibit B, the Debtors and the Purchasers will  
12 comply with the requirements of Section 365 of the Bankruptcy Code  
13 for purposes of Cure Payments and adequate assurances of future  
14 performance. The Purchasers reserve the right to delete agreements  
15 from Exhibit B if the Debtors and the counter-parties to such  
16 agreements fail to reach arrangements satisfactory to the Purchasers for  
17 a reduction or modification of Cure Amounts payable to such parties.

18 (ii) The assumption by the Purchasers of the Debtors' obligations  
19 associated with the acquisition of fiber or equipment subject to a  
20 security interest or a lease (for example, to equipment vendors such as  
21 Finova, Comdisco and Extreme).

22 (iii) The assumption by the Purchasers of the Debtors' obligations  
23 under the \$9 million secured Note Purchase Agreement.

24 c. Credit Bid (Section 2.1(b) of Purchase Agreement). The Purchasers will  
25 credit bid all amounts due under the DIP Loan as of the closing date of the sale  
26 (estimated to be \$8.2 million).

27 d. Co-Bid Consideration (Section 2.1(e) of Purchase Agreement). The Purchase  
28 Price will include the Co-Bid Consideration, if any, for any Non-Core Assets.

3. The Acquired Assets.

Under the Purchase Agreement, the Acquired Assets consist of the following four general  
categories of property of the estates of the Debtors (except for the Excluded Assets): (1) all  
unregulated property (including customer agreements) of Yipes, Yipes Group and Yipes  
Properties related to the Core Business of Yipes in Chicago, Dallas, Denver, Houston, New York,  
Philadelphia, San Diego, San Francisco and Seattle (defined as the **Unregulated Assets** under

<sup>3</sup> The Purchasers will also assume certain other, relatively minor, obligations of the Debtors in connection with pending regulatory approvals and obligations to any employees of the Debtors that may be hired by the Purchasers if it becomes the successful Buyer. In addition, as is customary, the Purchasers have assumed operating obligations arising on and after the First Closing Date related to the operation of the Core Business.

1 Section 1.1(a) of the Purchase Agreement), (2) the stock of Yipes Transmission and Yipes  
2 Virginia *whether or not related to the Core Business* (defined as the **Regulated Stock** under  
3 Section 1.1(b) of the Purchase Agreement), (3) the regulated property of Yipes Transmission and  
4 Yipes Virginia related to the Core Business of Yipes in Chicago, Dallas, Denver, Houston, New  
5 York, Philadelphia, San Diego, San Francisco and Seattle (defined as the **Regulated Assets** under  
6 Section 1.1(c) of the Purchase Agreement), and (4) certain other property of the Debtors *whether*  
7 *or not related to the Core Business* (defined as the **Other Assets** under Section 1.1(d) of the  
8 Purchase Agreement).<sup>4</sup> **Each of the four asset categories is more particularly itemized in the**  
9 **Purchase Agreement and all parties in interest are encouraged to read the terms of the**  
10 **Purchase Agreement for a definitive listing of the Acquired Assets. The Acquired Assets**  
11 **are substantially all property of the Debtors including intellectual property related to the**  
12 **Ethernet services offered by Yipes, rights of use under fiber optic networks (some of which**  
13 **may be owned, others of which may be the subject to agreements), all furniture, fixtures**  
14 **and equipment and all accounts receivable due and payable from any customers of Yipes**  
15 **whose network agreements are assumed by Sellers and assigned to Purchasers.**

16 The Unregulated Assets specifically include all licenses, franchises, permits, easements  
17 and other property rights, authorizations and approvals issued to Yipes, Yipes Group, Yipes  
18 Properties and Web Services by any domestic or foreign court, government, governmental  
19 agency, authority, entity or instrumentality (a “Governmental Entity”). The Regulated Assets  
20 include similar licenses and franchises from Governmental Entities issued to or for the benefit of  
21 Yipes Transmission and Yipes Virginia. The transfer of the foregoing licenses and permits,  
22 however, is subject to Regulatory Approval – the Motion does not seek an order, nor does the  
23 Purchase Agreement presume, that the Bankruptcy Court can preempt any regulatory consents or  
24 approvals that are otherwise required under applicable nonbankruptcy law. For this reason, the  
25 Purchase Agreement contemplates multiple closings – a First Closing (as defined in Section  
26 3.1(a) of the Purchase Agreement) for the Unregulated Assets, a Second Closing (Section 3.1(b))  
27 for the Regulated Stock, and a series of subsequent closings (each a Regulatory Closing under

28 <sup>4</sup> The Unregulated Assets are being acquired by PHX, the Regulated Stock and the Regulated Assets are being acquired by Holdings, and the Other Assets are being acquired by both Purchasers.



1 Section 3.2(c) as and when regulatory approvals are obtained. Notwithstanding these staggered  
2 closings, if any of the licenses or permits can be transferred **without** the approval of a  
3 Governmental Entity, such license and permits are deemed to be Unregulated Assets which may  
4 be conveyed by the Sellers to the Purchasers on the First Closing.

5 The **Other Assets** category of the Acquired Assets includes various claims and causes of  
6 action referred to as the Purchased Claims. Among these claims are any causes of action held by  
7 the estates of the Debtors against the Noteholders (or any of their respective shareholders,  
8 partners, limited partners, officer or directors). The Noteholders include the Norwest Parties. In  
9 addition, two Noteholders are current employees of the Debtors: Jerry Parrick (the former CEO of  
10 Yipes), and Stanley J. Moore (a Vice President of Yipes). Importantly, although claims of the  
11 Debtors against the Noteholders are effectively being released (because the Purchasers are  
12 assuming all obligations to the Noteholders), the Debtors have reserved rights against any current  
13 or former officers and directors (including any officers or directors who may have been employed  
14 by or affiliated with any Noteholders). These D&O claims are part of the Excluded Assets.

15 **4. The Excluded Assets.**

16 Section 1.2 of the Purchase Agreement specifically itemizes the Excluded Assets. **Parties**  
17 **in interest are encouraged to read the terms of the Purchase Agreement for a definitive**  
18 **listing of the Excluded Assets.** The principal Excluded Assets are the Debtor's cash and cash  
19 equivalents and any property related to the Non-Core Assets. All of the Non-Core Assets are,  
20 however, being offered for sale by the Debtors in connection with the Auction. In addition, the  
21 Purchasers may elect to submit a Co-Bid with another qualified bidder for the Non-Core Assets,  
22 in which case, those Non-Core Assets subject to such Co-Bid would cease, correspondingly, to be  
23 Excluded Assets and the Purchase Price offered by the Purchasers would increase in the amount  
24 of any Co-Bid Consideration provided by the Co-Bidder.

25 **5. Executory Contracts.**

26 The Debtors propose to assume and assign to any Buyer the Assigned Contracts listed on  
27 Exhibit B. The Assigned Contracts include fiber agreements, co-location agreements, internet  
28 transit agreements, right of entry agreements, conduit agreements, equipment and real estate

1 leases and customer agreements related to the Core Business. The Buyer shall be responsible for  
2 demonstrating adequate assurance of its future performance under the Assigned Contracts  
3 pursuant to Section 365(f) of the Bankruptcy Code. The Buyer shall also be required to cure any  
4 defaults (the “Cure Amounts”) under an Assigned Contract and provide compensation for actual  
5 pecuniary loss to the non-debtor party to an Assigned Contract resulting from such default  
6 pursuant to Section 365(b) of the Bankruptcy Code. The Debtors and the Buyer reserve the right  
7 to amend the list of Assigned Contracts to delete an Assigned Contract or to add any other  
8 executory contract or unexpired lease (subject to compliance with Section 365 of the Bankruptcy  
9 Code).

10 The Cure Amounts for each Assigned Contract reflect the Debtors’ proposed Cure  
11 Amount to each counter-party to an Assigned Contract. **The proposed Cure Amount may vary**  
12 **from the actual amount that may be asserted by a counter-party to an Assigned Contract**  
13 **under Section 365(b) of the Bankruptcy Code. As such, the proposed Cure Amount**  
14 **represents an offer by the Debtors to assume and assign a party’s agreement subject to**  
15 **acceptance by such party of the reduced Cure Amount (the “Reduced Cure Amount”).** The  
16 Debtors intend to pay the Reduced Cure Amount to each party to an Assigned Contract in full  
17 satisfaction of any and all defaults and obligations arising under Section 365(b) of the Bankruptcy  
18 Code. If a non-debtor party fails to object to the proposed assumption and assignment in the  
19 reduced amount, such party shall be deemed to have consented to payment of the Reduced Cure  
20 Amount as a condition to assignment. If a non-debtor party to an Assigned Contract timely files  
21 an objection to the proposed assumption and assignment of the Assigned Contract in the Reduced  
22 Cure Amount, the Debtors reserve the right to (i) negotiate an alternative Cure Amount with such  
23 non-debtor party, (ii) assume and assign the Assigned Contract by paying any other Cure Amount  
24 which may be established by the non-debtor party, or (iii) delete the executory contract or  
25 unexpired lease from the schedules of the Assigned Contracts.

26 Each non-debtor party to an Assigned Contract has been provided with a separate notice  
27 and motion for the proposed assumption and assignment, or alternatively, rejection, of its  
28 Assigned Contract pursuant to the Contracts Notice. The Contracts Notice was served on

1 May 21, 2002, on each non-debtor party to an Assigned Contract.<sup>5</sup> The schedules attached to the  
2 Contracts Notice identify each executory contract(s) or unexpired lease(s) that the Debtors intend  
3 to assume and assign to the Buyer, the proposed Reduced Cure Amount (if any) for each such  
4 contract or lease, and procedures relating to the assumption, assignment, or alternatively,  
5 rejection, of such executory contract or unexpired lease. The Debtors request in this Motion that  
6 any Assigned Contract that is ultimately not assumed by the applicable Debtor and assigned to the  
7 Buyer be deemed rejected pursuant to section 365(a) of the Bankruptcy Code on the later of (a)  
8 the date on which the Sale closes, or (b) such other date as the Debtors may fix at the Sale  
9 Hearing.

10 **6. Court Approval.**

11 The Purchaser's obligation to purchase the Acquired Assets and to take an assignment of  
12 the Assigned Contracts is dependent, among other things, upon the entry of an order (the  
13 "Approval Order"), in form and substance satisfactory to the Purchasers, approving the Sale and  
14 finding that Purchasers have acted in good faith pursuant to section 363(m) of the Bankruptcy  
15 Code. Pursuant to the Court's instructions at the hearing to approve the Debtors' bidding  
16 procedures, a copy of the proposed Approval Order is attached hereto as Exhibit C.

17 **7. Free and Clear.**

18 The Proposed Sale is to be free and clear of all liens, claims and interests of the  
19 Lienholders set forth in the Motion pursuant to Bankruptcy Code §§ 363(b) and (f). Pursuant to  
20 Rule 6004 of the Bankruptcy Rules and B.L.R. 6004-1, the Debtors have identified the  
21 Lienholders listed behind the caption page to this Motion as the holders of **potential** pre-petition  
22 liens (the "Liens") whose interests are (or may be) affected by the Proposed Sale of the Acquired  
23 Assets. Among the Excluded Assets are the Debtors' interests in certain deposit accounts held at  
24 Comerica Bank-California ("Comerica"), as successor in interest to Imperial Bank ("Comerica  
25 Accounts"). The Comerica Accounts have purportedly been pledged to secure (a) obligations to

26 <sup>5</sup> Pursuant to B.L.R. 6006-1, the Debtors also served the Contracts Notice on counsel for the Committee in  
27 Yipes, parties who have requested special notice pursuant to Rule 2002 of the Bankruptcy Code and non-  
28 insider creditors holding the 20 largest unsecured claims in the Debtors' Chapter 11 cases (other than  
Yipes). The inclusion of an Assigned Contract on Exhibit B does not constitute an admission that any  
Assigned Contract constitutes an executory contract or unexpired lease and the Debtors reserve all of their  
rights in connection therewith.

1 Comerica on account of certain letters of credit and other financial accommodations made by  
2 Comerica to the Debtors, and (b) obligations to other parties under leases of nonresidential real  
3 property and co-location agreements. The Comerica Accounts are not subject to the Proposed  
4 Sale and, accordingly, the property rights of Comerica in such accounts are not affected by this  
5 Motion. In addition, the Purchase Agreement contemplates that certain other Permitted  
6 Encumbrances shall remain attached to the encumbered property to the extent such property is  
7 part of the Acquired Assets or related to the Assumed Liabilities.

8 The Sale of the Acquired Assets free and clear of all Liens held by the Lienholders is  
9 appropriate pursuant to 11 U.S.C. § 363(f) because the Purchase Price payable by the Purchasers  
10 is equal to or exceeds the aggregate value of the Liens on the Acquired Assets, the holders of such  
11 Liens could be compelled to accept a money judgment for such Liens, or the holders of such  
12 Liens will have consented to the sale of the Acquired Assets free and clear of liens, claims,  
13 interests and encumbrances unless they timely file an objection to the Motion.

14 II.

15 **THE SALE AND THE ASSUMPTION AND ASSIGNMENT**  
16 **OF CONTRACTS AND LEASES SHOULD BE APPROVED**

17 A. **The Proposed Sale Satisfies the Business Judgment Test and**  
18 **Is in the Best Interests Of the Debtor's Estate and Its Creditors.**

19 Pursuant to Bankruptcy Code § 363(b)(1), the Debtor, after notice and a hearing, may use,  
20 sell, or lease property, other than in the ordinary course of business. A debtor's application of its  
21 sound business judgment in the use, sale, or lease of property is subject to great judicial  
22 deference. See, e.g., In re Moore, 110 B.R. 924 (Bankr. C.D. Cal. 1990); In re Canyon  
23 Partnership, 55 B.R. 520 (Bankr. S.D. Cal. 1985). In determining whether any sale of assets out  
24 of the ordinary course of business should be approved, bankruptcy courts usually consider the  
25 following factors:

- 25 (1) Whether a sufficient business reason exists for the sale;
- 26 (2) Whether the proposed sale is in the best interest of the estate, which in turn is  
27 based on the following factors:
  - 28 (a) that terms of the sale are fair and reasonable;

- 1 (b) that the proposed sale has been adequately marketed;
- 2 (c) that the proposed sale terms have been properly negotiated and proposed in
- 3 good faith; and
- 4 (d) that the purchaser is involved in an "arms-length" transaction with the
- 5 seller; and
- 6 (3) Whether notice of the sale was sufficient.

7 See generally Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (9th Cir. BAP 1988)

8 ("there must be some articulated business justification for using, selling, or leasing the property

9 outside the ordinary course of business . . . whether the proffered business justification is

10 sufficient depends on the facts of the case. As the Second Circuit held in Lionel, the bankruptcy

11 judge should consider all salient factors pertaining to the proceeding and, accordingly, act to

12 further the diverse interests of the debtor, creditors and equity holders, alike. . . .")<sup>6</sup> In

13 interpreting Bankruptcy Code § 363(b)(1), courts have held that a transaction involving property

14 of the estate generally should be approved so long as the debtor can demonstrate "some

15 articulated business justification for using, selling, or leasing property outside of the ordinary

16 course of business." In re Continental Airlines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986); accord

17 In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); Walter, 83 B.R. at 19-20 (B.A.P. 9th Cir.

18 1988); In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981). The factors a

19 court should consider include, inter alia, the consideration to be paid, the financial condition and

20 needs of the debtor, the qualifications of the buyer, and whether a risk exists that the assets

21 proposed to be sold would decline in value if left in the debtor's possession. See Equity Funding

22 Corp. of America v. Financial Associates (In re Equity Funding Corp.), 492 F.2d 793, 794 (9th

23

24 <sup>6</sup> See also In re American Development Corp., 95 B.R. 735, 739 (Bankr. C.D. Cal. 1989) (the following

25 factors are relevant concerning whether a section 363(b) transaction should be authorized: (1) has the

26 debtor satisfied the business judgment test by demonstrating good and sound business reasons for the

27 proposed transaction; (2) is the proposed transaction in the best interests of creditors; (3) is the proposed

28 transaction premature; (4) does the debtor have other options available to reorganize; (5) will a proposed

transaction facilitate a plan of reorganization); In re Phoenix Steel Corp., 82 B.R. 334, 335-356 (Bankr. D.

Del. 1987) (In determining whether a proposed sale of equipment was proper under section 363, court

considered whether the terms of proposed sale were fair and equitable, whether there was a good business

reason for completing the sale and whether the transaction was proposed in good faith); In re Alves, 52

B.R. 353 (Bankr. D.R.I. 1985) (factors concerning whether sale of property under section 363 should be

approved concerned integrity of sale and the best interest of bankruptcy estate).

1 Cir.) (affirming trial court's finding that the proposed sale of the debtor's assets would be in the  
2 best interest of the estate in light of impending deterioration of market value of debtor's assets)  
3 *cert. denied sub nom*, Herman Inv. Co. v. Loeffler, 419 U.S. 964 (1974).

4 As set forth in the Kevane, Johnson, and Carlson Declarations, the Debtors have  
5 considered and met each of the relevant factors with respect to the Proposed Sale and have  
6 articulated reasonable business justifications in support of the Sale. First, extensive notice has  
7 been given to all known parties in interest of the Motion and the relief requested therein and the  
8 proposed assumption, assignment or rejection of the Assigned Contracts. Second, timing is  
9 critical because the Debtors will not have the funding to continue their operations past June 12,  
10 2002. Accordingly, the Debtors do not have sufficient time to confirm a plan incorporating the  
11 Proposed Sale. Third, the Purchase Price for the Acquired Assets is fair and reasonable and will  
12 be tested in a competitive marketplace pursuant to the Debtors' Amended Bidding Procedures.  
13 Finally, the Proposed Sale does not unfairly benefit any insider, nor does it unfairly favor any  
14 creditor or class of creditors. The Purchase Agreement makes no attempt whatsoever to govern  
15 distributions that may be made under a plan.

16 1. **There Is a Substantial Business Justification for the Sale.**

17 The seminal case for a sale of substantially all of a debtor's assets outside the ordinary  
18 course of business is Lionel, *supra*. That case requires a sound business justification for the sale.  
19 The high "burn rate" of the Debtors' ongoing operations and the absence of funding for the  
20 Debtors' continuing operations after June 12, 2002, all compel a sale of the business by June 10,  
21 2002. In addition, although courts no longer apply the strict "emergency" standard for approving  
22 sales outside the ordinary course of business, the Debtors believe that they could meet this  
23 standard if applicable, because there is imminent danger that the assets of the Debtors' business  
24 will be lost if prompt action is not taken. See In re Huntington, Ltd., 654 F. 2d 578 (9<sup>th</sup> Cir.  
25 1981);

26 2. **The Adequacy of the Purchase Price.**

27 The Debtors believe the Purchase Price represents fair value for the Acquired Assets.  
28 First, as noted above, the Debtors' business, including the Acquired Assets, were extensively

1 marketed by EYCF and the Debtors. Second, the Sale represents the highest and best offer that  
2 the Debtors have received after an open Auction pursuant to court-approved sales and bidding  
3 procedures -- the adequacy of the Purchase Price has thus been tested through the Amended  
4 Bidding Procedures governing the Auction. As such, the Sale establishes the value of the  
5 Acquired Assets and enables the Debtors to capture the going concern value of the business for  
6 the benefit of creditors. In other words, even though the Sale will not generate sufficient  
7 proceeds to pay creditors in full, it does generate the most proceeds obtainable and will benefit  
8 those creditors with an economic stake in the outcome.

9 **3. Arms' Length Transaction.**

10 The Purchasers are new acquisition vehicles formed by the Norwest Parties. The Norwest  
11 parties, in turn, are Investors, Noteholders and DIP Lenders to the Debtors.<sup>7</sup> Three of the  
12 Norwest Parties (Norwest, Sprout Group and NEA) own approximately 60.9% of the preferred  
13 stock of Yipes Group. The principals or representatives of these Norwest Parties were also  
14 former directors of the Debtors prior to the commencement of their respective Chapter 11 cases.  
15 Promod Haque of Norwest, Keith Geeslin of Sprout Group and Peter Morris of NEA were  
16 members of the board of directors of Group until their resignation on April 19, 2002, the date  
17 Group commenced its Chapter 11 case. Other current DIP Lenders, who are or may become  
18 Norwest Parties (and thus potential owners of the Purchasers), such as Focus Venture Partners  
19 and JP Morgan/Chase, appear to currently hold observation rights on Group's board of directors  
20 (although Debtors are not aware that any of these parties has actually attended any of the board's  
21 meetings following the commencement of the Chapter 11 cases).

22 Based on the foregoing connections and affiliations, the Purchasers may qualify as  
23 "insiders" of the Debtors pursuant to Section 101(31) of the Bankruptcy Code. Notwithstanding  
24 the Lead Bidder's insider status, the Proposed Sale represents an arms' length, negotiated  
25 transaction between the Debtors and the Purchasers. The parties were each represented by

26 <sup>7</sup> In addition, Gerald Parrick, the Debtors' former Chief-Executive-Officer and current non-officer  
27 Chairman of the Board, and Stan Moore, Vice President, Law and Public Policy, were participants in the  
28 Note Purchase Agreement in the amount of \$6,490 and \$2,593, respectively. Under the Purchase  
Agreement, the Debtors' obligations to all Noteholders are being assumed by the Purchasers. Messrs.  
Parrick and Moore are not part of the Norwest Parties and will not participate in the purchase of any of the  
Debtors' assets.

1 separate counsel during the negotiations resulting in the Purchase Agreement. The  
2 representatives of the Norwest Parties had resigned their positions as directors or officers prior to  
3 the commencement of each Debtor's chapter 11 case. Finally, the Debtors have actively  
4 marketed their business to all qualified potential investors in order to obtain the highest and best  
5 price for the Debtors' assets. As noted above, over 160 potential investors were contacted in  
6 order to expose the Debtors' business to the market and possibly attract a competing bid to the  
7 Lead Bidder. The Debtors prepared and disseminated confidential memoranda in order to target  
8 these potential investors and opened their data room for review by any party who executed a non-  
9 disclosure agreement. There are no hidden or undisclosed deals or understandings between or  
10 among the Debtors, the Debtors' management or the Purchasers (including any offers of  
11 employment or promises of future compensation). See Johnson Declaration. The competitive  
12 bidding process provided in the Amended Bidding Procedures further ensures the transparency of  
13 the Sale of the Debtors' business to the Lead Bidder.

14 **B. The Court's Order Should Authorize and Provide for the**  
15 **Sale of Debtors' Right, Title and Interest In the Property**  
16 **Free and Clear Of Claims, Liens, and Interests of Others.**

17 Bankruptcy Code § 363(f) expressly authorizes a debtor to sell property out of the  
18 ordinary course of business "free and clear of any interest in such property of an entity" if any one  
19 of the five following conditions is met:

- 20 (a) applicable non-bankruptcy law permits sale of such property free and clear of  
21 such interest;
- 22 (b) such entity consents;
- 23 (c) such interest is a lien and the price at which such property is to be sold is greater  
24 than the aggregate value of all liens on such property;
- 25 (d) such interest is in bona fide dispute; or
- 26 (e) such entity could be compelled, in a legal or equitable proceeding, to accept a  
27 money satisfaction of such interest.

28 Since Bankruptcy Code § 363(f) is written in the disjunctive, any of the five conditions,  
including the consent of the lienholders, provides authority to sell free and clear of liens. See



1 Citicorp Homeowners Services, Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988)  
2 (concluding that section 363(f) is written in the disjunctive). The Debtors seeks to sell the  
3 Acquired Assets free and clear of all Liens of the Lienholders.

4 **1. Consent To The Sale: Bankruptcy Code § 363(f)(2).**

5 Bankruptcy Code § 363(f)(2) permits a sale free and clear of liens, claims, and interests if  
6 the entity asserting the lien consents. To the extent a Lienholder that receives notice does not file  
7 a written objection to this Motion, such party should be deemed to have consented to the sale of  
8 the Acquired Assets free and clear of their Liens at the Sale Hearing. See In re Channel One  
9 Communications, Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990). All known, putative  
10 Lienholders have been served with this Motion in accordance with B.L.R. 6004-1.

11 **2. The Purchase Price Equals the Aggregate Value**  
12 **of the Liens on the Property: Bankruptcy Code § 363(f)(3).**

13 Bankruptcy Code § 363(f)(3) permits a sale free and clear of liens if the purchase price  
14 exceeds "the aggregate value of all liens on the property." Under section 363(f)(3), the purchase  
15 price must be sufficient to ensure that the value of the liens is adequately protected. In re Beker  
16 Industries Corp., 63 B.R. 474, 476 (Bankr. S D. N.Y. 1986); In re Terrace Gardens Park  
17 Partnership, 96 B.R. 707, 713 (Bankr. W.D. Tex. 1989).

18 The salient provision of Bankruptcy Code § 363(f)(3) is "the aggregate value of all liens  
19 on the property" (emphasis added). Bankruptcy Code § 506(a)<sup>8</sup> equates the value of a secured  
20 claim to the value of the collateral securing the claim. Because the value of the lien cannot  
21 exceed the fair price of the collateral, courts regularly permit sales free and clear of liens so long  
22 as the proposed sale is justified by the circumstances and the sale price is a fair market price. See  
23 Beker at 477 (Bankr. S.D.N.Y. 1986) (holding that "collateralized property might be sold for less  
24 than the amount of a lien over the objection of a secured creditor where justified by special

25 <sup>8</sup> 11 U.S.C. § 506(a) provides in pertinent part:

26 An allowed claim of a creditor secured by a lien on property in which the estate has an interest  
27 . . . is a secured claim to the extent of the value of such creditor's interest in the estate's  
28 interest in such property . . . and is an unsecured claim to the extent that the value of creditor's  
interest . . . is less than the amount of such allowed claim. Such value shall be determined in  
light of the purpose of the valuation and of the proposed disposition or use of such property,  
and in conjunction with any hearing on such disposition or use or on a plan affecting such  
creditors interest.

1 circumstances...."); see also, In re Hatfield Homes, Inc., 30 B.R. 353, 355 (Bankr. E.D. Pa. 1983)  
2 ("if the proposed sales price is the best price obtainable under the circumstances of a particular  
3 case, then the fact that junior lienholders may receive little or nothing from the proceeds of the  
4 sale would not, standing alone, constitute reason for disapproving the proposed sale.").

5 The weight of authority is consistent with Beker on this issue in interpreting Bankruptcy  
6 Code § 363(f)(3) to mean that the sale price need only exceed the value of all liens, i.e., the value  
7 of the collateral, not the amount of all claims held by creditors with liens on the property. In re  
8 Terrace Gardens Park Partnership, supra; In re Collins, 180 B.R. 447, 450-51 (Bankr. E.D. Va.  
9 1995) (value as used in § 363(f)(3) is defined by reference to § 506(a)); In re Equity Management  
10 Systems, 149 B.R. 120, 123 (Bankr. S.D. Iowa 1993) (same); In re Milford Group, Inc., 150 B.R.  
11 904, 906 (Bankr. M.D. Pa. 1992) (same); In re Oneida Lake Development, Inc., 114 B.R. 352,  
12 356-57 (Bankr. N.D.N.Y. 1990) (same).

13 Finally, interpreting section 363(f)(3) to mean that the sale price need only be the fair  
14 market value of the property is consistent with the treatment of secured claims throughout the  
15 Bankruptcy Code. Sections 361 through 364 of the Bankruptcy Code deal with the treatment of  
16 secured claims. The threshold question which must be resolved under each of these four sections  
17 for a court to approve an action is whether the secured party's interest is adequately protected.  
18 Adequate protection relates to the value of the collateral, not the value of the debt. 11 U.S.C. §  
19 361. It would be illogical to read section 363(f)(3) so that it contains a restriction inconsistent  
20 with the adequate protection scheme in the rest of the Bankruptcy Code. As the Terrace Gardens  
21 court stated:

22 It makes no sense to read into Section 363(f)(3) a restriction  
23 inconsistent with the adequate protection scheme which pervades  
24 both Section 363 and the rest of the Code, just because the sale is  
25 free of liens, especially as the commonly accepted method for  
adequately protecting a secured creditor when a sale is authorized  
under Section 363(f) is to order the liens to attach to the proceeds of  
the sale.

26 Terrace Gardens, 96 B.R. at 713 (citations omitted).

27 In light of the extensive marketing of the Acquired Assets, the Purchase Price represents  
28 the fair market value of the Acquired Assets. Thus, the Purchase Price evinces the maximum

1 "value" of the actual and putative liens. Therefore, the Proposed Sale satisfies section 363(f)(3)  
2 and should be approved free and clear of the Liens held by the Lienholders.

3 **3. Lienholders May Be Compelled to Accept a**  
4 **Money Judgment: Bankruptcy Section 363(f)(5).**

5 Even if circumstances did not exist to warrant approval of the sale free and clear of liens  
6 pursuant to Bankruptcy Code sections 363(f)(2), (f)(3) or (f)(4), such authority is independently  
7 justified under Bankruptcy Code section 363(f)(5), which provides that assets may be sold free  
8 and clear of liens if the holders "could be compelled, in a legal or equitable proceeding, to accept  
9 a money satisfaction of [their] interest[s]". 11 U.S.C. § 363(f) (5).

10 Bankruptcy Code section 1129(b)(2) permits a debtor or trustee to retain property and  
11 cram-down objecting creditors upon payment of the actual value of the collateral. See, e.g., In re  
12 Terrace Chalet Apartments, Ltd., 159 B.R. 821, 829 (N.D. Ill. 1993) (creditor who could be  
13 crammed down under section 1129(b) could be compelled to accept a money satisfaction of his  
14 interest under section 363(f)(5)); In re Hunt Energy Co., Inc., 48 B.R. 472, 485 (Bankr. N.D.  
15 Ohio 1985) (same); In re Weyland, 63 B.R. 854, 859-861 (Bankr. E.D. Wisc. 1986) (same); In re  
16 Red Oak Farms, Inc., 36 B.R. 856, 858 (Bankr. W.D. Mo. 1984);. In addition, Bankruptcy Code  
17 § 1129(b)(2)(A)(ii) permits the sale free and clear of liens with liens to attach to proceeds.

18 Each of the Lienholders could be compelled to accept a monetary satisfaction of its claims  
19 pursuant to Bankruptcy Code § 1129(b)(2). Bankruptcy Code § 506(a) limits the amount of a  
20 secured claim to the value of the collateral securing the lien. As a result, a fair price for the  
21 collateral itself establishes the maximum amount of a creditor's secured claim. In addition, under  
22 Bankruptcy Code § 1129(b)(2)(A)(ii), a secured creditor's collateral may be sold free and clear of  
23 liens with liens to attach to proceeds. Therefore, holders of liens could be compelled to accept  
24 money satisfaction of their interests under Bankruptcy Code §§ 1129(b)(2) and 506(d). Because  
25 the Debtors will be obtaining a fair price in an arms' length transactions, the Proposed Sale  
26 satisfies Bankruptcy Code § 363(f)(5) and should be approved.

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1 **C. The Court Should Authorize the Debtor to Assume and**  
2 **Assign Executory Contracts and Unexpired Leases to the Buyer.**

3 Bankruptcy Code § 365(a) permits the assumption of executory contracts and unexpired  
4 leases as follows:

5 (a) . . . the trustee, subject to the court's approval, may assume or  
6 reject any executory contract or unexpired lease of the debtor,

7 (b)(1) If there has been a default in an executory contract or  
8 unexpired lease of the debtor, the trustee may not assume such  
9 contract or lease unless, at the time of assumption of such contract  
10 or lease, the trustee –

11 (A) cures, or provides adequate assurance that the trustee will  
12 promptly cure, such default;

13 (B) compensates, or provides adequate assurance that the trustee  
14 will promptly compensate, a party other than the debtor to such  
15 contract or lease, for any actual pecuniary loss to such party  
16 resulting from such default; and

17 (C) provides adequate assurance of future performance under such  
18 contract or lease.

19 11 U.S.C. § 365.

20 Bankruptcy Code section 365(f)(2) provides the authority for the trustee [debtor in  
21 possession] to assign executory contracts and leases as follows:

22 The trustee may assign any executory contract or unexpired lease of  
23 the debtor only if –

24 (A) the trustee assumes such contract or lease in accordance with  
25 the provisions of this section; and

26 (B) adequate assurance of future performance by the assignee of  
27 such contract or lease is provided . . . .

28 11 U.S.C. § 365(f)(2).

Although Bankruptcy Code section 365 does not set forth standards for courts to apply in  
determining whether to approve a trustee's or debtor in possession's decision to assume and assign  
executory contracts or unexpired leases, courts have consistently applied a "business judgment"  
test when reviewing such a decision. See, e.g., Group of Institutional Investors v. Chicago,  
Milwaukee, St. Paul & Pacific Rail Road Co., 318 U.S. 523, 550 (1943); Matter of Mingos, 602  
F.2d 38, 43 (2nd Cir. 1979); In re Chi-Feng Huang, 23 B.R. 798, 800 (B.A.P. 9th Cir. 1982).

1 A debtor satisfies the "business judgment" test when it determines, in good faith, that  
2 assumption and assignment of an executory contract or unexpired lease will benefit the estate and  
3 creditors. In re Chipwich Inc., 54 B.R. 427, 430-31 (Bankr. S.D. N.Y. 1985).

4 As noted above, the assumption and assignment of the Assigned Contracts is a necessary  
5 condition to the Purchase Agreement. The Debtors have also established adequate procedures  
6 that allow any party to an Assigned Contract to object to the Debtors' proposed assumption and  
7 assignment of such contract. A party to an Assigned Contract that disagrees with the Reduced  
8 Cure Amounts set forth in the Contracts Notice, or otherwise objects to the assumption or  
9 assignment of its contract, may file and serve a timely objection to this Motion.

10 Further, if a party to an Assigned Contract objects to the assignment of such Contract to  
11 the Buyer, the Buyer will demonstrate adequate assurances of future performances under the  
12 Assigned Contract. The existence of "adequate assurance of future performance" as required  
13 under Bankruptcy Code § 365(f) involves a factual inquiry, requiring case-by-case consideration.  
14 See Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309-10 (5th Cir. 1985); In re  
15 Lafayette Radio Electronics Corp., 9 B.R. 993, 998 (Bankr, E.D.N.Y. 1981). In the event a party  
16 to an Assigned Contract challenges the Buyer's ability to provide adequate assurance of future  
17 performance, the Buyer will provide such party, or the Bankruptcy Court, with supplemental  
18 evidence of its financial wherewithal to perform the contract or lease. The Debtors submit that  
19 there is sufficient cause for the assumption and the assignment of the Assigned Contracts under  
20 the terms set forth above.

21 **D. The Purchasers Have Acted in Good Faith.**

22 "[W]hen a bankruptcy court authorizes a sale of assets pursuant to section 363(b)(1), it is  
23 required to make a finding with respect to the 'good faith' of the purchaser." In re Abbotts  
24 Diaries, Inc., 788 F.2d 143, 149-50 (3d Cir. 1986). The purpose of such a finding is to facilitate  
25 the operation of Bankruptcy Code § 363(m), which provides a safe harbor for purchasers of a  
26 debtor's property when the purchase is made in "good faith." Specifically, Bankruptcy Code  
27 § 363(m) provides:  
28

1 The reversal or modification on appeal of an authorization under  
2 subsection (b) or (c) of this section of a sale or lease of property  
3 does not affect the validity of the sale or lease under such  
4 authorization to an entity that purchased or leased such property in  
good faith, whether or not such entity knew of the pendency of the  
appeal, unless such authorization and such sale or lease were stayed  
pending appeal.

5 See Ewell v. Diebert (In re Ewell), 958 F.2d 276, 281 (9th Cir. 1992); Irvin v. Lincoln Heritage  
6 Life Ins. Co. (In re Irvin), 950 F.2d 1318, 1323 (7th Cir. 1991). This provision serves the  
7 important purposes both of encouraging good faith transactions and of preserving the finality of  
8 the bankruptcy court's orders unless stayed pending appeal. In re Abbotts Dairies, Inc., 788 F.2d  
9 at 147. As the Seventh Circuit recognized in In re Edwards, 962 F.2d 641, 643 (7th Cir. 1992),  
10 "[i]f purchasers at judicially approved sales of property of a bankrupt estate, and their lenders,  
11 cannot rely on the deed that they receive at the sale, it will be difficult to liquidate bankrupt  
12 estates at positive prices." Id. at 643. The Court also noted that although the law balances the  
13 competing interests between lien holders and purchasers of assets of the estate, it weighs such  
14 interests "heavily in favor of the bona fide purchaser," id. at 643, particularly where, as here, there  
15 are substantial business justifications for the proposed transactions.

16 The Purchasers are entitled to the safe harbor provided by Bankruptcy Code § 363(m).  
17 The negotiations between the Purchasers and the Debtors at all times were conducted at arms'  
18 length and in good faith, and there are no undisclosed agreements, arrangements, or  
19 understandings between the Debtors and the Purchasers. All of the consideration to be paid by  
20 the Purchasers to the Debtors is set forth in the Purchase Agreement. There is no other  
21 consideration for the Acquired Assets or in connection with the Proposed Sale other than as set  
22 forth in the Purchase Agreement.

23 **E. Other Relief Related to Regulated Sellers.**

24 The Acquired Assets include, among other property, certain assets, licenses, permits,  
25 charters, certificates, franchises and similar grants held by Yipes Transmission and Yipes  
26 Virginia that are subject to the regulation by, or jurisdiction of, certain state and local  
27 governmental units ("Regulated Assets"). The conveyance of the Regulated Assets by the  
28 Debtors to the Purchasers is, and shall be effectuated, subject to applicable nonbankruptcy law

1 and regulations. Inasmuch as the Buyer's use and enjoyment of the Acquired Assets (other than  
2 the Regulated Assets) is dependent upon the privileges and rights conferred by the Regulated  
3 Assets, the Purchase Agreement is conditioned on the modification of the automatic stay in the  
4 Chapter 11 cases of Yipes Transmission and Yipes Virginia. In order to maximize the value of  
5 the Acquired Assets and to allow the Buyer the benefit of such Acquired Assets, the Debtors  
6 request that the Court modify the automatic stay pursuant to section 362(d)(1) of the Bankruptcy  
7 Code in Yipes Transmission and Yipes Virginia's Chapter 11 cases in order to enable the Buyer  
8 to exercise its rights and remedies as a pledgee of the capital stock of such Debtors, and as a  
9 holder of a security interest with respect to the Regulated Assets.

10 In addition, the Debtors request the appointment of responsible officer to represent the  
11 estates of Yipes Transmission and Yipes Virginia ("Regulatory Officer") for the purpose of  
12 exercising the rights, power and authority of Yipes Transmission and Yipes Virginia in  
13 connection with the consummation of the Purchase Agreement and compliance with the  
14 provisions of the Regulatory Law applicable to such debtors. The Debtors request that the  
15 Regulatory Officer, as the representative of the estates of Yipes Transmission and Yipes  
16 Virginia, be authorized to execute such certificates or instruments of Yipes Transmission and  
17 Yipes Virginia pursuant to applicable provisions of the Regulatory Law without (i) further  
18 action by their respective directors or stockholders, or (ii) further notice to creditors or  
19 approval of this Court. The Debtors submit that the Court should retain exclusive jurisdiction  
20 over any claims and causes of action asserted against the Regulatory Officer arising out of the  
21 performance of his duties and that the Regulatory Officer may not be sued, or have claims  
22 asserted against him, in any other forum without leave of the Court. The Debtors submit that  
23 the foregoing procedures in connection with the Regulated Assets are necessary and appropriate  
24 pursuant to section 105(a) of the Bankruptcy Code because the utility of the Acquired Assets is  
25 dependent upon the rights and privileges conferred by the Regulatory Assets.

26 In addition, under the Purchase Agreement, the Purchasers have the option of proposing a  
27 plan of reorganization for the Regulated Sellers. This option is intended to provide flexibility to  
28 the Purchasers to realize all of the rights and benefits associated with the sale of the Regulated

1 Assets. The Sellers request, accordingly, that the automatic stay under Section 362 and exclusive  
2 periods under Section 1121 of the Bankruptcy Code be modified to the extent necessary to enable  
3 the Purchasers to exercise the plan option. Last, the Sellers request, under Section 554 of the  
4 Bankruptcy Code, that Purchasers be authorized to abandon property of the estates of the  
5 Regulated Sellers if necessary or appropriate to preserve to Purchasers the continued operation of  
6 the Core Business.

7 **F. Transfer Pursuant to Section 1146(c).**

8 Section 1146(c) of the Bankruptcy Code provides: “The issuance, transfer, or exchange of  
9 a security, or the making or delivery of an instrument of transfer under a plan confirmed under  
10 section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.”  
11 Section 1146(c) of the Bankruptcy Code has been construed to include transfers under a sale  
12 outside of, but in furtherance of, a plan of reorganization. See In re Hechinger Inv. Co. of Del.,  
13 Inc., 254 B.R. 306, 316-321 (Bankr. D. Del. 2000) (section 1146(c) exception is available to a  
14 liquidating debtor, subject to an appropriate escrow, in the event that a chapter 11 plan is not  
15 confirmed) *aff’d* 276 B.R. 43 (D. Del. 2002). The Debtors intend on filing a joint liquidating  
16 chapter 11 plan funded by Sales Proceeds and submit that the transfer of the Acquired Assets  
17 should be free from any and all transfer taxes.

18 **G. The Sale Order Should Be Effective Within Three Days from Entry**

19 Under Bankruptcy Rule 6004(g), “[a]n order authorizing the use, sale, or lease of property  
20 other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless  
21 the court orders otherwise.” FED. R. BANKR. P. 6004(g). Similarly, Bankruptcy Rule 6006(d)  
22 provides that “[a]n order authorizing the trustee to assign and executory contract or unexpired  
23 lease under section 365(f) is stayed until the expiration of 10 days after entry of the order, unless  
24 the court orders otherwise.” FED. R. BANKR. P. 6006(d). The Proposed Sale is conditioned on  
25 the transaction closing within three business days after entry of an order granting the Motion.  
26 Moreover, the Proposed Sale is supported by all of the Debtors’ constituents, including the  
27 Committee, the DIP Lenders and the Debtors’ pre-petition lenders. Under the circumstances, the  
28 Debtors submit that the order granting the Motion should include a modification of Bankruptcy



1 Rule 6004(g) and 6006(d) and that the Approval Order should be effective upon two calendar  
2 days following its entry.

3 III.

4 NOTICE

5 On May 21, 2002, the Debtors served the Sale Notice by mail to, among other parties,  
6 (i) all of the Debtors' creditors; (ii) all of the Debtors' equity security holders; (iii) counsel to the  
7 Committee; (iv) the Office of the United States Trustee; (v) all parties who have filed requests for  
8 special notice in the Debtors' chapter 11 cases; (vi) counsel to the Debtors' secured lenders; (vii)  
9 the Securities and Exchange Commission; and (viii) the Internal Revenue Service. In addition, on  
10 May 21, 2002, the Debtors served the Contracts Notice by mail to (i) all non-debtor parties to the  
11 Assigned Contracts; (ii) counsel to the Committee; (iii) counsel for the Debtors' secured lenders;  
12 (iv) all parties who have filed requests for special notice in the Debtors' chapter 11 cases; (v) the  
13 Office of the United States Trustee; (vi) and the twenty largest non-insider creditors in each of the  
14 Debtors' cases (except for Yipes Communications). Further, on May 21, 2002, the Debtors  
15 served the Motion, the Johnson Declaration, the Kevane Declaration, the Carlson Declaration and  
16 the Haque Declaration (collectively, the "Pleadings") on (i) counsel for the Committee, (ii)  
17 counsel for the Debtors' secured lenders, (iii) the Office of the United States Trustee, (iv) the  
18 Securities and Exchange Commission, (v) the Internal Revenue Service, (vi) the Lienholders, (v)  
19 and all parties requesting special notice. The proper and timely service of the Sale Notice, the  
20 Contract Notice and the Pleadings is evidenced by the proofs of service of such notifications. A  
21 reasonable opportunity to object and be heard has been afforded to all parties in interest. The  
22 Debtors submit that no other or further notice of the Motion or the Sale Hearing or further service  
23 of the Pleadings is necessary or required and that the Amended Procedures Order provided proper  
24 and adequate notice of the Auction and the overbid process to all potential bidders on the  
25 Debtors' assets. The Debtors request that the Court finds such notice adequate and sufficient  
26 under the particular circumstances of these Chapter 11 cases.

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IV.

CONCLUSION

For the reasons and based upon the arguments and authorities set forth above, the Debtors respectfully requests that this Court enter an order:

(a) authorizing the Debtors to sell the Acquired Assets to the Lead Bidder, or to a successful qualified overbidder(s), free and clear of liens, claims, and interests of Lienholders pursuant to Bankruptcy Code §§ 363(b) and (f);

(b) providing that the Lienholders' Liens will attach to the Sale Proceeds (unless otherwise transferred with the Acquired Assets, as Permitted Encumbrances, or assumed by the Purchasers as Assumed Liabilities);

(c) approving the Purchase Agreement;

(d) authorizing and approving the assumption by the Debtors and assignment to the Buyer, or to a successful qualified overbidder(s), of the Assigned Contracts identified in the Contracts Notice, as amended, effective upon the closing of the Sale;

(e) finding that the Reduced Cure Amounts, if any, or such other amounts as may be agreed by the Debtors and the non-debtor parties to each executory contract or unexpired lease assumed by the Debtors and assigned to the Lead Bidder to a successful qualified overbidder(s), are the only amounts the Debtors are required to pay in order to assume and assign the Assigned Contracts to the Buyer in full and final satisfaction of any obligations arising under Section 365(b)(1) of the Bankruptcy Code;

(f) finding that any Assigned Contract that is deleted from Exhibit B at the request of the Purchasers or the Debtors shall be deemed rejected pursuant to section 365(a) on the later of (a) the date on which the Sale closes, or (b) such other date as the Debtors may fix at the Hearing.

(f) finding that the Buyer can provide adequate assurance of future performance to the non-debtor party to each Assigned Contract;

(g) finding that notice of the Sale Motion and the Hearing was adequate and sufficient under the circumstances;

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(h) finding that the making or delivery of an instrument of transfer related to the Acquired Assets shall not be taxed under any law imposing a transfer, stamp, sales, excise or similar tax pursuant to section 1146(c) of the Bankruptcy Code;

(i) reducing the 10-day automatic stay of the effectiveness of the Order granting the Motion to two calendar days after the date of the entry of such order pursuant to Bankruptcy Rules 6004(g) and 6006(d);

(j) finding that the Buyer of the Acquired Assets has acted in good faith within the meaning of Bankruptcy Code section 363(m); and

(k) granting such other and further relief as may be just and proper.

Dated: May 20, 2002 PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.

By Henry C. Kevane  
Henry C. Kevane  
Attorneys for Debtors and Debtors in Possession

**ASSET PURCHASE AGREEMENT**

**by and among**

**YIPES COMMUNICATIONS, INC.  
YIPES COMMUNICATIONS GROUP, INC.  
YIPES PROPERTIES, INC.  
YIPES TRANSMISSION, INC.  
YIPES TRANSMISSION VIRGINIA, INC.  
YIPES WEB SERVICES, INC.**

**as Sellers**

**and**

**PHX HOLDINGS, INC.  
PHX COMMUNICATIONS, INC.**

**as Purchasers**

**May 21, 2002**

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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this "*Agreement*") is entered into as of May 21, 2002, by and among PHX COMMUNICATIONS, INC., a Delaware corporation ("*PHX*"), PHX HOLDINGS, INC., ("*Holdings*", and collectively with PHX, "*Purchasers*") a Delaware corporation, YIPES COMMUNICATIONS, INC., a California corporation ("*Yipes Communications*"), YIPES COMMUNICATIONS GROUP, INC., a Delaware corporation ("*Yipes Group*"), YIPES PROPERTIES, INC., a California corporation, YIPES TRANSMISSION, INC., a California corporation ("*Yipes Transmission*"), YIPES TRANSMISSION VIRGINIA, INC., a Virginia corporation ("*Yipes Virginia*"), and YIPES WEB SERVICES, INC., a California corporation (each, a "*Seller*" and collectively, the "*Sellers*"; Yipes Transmission and Yipes Virginia are also referred to herein as the "*Regulated Sellers*" and the remaining Sellers are referred to herein as the "*Unregulated Sellers*").

### PRELIMINARY STATEMENTS

- A. Each Seller has filed a voluntary petition (the "*Bankruptcy Petition*") for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101, et seq. (the "*Bankruptcy Code*"), in the United States Bankruptcy Court for the Northern District of California (or such other Court having jurisdiction over each Seller's case under the Bankruptcy Code, the "*Court*"); and
- B. Subject to the approval of the Court, and with respect to the Regulated Sellers subject to approval of certain other regulatory bodies, the Sellers desire to sell to Purchasers, and Purchasers desire to purchase from the Sellers, substantially all of the Sellers' assets, all upon the terms and subject to the conditions set forth in this Agreement.

### STATEMENT OF AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchasers and the Sellers hereby agree as follows:

#### SECTION 1. PURCHASED ASSETS AND ASSUMED LIABILITIES

##### 1.1. Sale of Assets

As more particularly set forth in this Section 1.1, the assets to be acquired by the Purchasers hereunder (collectively, the "*Acquired Assets*") constitute all of the Seller's right, title and interest in (a) the properties, claims and rights relating to the going concern core operating business of the Sellers, as described in Schedule 1.1 under the caption "Core Business" (referred to herein as, the "*Core Business*"), (b) the Regulated Stock (as defined below), (c) the Assumed Liabilities (as defined below), (d) any equipment or fixtures of Sellers (as each such term is defined in the Uniform Commercial Code as adopted in the State of California, collectively "*Equipment*"), (e) the Purchased Claims (as defined below), (f) the Deposits and (g) any Other Assets (as defined below) not otherwise listed in clauses (b) through (f) hereof and (h) any assets that are the subject of a Co-Bid (as defined below) (in the case of clauses (b) through (h), whether or not related to the Core Business).

(a) **Unregulated Assets Purchased by PHX**

Pursuant to Sections 363(f) and 365 of the Bankruptcy Code and the Approval Order (as such term is defined in Section 7.4 below) and subject to the terms and conditions of, and in reliance upon the representations and warranties contained in, this Agreement, at the First Closing (as such term is defined in Section 3.1(a) below), each Unregulated Seller shall sell, transfer and assign to PHX and PHX shall purchase and assume from each Unregulated Seller, all of such Unregulated Seller's right, title and interest in, to and under all of the assets, properties, claims and rights included in such Unregulated Seller's bankruptcy estate constituting, related to, regularly used in or necessary for, the operation of the Core Business as a going concern, other than any Excluded Assets (as defined below) and the Regulated Stock (as defined below) (such transferred assets, properties and rights being collectively, the "*Unregulated Assets*"), wherever located, free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances in accordance with, and to the extent permitted by, and with all of the protection afforded by, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the Approval Order (such mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the "*Unregulated Encumbrances*"), other than any such mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances directly and inseparably related to the Assumed Liabilities (as such term is defined below) (such other mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the "*Unregulated Permitted Encumbrances*"), including, without limiting the generality of the foregoing as Unregulated Assets:

(i) All evidences of indebtedness to, and rights to payment of, such Unregulated Seller, including accounts receivable, instruments, payment intangibles, bills and notes receivable, commercial paper and acceptances, letters of credit and chattel paper (including, without limitation, electronic chattel paper), including, without limitation, those listed on Schedule 1.1(a)(i);

(ii) All personal property, including, without limitation, machinery, Equipment, inventory, instruments, computer hardware and software, tooling, furniture, fixtures, motor vehicles, supplies, repair and maintenance parts, demonstration units, conduit, fiber, and other fixed assets, together with manufacturer or vendor warranties associated therewith, including, without limitation, those interests listed on Schedule 1.1(a)(ii) hereto;

(iii) All claims and rights under those leases and executory contracts (A) to which any Unregulated Seller is a party (as an original party, by operation of law, or through assignment) and (B) which PHX has elected to have such Unregulated Seller assume and assign to PHX pursuant to Section 365 of the Bankruptcy Code, all of which are listed on Schedule 1.3 hereto (collectively, the "*Unregulated Assigned Contracts*"), which Schedule may be amended by PHX, at any time from the date hereof through and including the date and time of the entry of the Approval Order (subject to compliance with Section 365 of the Bankruptcy Code), to include or withdraw any lease or executory contract of such Unregulated Seller; provided that, other than to remove any contract not assignable under Bankruptcy Code § 365, in the event such Schedule is amended by PHX after May 30, 2002, and such amendment results in an increase in the amount of rejection damages to be suffered by any Unregulated Seller's estate, PHX shall increase the Cash Consideration in an amount sufficient to offset any

decrease in distributions to unsecured creditors as a result of any allowed claim for increased rejection damages resulting therefrom;

(iv) All right, title and interest to trademarks, trademark rights, service marks, service mark rights, copyrights, trade names, trade name rights, fictitious business names, works of authorship, inventions (whether patentable or not), invention disclosures, industrial models, industrial designs, utility models and certificates of invention, designs, emblems and logos, trade secrets and other confidential information, manufacturing formulae, technical information, patents, patent applications, mask works, mask work registrations, franchises, franchise rights, customer and supplier lists, product designs, product packaging, business and product names, logos, slogans, rights of publicity, improvements, processes, formulae, processes, specifications, technology, methodologies, computer and other software (including, without limitation, all source code and object code), firmware, development tools, flow charts, annotations, all Web addresses, sites and domain names, all data bases and data collections and all rights therein, any other confidential and proprietary right or information, whether or not subject to statutory registration, and all related technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, copyrights, trademarks, mask works, or other Unregulated Assets, and the right to sue for infringement or conversion, if any, in connection with any of the Unregulated Assets, and all documents, disks, records, files and other media on which any of the Unregulated Assets are stored, and other proprietary rights and general intangibles (collectively, the “*Unregulated Proprietary Rights*”), including, without limitation, all patents, patent applications, registered trademarks (and applications therefor) and registered copyrights listed on Schedule 1.1(a)(iv) hereto, together with all applications therefore, or improvements or enhancements thereto, or derivative versions thereof at any time;

(v) All rights and claims of such Unregulated Seller under express or implied warranties related to any of the Unregulated Assets as well as under all policies of insurance related to any of the Unregulated Assets or the related business, including, without limitation, with respect to any pending claims;

(vi) All licenses, franchises, permits, easements and other property rights, authorizations and approvals issued to such Unregulated Seller by any domestic or foreign court, government, governmental agency, authority, entity or instrumentality (a “*Governmental Entity*”), including, without limitation, those listed on Schedule 1.1(a)(vi);

(vii) All original books or duplicates thereof of account, accounts payable and payroll records, drawings, files, papers, computer data (including information or programs stored in computers) and related computer or similar programs (the “*Unregulated Records*”); and

(viii) All goodwill associated with the Unregulated Assets.

**(b) Regulated Stock Purchased by Holdings**

(i) Pursuant to Sections 363(f) and 365 of the Bankruptcy Code and the Approval Order and subject to the terms and conditions of, and in reliance upon the

representations and warranties contained in, this Agreement, at the Second Closing (as such term is defined in Section 3.1(b) below), Yipes Group shall sell, transfer and assign to Holdings and Holdings shall purchase from Yipes Group, all of the right, title and interest of Yipes Group in, to and under the capital stock of Yipes Transmission (the "*Transmission Stock*"), wherever located, free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances in accordance with, and to the extent permitted by, and with all of the protection afforded by, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the Approval Order (such mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the "*Transmission Encumbrances*"), other than any such mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances directly and inseparably related to the Assumed Liabilities (as such term is defined below) (such other mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the "*Transmission Permitted Encumbrances*"). For such purpose "capital stock" shall include any and all options, warrants and other rights of every kind to acquire capital stock.

(ii) Pursuant to Sections 363(f) and 365 of the Bankruptcy Code and the Approval Order and subject to the terms and conditions of, and in reliance upon the representations and warranties contained in, this Agreement, at the Second Closing, Yipes Transmission shall sell, transfer and assign to Holdings and Holdings shall purchase from Yipes Transmission, all of the right, title and interest of Yipes Transmission in, to and under the capital stock of Yipes Virginia (the "*Virginia Stock*"; and together with the Transmission Stock, the "*Regulated Stock*"), wherever located, free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances in accordance with, and to the extent permitted by, and with all of the protection afforded by, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the Approval Order (such mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the "*Virginia Encumbrances*"), other than any such mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances directly and inseparably related to the Assumed Liabilities (as such term is defined below) (such other mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the "*Virginia Permitted Encumbrances*"). For such purpose "capital stock" shall include any and all options, warrants and other rights of every kind to acquire capital stock.

**(c) Regulated Assets Purchased by Holdings**

Pursuant to Sections 363(f) and 365 of the Bankruptcy Code and the Approval Order and subject to the terms and conditions of, and in reliance upon the representations and warranties contained in, this Agreement, at one or more Regulatory Closings (as such term is defined below), each Regulated Seller shall sell, transfer and assign to Holdings and Holdings shall purchase and assume from each Regulated Seller, all of such Regulated Seller's right, title and interest in, to and under all of the assets, properties, claims and rights included in such Regulated Seller's bankruptcy estate constituting, related to, regularly used in or necessary for, the operation of the Core Business as a going concern, other than for any Excluded Assets and the Regulated Stock (such assets, properties and rights being collectively, the "*Regulated Assets*"), wherever located, free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances in accordance with, and to the extent permitted by, and with all of the protection afforded by, the Bankruptcy Code and the Federal Rules of Bankruptcy

Procedure and the Approval Order (such mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the “*Regulated Encumbrances*”), other than any such mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances directly and inseparably related to the Assumed Liabilities (as such term is defined below) (such other mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the “*Regulated Permitted Encumbrances*”), including, without limiting the generality of the foregoing as Regulated Assets:

(i) All licenses, permits, easements and other property rights, certificates, franchises, consents, waivers, registrations or other regulatory authorizations issued to each of the Regulated Sellers by any state or local Governmental Entities, including, without limitation, state and local public service and public utilities or similar commissions and municipalities (the “*State Regulators*”) (together with any renewals, extensions, or modifications thereof and any additions, improvements or enhancements thereto, the “*State Licenses*”) and all licenses, permits, certificates, franchises, registrations, easements and other property rights, and other authorizations issued to each of the Regulated Sellers by the Federal Communications Commission or any successor or other federal agency of applicable jurisdiction (the “*FCC*”) (together with any renewals, extensions or modifications thereof and any additions, improvements or enhancements thereto made as of the date of the applicable Regulatory Closing, the “*FCC Licenses*”), including, without limitation, those listed on Schedule 1.1(c)(i);

(ii) All evidences of indebtedness to, and rights to payment of, such Regulated Seller, including, without limitation, accounts receivable, bills and notes receivable, instruments, payment intangibles, commercial paper and acceptances, letters of credit and chattel paper (including electronic chattel paper), including, without limitation, those listed on Schedule 1.1(c)(ii);

(iii) All personal property, including, without limitation machinery, Equipment, inventory, instruments, computer hardware and software, tooling, furniture, fixtures, motor vehicles, supplies, repair and maintenance parts, demonstration units, conduit, fiber, and other fixed assets, together with manufacturer or vendor warranties associated therewith, including, without limitation, those interests listed on Schedule 1.1(c)(iii) hereto;

(iv) All claims and rights under those leases and executory contracts (A) to which any Regulated Seller is a party (as an original party, by operation of law, or through assignment) and (B) which Holdings has elected to have such Regulated Seller assume and assign to Holdings pursuant to Section 365 of the Bankruptcy Code, all of which are listed on Schedule 1.3 hereto (collectively, the “*Regulated Assigned Contracts*” and together with the Unregulated Assigned Contracts, the “*Assigned Contracts*”), which Schedule may be amended by Holdings, at any time from the date hereof through and including the date and time of the entry of the Approval Order (subject to compliance with Section 365 of the Bankruptcy Code), to include or withdraw any lease or executory contract of any Regulated Seller; provided that, other than to remove any contract not assignable under Bankruptcy Code § 365, in the event such Schedule is amended by Holdings after May 30, 2002, and such amendment results in an increase in the amount of rejection damages to be suffered by any Regulated Seller’s estate, Holdings shall increase the Cash Consideration in an amount sufficient to offset any decrease in

distributions to unsecured creditors as a result of any allowed claim for increased rejection damages resulting therefrom;

(v) All right, title and interest to trademarks, trademark rights, service marks, service mark rights, copyrights, trade names, trade name rights, fictitious business names, works of authorship, inventions (whether patentable or not), invention disclosures, industrial models, industrial designs, utility models and certificates of invention, designs, emblems and logos, trade secrets and other confidential information, manufacturing formulae, technical information, patents, patent applications, mask works, mask work registrations, franchises, franchise rights, customer and supplier lists, product designs, product packaging, business and product names, logos, slogans, rights of publicity, improvements, processes, formulae, processes, specifications, technology, methodologies, computer and other software (including all source code and object code), firmware, development tools, flow charts, annotations, all Web addresses, sites and domain names, all data bases and data collections and all rights therein, any other confidential and proprietary right or information, whether or not subject to statutory registration, and all related technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, copyrights, tradenames, mask works, or other Regulated Assets, and the right to sue for infringement or conversion, if any, in connection with any of the Regulated Assets, and all documents, disks, records, files and other media on which any of the Unregulated Assets are stored, and other proprietary rights and general intangibles, (collectively, the “*Regulated Proprietary Rights*” and together with the Unregulated Proprietary Rights, the “*Proprietary Rights*”), including without limitation, all patents, patent applications, registered trademarks (and applications therefor) and registered copyrights listed on Schedule 1.1(c)(v) hereto, together with all applications therefore, or improvements or enhancements thereto, or derivative versions thereof at any time;

(vi) All rights and claims of such Regulated Seller under express or implied warranties related to any of the Regulated Assets as well as under all policies of insurance related to any of the Regulated Assets, including with respect to any pending claims;

(vii) All original books or duplicates thereof of account, accounts payable and payroll records, drawings, files, papers, computer data (including information or programs stored in computers) and related computer and similar programs (the “*Regulated Records*” and together with the Unregulated Records, the “*Records*”); and

(viii) All goodwill associated with the Regulated Assets.

**(d) Other Assets Purchased by Purchasers**

Pursuant to Sections 363(f) and 365 of the Bankruptcy Code and the Approval Order (as such term is defined in Section 7.4 below) and subject to the terms and conditions of, and in reliance upon the representations and warranties contained in, this Agreement, at the First Closing, each Seller shall sell, transfer and assign to Purchasers and Purchasers shall purchase and assume from each Regulated Seller, all of such Regulated Seller’s right, title and interest in, to and under all of the assets, properties, claims and rights set forth below in this Section 1.1(d), whether relating to the Core Business or otherwise (such transferred assets, properties and rights

being collectively, the “*Other Assets*”), wherever located, free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances in accordance with, and to the extent permitted by, and with all of the protection afforded by, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the Approval Order (such mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the “*Other Encumbrances*”; and together with the Unregulated Encumbrances, the Regulated Encumbrances, the Transmission Encumbrances and the Virginia Encumbrances, the “*Encumbrances*”), other than any such mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances directly and inseparably related to the Assumed Liabilities (as such term is defined below) (such other mortgages, liens, pledges, security interests, charges, claims and encumbrances being collectively, the “*Other Permitted Encumbrances*”; and together with the Unregulated Permitted Encumbrances, the Regulated Permitted Encumbrances, the Transmission Permitted Encumbrances and the Virginia Permitted Encumbrances, the “*Permitted Encumbrances*” each of which is set forth on Schedule 1.3), including, without limiting the generality of the foregoing as Other Assets:

(i) any and all claims (as defined in Section 101(5) of the Bankruptcy Code), including, without limitation, claims under Bankruptcy Code §506(c), 510, 544, 545, 547, 548, 549, 550 and 553 of such Seller (A) against any former or current holder of an Assumed Liability or any of such holder’s shareholders, partners, limited partners, officers, directors, employees, attorneys, agents or affiliates in their respective capacity as such, including, without limitation, any claims relating to, or arising from, the Note Purchase Agreement (as defined below) or the Noteholder Liabilities, whether pre or post-petition, legal or equitable, related to the Core Business or not related to the Core Business, including, without limitation, all such claims against any person or entity listed on Schedule 1.1(d)(i)(A) and (B) listed on Schedule 1.1(d)(i)(B), in each case whether or not asserted and whether contingent or fixed (collectively, the “*Purchased Claims*”); provided, however, that to the extent that any such claims are not assignable under applicable law, then to the maximum extent permitted by applicable law, the proceeds are assigned to Purchasers and Purchasers shall be the exclusive managers of such claims for the purpose of such collection, settlement, compromise or other management of such claims on behalf of the estates of the Sellers; provided that, Purchasers shall reimburse Sellers for any reasonable costs and expenses incurred by Sellers in the course of such collection, settlement, compromise or management; and provided further that, Purchasers shall have no obligation to pursue or prosecute any such claims and the decision to prosecute or not prosecute such claims shall be in the sole and absolute discretion of Purchasers. Notwithstanding the foregoing, the parties agree that the Purchased Claims shall not include (A) any claims (the “*D&O Claims*”) of Sellers for breach of fiduciary duty, corporate waste, negligent mismanagement or misrepresentation against any individuals which serve as current or served as former directors or officers of the Sellers (the “*D&O’s*”), but shall include any D&O Claims with respect to any affiliates or related parties of the D&O’s who currently hold or in the past held Noteholder Liabilities and (B) any defenses to the allowance of any pre- or post-petition claims against the Sellers other than defenses against the Noteholder Liabilities or the DIP Loan Amounts. The purpose and intent of the previous sentence is to allow Sellers to hold the individual D&Os accountable for the D&O Claims (if any), while allowing Purchasers to acquire the Purchased Claims, even through some holders of Assumed Liabilities may be affiliates of the D&Os;

(ii) Subject to Section 1.7, all rights to refunds of (including, without limitation, surety or security refund rights), or rights to reallocate, cash deposits or other rights to payment securing obligations of such Seller under any Assumed Contracts or surety bonds related to the Core Business (the “*Deposits*”), including without limitation, those described on Schedule 1.1(d)(ii);

(iii) Any Equipment not otherwise covered in this Section 1.1;

(iv) Any notes made by an employee or consultant of such Seller or any affiliate of such Seller who becomes an employee or consultant of either of the Purchasers within one month of the First Closing Date (the “*Purchased Notes*”); and

(v) Any other asset listed on Schedule 1.1(d)(iv).

**(e) Regulatory Approval**

If no approval (a “*Regulatory Approval*”) of a State Regulator is required to transfer any particular Regulated Asset to Holdings, such Regulated Asset shall be transferred to Holdings on the First Closing Date (as defined below). If Regulatory Approval is required to transfer any particular Regulated Asset to Holdings, such Regulated Asset shall not be deemed transferred hereunder until the appropriate Regulatory Approval shall have been obtained from such State Regulator, at which time such Regulated Asset shall be automatically transferred to Holdings without further action by the relevant Regulated Seller, Holdings or further order of the Court. The transfer of a Regulated Asset shall be deemed to constitute a “*Regulated Closing*”.

**(f) Option for Plan of Reorganization**

Notwithstanding anything else in this Agreement, at any time after the First Closing Date, Holdings may elect (the “*Plan Election*”) (at its sole and absolute discretion) to obtain control of any Regulated Assets not already the subject of a Regulatory Closing pursuant to a plan of reorganization for both of the Regulated Sellers. Upon the making of a Plan Election by Holdings, Holdings shall propose a plan of reorganization to the Regulated Sellers and any statutory committee appointed in the bankruptcy case or cases thereof and shall request the consent of such parties to the confirmation of such plan or reorganization, which consent shall not be unreasonably withheld. If Holdings cannot obtain the consent of the Regulated Sellers and committee within 30 days of the Plan Election, the Plan Election shall be deemed null and void and shall be of no further force or effect and Holdings shall not file or seek to confirm such plan of reorganization. The parties agree that the following plan provisions are reasonable:

(i) On the effective date of such plan, Holdings shall own 100% of the capital stock of the reorganized Regulated Sellers;

(ii) On the effective date of the plan, the reorganized Regulated Sellers shall have all Regulatory Approvals required to operate their business as such business is permitted to operate on the date hereof;



(iii) Such plan shall require the Regulated Sellers to provide continued service and access to PHX as shall be required for PHX to continue its operations without interruption on terms and conditions acceptable to PHX; and

(iv) (A) Holdings shall not be compelled to increase the Purchase Price for the Unregulated Assets in any such plan and (B) the Sellers shall not be compelled to accept any decrease in the Purchase Price for the Unregulated Assets in any such plan.

The parties agree that the exclusive period set forth in Bankruptcy Code § 1121, as extended from time to time, and the automatic stay set forth in Bankruptcy Code §362(a), shall be modified on the First Closing Date to the extent required to permit the implementation of this Section 1.1(f).

## **1.2. Excluded Assets.**

Notwithstanding anything contained in this Agreement to the contrary, the following assets, properties, claims and rights will not be included in the Acquired Assets (the “*Excluded Assets*”):

(a) The corporate seal, minute books, charter documents, corporate stock record books and such other Records as pertain to the organization, existence or share capitalization of a Seller and duplicate copies of such records as are necessary to enable such Seller to (i) file its tax returns and reports and (ii) otherwise administer its bankruptcy estate, as well as any other Records or materials relating to such Seller generally and not involving or relating to the Acquired Assets;

(b) All “employee benefit plans” (as such term is defined by Section 3(3) of the Employee Retirement Security Act of 1974, as amended (“*ERISA*”)), “employee pension benefit plans” (as such term is defined by Section 3(2) of ERISA) and all other pension, profit sharing or cash or deferred compensation plans and trusts and assets thereof and any other employee benefit plan or arrangement thereof, if any, maintained by such Seller or any of its affiliates;

(c) Any Seller’s equity interests in any other Seller (other than the Regulated Stock);

(d) Except for the Deposits, all cash, cash equivalents, certificates of deposit, securities investments, rights to purchase or acquire securities, money market savings accounts, and other accounts with financial institutions and all rights to refunds of (including, without limitation, surety or security refund rights), or rights to reallocate, cash deposits or other rights to payment securing obligations of such Seller under any executory or unexpired leases not assumed hereunder or surety bonds not related to the Core Business, including, without limitation, those listed on Schedule 1.2(d);

(e) Any refunds or rights to reallocate cash deposits or other rights to payment securing the obligations of any Seller to the City of New York, New York in excess of \$1,000,000 (such excess, the “*NYC Deposits*”);

(f) All contracts, contractual licenses, leases or other agreements which are not Assigned Contracts;

(g) Any accounts receivable relating to customers which are not parties to an Assigned Contract;

(h) Any deposits tendered to the Sellers by “Alternative Bidders” under the Procedures Order;

(i) Any D&O Claims;

(j) Any claims under Bankruptcy Code §506(c), 510, 544, 545, 547, 548, 549, 550 and 553, other than Purchased Claims;

(k) Any options or warrants in Netscreen, Inc. held by Sellers;

(l) Any stock of YY Software, Inc. held by Sellers;

(m) Any rights to refunds of premiums under insurance policies of Sellers in effect prior to the First Closing Date, except for the Deposits;

(n) Any rights of recovery (whether for reimbursement, contribution or otherwise) against co-debtors or insurers on account of any claims other than the Purchased Claims;

(o) All tax refunds, credits or reductions;

(p) All notes receivable other than Purchased Notes and notes receivable relating to Assumed Contracts; and

(q) Except as otherwise set forth in Section 1.1(d), (A) any Acquired Asset, property or right not subject to a Co-Bid, relating to Sellers’ operating business in the “non-core” markets of Atlanta, Boston, Miami, Pittsburgh and Washington D.C. (the “*Non-Core Assets*”) and (B) any assets listed on Schedule 1.2.

### **1.3. Assumed Liabilities.**

Purchasers shall assume and thereafter in due course pay and fully satisfy (as applicable to each such party with respect to the Unregulated Assets in the case of PHX and the Regulated Assets in the case of Holdings):

(a) all liabilities and obligations of the applicable Sellers associated with an Assigned Contract which arise after the assumption of such Assigned Contract by PHX or Holdings (as the case may be) (the “*Contractual Obligations*”), and any undertakings (payment and/or performance) necessary to cure defaults or compensate for losses under such Assigned Contracts, as set forth on Schedule 1.3 (the “*Cure Amounts*”); provided, that, at the request of Purchaser, one or more Assigned Contracts shall have first been modified so that the Cure Amounts and other terms of such Assigned Contracts are in form and substance satisfactory to

the Purchasers; provided further that, if an Assigned Contract has not been modified in form and substance satisfactory to Purchasers, then, at Purchasers' option, such Assigned Contract may be deleted from Schedule 1.3;

(b) any obligations and liabilities associated with the purchase by PHX or Holdings of Equipment or fiber which is subject to a pre-existing security interest or lease, as set forth in Schedule 1.3 (the "*Assumed Vendor Obligations*");

(c) all liabilities and obligations of the applicable Sellers under and in connection with that certain Amended and Restated Convertible Note Purchase Agreement (the "*Note Purchase Agreement*") dated as of March 5, 2002, by and among Yipes Group and the "Noteholders" from time to time party thereto, including any guarantees thereof issued by the Sellers (the "*Noteholder Liabilities*");

(d) any liabilities or obligations to or on the account of any State Regulator in connection with the maintenance or procurement of any State Licenses, FCC Licenses or any Regulated Proprietary Rights related to any such State Licenses or FCC Licenses to the extent not covered by the Deposits (the "*Regulatory Liabilities*"); and

(e) all liabilities and obligations of the Unregulated Sellers for accrued vacation and unreimbursed expenses relating to employees of the Unregulated Sellers who are offered employment by the Purchasers within one month of the First Closing Date (the "*Employee Liabilities*").

The Contractual Obligations, the Cure Amounts, the Assumed Vendor Obligations, the Noteholder Liabilities, the Regulatory Liabilities and Employee Liabilities are collectively referred to herein as, the "*Assumed Liabilities*".

Except for the Assumed Liabilities, Purchasers have not agreed to pay, shall not be required to assume or pay, and shall have no liability or obligation for or with respect to, any liability or obligation, whether direct or indirect, absolute, inchoate, or contingent, of the Sellers, however or whenever arising under any legal, equitable or other theory whatsoever, and each Seller agrees that it will take all commercially reasonable actions and do all commercially reasonable things necessary to reasonably ensure that Purchasers are not liable for any of the foregoing. Purchasers shall not be deemed a successor to any Seller for the purposes of any theory of successor liability. The parties agree that Sellers shall not be liable for any obligations of the Purchasers, including, without limitation, any liabilities of Purchasers arising after the First Closing Date relating to Purchasers' operation of the Core Business (the "*Purchaser Liabilities*"). In the event that an invoice or similar request for payment (a "*Mixed Invoice*") contains both Purchaser Liabilities and liabilities of one or more Sellers (other than Assumed Liabilities) (the "*Seller Liabilities*"), the parties shall negotiate in good faith to identify which liabilities are Purchaser Liabilities and which are Seller Liabilities and shall take all appropriate actions to properly allocate the Mixed Invoice pursuant to the terms and conditions of this Agreement.

#### 1.4. Co-Bidders.

(a) At the option of the Purchasers, Purchasers may, upon written notice to Yipes Communications (a “*Co-Bid Notice*”), designate one or more co-bidders, who may be affiliated or unaffiliated with the Purchasers (each a “*Co-Bidder*”), for assets, properties, claims and rights included in Sellers’ bankruptcy estates and described in such Co-Bid Notice, including, but not limited to, any of the same which consist of Non-Core Assets, for consideration to be paid to the Sellers (“*Co-Bid Consideration*”) and on terms and conditions described in such Co-Bid Notice.

(b) Upon such Co-Bidder’s execution of a joinder agreement to this Agreement on term and conditions satisfactory to the Purchasers, including, but not limited to, conditions regarding (i) the financial status and creditworthiness of such Co-Bidder and (ii) the Purchasers’ replacement of such Co-Bidder or termination of such Co-Bid, such Co-Bidder shall become a party to this Agreement to the extent and in the manner specified in such joinder agreement.

(c) In connection with any such Co-Bid, Purchasers shall negotiate in good faith to enter into agreements with such Co-Bidder relating to the provision of any Acquired Asset, service or other benefit that the Purchasers are entitled to hereunder or under any Transaction Agreements (as defined below), including, but not limited to, the sale or assignment of Equipment leased or owned by Purchasers and the provision by Purchasers of NOC Services, transitional management services and access to Regulated Assets provided to Holdings under the Interim Services Agreement (as defined below), on terms mutually satisfactory to the Purchasers and such Co-Bidder and for consideration to be paid to the Purchasers for their own account.

#### 1.5. Provisions Relating to Certain Premises.

(a) In the event that (i) the Purchasers seek to remove Acquired Assets from a co-location facility, warehouse or other premises (the “*Premises*”) after they have been sold to Purchasers free and clear of Encumbrances and (ii) the executory contract or unexpired lease relating to such Premises has been rejected by the Sellers and (iii) the operator, warehouseman or landlord (the “*Purported Lien Holder*”) of such Premises asserts a statutory or contractual lien upon such Acquired Assets, then one (and only one) of the following shall occur:

(i) Purchasers shall abandon the relevant Acquired Assets to the Purported Lien Holder, in which case the Encumbrances of such Purported Lien Holder upon such Acquired Assets previously removed by the sale free and clear provided for hereunder shall reattach to such Acquired Assets and shall divest from the Purchase Price or its proceeds; or

(ii) Purchasers shall remove such Acquired Assets from the Premises, in which case the statutory or contractual Encumbrances of the Purported Lien Holder previously removed by the sale free and clear provided for hereunder shall continue to attach to the Cash Consideration to the same extent and with the same perfection, priority and validity as such Encumbrances attached to the removed Acquired Assets.

(b) If Purchasers remove the Acquired Assets as set forth in clause (ii) above, the Sellers, or at the option of the Purchasers, the Purchasers on behalf of the Sellers' estates, shall commence, and the Purchasers shall fund the commercially reasonable cost of, litigation to remove, avoid or limit the Encumbrances of the Purported Lien Holder upon the Cash Consideration (whether under Bankruptcy Code §§ 544, 545, 547 or otherwise) resulting from the removal of such Acquired Assets. The Sellers (or representatives of their estates) and the Purchasers shall cooperate in good faith during the litigation and no such litigation shall be settled without agreement by both the Sellers (or any representatives of their estates) and the Purchasers. In the event that such litigation is unsuccessful, Purchasers shall adjust the Direct Consideration (as defined below) to offset any payments made by the Sellers to such Purported Lien Holder on account of the secured claim (a "*Lien Holder Claim*") related to the removal of such Acquired Assets by Purchasers (the "*Lien Holder True-Up*"). Purchasers shall have no obligation to pay the Lien Holder True-Up unless Sellers or Purchasers commence litigation as provided in this Section 1.5(b). Purchasers shall pay the Lien Holder True-Up within 30 days of the entry of a final and non-appealable judgment awarding a Purported Lien Holder a Lien Holder Claim.

#### **1.6. Core Business Allocations.**

Without limiting the generality of any other definition or provision conferring any benefit in favor of either of the Purchasers, the following rules of interpretation shall apply to Section 1.1:

(a) Any property, claim or right of Sellers shall be deemed to be "constituting, related to, regularly used in, or necessary for, the operation of the Core Business as a going concern" for the purposes of this Agreement if such property, claim or right is involved in any respect, in whole or in part, in the operation of the Core Business;

(b) To the extent that any property, claim or right may not be lawfully transferred to the Purchasers without Regulatory Approval, such Acquired Asset is a Regulated Asset or Regulated Stock, as the case may be, but, to the extent that such property, claim or right constitutes property of the estate that may be lawfully transferred to a Purchaser without Regulatory Approval, such property, claim or right is a Unregulated Asset or Other Asset, as the case may be; and

(c) Any property, claim or right of Sellers is either an Acquired Asset or an Excluded Asset, and Acquired Assets are either Unregulated Assets, Regulated Assets, Regulated Stock or Other Assets.

#### **1.7. Certain Provisions Related to Deposits.**

(a) Other than with respect to the NYC Deposits, if and when Purchasers receive a refund or return of any Deposits within one year of the First Closing Date, Purchasers shall return such Deposits to the Sellers less any costs and expenses incurred by the Purchasers in obtaining such refund or return; provided that, Purchasers shall not be required to return any such refunds or returns if such refunds or returns are used, or are reasonably contemplated to be used within a reasonable time, by Purchasers to secure a replacement, or renewal of, the Assumed

Contract or security bond to which such refunds or returns are related. Purchasers shall be under no obligation to take any action (or refrain from taking any action) or enter into any agreements (or refrain from entering into any agreements) for the purpose of, or in order to, obtain any such refunds or returns.

(b) Purchasers shall cooperate in good faith with Sellers to obtain the refund or return of the NYC Deposits from the City of New York and shall pay such NYC Deposits to Sellers less any costs and expenses incurred by the Purchasers in obtaining the NYC Deposits; provided that, Purchasers shall not be liable to Sellers for any failure by the City of New York to return the NYC Deposits and; provided, further that Purchasers shall not be required to return such portion of the NYC Deposits to the extent that the City of New York requires or is reasonably contemplated to require that Purchasers maintain any deposits above \$1,000,000 as security for Purchasers' business operations within the City of New York at the time the NYC Deposits are received by the Purchasers.

## **SECTION 2. PURCHASE PRICE**

### **2.1. Purchase Price.**

The purchase price (the "*Purchase Price*") shall consist of the following:

(a) PHX and Holdings shall assume their respective Assumed Liabilities. The Noteholder Liabilities and the Assumed Vendor Obligations shall be assumed (or paid) as of the First Closing Date. The Assumed Liabilities related to Assigned Contracts shall be assumed as of the effective date that any such Assigned Contract is assigned to PHX or Holdings (as the case may be);

(b) Purchasers, as assignee of the DIP Lenders, shall credit bid the entire DIP Loan Amount on the First Closing Date, subject to Section 5 of the Second Stipulation between Debtor and Norwest Venture Partners VII, L.P. Authorizing Use of Cash Collateral, Granting Replacement Liens and Administrative Claims as Adequate Protection and Order Therefor (as amended from time to time). For purposes of this Agreement, the "*DIP Loan Amount*" means the outstanding principal, plus accrued but unpaid interest thereon, plus other liquidated amounts owing under that certain Debtor-in-Possession Term Credit and Security Agreement dated as of April 10, 2002, by and among the lenders from time to time parties thereto (the "*DIP Lenders*"), the Sellers and Norwest Venture Partners VII, L.P. as administrative agent as amended (the "*Loan Agreement*") and related Loan Documents as amended (collectively, the "*DIP Loan Documents*") on the First Closing Date;

(c) Purchasers shall pay, on the First Closing Date, \$1,000,000 (the "*Direct Consideration*"); and together with the amount disbursed to or for the account of Seller pursuant to the Escrow Account described below and the cash portion of any Co-Bid Consideration, the "*Cash Consideration*") to Yipes Communications in immediately available funds, to an account designated in writing by Yipes Communications;

(d) Purchasers shall pay \$1,000,000 in immediately available funds (the "*Initial Escrow Balance*") to be deposited by Purchasers into an escrow account with Wells

Fargo Bank, N.A. (or an affiliate thereof) (the “*Escrow Account*”) pursuant to an escrow agreement, by and among and in form and substance satisfactory to Purchasers and Sellers, which agreement shall contain the escrow release conditions set forth in Section 2.4 below (the “*Escrow Agreement*”); and

(e) Any Co-Bidder shall tender, on the First Closing Date, the Co-Bid Consideration, if any.

## **2.2. Allocation of Purchase Price; Allocation of Taxes.**

The parties agree that the value of the collateral securing the DIP Loan Amount and the Noteholder Liabilities equals or exceeds those amounts, such that the payments thereon or assumptions thereof pursuant to this Agreement shall constitute payment of allowed secured claims that are valid and enforceable and as to which no setoff, recoupment, defense, counterclaim or right of disgorgement or turnover shall be applicable.

In addition, each of the parties agrees that the Purchase Price shall be allocated among the Acquired Assets as reasonably determined by Purchasers prior to the First Closing on a schedule to be prepared by Purchasers (and reasonably satisfactory to Yipes Communications) in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended (the “*Code*”); provided that the portion of the Purchase Price allocated to the Regulated Stock shall be \$1.00 (One Dollar). Each of the parties agrees to report this transaction for state and federal tax purposes in accordance with such allocation. If any state or federal taxing authority challenges such allocation, Purchasers and the applicable Seller shall cooperate in good faith in responding to such challenge. The party receiving the notice of such challenge shall give prompt written notice to the other parties of any such challenge. Purchasers shall have the option to elect within thirty (30) days of receipt of such notice to assume the defense of any such challenge. Regardless of whether Purchasers elect to assume such defense, each of Purchasers and the applicable Seller, respectively, shall be entitled to approve the settlement, if any, that the other may desire to make with respect to any such challenge, which approval shall not be unreasonably withheld. The Approval Order shall reserve jurisdiction to resolve any such dispute with a taxing authority in accordance with 11 U.S.C. § 505 and other applicable law.

Notwithstanding any provision or implication to the contrary in this Agreement, the allocation of the Purchase Price among the estates of the Sellers shall be subject to further agreement or order of the Bankruptcy Court. The Cash Consideration deposited in the Escrow Account, subject to satisfaction of the Regulatory Approvals and the Regulatory Obligations shall not constitute an admission or acknowledgment that such amount, or any specific portion thereof, is or should be allocable to one of the Regulated Sellers.

## **2.3. Transfer Taxes.**

Notwithstanding any statute, rule, regulation, ordinance, ruling, writ or injunction (collectively, “*Legal Requirements*”) that would otherwise impose liability on the Sellers, as between Purchasers and the Sellers, it shall be the Purchasers’ responsibility to pay any transfer or similar taxes when due. Each of the Purchasers shall, at its own expense, file all necessary tax returns and other documentation with respect to all such taxes; provided, however, that, if

required by the Court or any Legal Requirement, the Sellers will join in the execution of any such tax returns and other documentation; and provided, further that nothing contained in this Section 2.3 shall be deemed to limit any transfer tax exemption in accordance with Section 1146(c) of the Bankruptcy Code provided for in the Approval Order.

#### 2.4. Escrow Release Provisions.

The Escrow Amount shall be irrevocably released to the Sellers as follows:

(i) One seventh (1/7) of the Initial Escrow Balance remaining on any date that the Regulated Sellers shall have obtained any of the Regulatory Approvals listed on Schedule 2.4 not previously obtained by Regulated Sellers up to a maximum distribution of five sevenths (5/7) of the Initial Escrow Balance;

(ii) The remaining Initial Escrow Balance on the date that the Regulated Sellers shall have obtained all of the Regulatory Approvals listed on Schedule 2.4 not otherwise obtained under clause (i) above (such date, the "*Regulatory Approval Completion Date*"); and

(iii) The remaining Initial Escrow Balance on the effective date of a plan of reorganization that is confirmed pursuant to Section 1.1(f) hereof (the "*Plan Effective Date*");

provided that, if the Regulatory Approval Completion Date or the Plan Effective Date shall not have occurred prior to June 10, 2003, then an amount equal one-half (1/2) of the Initial Escrow Balance remaining on June 10, 2003 shall on such date be irrevocably released to the Purchasers instead of the Sellers; and provided further that, if the Regulatory Approval Completion Date or the Plan Effective Date shall not have occurred prior to July 10, 2003 (the "*Final Escrow Release Date*"), then any Initial Escrow Balance remaining in the Escrow Account on the Final Escrow Release Date shall on such date be irrevocably released to the Purchasers instead of the Sellers; and provided further, that any Initial Escrow Balance remaining in the Escrow Account on the date that any of the following occur shall be irrevocably released to the Purchasers instead of the Sellers on such date: (i) any Regulated Seller shall have ceased providing continuous service to PHX or Holdings on the terms and conditions set forth in the Interim Services Agreement, except as a result of Purchasers' default thereunder, (ii) any Seller shall have violated the covenants set forth in Section 6.8(a) or (c) of this Agreement or (iii) the bankruptcy case of any Regulated Seller shall have been converted into a case under chapter 7 of the Bankruptcy Code or an examiner or chapter 11 trustee shall have been appointed in the bankruptcy case of any Regulated Seller. Nothing in this Section 2.4 shall prevent Sellers from asserting a Seller Regulatory Claim against the Escrow Account.

The payment of the Escrow Amounts shall be subject to such other terms and conditions as may be set forth in the Escrow Agreement, which shall be consistent with this Section 2.4.



## SECTION 3. CLOSINGS; CLOSING DELIVERIES.

### 3.1. The Closings.

(a) The sale of Unregulated Assets contemplated by this Agreement (the “*First Closing*”) shall occur within three (3) business days after the satisfaction or waiver of the conditions set forth in Sections 7 and 8 hereof, at the offices of Brobeck, Phleger & Harrison LLP, One Market Street, San Francisco, California, or at such other place and on such other date and time as PHX and the Unregulated Sellers shall mutually agree, orally or in writing (such date being referred to herein as the “*First Closing Date*”).

(b) The sale of the Regulated Stock contemplated by this Agreement (the “*Second Closing*”) shall occur within three (3) business days after the satisfaction or waiver of the conditions set forth in Section 9 hereof, at the offices of Brobeck, Phleger & Harrison LLP, One Market Street, San Francisco, California, or at such other place and on such other date and time as Holdings, Yipes Group and Yipes Transmission shall mutually agree, orally or in writing but in no case less than three (3) business days following the receipt of the applicable Regulatory Approval therefor, except as otherwise unanimously agreed by the applicable parties (such date being referred to herein as the “*Second Closing Date*”).

(c) Regulatory Closings shall occur from time to time as set forth in Section 1.1(d). The First Closing, the Second Closing and each Regulatory Closing is referred to herein as a “*Closing*.”

### 3.2. Sellers’ Obligations at First Closing.

At the First Closing, unless specified otherwise, each Seller shall deliver or cause to be delivered to PHX and/or Holdings (as the case may be):

(a) possession of all of the Records transferable without Regulatory Approval together with copies of any reasonably requested books and records that are Excluded Assets;

(b) possession of all of the Unregulated Assets and all Regulated Assets which can be transferred without Regulatory Approval, which insofar as they are tangible will remain at the premises where they are located;

(c) all documents of title relating to the Unregulated Assets and the Regulated Assets transferable without Regulatory Approval;

(d) any applicable filings, recordations, notices and consents related to the Unregulated Assets and the Regulated Assets transferable without Regulatory Approval;

(e) possession of all originals or copies of all Unregulated Assigned Contracts and Regulated Assigned Contracts assignable without Regulatory Approval and other documentary Unregulated Assets and Regulated Assets transferable without Regulatory Approval and appropriate instruments of assignment thereof;

(f) copies of resolutions of each Seller's Board of Directors certified by a Secretary, Assistant Secretary, or other appropriate officer of such Unregulated Seller, authorizing the execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement;

(g) a certificate (a "*Seller's Closing Certificate*") setting forth that, except as expressly set forth in each Seller's Closing Certificate, (i) each of the representations and warranties made by such Seller in this Agreement was accurate in all respects as of the date hereof (to the extent that such representation and warranty related to the date hereof) and is accurate in all material respects as of the First Closing Date as if made on such date; (ii) each of the covenants and obligations that each such Seller is required to have complied with or performed pursuant to this Agreement at or prior to the First Closing Date has been duly complied with and performed in all material respects; and (iii) each of the conditions set forth in Section 7 has been satisfied in all material respects.

(h) a Bill of Sale in such form as agreed to between PHX and each Unregulated Seller in accordance with the terms hereof, duly executed by each such Unregulated Seller;

(i) a Bill of Sale in such form as agreed to between Holdings and each Regulated Seller in accordance with the terms hereof, duly executed by each Regulated Seller;

(j) a duly executed Interim Services Agreement

(k) a duly executed Security Agreement; and

(l) each of the other agreements and documents contemplated to be delivered by or entered into by each Seller in connection with or pursuant to this Agreement, duly executed by each such Seller.

### **3.3. Purchasers' Obligations at the First Closing.**

At the First Closing, Purchasers shall deliver or cause to be delivered to Yipes Communications on behalf of Sellers:

(a) the Cash Consideration, payable to Sellers and the Escrow Account as set forth in Section 2.4;

(b) written acknowledgement of satisfaction of all of the Sellers' indebtedness under the DIP Loan Agreement;

(c) an Assumption Agreement in such form as agreed to between PHX and the Unregulated Sellers in accordance with terms hereof, duly executed by PHX; and

(d) an Assumption Agreement in such form as agreed to between Holdings and the Regulated Sellers in accordance with terms hereof, duly executed by the Regulated Sellers; and

(e) each of the agreements and documents contemplated to be delivered by or entered into by Purchasers in connection with or pursuant to this Agreement, duly executed by Purchaser.

### **3.4. Second Closing.**

At the Second Closing, unless specified otherwise:

(a) Yipes Group shall deliver or cause to be delivered to Holdings certificates evidencing the Regulated Stock of Yipes Transmission in the name of Holdings and such other evidence as may be reasonably requested by Holdings to demonstrate that all right, title and interest of Yipes Group in such Regulated Stock shall have been transferred to Holdings;

(b) Yipes Transmission shall deliver or cause to be delivered to Holdings certificates evidencing the Regulated Stock of Yipes Virginia in the name of Holdings and such other evidence as may be reasonably requested by Holdings to demonstrate that all right, title and interest of Yipes Transmission in such Regulated Stock shall have been transferred to Holdings; and

(c) Yipes Group and Yipes Transmission shall each deliver a certificate (a "*Second Closing Certificate*") setting forth that, except as expressly set forth in each such Seller's Second Closing Certificate, (i) each of the representations and warranties made by each Seller in this Agreement related to the Second Closing is accurate in all material respects as of the Second Closing Date as if made on such date; (ii) each of the covenants and obligations that each such Seller is required to have complied with or performed pursuant to this Agreement at or prior to the Second Closing Date has been duly complied with and performed in all material respects; and (iii) each of the conditions set forth in Section 8 has been satisfied in all material respects.

### **3.5. Regulatory Closings**

At each Regulatory Closing, the applicable Regulated Seller shall deliver to Holdings any applicable license or approval documentation as well as executed assignment agreements, bills of sale or instruments of transfer reasonably requested by Holdings to evidence the transfer of the relevant Regulated Asset.

### **3.6. Payment of Cure Amounts.**

Purchasers and Sellers agree that Sellers shall have no liability or obligation to pay the Cure Amounts that are Assumed Liabilities.

### **3.7. Passage of Title; Risk of Loss; Effectiveness.**

Legal and equitable title and risk of loss with respect to all of the Unregulated Assets and the Regulated Assets transferable without Regulatory Approval shall pass to Purchasers upon conveyance, assignment or transfer of such Acquired Assets at the First Closing. Legal title and risk of loss with respect to all of the Regulated Stock shall pass to Holdings upon conveyance,

assignment or transfer of the Regulated Stock at the Second Closing. Legal title and risk of loss with respect to any Regulated Asset transferable only with Regulatory Approval shall pass to Holdings upon conveyance, assignment or transfer of such Regulated Asset at the applicable Regulatory Closing. Equitable title to the Regulated Stock and the Regulated Assets transferable only with Regulatory Approval shall pass to Holdings on the First Closing Date, to the maximum extent permitted by applicable law. The transactions contemplated by this Agreement to be taken at the First Closing, the Second Closing or a Regulatory Closing shall be effective as of Purchasers' close of business on the relevant closing date.

### **3.8. Instruments of Conveyance at Closing.**

At each Closing each Seller shall (at its own expense) execute and deliver (or cause to be delivered) to Purchasers such bills of sale, endorsements, assignments and other good and sufficient instruments of transfer, conveyance and assignment (in each case in a form reasonably required by Purchasers) and shall take such other actions as may be necessary or reasonably required in order to transfer title to the Acquired Assets to Purchasers and otherwise implement or perform this Agreement or any other agreement executed as required by this Agreement. Simultaneously therewith, each Seller shall take (or shall cause to be taken) all steps necessary to put Purchasers in possession or operating control of the purchased Acquired Assets.

### **3.9. Further Assurances after Closing.**

(a) Each Seller shall, at any time and from time to time after a Closing, and notwithstanding any knowledge of Purchasers at the time of the execution of this Agreement or such Closing, upon the request of Purchasers, execute, acknowledge and deliver, and cause to be done, executed, acknowledged or delivered, and at Purchasers' expense, all such further reasonable acts, deeds, transfers, conveyances, assignments, powers of attorney or assurances as may be required to transfer, assign, convey and grant all of the Acquired Assets to Purchasers in accordance with the terms hereof.

(b) Purchasers shall, at any time and from time to time after the relevant Closing, and notwithstanding any knowledge of Seller at the time of the execution of this Agreement or such Closing, upon the request of a Seller, execute, acknowledge and deliver, and cause to be done, executed, acknowledged and delivered, all such further reasonable acts, deeds, assumptions, powers of attorney or assurances as may be required for Purchasers to assume all of the Assumed Liabilities from Sellers in accordance with the terms hereof.

## **SECTION 4. REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

Each Seller, jointly and severally, represents and warrants, to and for the benefit of Purchasers, that, except as set forth in the written disclosure schedule delivered by the Sellers to Purchasers prior to the date hereof and dated as of the date hereof (the sections of which disclosure letter shall contain exceptions to and qualifications of the representations and warranties of the Sellers set forth in the corresponding sections of this Agreement, and such disclosures shall apply as exceptions and qualifications only to such corresponding sections of this Agreement or to other sections of this Agreement solely to the extent that it is reasonably apparent from the description of such exceptions and qualifications that they reasonably relate to

such other sections of this Agreement) (the “*Disclosure Schedule*”), the following are true and correct to the best knowledge of the Sellers (other than Section 4.1, which Sellers represent and warrant shall be true and correct regardless of knowledge) as of this date and as of each Closing applicable thereto. For purposes of this Section 4 knowledge of Sellers shall refer strictly to the knowledge of Stan Moore, Dennis Muse, Kurt Johnson, Jerry Parrick, Tim Mason, Larry Bercovich, Thor Johnson, Nick Cincio, Kamran Sistanizadeh and, after the First Closing, any “responsible officer” of a Seller and knowledge of such identified persons means the current, actual knowledge of a particular fact, matter or circumstance without imputing or attributing any constructive knowledge, including knowledge gained following the exercise of a particular standard of care or due diligence):

#### **4.1. Authority; Binding Nature of Agreements.**

Each Seller is a corporation duly organized and validly existing under the laws of the state of its jurisdiction of incorporation. Subject to the entry of the Approval Order and appropriate Regulatory Approval, each Seller has the requisite power and authority (corporate or otherwise) to enter into and to perform its obligations under this Agreement, the Interim Services Agreement (as defined below), the Security Agreement (as defined below) and the other agreements contemplated to be delivered or entered into with or pursuant to this Agreement (the “*Transaction Agreements*”), and the execution, delivery and performance by each Seller of the Transaction Agreements to which it is a party have been duly authorized by all necessary action (corporate or otherwise) of such Seller. Subject to the entry of the Approval Order and appropriate Regulatory Approval, the Transaction Agreements constitute, or upon execution and delivery will constitute, the legal, valid and binding obligation of each Seller, enforceable against such Seller in accordance with their terms.

#### **4.2. Non-Contravention; Consents.**

(a) Subject to the entry of the Approval Order and appropriate Regulatory Approval, neither the execution and delivery of the Transaction Agreements, nor the consummation of the transactions contemplated hereby or thereby, will by itself, directly or indirectly (with or without notice or lapse of time) (i) contravene, conflict with, or result in a violation of, any of the provisions of any of the Seller’s organizational documents, (ii) contravene, conflict with, or result in a violation of, or give any Governmental Entity or other person or entity the right to challenge the transactions contemplated hereby or to exercise any remedy or obtain any relief under, any federal, state, county or local law, statute, rule, regulation, ordinance, code or any decree, ruling, order, writ, injunction, award or judgment of any court or Governmental Entity applicable to each Seller or with respect to which any of the Acquired Assets is subject, or (iii) to each Seller’s knowledge, result in the imposition or creation of any Encumbrances upon, or with respect to, any or all of the Acquired Assets.

(b) Subject to the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and Regulatory Approvals and except as specifically provided in the Approval Order, to each Seller’s knowledge, no Seller was, is or will be required to make any filing with or give any notice to, or to obtain any approval, consent, ratification, permission, waiver or authorization from, any person, entity or Governmental Entity in connection with the

execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

#### **4.3. Title; Condition of Assets; Asset Transfers**

(a) Each Seller has valid title to and is the exclusive legal and equitable owner, or is the licensee or lessee of, and, subject to the entry of the Approval Order and Regulatory Approval, has the unrestricted power and right to sell, assign and deliver all of its right, title and interest in, to and under the Acquired Assets to be sold, assigned and delivered by such Seller pursuant to this Agreement. Upon the Closing with respect to any Acquired Asset, PHX or Holdings will acquire exclusive, valid title or license to or a valid leasehold interest in (as the case may be) such Acquired Asset, and no restrictions will exist on Purchasers right to use, resell, license or sublicense any of the Acquired Assets other than as set forth in the Assigned Contracts or as imposed by applicable law, including without limitation, any State Regulators.

(b) The tangible Acquired Assets are in good and normal operating condition and repair (ordinary wear and tear excepted) and the Core Business is currently being conducted in the ordinary course using such Acquired Assets in the ordinary course.

(c) No Seller has assigned or encumbered the Purchased Claims to or for the benefit of any person, partnership, corporation or other entity.

#### **4.4. Assigned Contracts**

Subject to the entry of the Approval Order, any appropriate Regulatory Approvals and the payment of the related Cure Amount, each of the Assigned Contracts (as modified with the consent of the Purchasers) is valid and in full force and effect, and is enforceable by the Seller party thereto in accordance with its terms.

#### **4.5. Proprietary Rights.**

(a) Schedules 1.1(a)(iv) and 1.1(c)(v) set forth all of the patents, registered trademarks (and applications therefor) and registered copyrights which are owned by the Sellers.

(b) Schedule 1.1(a)(iv) sets forth a true and complete list of all contracts, licenses and other agreements to which Seller is a party, which affect any item of the Proprietary Rights, except commercially available (i.e., off-the-shelf) retail software.

(c) The Sellers have the non-exclusive right to use, sell, license and dispose of all Proprietary Rights listed on Schedules 1.1(a)(iv) and 1.1(c)(v).

(d) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (a) breach, violate or conflict with any instrument or agreement governing any Proprietary Right, (b) cause the forfeiture or termination or give rise to a right of forfeiture or termination of any Proprietary Right, or (c) in any way impair the right of Purchasers to use, sell, license or dispose of or to bring any action for the infringement of, any Proprietary Right or any products or technology designed or, developed,

or to be manufactured, sold or serviced by the business of the Sellers or other services (collectively, "**Products and Services**").

(e) The manufacture, marketing, license, sale or use of any Products and Services anywhere in the world does not or would not, to each Seller's knowledge, (A) violate any license or agreement with any third-party, (B) infringe on any non-patent Proprietary Right of any third party or (c) infringe any third-party patent rights. None of the Sellers or any of their respective employees has misappropriated any third party trade secrets. There is no claim or litigation pending or threatened contesting the validity, ownership or right to use, sell, license or dispose of any Proprietary Right, nor is there any basis for any such claim.

(f) To each Seller's knowledge, no third party is infringing on any Proprietary Right where such infringement could materially limit the protection afforded by the Proprietary Rights to the use, sale, license, sublicense or disposition of the Products and Services or prevent the future enforcement of such Proprietary Right.

(g) All Proprietary Rights which comprise trade secret rights are presently, and as of the First Closing Date will be, located at Seller's address as shown in this Agreement and have not been used, divulged or appropriated for the benefit of any person other than the Sellers or to the detriment of the Sellers.

#### **4.6. Accounts Receivable.**

The accounts receivable and other rights to payment described in Schedules 1.1(a)(i) and (c)(ii) of each of the Sellers arising from the Sellers' respective business are valid and genuine; have arisen solely out of bona fide sales and deliveries of goods, performance of services and other business transactions in the ordinary course of business consistent with past practice.

#### **4.7. Bankruptcy Filings.**

There are no motions pending, and the Sellers are not aware of any intention of a third party to file a motion, to convert or dismiss the Seller bankruptcy cases or to appoint a trustee or examiner. Except as set forth in Schedule 4.7, no party to any Assigned Contract is a debtor in any case filed by or against it under the Bankruptcy Code.

#### **4.8. Certain Representations Regarding Employees.**

No Seller has made any representations or warranties to any of their employees concerning their employment, if any, by Purchasers before or after the First Closing Date and each Seller understands and acknowledges that any decision by Purchasers to offer employment to any of Sellers' employees before or after the First Closing Date is to be made in Purchasers' sole discretion.

### **SECTION 5. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Each of the Purchasers represent and warrant, to and for the benefit of the Sellers, that (a) each of them is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite power and authority to enter into and perform

its obligations under this Agreement, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action, and (c) subject to the entry of the Approval Order, this Agreement constitutes the legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms; provided that Purchasers make no representation or warranty regarding the status of any Governmental Approval necessary for the transfer of the Regulatory Assets or the Regulated Stock or either of their ability to purchase such Acquired Assets absent such Governmental Approvals.

## **SECTION 6. COVENANTS**

### **6.1. Sellers' Conduct of the Business Prior to Closing.**

From the date of this Agreement until the First Closing Date, each Seller shall, and shall use reasonable efforts to cause the affiliates over which it exercises control and its agents, officers, directors, employees, attorneys and other professionals, to:

(a) Comply in all respects with the order of the Court, Order Establishing Bidding Procedures, Granting Approval of Expense Reimbursement Provision and Scheduling Hearing for the Sale of the Debtors' Assets (the "*Procedures Order*");

(b) Conduct its business and use commercially reasonable efforts to preserve intact the Acquired Assets and all rights arising out of or related to the Acquired Assets, in each case subject to the limitations and restrictions imposed by the Bankruptcy Code and the Court and otherwise to perform and comply with this Agreement; and

(c) Use best efforts to re-negotiate the Assigned Contracts on a basis satisfactory to Purchasers, including, without limitation, by (i) re-negotiating the monthly payments on account of fiber contracts and co-location contracts relating to the Core Business to at least 30% of the pre-bankruptcy cost, (ii) re-negotiating the monthly payments on account of transit contracts relating to the Core Business to at least 50% of the pre-bankruptcy cost and (iii) re-negotiating the monthly payments on account of Equipment contracts relating to the Core Business to at least 50% of the pre-bankruptcy cost, in each case with minimal Cure Amounts.

### **6.2. Restrictions on Sellers' Conduct of the Business Prior to Closing.**

From the date of this Agreement until the First Closing Date, except as Purchasers may otherwise consent to in writing or as otherwise required by Section 6.1 hereof, or as otherwise ordered by the Court or required under the Bankruptcy Code, the Sellers shall not, and shall use reasonable efforts to cause the affiliates over which they exercise control and their respective agents, officers, directors, employees, attorneys and other professionals, not to take any of the following actions:

(a) Enter into, create, incur or assume any borrowings or any other obligations (other than pursuant to the Loan Agreement), take any other action, in any case which would have a material adverse effect on the Sellers, the Acquired Assets, or Purchasers' ability to operate, exercise, employ and exploit the Acquired Assets in substantially the same manner as proposed by the Sellers;



(b) Sell, transfer, lease, license, encumber or otherwise dispose of any of the Acquired Assets;

(c) Take any action that, after consummation of the transactions contemplated hereby, would be reasonably likely to materially impair any of the rights, title and interest of in and to the Acquired Assets or the right or ability of either Purchaser to realize on the Acquired Assets or otherwise receive the full and timely benefit of its bargain under this Agreement the documents executed pursuant to this Agreement;

(d) Terminate or amend any Assigned Contract or agree to any Cure Amount not approved in advance by Purchasers;

(e) Materially change the terms or impair the value of any of the Acquired Assets or enter into any side letter, waiver, alteration, amendment or other arrangement materially changing the terms or impairing the value of any of the Acquired Assets;

(f) Enter into any contract, arrangement or understanding, or agree, in writing or otherwise, to take any of the actions described in Section 6.2(a) through (e) above, or any action that would make any of their representations or warranties contained in this Agreement untrue or incorrect in any material respect or prevent it from performing or cause any of them not to perform its respective covenants hereunder; or

(g) Pursue any preference or other claims against any third parties to the extent that such claims would give rise to additional Cure Amounts against any Acquired Asset without the consent of Purchasers.

Notwithstanding the foregoing, Seller shall be permitted to: (i) terminate employees; (ii) execute, amend or extend retention agreements with employees; (iii) transfer or dispose of any Acquired Assets pursuant to the Bidding Procedures Order (and as otherwise consistent with Section 6.1); (iv) repair or replace damaged or obsolete Acquired Assets that would constitute Acquired Assets at Closing; and (v) take any other action in the ordinary course of business that would not deprive Purchasers of the benefit of its bargain pursuant to this Agreement.

### **6.3. Certain Notifications.**

(a) From the date of this Agreement until the date of the final Closing, the Sellers shall:

(1) Promptly notify Purchasers, by delivery of an update to the Disclosure Schedule, of (i) any action taken by any of the Sellers, or any circumstance or event, that could reasonably be expected to have a material adverse effect on the Acquired Assets and (ii) any fact, circumstance, event, or action affecting the Acquired Assets (A) which, if known at the date of this Agreement, would have been required to be disclosed in or pursuant to this Agreement or (B) the existence, occurrence or taking of which would result in any of the representations and warranties of the Sellers contained in this Agreement or any agreement contemplated to be delivered by or entered into by the Sellers in connection with or pursuant to this Agreement not being true and correct in all material respects when made or at a Closing

(notwithstanding any provision of this Section 6.3(a)(1), no notice shall be required in respect of any Acquired Asset that has previously been transferred to the Purchasers at a Closing);

(2) Promptly notify Purchasers regarding any material breach of any covenant or obligation of the Sellers hereunder;

(3) Promptly notify Purchasers in writing of the occurrence of any circumstance or event which will result in, or could reasonably be expected to result in, the failure of the Sellers to timely satisfy any of the closing conditions specified in Section 7 or 9 of this Agreement; and

(4) Promptly forward to Purchasers a copy (unless already served on Purchasers' counsel) of any notice, application, motion, objection, response, proposed order or other documents or pleadings relating in any way to this Agreement, the Loan Agreement or the transactions contemplated hereby or thereby (together with a true and correct copy of any such documents or pleadings).

(b) From the date of this Agreement until the date of the final Closing, the Purchasers shall:

(1) Promptly notify Sellers in writing of the occurrence of any circumstance or event which will result in, or could reasonably be expected to result in, the failure of Purchasers to timely satisfy any of the closing conditions specified in Section 8 of this Agreement; and

(2) Promptly forward to Sellers a copy (unless already served on Sellers' counsel) of any notice, application, motion, objection, response, proposed order or other documents or pleadings relating in any way to this Agreement, the Loan Agreement or the transactions contemplated hereby or thereby (together with a true and correct copy of any such documents or pleadings).

#### **6.4. Commercially Reasonable Efforts.**

From the date of this Agreement until the final Closing, (a) each of the Purchasers and each of the Sellers shall use their respective commercially reasonable efforts (i) to cause to be fulfilled and satisfied all of the other party's conditions to the Closing set forth in Articles 7, 8 and 9; (ii) to perform all of their respective obligations required to be performed at each Closing under this Agreement (including the proper conveyance of all Acquired Assets); and (iii) to obtain a hearing before the Court in respect of this Agreement and the Approval Order as promptly as practicable (the "**Approval Hearing**"); and (b) the Sellers shall use their respective commercially reasonable efforts to provide counsel to Purchasers with a copy of each notice, application, motion, proposed order and other pleadings prepared by Seller relating to the transactions contemplated by this Agreement and to be filed with the Court in advance of the filing of such documents with the Court.

## **6.5. Notices.**

The Sellers shall use their respective best efforts to provide requisite notice of this Agreement and the Approval Hearing to the following persons and entities (collectively, the "*Notice Parties*"): (i) each and every holder of a "claim" (as defined in Section 101(5) of the Bankruptcy Code) against any of the Sellers; (ii) each and every holder of an equity security interest in any of the Sellers; (iii) parties to executory contracts and unexpired leases; (iv) each and every Governmental Entity or taxing authority applicable to any of the Sellers or any of the Acquired Assets or with respect to which any of the Acquired Assets is subject; (v) each and every holder of any known Encumbrance on any of the Acquired Assets; (vi) the Office of the United States Trustee for the Northern District of California; (vii) counsel for the Official Committee of Unsecured Creditors appointed in the Yipes Communications case under the Bankruptcy Code; (viii) any and all other persons and entities upon whom the Sellers are required (pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any order of the Court) to serve such notice. In addition, Sellers shall serve the motion for approval of this Agreement on the following parties to satisfy the requirements for selling free and clear pursuant to Bankruptcy Local Rule 6004-1: (1) parties listed in clause (v), (2) local municipalities and taxing authorities, (3) parties to co-location agreements, unexpired leases of real property and current providers of warehouse and storage services.

## **6.6. Updated Cure Amounts.**

No later than three (3) days prior to the date of the Approval Hearing, each Seller shall provide to Purchasers a list of the proposed Cure Amounts, including an itemized list of differences, and, upon Purchasers' reasonable request, an explanation thereof, between each such proposed Cure Amount and the Cure Amounts described in Schedule 1.3.

## **6.7. Certain Covenants.**

(a) Subject to the requirements of the Bankruptcy Code or an order of the Court after the First Closing Date, upon the reasonable request of Purchasers, each Seller shall cooperate with Purchasers, at Purchasers' expense, to enforce the terms of any Assigned Contracts between the Seller and any third party and shall at the request of PHX reject any contracts, contractual licenses, leases or other executory agreements not yet assumed which PHX believes (in its sole discretion) interfere with the going forward operations of the Core Business after the First Closing. After the First Closing, each Seller shall promptly deliver to Purchasers (A) any mail, packages and other communications addressed to such Seller and relating to the Acquired Assets, and (B) any cash, securities or other property such Seller receives that constitute the Acquired Assets or any of them, including any insurance proceeds, payments with respect to receivables and interest payable thereon.

(b) Each Seller shall, for a period of one (1) year after the First Closing Date, at Purchasers' request, provide Purchasers and their representatives (at Purchasers' expense) with access to and the right to make copies of all remaining records and documents related to the Acquired Assets, possession of which is retained by such Seller, as may be necessary or useful in connection with Purchasers' use of the Acquired Assets. If during such period such Seller elects to dispose of such records and documents, the Seller shall give

Purchasers sixty (60) days' prior written notice, during which period Purchasers shall have the right to take such records and documents without further consideration.

(c) In the event that any contract (the "*Unassumed Licenses*") designated as an "Assigned Contract" by Purchasers cannot be assumed and assigned as a result of Bankruptcy Code § 365(c)(1), Sellers shall, on the First Closing Date, enter into one or more agreements and do all other acts or things necessary or required (the "*Software Arrangements*") (in any case, consistent with applicable law and the terms of such contract) to support the continuous ordinary course operations of Purchasers, as such operations existed prior to the First Closing Date, for a reasonable time after the First Closing Date, but in any event not less than 365 days thereafter. Any such Software Arrangements (i) shall be at no cost or expense to Purchasers, other than the cost of reimbursing Sellers for any actual out-of-pocket expenses directly related to Sellers' operations under the Software Arrangements, including, without limitation, costs of employees and hardware, (ii) shall provide for Purchasers to lease the hardware required for Sellers to perform under the Software Arrangements to Sellers at nominal cost (to be paid by Purchasers) or no cost and (iii) shall provide for Sellers to maintain and use the Unassumed Licenses to support Purchasers' ordinary course operations, until Purchasers either (x) obtain the consents required to assume such Unassumed Licenses or (y) are able to replace such Unassumed Licenses with comparable licenses from the same or similar sources. It is the intent of the parties under this subsection for the operations of the Sellers which are transferred to the Purchasers hereunder to continue without interruption. Nothing in this Section 6.7(c) is intended to waive any conditions precedent set forth in this Agreement.

(d) Within two weeks of the First Closing Date, Sellers shall change their legal names in order to strike the word "Yipes" from such names and shall alter the captions under which their respective bankruptcy cases are administered so as to eliminate the word "Yipes" from such captions.

## **6.8. Covenants and Other Provisions Related to the Regulated Assets**

(a) From the First Closing Date through the final Regulatory Closing, (x) no Regulated Seller shall file a motion seeking to (A) convert its bankruptcy case into a case under chapter 7 of the Bankruptcy Code, (B) appoint an examiner or trustee in its chapter 11 case, (C) dismiss its chapter 11 case, or (D) abandon any of the Regulated Assets or Regulated Stock, in each case without the prior written consent of the Purchasers, (y) no Seller shall seek to substantively consolidate any of the Regulated Sellers with either each other or any Unregulated Seller and (z) no Regulated Seller shall seek to confirm a plan of reorganization, except as set forth in Section 1.1(f) hereof, in each case, without the prior written consent of the Purchaser.

(b) Notwithstanding anything in Section 6.8(a), Holdings shall have the right on or after the First Closing Date to require the estate of a Regulated Seller to abandon any Regulated Asset not yet subject to a Regulatory Closing by giving such Regulated Seller a notice of abandonment. Any such abandonment shall become automatically effective on the fifth (5th) day after Holdings sends its notice of abandonment and shall have the same effect as an abandonment under Bankruptcy Code § 554.

(c) Each Seller shall obtain the Regulatory Approvals described in Section 2.4 required for the transfer of all of the Regulated Assets to Holdings on or before the Final Escrow Release Date. In addition, at all times after the First Closing Date, each Seller shall perform all of its obligations under the Interim Services Agreement (if any) and the Software Arrangements. The Interim Services Agreement shall require each Regulated Seller to conduct its business in the ordinary course and use commercially reasonable efforts to preserve intact the Regulated Assets and all rights arising out of or related to the Regulated Assets pending a Regulatory Closing with respect to such Regulated Assets, including, without limitation, by maintaining continuous service to PHX on the terms and conditions set forth in the Interim Services Agreement and by complying with the terms and conditions of all Transaction Agreements, including, without limitation, this Agreement. The Interim Services Agreement shall provide that Holdings shall compensate or reimburse the Regulated Sellers for all amounts incurred in performing their obligations thereunder.

(d) The obligations of Sellers set forth in Sections 6.8(a) and 6.8(c) above (the “*Regulatory Obligations*”), including without limitation, the obligations to comply with the Interim Services Agreement and the Software Arrangements shall be secured by a first priority perfected security interest in and lien upon the Regulated Stock, the Regulated Assets and the Escrow Account, which security interest and lien shall be granted pursuant to Bankruptcy Code § 364(d) and pursuant to a Security Agreement (the “*Security Agreement*”), in substantially the form of Exhibit A hereto. Damages for Sellers’ breach of the Regulatory Obligations are hereby liquidated at \$10,000,000, but shall be satisfied solely from the Regulated Stock, the Regulated Assets and the Escrow Account. The Sellers agree that each Seller shall be jointly and severally liable for any breach of the Regulatory Obligations and that the liquidated damages set forth in this subsection (d) are reasonable on date of this Agreement based upon the current circumstances of the Sellers, and, accordingly, the foregoing liquidated damages are not subject to avoidance under California Civil Code § 1671. At all times from the First Closing Date through the Second Closing Date, Purchasers shall have the right, as pledgee, to assert all of the rights of Yipes Communications and Yipes Transmission under, with respect to or in connection with the Regulated Stock, as more particularly set forth in the Security Agreement and shall have relief from stay to enforce all of their rights under this Agreement, including, without limitation, under Section 6 hereof or under any other Transaction Agreement.

#### **6.9. Transition Arrangements for Sellers.**

After the First Closing Date, Purchasers shall provide to Sellers, at no cost or expense to Sellers, reasonable office space at Purchasers’ offices located at 114 Sansome Street, 14<sup>th</sup> Floor San Francisco, California until June 10, 2003. In addition, Purchasers shall provide Sellers, at no cost or expense to Sellers, with access upon reasonable notice and during regular business hours, to any employees of Purchasers or Records in the custody or control of Purchasers, in each case, to the extent required for Sellers to administer their bankruptcy estates; provided that Sellers shall reimburse Purchasers for any actual out-of-pocket expenses incurred by Purchasers in connection with the photocopying of any such Records. Furthermore, Purchasers shall store any Records of the Sellers located on any premises of Purchasers until June 10, 2003 at no cost or expense to Sellers.

#### **6.10. Efforts to Obtain Qualification.**

From the First Closing Date through the Final Escrow Release Date, Holdings shall use commercially reasonable efforts to receive or obtain any State Licenses required for Holdings to receive the transfer of the Regulated Assets contemplated by this Agreement, unless Holdings determines in good faith that the Regulated Sellers will be unable to obtain the Regulatory Approvals required to transfer the Regulated Assets. Any damages for Holdings' failure to comply with this Section 6.10 (a "*Seller Regulatory Claim*") shall be limited to a claim against the Escrow Account.

### **SECTION 7. CONDITIONS PRECEDENT TO PURCHASERS' OBLIGATION AT THE FIRST CLOSING.**

Purchasers' obligations to purchase the Unregulated Assets, assume the Unregulated Assigned Contracts and take the other actions required to be taken by Purchaser, on the First Closing Date, are subject to the satisfaction, at or prior to the First Closing of the following conditions (any of which may be waived by Purchaser, in whole or in part and from time to time at Purchasers' sole discretion):

#### **7.1. Accuracy of Representations.**

The representations and warranties made by the Sellers in this Agreement shall be true and correct in all material respects on and as of the First Closing Date with the same effect as though such representations and warranties had been made on and as of the First Closing Date.

#### **7.2. Performance of Obligations.**

Each Seller shall have performed all material obligations herein required to be performed or observed by it on or prior to the Closing Date under this Agreement and the other Transaction Agreements.

#### **7.3. Additional Documents.**

Purchasers shall have received such documents as Purchasers may reasonably request in good faith for the purpose of (i) evidencing the accuracy of any representation or warranty made by the Sellers, (ii) evidencing the compliance by the Sellers with, or the performance by the Sellers of, any covenant or obligation set forth in this Agreement and any related documents, (iii) evidencing the satisfaction of any condition set forth in this Section 7, or (iv) otherwise facilitating the consummation or performance of the transactions contemplated under this Agreement and the other Transaction Agreements.

#### **7.4. Court Approvals.**

(a) The final order entered by the Court on May 28, 2002, approving the Loan Agreement and providing, among other things, that the credit extended by the "Lenders" thereunder was extended in good faith, shall remain valid and enforceable.

(b) The Court shall have entered an order (in form and substance satisfactory to PHX and Holdings) (the “*Approval Order*”) (i) authorizing and approving the sale to Purchasers of the Acquired Assets in accordance with this Agreement pursuant to Sections 363 and 365 of the Bankruptcy Code; (ii) finding that PHX and Holdings are purchasers acting in good faith and are entitled to the protections of Section 363(m) of the Bankruptcy Code; (iii) providing that, subject to Regulatory Approvals where necessary the sale of the Acquired Assets is free and clear of the Encumbrances, (iv) containing a waiver or reduction of the 10 day stay set forth in Bankruptcy Rule 6004(g) and Bankruptcy Rule 6006(d), (v) granting the liens described in Section 6.8(d) hereof, (vi) providing for an exemption from transfer, recording or stamp taxes pursuant to Bankruptcy Code § 1146(c), and (vii) containing such other findings and provisions as may be reasonably requested by PHX and Holdings to ensure that valid and enforceable title to, or right of use as lessee or licensee of, the Acquired Assets will be transferred to the applicable Purchasers pursuant to Bankruptcy Code §§ 363 and 365.

(c) The Sellers shall have filed an appropriate motion on or before May 21, 2002 seeking the Approval Hearing and entry of the Approval Order on or before June 10, 2002.

(d) No appeal of the Approval Order shall have been filed prior to the First Closing Date.

#### **7.5. Other Approvals.**

All board of director, corporate, and third party consents and approvals, if any, necessary to effect the sale of the Acquired Assets as set forth herein will have been obtained and remain in effect.

#### **7.6. Absence of Certain Changes.**

The Purchasers shall have determined in good faith on or prior to May 30, 2002 that (i) since March 21, 2002 there has not been a material adverse change in the Core Business (including but not limited to a decrease in revenue associated with the Core Business of greater than 10%) and there has not otherwise occurred any event or circumstance such that such a material adverse change is likely to occur prior to June 7, 2002, (ii) there has not been a material impairment in the value of any material Acquired Asset, (iii) there has not been a substantial deterioration in the feasibility of the business plan of the Purchasers for the Core Business or in the ability of either Purchaser to timely receive and retain the benefit of this Agreement and the transactions contemplated by this Agreement or any of the Related Agreements and (iv) there has not been any interruption in the continuous operation of the Core Business.

#### **7.7. Regulatory Arrangements.**

Prior to June 5, 2002, Yipes Transmission and Yipes Virginia each shall have agreed to the form of (and on or prior to the First Closing Date shall have entered into) such agreements and arrangements with the Purchasers (on terms reasonably acceptable to the Purchasers) as the Purchasers may deem reasonably necessary (the “*Interim Services Agreement*”) to provide such

parties with such services which are required to maintain the operation of the Core Business pending the completion of the Regulated Closings.

**7.8. No Adverse Proceedings.**

No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or Governmental Entity shall have been rendered against, any party hereto which would render it unlawful, as of the First Closing Date, to effect any of the transactions contemplated by this Agreement or any other Transaction Agreement in accordance with its terms.

**7.9. Transaction Documentation.**

All agreements, certificates, instruments and other documentation relating to the transactions contemplated by this Agreement or any other Transaction Agreements shall be in form and substance satisfactory to the Purchasers, and their counsel and Purchasers shall have received such other documents, opinions, certificates, instruments and agreements in connection with the transactions contemplated hereby all in form and substance satisfactory to the Purchasers, as they shall have reasonably requested.

**7.10. Renegotiation of Contracts.**

(a) On or prior to May 24, 2002 each of the Assigned Contracts shall have been renegotiated and modified by the Sellers and the relevant non-debtor party, on terms and in form satisfactory to Purchasers, including, without limitation, by (i) re-negotiating the monthly payments on account of fiber contracts and co-location contracts relating to the Core Business to at least 30% of the pre-bankruptcy cost, (ii) re-negotiating the monthly payments on account of transit contracts relating to the Core Business to at least 50% of the pre-bankruptcy cost and (iii) re-negotiating the monthly payments on account of Equipment contracts relation to the Core Business to at least 50% of the pre-bankruptcy cost.

(b) Sellers shall have obtained the consent to assignment of each Assigned Contract of material importance to the successful and economic future operation of the Core Business (as determined by the PHX in its sole discretion) which is not otherwise assignable under applicable law.

**7.11. Negotiation of Secured Claims.**

On or prior to May 24, 2002, each claim of a secured creditor of any of the Sellers constituting an Assumed Liability shall have been restructured or resolved in a manner in form and substance satisfactory to Purchasers, including, without limitation, the Noteholder Liabilities.

**7.12. Schedules.**

Sellers shall have provided Purchasers with all Schedules contemplated under this Agreement and the Related Agreements, finalized and completed and effective as of the date of



this Agreement, in form and substance reasonably satisfactory to Purchasers, at least three (3) business days prior to the date of the Approval Order.

**7.13. Responsible Officer.**

A responsible officer satisfactory to Purchasers and Sellers shall have been appointed in the bankruptcy cases of Yipes Transmission and Yipes Virginia under mutually acceptable governance principles.

**SECTION 8. CONDITIONS TO SELLERS' OBLIGATIONS AT THE FIRST CLOSING**

The Sellers' obligations to sell the Unregulated Assets and take the other actions required to be taken by the Sellers at and following the First Closing Date are subject to the satisfaction, at or prior to the First Closing, of the following conditions (any of which may be waived by Sellers, in whole or in part):

**8.1. Accuracy of Representation.**

The representation and warranties made by Purchasers in this Agreement shall be true and correct in all material respects on and as of the First Closing Date with the same effect as though such representations and warranties had been made on and as of the First Closing Date.

**8.2. Performance of Obligations.**

Purchasers shall have performed all material obligations herein engaged to be performed or observed by them on or prior to the First Closing Date.

**8.3. Court Approval.**

The Court shall have entered the Approval Order prior to the First Closing Date.

**8.4. No Adverse Proceedings.**

No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or Governmental Entity shall have been rendered against, any party hereto which would render it unlawful, as of the First Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**SECTION 9. CONDITIONS TO OBLIGATIONS AT THE SECOND CLOSING AND ANY REGULATORY CLOSING**

**9.1. Conditions to Holdings' Obligations.**

Holdings' obligations to (i) purchase the Regulated Stock at the Second Closing, (ii) purchase a Regulated Asset at a Regulated Closing and (iii) assume a Regulated Assigned Contract at a Regulated Closing and take the other actions required to be taken by PHX or Holdings in connection therewith, are subject to the satisfaction, at or prior to the relevant

Closing of the following conditions (any of which may be waived by Holdings, in whole or in part):

- (a) The First Closing shall have occurred.
- (b) Sellers shall have obtained the required Regulatory Approvals for the transfer of the Regulated Assets which are the subject of the Closing to Holdings.
- (c) Holdings shall have obtained the required Regulatory Approvals to receive the transfer of the Regulated Assets which are the subject of the Closing from Sellers.
- (d) No "Default" or "Event of Default" shall have occurred under the Security Agreement or under any other Transaction Agreement.
- (e) Sellers shall have performed all material obligations herein engaged to be performed or observed by it on or after the First Closing Date through the date of the relevant Closing.

## **9.2. Conditions to Sellers' Obligations.**

The obligations of Yipes Group and Yipes Virginia to sell the Regulated Stock at the Second Closing and the obligations of the Regulated Sellers to sell Regulated Assets at one or more Regulated Closings and, in each case, take the other actions required to be taken by such Sellers in connection therewith, are subject to the satisfaction, at or prior to the relevant closings of the following conditions (any of which may be waived by Sellers, in whole or in part):

- (a) The First Closing shall have occurred.
- (b) Sellers shall have obtained the required Regulatory Approvals for the transfer of the Regulated Assets which are the subject of the Closing.
- (c) Holdings shall have obtained the required Regulatory Approvals to receive the transfer of the Regulated Assets which are the subject of the Closing from Sellers.
- (d) Purchasers shall not have failed to perform any material obligation under the Interim Services Agreement.

## **SECTION 10. TERMINATION.**

### **10.1. Termination.**

At any time prior to the First Closing, this Agreement may be terminated (without prejudice to other remedies which may be available to the parties under this Agreement, at law or in equity):

- (a) by the mutual written consent of Purchasers and Sellers; or

(b) immediately upon written notice of Purchasers to Sellers (i) upon the Maturity Date (as defined therein) of the Loan Agreement; (ii) upon the occurrence of an Event of Default (as defined therein) under the Loan Agreement; or (iii) if Purchasers reasonably determine that Sellers cannot satisfy (other than as a result of the Purchasers own actions) the conditions precedent set forth in Section 7 of this Agreement by June 12, 2002; or

(c) immediately upon written notice of Purchasers to Sellers if the First Closing does not occur on or prior to June 12, 2002, provided that a later date may be agreed upon in writing by Purchasers and Sellers; or

(d) immediately upon written notice of Purchasers to Sellers or Sellers to Purchasers in the event that any injunction or other equitable relief is granted by any court of competent jurisdiction enjoining the consummation of any of the transactions set forth herein at least through June 12, 2002; or

(e) immediately upon written notice of Purchasers to Sellers or Sellers to Purchasers in the event that any of the Sellers ceases to continuously operate the Core Business consistent with past practice or ceases to have sufficient funds to so operate; or

(f) immediately upon written notice of Purchasers to Sellers in the event that a trustee in bankruptcy or an examiner with expanded powers is appointed for any of the Sellers, or the bankruptcy case of any of the Sellers is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or

(g) immediately upon written notice of Purchasers to Sellers in the event that the Approval Order shall have been challenged, revoked, rescinded or modified in any material respect adverse to the Purchasers (as determined by the Purchasers in their sole discretion) on or before June 12, 2002; or

(h) immediately upon written notice of Sellers to Purchasers in the event that a qualified bidder is deemed to have offered a higher and better bid than the Purchasers for the Acquired Assets (subject to the terms and conditions of the Procedures Order).

## **10.2. Effect of Termination; Payment of Expense Amount.**

If this Agreement is terminated in accordance with Section 10.1, all obligations of the parties hereunder shall terminate, except for the obligations set forth in this Section 10.2, Section 12 (other than Section 12.15) and any other Section which, by its terms, survives termination, provided, however, that Sellers shall have no liability for damages in an amount greater than the Expense Amount set forth in the Procedures Order, whether for fees and costs incurred by Purchasers in connection with the negotiation and preparation of this Agreement or on account of the breach of any covenants or agreements set forth herein. In addition, in the event that this Agreement is terminated pursuant to Section 10.1(h), the Purchasers shall be entitled to the Expense Amount set forth in the Procedures Order.

## **SECTION 11. SURVIVAL OF REPRESENTATION AND WARRANTIES**

All representations and warranties of each Seller contained in this Agreement and in the applicable Seller's Closing Certificate or Second Closing Certificate, bills of sale, endorsements, assignments and other instruments of transfer, conveyance and assignment shall terminate and be of no further force or effect after the applicable Closing, except to the extent that any such representations or warranties (or any breach thereof) gives rise to a right of specific performance hereunder or gives rise to a defense against any claim or right asserted by the Sellers, or any of them, against the Purchasers, or any of them. Nothing in this Section 11 is intended to limit the obligations of the Sellers to perform any covenants, agreements or obligations under this Agreement, including, but not limited to those covenants, agreements or obligations set forth in Sections 3.8, 3.9, 6.3, 6.4, 6.7, 6.8 and all Section 12, which by their terms contemplate performance after the Closings applicable thereto.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

### **12.1. Disclaimer**

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 4 ABOVE, NO WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE TITLE, MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE ACQUIRED ASSETS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE ACQUIRED ASSETS. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, IT IS THE EXPRESS INTENTION OF THE SELLERS AND PURCHASERS THAT THE ACQUIRED ASSETS SHALL BE CONVEYED AND TRANSFERRED TO PURCHASERS IN THEIR PRESENT CONDITION AND STATE OF REPAIR, "AS IS", "WHERE IS," AND "WITH ALL FAULTS."

### **12.2. Fees and Expenses.**

Except as otherwise specifically provided herein and the Procedures Order, each party shall pay its own fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby.

### **12.3. Attorneys' Fees.**

If any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision hereof is brought against any party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

### **12.4. Notices.**

Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and

received when delivered (by hand, by registered mail, by courier or express delivery service or by telecopier) to the address or telecopier number set forth beneath the name of such party below (or to such other address or telecopier number as such party shall have specified in a written notice given to the other parties hereto):

if to the Sellers: c/o Yipes Communications, Inc.  
114 Sansome Street, 14<sup>th</sup> Floor  
San Francisco, CA 94104  
Attn: Stan Moore, Esq.  
Telephone: (415) 901-2033  
Facsimile: (415) 901-2201

with a copy to: Pachulski, Stang, Ziehl, Young & Jones P.C.  
Three Embarcadero Center, Suite 1020  
San Francisco, CA 94111-5994  
Attn: Henry C. Kevane  
Telephone: 415-263-7000  
Facsimile: 415-263-7010

with a copy to: Murphy, Sheneman, Julian & Rodgers  
101 California Street, Suite 39  
San Francisco, CA 94111  
Attn: Keith McDaniels  
Telephone: 415-398-4700  
Facsimile: 415-421-7879

if to PHX or Holdings: PHX Communications, Inc.  
PHX Holdings, Inc.  
c/o Norwest Venture Partners  
525 University Avenue, Suite 800  
Palo Alto, CA 94301  
Attn: Promod Haque  
Telephone: (650) 321-8000  
Facsimile: (650) 321-8010

with a copy to: Brobeck, Phleger & Harrison LLP  
2000 University Avenue  
Palo Alto, CA 94303  
Attn: G. Larry Engel  
Telephone: 650-331-4331  
Facsimile: 650-331-8110

with a copy to:

Murphy, Sheneman, Julian & Rodgers  
101 California Street, Suite 39  
San Francisco, CA 94111  
Attn: Keith McDaniels  
Telephone: 415-398-4700  
Facsimile: 415-421-7879

**12.5. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

**12.6. Governing Law; Venue; Waiver of Jury Trial.**

This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. Unless otherwise agreed to by the parties in writing, each party to this Agreement irrevocably consents and submits to the jurisdiction of the Court with respect to all claims under or related to this Agreement. PURCHASERS AND EACH OF THE SELLERS IRREVOCABLY WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LEGAL PROCEEDING RELATING TO THIS AGREEMENT.

**12.7. Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Sellers and their respective successors and permitted assigns (if any), including any Chapter 7 or Chapter 11 trustee appointed in Sellers' bankruptcy cases or any of them, subject to Court approval, and Purchasers and their successors and assigns. This Agreement may not be assigned by any party hereto without the prior written consent of the other parties; provided, however, that Purchasers may, without the consent of the Sellers, freely assign any or all of its rights and delegate any or all of its duties under this Agreement, in whole or in part, to any affiliate of Purchasers or to any Co-Bidder (to the extent permitted by Section 1.4); provided further that Purchasers shall thereupon be relieved of any liability under this Agreement as a result of such assignment or delegation.

**12.8. Remedies Cumulative; Specific Performance; Damages.**

(a) The rights and remedies of the parties hereto shall be cumulative (and not alternative).

(b) Each party acknowledges and agrees that the other party would be damaged irreparably in the event any of the provisions of this Agreement was not performed in accordance with its specific terms or otherwise was breached. Accordingly, each party agrees that the other party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and

provisions hereof in any action or proceeding in addition to any other remedy to which it may be entitled, at law or in equity.

(c) The parties agree that:

(i) Prior to the First Closing Date, the sole and exclusive remedies on account of a breach, default under or failure of any representations, warranties, covenants, obligations, or conditions by Sellers or Purchasers shall be as follows: (A) either Sellers or Purchasers may terminate this Agreement in accordance with the terms hereof, (B) in the case of Purchasers, Purchasers may seek damages to the extent permitted under Section 10.2 and (C) either Purchasers or Sellers may require specific performance of this Agreement.

(ii) After the First Closing Date, but prior to the final Closing, the sole and exclusive remedies on account of a breach, default under or failure of representations, warranties, covenants, obligations, or conditions by Sellers or Purchasers related to the purchase or maintenance of Regulated Assets or Regulated Stock, including, without limitation, any breach of the Regulatory Obligations or the Software Arrangements shall be as follows: (A) in the case of Purchasers, the right to receive funds from the Escrow Account as set forth in Section 2.4, (B) in the case of Sellers, the right to assert claims against the Escrow Account as set forth in Section 6.10, (C) in the case of Purchasers, the right to the liquidated damages referenced in Section 6.8(d), including, without limitation, the right to collect such liquidated damages pursuant to the Security Agreement, subject to the limitations on recourse set forth in Section 6.8(d) and (D) in the case of either Sellers or Purchasers, the right to specific performance of this Agreement.

(iii) After the First Closing Date, there shall be no remedies for either Sellers or Purchasers on account of a breach, default under or failure of any representations, warranties, covenants, obligations, or conditions by Sellers or Purchasers not provided for in clause (ii) above.

#### **12.9. Waiver.**

No failure or delay on the part of any party hereto to exercise any right or remedy under this Agreement shall operate as a waiver of such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any other or further exercise thereof. No party shall be deemed to have waived any claim arising out of this Agreement, or any right or remedy under this Agreement, unless the waiver of such claim, right or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; provided, however, that a waiver executed by Yipes Communications shall also constitute a valid waiver by each of the Sellers.

#### **12.10. Amendments.**

This Agreement may not be amended other than by a written instrument duly executed and delivered by a duly authorized officer on behalf of each of the parties hereto; provided, however, that an amendment executed by an authorized officer of Yipes Communications shall bind each of the Sellers.

**12.11. Severability.**

In the event that any provision of this Agreement shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**12.12. Parties in Interest.**

None of the provisions of this Agreement is intended to provide any rights or remedies to any person or entity other than the parties hereto and their respective successors and permitted assigns (if any), and there are no third party beneficiaries.

**12.13. Preparation of this Agreement.**

Each of the parties hereby acknowledges and agrees that (a) Purchasers and the Sellers jointly and equally participated in the drafting of this Agreement and all other agreements contemplated hereby, (b) both Purchasers and the Sellers have been adequately represented and advised by legal counsel with respect to this Agreement and the transactions contemplated hereby and (c) no presumption shall be made that any provision of this Agreement shall be construed against either party by reason of such role in the drafting of this Agreement and any other agreement contemplated hereby.

**12.14. Entire Agreement.**

The Agreement (including schedules and exhibits hereto) sets forth the entire understanding of the parties relating to the subject matter hereof and supersedes all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof.

**12.15. Time of the Essence; Further Assurances.**

The parties hereto acknowledge that time is of the essence to this Agreement. Before, during and after the First Closing Date, Sellers agree to provide all assistance reasonably requested by Purchasers in order to acquire all right, title and interest in the Acquired Assets, and Purchasers agree to provide all assistance reasonably requested by the Sellers to obtain entry of the Approval Order; provided, however, that nothing contained herein shall be deemed to obligate Purchasers to waive any requirement in Section 7 of this Agreement.

**12.16. Plan.**

Except as set forth in Section 1.1(f), without the prior written consent of the party affected, this Agreement may not be modified by the terms of any plan of reorganization proposed by the Sellers and filed in the Court, or otherwise.



**12.17. Schedules.**

The parties acknowledge that as of the execution date of this Agreement, the schedules and exhibits related to this Agreement have not yet been finalized. Accordingly, the terms of any such schedules and exhibits shall not be binding upon either Sellers or Purchasers until such time as Sellers and Purchasers agree that such schedules or exhibits are in final form.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

**PURCHASER:**

**PHX HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**PHX COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SELLERS:**

**YIPES COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**YIPES COMMUNICATIONS GROUP, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**YIPES PROPERTIES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**YIPES TRANSMISSION, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**YIPES TRANSMISSION VIRGINIA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**YIPES WEB SERVICES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

## Yipes Communications Inc., et., al.

## Fiber Contracts

(\$ In thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Fiber	YCI	Con Edison Communications LLC	Dark Fiber IRU Agreement	New York	0
Fiber	YCI	Empire Communications, Inc	Indefeasible Right of Use Agreement (IRU), as amended	Multi-Cities	N/A
Fiber	YCI	Level 3 Communications, LLC	Indefeasible Right of Use Agreement (IRU), as amended	Multi-Cities	0
Fiber	YCI	Metromedia Fiber Network Services, Inc	Fiber Optic Private Network Agreement, as amended	Multi-Cities	0
Fiber	YCI	Platt River Power Authority	Fiber Use License Agreement	Denver	0
Fiber	YCI	Sunesys, Inc	Dark Fiber License Agreement, as amended	Philadelphia	0
Fiber	YCI	The City of Longmont	Fiber Use License Agreement	Denver	0
Fiber	YCI	The City of Palo Alto	License Agreement	Bay Area	N/A
Fiber	YCI	The City of Santa Clara dba Silicon Valley Power	Lease Agreement	Bay Area	173,000
					\$ 173,000

Yipes Communications Inc , et., al.  
**Colocation Contracts**  
(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Colocation	YCI	811 10th Avenue		New York	N/A
Colocation	YCI	ACSI Network Technologies Inc	Colocation Agreement	Multi -Cities	0
Colocation	YCI	Apollo Communication international Group	Co-Location and Service Agreement	Seattle	0
Colocation	YCI	City of Longmont		Denver/Longmont	0
Colocation	YCI	Clear Blue	Multisite Collocation Agreement, as amended	Multi -Cities	0
Colocation	YCI	ColloHouse II, LLC - LayerOne Inc	Master Service Agreement, License Agreement Collocation Room, as amended	Multi -Cities	0
Colocation	YCI	Colo4Dallas		Dallas	0
Colocation	YCI	Comfluent		Dallas	N/A
Colocation	YCI	CyrusOne	Master Service Agreement	Houston	0
Colocation	YCI	espire Communications, Inc	Master Service Agreement	Multi -Cities	0
Colocation	YCI	Equinix, Inc	Master Service Agreement	Multi -Cities	N/A
Colocation	YCI	Exodus		Multi -Cities	0
Colocation	YCI	Genuity Telecom	Master Connectivity Services Agreement	Dallas	N/A
Colocation	YCI	ICG Choice com	Customer Colocation Agreement	Houston	0
Colocation	YCI	InterNAP Network Services Corp	Collocation Space Sublicense	Seattle	N/A
Colocation	YCI	Level 3 Communications, LLC	Fiber Connection Agreement	Multi -Cities	0
Colocation	YCI	Meridian Telesis	Carrier Access Agreement	Philadelphia	N/A
Colocation	YCI	PAIX Telecommunications	Carrier Access Agreement	Multi -Cities	0
Colocation	YCI	Platt River Power Authority		Denver/Ft Collins	N/A
Colocation	YCI	RACO		New York	0
Colocation	YCI	Switch and Data Facilities Company LLC	Master License Agreement, as amended	Multi -Cities	0
Colocation	YCI	Telergy		New York	0
					0

Yipes Communications Inc., et., al.  
Transit Contracts  
(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Transit	YCI	Level 3 Communications, LLC	Master Agreement	Multi -Cities	0
Transit	YCI	Genuity Telecom	Master Agreement	Multi -Cities	0
					<hr/> 0

**Yipes Communications Inc., et., al**  
**Office Lease Contracts**  
(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Office Lease	YCI	EOP Operating Limited Partnership	Lease Agreement	Chicago	\$ 26,886
Office Lease	YCI	WRC Properties, Inc	Lease Agreement	Denver	N/A
Office Lease	YCI	Manrock LLC c/o Brickmann Associates	Lease Agreement	New York	N/A
Office Lease	YCI	Equitable Life Assurance Society of the U S c/o Fox really	Lease Agreement	Philadelphia/Bala Cynwyd	N/A
Office Lease	YCI	CEP-Sansome Investors LLC/SRM Associates	Lease Agreement	Bay Area/San Francisco	N/A
					\$ 26,886

## Yipes Communications Inc., et., al.

## Software License Contracts

(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Software License	YCI	Arcus	Software License Agreement		N/A
Software License	YCI	ARIN IP	Software License Agreement		N/A
Software License	YCI	Concord	Software License Agreement		N/A
Software License	YCI	DNS (Network Solutions)	Software License Agreement		N/A
Software License	YCI	Exchange	Software License Agreement		N/A
Software License	YCI	Jyra	Software License Agreement		N/A
Software License	YCI	Netfinity	Software License Agreement		N/A
Software License	YCI	Network Appliance	Software License Agreement		N/A
Software License	YCI	Oracle (Database)	Software License Agreement		N/A
Software License	YCI	Oracle Financials	Software License Agreement		N/A
Software License	YCI	Portal	Software License Agreement		N/A
Software License	YCI	Remedy	Software License Agreement		N/A
Software License	YCI	Shoreline	Software License Agreement		N/A
Software License	YCI	Siebel	Software License Agreement		N/A
Software License	YCI	SpectraLogic (Tape)	Software License Agreement		N/A
Software License	YCI	Spectrum	Software License Agreement		N/A
Software License	YCI	Sun (Hardware)	Software License Agreement		N/A
Software License	YCI	Truel IP	Software License Agreement		N/A
Software License	YCI	Veritas (Backup)	Software License Agreement		N/A
Software License	YCI	Vertex/Commtax Systems Infrastructure	Software License Agreement		N/A
					<u>0</u>



Yipes Communications Inc., et., al.  
**Equipment Contracts**  
(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Equipment	YCI	Comdisco	Restructured Equipment Agreement	Multi-Cities	N/A
Equipment	YCI	Extreme Networks	Restructured Equipment Agreement	Multi-Cities	N/A
Equipment	YCI	Finova	Restructured Equipment Agreement	Multi-Cities	N/A
Equipment	YCI	Key Equipment Finance	Restructured Equipment Agreement	Multi-Cities	N/A
					<u>0</u>

Yipes Communications Inc., et al  
 Right of Entry Contracts  
 (\$ In thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Right of Entry	YCI	10 & 30 South Wacker, L L C	10 South Wacker Drive, Chicago, IL 60606-7407	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	1114 TrizecHahn Swig, LLC	1114 Avenue of the Americas, New York, NY	Right of Entry Agreement	New York	3,016
Right of Entry	YCI	114 Millennium, Ltd	222 Las Colinas Blvd , Irving, TX 75039	Right of Entry Agreement	Dallas/Irving	1,575
Right of Entry	YCI	12500 Arapahoe LLC	12500 E Arapahoe Road, Englewood CO 80112	Right of Entry Agreement	Denver/Englewood	563
Right of Entry	YCI	1411 TrizecHahn Swig, LLC	1411 Broadway, New York, NY	Right of Entry Agreement	New York	2,313
Right of Entry	YCI	1460 Leesehold TrizecHahn Swig, LLC	1460 Broadway, New York, NY	Right of Entry Agreement	New York	1,398
Right of Entry	YCI	175 Jackson LLC	175 W Jackson Blvd , Chicago, IL 60604	Right of Entry Agreement	Chicago	1,398
Right of Entry	YCI	209 West Jackson, LLC	209 West Jackson Blvd , Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	2601 Elliott, LLC	2601 Elliott Ave, Seattle, WA 98121	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	32 Sixth Avenue Company /Via 32 AA Associates LLC (Rudin)	32 Avenue of the Americas, New York City NY 10013	Right of Entry Agreement	New York	5,418
Right of Entry	YCI	333 West Wacker, LLC	333 W Wacker Drvs, Chicago, IL 60606	Right of Entry Agreement	Chicago	6,713
Right of Entry	YCI	345 Park Avenue L P (Rudin)	345 Park Avenue, New York City, NY 10154	Right of Entry Agreement	Chicago	870
Right of Entry	YCI	35 W Wacker Venture L P	35 West Wacker Dr, Chicago, IL 60601	Right of Entry Agreement	Chicago	1,500
Right of Entry	YCI	355 Lexington LLC (Rudin)	355 Lexington Avenue, New York City, NY 10017	Right of Entry Agreement	New York	102
Right of Entry	YCI	3701 University City Science Center	3701 Market Street	Right of Entry Agreement	Philadelphia	150
Right of Entry	YCI	40 Broad Delaware, Inc	40 Broad Street, New York, NY 10004	Right of Entry Agreement	New York	580
Right of Entry	YCI	40 East 52nd Street L P (Rudin)	40 East 52nd Street, New York City, NY 10022	Right of Entry Agreement	New York	759
Right of Entry	YCI	400 West Broadway LLC	400 Hamilton Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	400 West Broadway LLC	525 B Street	Right of Entry Agreement	San Diego	680
Right of Entry	YCI	400 West Broadway LLC	600 B Street	Right of Entry Agreement	San Diego	1,200
Right of Entry	YCI	401 Properties, LP	401 South LaSalle, Chicago, IL 60605	Right of Entry Agreement	Chicago	350
Right of Entry	YCI	405 Main Land Ltd	405 Main Street, Houston TX 77002	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	4070 Butler Associates, LP	4070 Butler Pike	Right of Entry Agreement	Philadelphia/Plymouth Meeting	81
Right of Entry	YCI	41 Madison LP (Rudin)	41 Madison Avenue, New York City, NY 10010	Right of Entry Agreement	New York	225
Right of Entry	YCI	48 Wall Street, LLC	48 Wall Street, New York, NY	Right of Entry Agreement	New York	457
Right of Entry	YCI	55 Broad Street L P (Rudin)	55 Broad Street, New York City, NY 10463	Right of Entry Agreement	Chicago	26,997
Right of Entry	YCI	55 West Monroe Corporation	55 W Monroe, Chicago, IL	Right of Entry Agreement	Chicago	1,320
Right of Entry	YCI	55 West Wacker Associates, LLC	55 W Wacker Dr Chicago, IL 60601	Right of Entry Agreement	Houston	418
Right of Entry	YCI	5599 San Felipe, Ltd	5599 San Felipe, Houston, TX	Right of Entry Agreement	Houston	301
Right of Entry	YCI	580 Lexco L P (Rudin)	580 Lexington Avenue, New York City, NY 10022	Right of Entry Agreement	New York	3,500
Right of Entry	YCI	801 West Associates LLC	801 W 26th St, New York, NY 10001	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	840-850 Lake Street LLC	840-850 West Lake, Chicago, IL 60661	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	789 Sherman LLC	789 Sherman, Denver, CO 80203	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	80 Pine LLC (Rudin)	80 Pine Street, New York City NY 10005	Right of Entry Agreement	New York	599
Right of Entry	YCI	96 Inverness, LP	96 Inverness, Englewood, CO	Right of Entry Agreement	Denver/Englewood	538
Right of Entry	YCI	Advanced Networking Solutions	420 Dresher Rd	Right of Entry Agreement	Philadelphia/Forsham	N/A
Right of Entry	YCI	Alektia Real Estate Symphony Towers, Inc	750 B Street	Right of Entry Agreement	San Diego	2,000
Right of Entry	YCI	All Property Services, Inc	119 2nd Street, Loveland, CO 80537	Right of Entry Agreement	Denver/Loveland	N/A
Right of Entry	YCI	American Assets, Inc , as Agent for Pacific Sorrento Mesa Holdings, L P and Paco	10145 Pacific Heights Boulevard	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	American Assets, Inc , as Agent for Pacific Stonecrest Holdings, L P	10105 Pacific Heights Boulevard	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	APCAR Investment	1800 Bering Drive Houston, TX 77057	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Arcadia University (fka Beaver College)	50 S. Easton Rd	Right of Entry Agreement	Philadelphia/Glenside	N/A
Right of Entry	YCI	Archon - LWS (910 Travis Street) Real Estate Limited Partnership	910 Travis Street Houston, TX	Right of Entry Agreement	Houston	2,143
Right of Entry	YCI	Archon - PHC Real Estate Limited Partnership	111 Market St and 111 W St John	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Archon - SKW II Real Estate, Limited Partnership	4801 Woodway, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Armada Holdings, LLC	2290 E. Prospect, Fort Collins, CO 80525	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Ashford Loop Associates, LP	1001 S Dairy Ashford Rd , Houston, TX	Right of Entry Agreement	Houston	3,122
Right of Entry	YCI	Baker Hamilton Properties LLC	601 Townsend Street	Right of Entry Agreement	Bay Area/San Francisco	250
Right of Entry	YCI	Bala Plaza, Inc	231 St Asaphs Road	Right of Entry Agreement	Philadelphia/Bala Cynwyd	2,020
Right of Entry	YCI	Bala Plaza, Inc	251 St Asaphs Rd	Right of Entry Agreement	Philadelphia/Bala Cynwyd	N/A
Right of Entry	YCI	Bala Plaza, Inc	333 E City Line Ave	Right of Entry Agreement	Philadelphia/Bala Cynwyd	N/A
Right of Entry	YCI	Bayshore Plaza, Inc	2107 N First St	Right of Entry Agreement	Bay Area/San Jose	1,320
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 100	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 1000	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 1100	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 1200	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 1300	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 1400	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 200	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 300	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 400	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 600	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 700	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 800	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 900	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bayside Business Plaza	2672 Bayshore Parkway Bldg 500	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Bel-Rea Institute	1881 S Dayton St, Denver, CO 80231	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Benaroya Capital Company, LLC	1100 Olive Way, Seattle, WA 98101	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	Benaroya Capital Company, LLC	1730 Minor Avenue, Seattle WA 98101	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	Board of Trustees of the Leland Stanford Junior University	3155 Porter Dr	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Boston Properties	153 E 53rd St , New York, NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Boston Properties	280 Park Ave NY NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Boston Properties	5 Times Sq, NY NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Boston Properties	599 Lexington Ave, NY, NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Boston Properties	875 3rd Ave, NY NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Boston Properties	111 S Independence Mall	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	Bourse Mall Associates LP	1700 Commerce St, Dallas, TX 75201	Right of Entry Agreement	Dallas	300
Right of Entry	YCI	Boxer - 1700 Commerce St LP	505 N Sam Houston Pkwy East, Houston, TX 77060	Right of Entry Agreement	Houston	1,830
Right of Entry	YCI	Boxer - 505-525 Atmum, LP	525 N Sam Houston Pkwy E, Houston, TX 77060	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Boxer - 6420 Richmond Atmum, LP	8420 Richmond Ave , Houston, TX 77057	Right of Entry Agreement	Houston	300
Right of Entry	YCI	Boxer - 723 Main, LP	723 Main St, Houston, TX 77057	Right of Entry Agreement	Houston	300
Right of Entry	YCI	Boxer - Benmar Place, LP	440 Benmar Dr , Houston, TX 77060	Right of Entry Agreement	Houston	300
Right of Entry	YCI	Brandwyne Operating Partnership, L P (VWR International, Inc - tenant)	1338 Enterprise Dr	Right of Entry Agreement	Philadelphia/West Chester	N/A
Right of Entry	YCI	Broadway 52nd LP (Rudin)	1675 Broadway, New York City, NY 10018	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Bryn Mawr College	101 North Memon Ave	Right of Entry Agreement	Philadelphia/Bryn Mawr	N/A
Right of Entry	YCI	C M Capital Corporation	255 University Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	California State Teachers' Retirement System	401 B Street	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	California/EI Camino Income Partners, LLC	490 California Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Campbell Associates, ll	379 Lytton Ave	Right of Entry Agreement	Denver	600
Right of Entry	YCI	Carlyle 17th Street LLC	950 17th Street, Denver, CO 80202	Right of Entry Agreement	Denver/Englewood	1,000
Right of Entry	YCI	CarrAmerica Realty, L P	7400 (E. 7450) E. Caley Ave, Englewood, CO	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	CB Parkway Business Center II, Ltd	6404 International Parkway, Plano, TX 75093	Right of Entry Agreement	Dallas/Plano	N/A
Right of Entry	YCI	CB Parkway Business Center III, Ltd	6500 International Parkway, Plano, TX 75093	Right of Entry Agreement	Dallas/Plano	N/A
Right of Entry	YCI	CB Parkway Business Center IV, Ltd	6504 International Parkway, Plano, TX 75093	Right of Entry Agreement	Dallas/Plano	N/A
Right of Entry	YCI	CB Parkway Business Center V, Ltd	4000 International Parkway, Carrollton, TX 75007	Right of Entry Agreement	Dallas/Carrollton	N/A
Right of Entry	YCI	CB Parkway Business Center, Ltd	6400 International Parkway, Plano, TX 75093	Right of Entry Agreement	Dallas/Plano	N/A
Right of Entry	YCI	CBPBC Phase VIII, LLC	4120 International Parkway, Carrollton, TX 75007	Right of Entry Agreement	Dallas/Carrollton	N/A
Right of Entry	YCI	Centennial BOCES	830 S Lincoln Street, Longmont CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Centrum-Bellevue LLC	8200 E Bellevue - Central, Englewood, CO 80111	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	CEP Investors IX LLC	114 Sansome St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	CGN Real Estate Limited Partnership (Archon)	600 East Las Colinas Blvd , Irving TX	Right of Entry Agreement	Dallas/Irving	3,716
Right of Entry	YCI	Champion Addison One P	15601 Dallas Parkway, Addison, TX 75001	Right of Entry Agreement	Dallas/Addison	5,750
Right of Entry	YCI	Chicago NBC Tower L P	455 N Cityfront Plaza Dr, Chicago, IL 60611	Right of Entry Agreement	Chicago	1,600
Right of Entry	YCI	Chicago Options Exchange Building Corporation	400 South LaSalle Street, Chicago, IL 60605	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Churoad Associates, LP	215 W Church Rd	Right of Entry Agreement	Philadelphia/Blue Bell	N/A
Right of Entry	YCI	Churoad Associates, LP	1400 Union Meeting	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Commonwealth - Fifth Street Properties, LLC	3111 Camino del Rio North	Right of Entry Agreement	San Diego	3,450

Yipes Communications Inc. et al

Right of Entry Contracts  
(\$ in thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Right of Entry	YCI	Commonwealth - FSP - Regents Square LLC	4250 Executive Square	Right of Entry Agreement	San Diego/A La Jolla	N/A
Right of Entry	YCI	Commonwealth - FSP - Regents Square LLC	4275 Executive Square	Right of Entry Agreement	San Diego/A La Jolla	N/A
Right of Entry	YCI	Conestoga Life Assurance Company	401 Parkway Drive	Right of Entry Agreement	Philadelphia/Broomall	N/A
Right of Entry	YCI	Constitution Partners LP	325 Chestnut St	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	Crescent	200 Crescent Ct	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	5080 Spectrum Drive	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	4510 Executive Dr	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	4520 Executive Dr	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	3773 Cherry Creek Dr N Denver, CO	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	707 17th Street, Denver, CO	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	5050 Quorum Drive, Addison, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	5065 Keller Springs Rd, Addison, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	5067 Keller Springs Rd Addison, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	100 Crescent Ct, Dallas, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	14001 Dallas Pkwy, Dallas, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	1445 Ross Ave, Dallas, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	14951 Dallas Parkway, Dallas, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crescent	4 Greenway Plaza, Houston, TX	Right of Entry Agreement	Dallas/Addison	N/A
Right of Entry	YCI	Crescent	5 Greenway Plaza, Houston, TX	Right of Entry Agreement	Dallas/Addison	N/A
Right of Entry	YCI	Crescent	8 Greenway Plaza, Houston, TX	Right of Entry Agreement	Dallas/Addison	N/A
Right of Entry	YCI	Crescent	9 Greenway Plaza, Houston, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	909 Fannin, Houston, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	125 E John Carpenter Fwy, Irving, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	1401 Rochelle Blvd, Irving, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	1420 Rochelle Blvd, Irving, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	1500 Rochelle Blvd, Irving, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	1510 Rochelle Blvd, Irving, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	1520 Rochelle Blvd, Irving, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Crescent	5801 N Macarthur Blvd, Irving, TX	Right of Entry Agreement	Dallas/Richardson	N/A
Right of Entry	YCI	Crescent	5805 N Macarthur Blvd, Irving, TX	Right of Entry Agreement	Dallas/Richardson	N/A
Right of Entry	YCI	Crescent	2100 Lakeside Blvd, Richardson, TX	Right of Entry Agreement	Dallas/Richardson	N/A
Right of Entry	YCI	Crescent	2150 Lakeside Blvd, Richardson, TX	Right of Entry Agreement	Dallas/Richardson	N/A
Right of Entry	YCI	Crescent	2400 Lakeside Blvd, Richardson, TX	Right of Entry Agreement	Dallas/Richardson	N/A
Right of Entry	YCI	Crescent	16415 Addison Rd, Dallas, TX	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Crescent	1717 Main Street, Dallas, TX	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Crescent	2501 Cedar Springs Rd, Dallas, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	2777 N Stemmons Fwy, Dallas, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	300 Crescent Ct	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	3500 Maple Ave, Dallas, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	500 Crescent Ct, Dallas, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	1 Greenway Plaza, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	11 E Greenway Plaza Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	12 Greenway Plaza, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	1221 and 1331 Lamar, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	1221 McKinney St, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	1800 West Loop S, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	1980 Post Oak Blvd, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	1990 Post Oak Blvd, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	2 Greenway Plaza, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	200 Westlake Park Blvd, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	2000 Post Oak Blvd, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	3 Greenway Plaza, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	3600 Buffalo Speedway, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Crescent	2425 N Central Expwy, Richardson, TX	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Crescent	2435 N Central Expwy, Richardson, TX	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Crescent Real Estate Funding VIII, LP	3333 Lee Parkway, Dallas, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Crystal Gardens, LLC	3307 S College Avenue, Fort Collins, CO 80525	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	C-W #11 Limited Partnership c/o Crescent	2001 Ross Ave, Dallas, TX	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Cypress Communications, Inc	275 Battery St, Embarcadero Center West	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Dallas Main LP	901 Main Street, Dallas, TX 75202	Right of Entry Agreement	Dallas	2,400
Right of Entry	YCI	Dallas RPFIV Campbell Centre Associates, LP, Trammell Crow	8150 North Central Expressway, Dallas, TX 75206	Right of Entry Agreement	Dallas	650
Right of Entry	YCI	DEGI Deutsche Gesellschaft für Immobilienfonds mbH	67 Wall Street New York, NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Denver Place Associates LP	999 Eighteenth Street, Denver, CO	Right of Entry Agreement	Denver	2,108
Right of Entry	YCI	Denver Place Associates LP	900 Nineteenth Street, Denver, CO	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Denver Siefler Associates LP	1999 Eighteenth Street, Denver, CO	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Drexel University	3240 Market Street	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	Duke Realty Limited Partnership	1400 Opus Place, Chicago, IL 60515	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Duke Realty Limited Partnership	1411 Opus Place, Chicago, IL 60515	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Duke-Weeks	1431 Opus Pl	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Duke-Weeks	3333 Warrenville Rd	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Duke-Weeks	2220 Chemssearch Blvd	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Duke-Weeks	5556 Tennyson Pkwy	Right of Entry Agreement	Dallas/Plano	N/A
Right of Entry	YCI	Duke-Weeks	5560 Tennyson Pkwy	Right of Entry Agreement	Dallas/Plano	N/A
Right of Entry	YCI	Dunwoody Associates LP	1475 Dunwoody Dr.	Right of Entry Agreement	Philadelphia/West Chester	N/A
Right of Entry	YCI	E Street Communications	3004 S Fairfax St, Denver, CO 80222	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Electrive Associates, L P	723 Electronic Drive	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	EOP Market Street Limited Partnership	1700 Market Street	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	EOP-1601 Market Street Limited Partnership	1601 Market Street	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	EOP-410 Building, L L C	410 17th Street, Denver, CO 80202-4402	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	EOP-8080 Limited Partnership	8080 North Central Expressway, Dallas, TX 75206-183	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	EOP-Central Park Plaza, L L C	2680 Zanker Road Central Park Plaza	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	EOP-Colonnade of Dallas Limited Partnership	15301 Dallas Parkway, Addison, TX 75001-4637	Right of Entry Agreement	Dallas/Addison	N/A
Right of Entry	YCI	EOP-Colonnade of Dallas Limited Partnership	15303 Dallas Parkway, Addison, TX 75001-4677	Right of Entry Agreement	Dallas/Addison	N/A
Right of Entry	YCI	EOP-Colonnade of Dallas Limited Partnership	15305 Dallas Parkway, Addison, TX 75001-4637	Right of Entry Agreement	Dallas/Addison	N/A
Right of Entry	YCI	EOP-Metropolitan II, L L C	4610 South Ulster Street, Denver, CO 80237-4321	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	EOP-Northwest Properties, L L C	1111 Third Avenue, Seattle, WA 98101-3292	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	EOP-Northwest Properties, L L C	999 Third Avenue, Seattle, WA 98104-4019	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	EOP-One Market, L L C	One Market Place, Spear Street Tower, 60 Spear Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	EOP-PALO ALTO SQUARE, LLC	3000 El Camino Real	Right of Entry Agreement	Bay Area/Palo Alto	5,658
Right of Entry	YCI	EOP-Santa Clara Office Center, L L C	2620 Augustine Drive	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	EOP-Santa Clara Office Center, L L C	2700 Augustine Drive	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	EOP-Santa Clara Office Center, L L C	3333 Bowers Avenue	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	EOP The Concourse, L L C	226 Airport Parkway	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	EOP-Westchase Limited Partnership	2500 City West Boulevard, Houston TX 77042-3000	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Equitable Life Assurance Society of the United States	401 City Ave	Right of Entry Agreement	Philadelphia/Bala Cynwyd	4,750
Right of Entry	YCI	Equity	1 Market St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Equity	60 Spear St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Equity	3001 Tasman Drive	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Equity	3003 Tasman Drive	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Equity	3032 Bunker Hill Lane	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Equity	3052 Bunker Hill Lane	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Equity	3101 Tasman Drive	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Equity	5101 Patrick Henry Drive	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Equity	5104 Old Knolls Drive	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Equity	1801 S Broadway	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Equity	4600 S Ulster St	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Equity	7800 E Union Ave	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Equity	5445 DTC Parkway	Right of Entry Agreement	Chicago	N/A

Yipac Communications Inc., et al  
 Right of Entry Contracts  
 (\$ in thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Propos- Amt
Right of Entry	YCI	Equity	5575 DTC Parkway	Right of Entry Agreement	Dallas	
Right of Entry	YCI	Equity	7400 E Orchard Road	Right of Entry Agreement	Dallas	
Right of Entry	YCI	Equity	1 N Franklin St	Right of Entry Agreement	Denver	
Right of Entry	YCI	Equity	1700 E Higgins Rd	Right of Entry Agreement	Denver	
Right of Entry	YCI	Equity	8600 W Bryn Mawr Ave	Right of Entry Agreement	Denver	
Right of Entry	YCI	Equity	8700 W Bryn Mawr Ave	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	Equity	2308 Sprinklake Rd	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	Equity	8115 Preston Rd	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	Equity	1100 2nd Ave	Right of Entry Agreement	Seattle	
Right of Entry	YCI	Equity - 10 & 30 South Wacker L L C	30 South Wacker Drive, Chicago, IL 60606-7407	Right of Entry Agreement	Chicago	
Right of Entry	YCI	Equity - EOP Operating Limited Partnership	20 North Wacker Drive, Chicago, IL 60606-2805	Right of Entry Agreement	Chicago	
Right of Entry	YCI	Equity - EOP-161 Clark Street Limited Partnership	161 North Clark Street, Chicago, IL 60601-3205	Right of Entry Agreement	Chicago	
Right of Entry	YCI	Everest Broadband	25 Broadway, New York, New York	Right of Entry Agreement	New York	
Right of Entry	YCI	FDS Telecommunications, L P	2020 Live Oak, Suite 100, Dallas, TX 75201	Right of Entry Agreement	Dallas	
Right of Entry	YCI	FDS Telecommunications, L P	1500 Champs, Suite 110, Denver, CO 80202	Right of Entry Agreement	Denver	
Right of Entry	YCI	Federal Reserve Bank of Chicago	230 South LaSalle, Chicago	Right of Entry Agreement	Chicago	
Right of Entry	YCI	Federal Reserve Bank of Dallas, Dallas, Texas	101 Market St	Right of Entry Agreement	Bay Area/San Francisco	
Right of Entry	YCI	FiberNet Equal Access, LLC	555 Market St	Right of Entry Agreement	Bay Area/San Francisco	
Right of Entry	YCI	FiberNet Equal Access, LLC	71 Stevenson	Right of Entry Agreement	Bay Area/San Francisco	
Right of Entry	YCI	FiberNet Equal Access, LLC	1700 Broadway - aka - 2 United Bank Center, Denver, CO	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	2000 South Colorado Blvd Tower I, Denver, CO	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	2000 South Colorado Blvd Tower II, Denver, CO	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	10 Inverness Drive East, Englewood, CO	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	5889 South Greenwood Plaza, Englewood, CO	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	6 Inverness Drive East Englewood, CO	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	8 Inverness Drive East, Englewood, CO	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	141 W Jackson Blvd Annex	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	141 W Jackson Blvd, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	180 N LaSalle Ave, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	20 N Clark Street, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	20 W Kinzie Street, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	2000 York Brook	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	208 South LaSalle, #2200, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	230 W Monroe, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	311 S Wacker Drive, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	33 N Dearborn, #1620, Chicago, IL	Right of Entry Agreement	Chicago	
Right of Entry	YCI	FiberNet Equal Access, LLC	33 West Monroe, Chicago, IL	Right of Entry Agreement	Chicago/Rolling Meadows	
Right of Entry	YCI	FiberNet Equal Access, LLC	330 North Wabash Ave., Chicago, IL	Right of Entry Agreement	Chicago/Rolling Meadows	
Right of Entry	YCI	FiberNet Equal Access, LLC	4343 Commerce Court III	Right of Entry Agreement	Chicago/Rolling Meadows	
Right of Entry	YCI	FiberNet Equal Access, LLC	525 Monroe Street, Chicago, IL	Right of Entry Agreement	Chicago/Rosemont	
Right of Entry	YCI	FiberNet Equal Access, LLC	55 E Monroe Street, Chicago, IL	Right of Entry Agreement	Chicago/Rosemont	
Right of Entry	YCI	FiberNet Equal Access, LLC	676 St. Clair Street, Chicago, IL	Right of Entry Agreement	Chicago/Schaumburg	
Right of Entry	YCI	FiberNet Equal Access, LLC	77 W Wacker Drive, #730 Chicago IL	Right of Entry Agreement	Dallas	
Right of Entry	YCI	FiberNet Equal Access, LLC	1701 Golf Road-Commercum, Rollingmeadows IL	Right of Entry Agreement	Dallas	
Right of Entry	YCI	FiberNet Equal Access, LLC	300 Park Avenue, NY, NY	Right of Entry Agreement	Dallas/Irving	
Right of Entry	YCI	FiberNet Equal Access, LLC	375 Hudson Street, NY, NY	Right of Entry Agreement	Dallas/Irving	
Right of Entry	YCI	FiberNet Equal Access, LLC	375 Park Avenue, NY, NY	Right of Entry Agreement	Dallas/Irving	
Right of Entry	YCI	FiberNet Equal Access, LLC	405 Lexington Avenue, NY, NY	Right of Entry Agreement	Dallas/Irving	
Right of Entry	YCI	FiberNet Equal Access, LLC	523 Madison Ave, NY, NY	Right of Entry Agreement	Denver	
Right of Entry	YCI	FiberNet Equal Access, LLC	1701 Golf Road-Tower 2, Rollingmeadows IL	Right of Entry Agreement	Denver	
Right of Entry	YCI	FiberNet Equal Access, LLC	1701 Golf Road-Tower 3, Rollingmeadows IL	Right of Entry Agreement	Denver	
Right of Entry	YCI	FiberNet Equal Access, LLC	6400 Shafer Court, Rosemont IL	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	FiberNet Equal Access, LLC	1700 E Golf Road # 1100, Schaumburg, IL	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	FiberNet Equal Access, LLC	1 Gateway Center Newark NJ	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	FiberNet Equal Access, LLC	100 Broadway, NY, NY	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	FiberNet Equal Access, LLC	122 East 42nd Street, NY, NY	Right of Entry Agreement	Houston	
Right of Entry	YCI	FiberNet Equal Access, LLC	1301 Ave of the Americas, NY, NY	Right of Entry Agreement	Houston	
Right of Entry	YCI	FiberNet Equal Access, LLC	150 E 42nd St, NY, NY	Right of Entry Agreement	Houston	
Right of Entry	YCI	FiberNet Equal Access, LLC	17 State Street, NY, NY	Right of Entry Agreement	Houston	
Right of Entry	YCI	FiberNet Equal Access, LLC	1700 Broadway	Right of Entry Agreement	Houston	
Right of Entry	YCI	FiberNet Equal Access, LLC	195 Broadway, NY, NY	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	650 Madison Ave, NY, NY	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	656 3rd Ave, NY, NY	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	656 Fifth Avenue, NY, NY	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	455 S Gulph Road	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	12000 Ford Road, Dallas, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	12100 Ford Road, Dallas, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	1700 Pacific Avenue, Dallas, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	1775 Street James Place, Houston, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	750 Bering Park, Houston, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	800 Bering Drive, Houston TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	900 Thread Needle Street, Houston, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	950 Echo Lane, Houston, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	1333 Corporate Park Drive, Irving TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	5201 N O'Connor Blvd, Irving, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	5205 N O'Connor Blvd, Irving, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	5215 N O'Connor Blvd, Irving, TX	Right of Entry Agreement	New York	
Right of Entry	YCI	FiberNet Equal Access, LLC	5221 N O'Connor Blvd, Irving, TX	Right of Entry Agreement	Philadelphia/King of Prussia	
Right of Entry	YCI	FiberNet Equal Access, LLC	1700 Lincoln St, Denver, CO 80203	Right of Entry Agreement	Denver	
Right of Entry	YCI	Fifth Street Properties - Commonwealth	841 Lexington Avenue, New York City, NY 10022	Right of Entry Agreement	New York	
Right of Entry	YCI	First Lexington Corporation (Rudin)	3200 Scott Blvd	Right of Entry Agreement	Bay Area/San Clara	
Right of Entry	YCI	Five Tower Bridge Associates	300 Barr Harbor Drive	Right of Entry Agreement	Philadelphia/West Conshohocken	
Right of Entry	YCI	Flescher Smythe - Glenarm 1800 LLC	1800 Glenarm, Denver, CO 80202	Right of Entry Agreement	Denver	
Right of Entry	YCI	Flescher Smythe - RCN 2000 LLC	2000 S Colorado Annex Building, Denver, CO 80222	Right of Entry Agreement	Denver	
Right of Entry	YCI	FMOB Associates	900 West Valley Road	Right of Entry Agreement	Philadelphia/Wayne	
Right of Entry	YCI	Fort Collins Coloradoan	1212 Riverside Ave., Ft Collins, CO 80524	Right of Entry Agreement	Denver/FL Collins	
Right of Entry	YCI	Fort Collins Plaza, LLC	3665 JFK Parkway, Ft Collins, CO	Right of Entry Agreement	Denver/FL Collins	
Right of Entry	YCI	Four Embarcadero Center Venture - Boston Properties	4 Embarcadero Center	Right of Entry Agreement	Bay Area/San Francisco	
Right of Entry	YCI	Fox Commercial Real Estate Services	590 Lancaster Ave	Right of Entry Agreement	Philadelphia/Mahwah	
Right of Entry	YCI	Franco Carrubba	2345 Yale Street	Right of Entry Agreement	Bay Area/Palo Alto	
Right of Entry	YCI	Frankenberger/Guthrie, LLC	1451 Research Park Drive	Right of Entry Agreement	San Diego/Riverside	
Right of Entry	YCI	Gall II, LP	1500 N Stemmes Fwy, Dallas TX 75247	Right of Entry Agreement	Dallas	
Right of Entry	YCI	Gardner, Carton & Douglas	321 N Clark Street 34th Fl Chicago, IL 60610-4755	Right of Entry Agreement	Chicago	
Right of Entry	YCI	Garland Office LLC & L J Sheridan	111 N Wabash, Chicago, IL 60602	Right of Entry Agreement	Chicago	
Right of Entry	YCI	Gateway Canyon, Inc	8101 E Prentice Ave Englewood, CO	Right of Entry Agreement	Denver/Englewood	
Right of Entry	YCI	Genecor International Inc	925 Page Mill Road	Right of Entry Agreement	Bay Area/Palo Alto	
Right of Entry	YCI	Golden Gate University	536 Mission Street	Right of Entry Agreement	Bay Area/San Francisco	
Right of Entry	YCI	Google, Inc.	2400 Bayshore Pkwy	Right of Entry Agreement	Bay Area/Mountain View	
Right of Entry	YCI	Great Lakes REIT, LP	1600 Golf Road Rolling Meadows, IL	Right of Entry Agreement	Chicago/Rolling Meadows	
Right of Entry	YCI	Hammer Company, LP & Clise, Inc	2033 Sixth Avenue, Seattle, WA 98121	Right of Entry Agreement	Seattle	
Right of Entry	YCI	Harbor Investment Partners c/o UBS Realty Investors LLC	1810 Embarcadero	Right of Entry Agreement	Bay Area/Palo Alto	
Right of Entry	YCI	Harold D Rider & Associates, a Division of Realty & Mortgage Company as an ag	300 West Adams, Chicago, IL 60606	Right of Entry Agreement	Chicago	
Right of Entry	YCI	Haverford College	370 Lancaster Ave	Right of Entry Agreement	Philadelphia/Haverford	
Right of Entry	YCI	Hawthorne Plaza, Ltd	75 Hawthorne Street	Right of Entry Agreement	Bay Area/San Francisco	
Right of Entry	YCI	Hercules Industries	4715 Innovation Drive, Fort Collins, CO 80525	Right of Entry Agreement	Denver/FL Collins	
Right of Entry	YCI	Hines	13727 Noel Rd	Right of Entry Agreement	Dallas	
Right of Entry	YCI	Hines	3040 Post Oak Blvd Suite 1230	Right of Entry Agreement	Houston	

Vipac Communications Inc. et al  
 Right of Entry Contracts  
 (\$ in thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Right of Entry	YCI	Hines	425 4th Ave	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	Hines - Greenspoint Plaza Limited Partnership	16655 Northchase Dr., Houston, TX	Right of Entry Agreement	Houston	420
Right of Entry	YCI	Hines Interests LP/ 700 Louisiana Limited	700 Louisiana, Houston, TX 77002	Right of Entry Agreement	Houston	2,400
Right of Entry	YCI	Hines/BBO	450 Lexington Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Hines/BBO	750 7th Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Honorway Investment Corp	386 Market St	Right of Entry Agreement	Bay Area/San Francisco	2,777
Right of Entry	YCI	HOOBIE, LP	806 Main St., Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Houston Office 88 Inc	5333 Westheimer, Houston, TX	Right of Entry Agreement	Houston	6,175
Right of Entry	YCI	Hub Properties Trust	960 Harvest Drive	Right of Entry Agreement	Philadelphia/Blue Bell	200
Right of Entry	YCI	Hudson Associates (2000) LLC	1600 Stout, Denver, CO 80202	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Inno Design	577 College Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Inno Design	599 College Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Intermet Communications Company	15 Inverness Way East Bldg A, Englewood, CO 80112	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	Isiar Financial, Inc a subsidiary of TriNet Essential Facilities XXVI	1861 Page Mill Rd	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	J.P. Morgan Investment Management, on behalf of Seventeenth Street Plaza Real	1225 17th St., Denver CO	Right of Entry Agreement	Denver	2,292
Right of Entry	YCI	KCSOI	501 W Broadway	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Kiroy Realty Corporation	6290 Sequoia Drive	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Kiroy Realty Corporation	6055 Lusk Blvd	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	La Salle University	1900 W Olney Ave	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	LaSalle Bank National Associates f/k/a LaSalle National Bank	209 S LaSalle, Chicago, IL	Right of Entry Agreement	Chicago	600
Right of Entry	YCI	Lee Park Investors, LP	1100 Hector St	Right of Entry Agreement	Philadelphia/Conshohocken	N/A
Right of Entry	YCI	Liberty Property Limited Partnership	5 Country View Road	Right of Entry Agreement	Philadelphia/Malvern	N/A
Right of Entry	YCI	Liberty Property Limited Partnership	1200 Liberty Ridge Drive	Right of Entry Agreement	Philadelphia/Wayne	N/A
Right of Entry	YCI	Liberty Property, LP	507 Prudential Road	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	Liberty Property, LP	700 Dresher Road	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	Lincoln-Carlyle Hartford LLC	150 S Wacker Dr., Chicago, IL 60606	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Lincoln-Carlyle Hartford LLC	100 S Wacker Dr., Chicago, IL 60606	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Lincoln-Carlyle Illinois Center LLC	111 E Wacker Drive, Chicago IL 60601	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Live Wire Networks, Inc	1020 15th Street, Denver, CO 80202	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Loft Development Corporation	130 S Jefferson Street, Chicago, IL 60661	Right of Entry Agreement	Chicago	300
Right of Entry	YCI	Lowes Northwest Investors Properties I, LLC	1551 Eastlake Avenue East, Seattle, WA	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	LWS II Real Estate Limited Partnership	10333 Richmond Avenue, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	LWS Real Estate Limited Partnership	300 S Wacker Dr., Chicago, IL	Right of Entry Agreement	Chicago	3,689
Right of Entry	YCI	Mack-Cah	1000 Westlakes Dr	Right of Entry Agreement	Dallas/EUless	N/A
Right of Entry	YCI	Mack-Cah	8181 E Tufts Ave	Right of Entry Agreement	Denver	500
Right of Entry	YCI	Mack-Cah	5975 S Quebec St	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	Mack-Cah	1055 Westlakes Dr	Right of Entry Agreement	Philadelphia/Berwyn	N/A
Right of Entry	YCI	Mack-Cah	1205 Westlakes Drive	Right of Entry Agreement	Philadelphia/Berwyn	N/A
Right of Entry	YCI	Mack-Cah	1235 Westlake Drive	Right of Entry Agreement	Philadelphia/Berwyn	N/A
Right of Entry	YCI	Mack-Cah	502 Germantown Pike	Right of Entry Agreement	Philadelphia/Berwyn	N/A
Right of Entry	YCI	Mack-Cah	150 Westpark Way	Right of Entry Agreement	Philadelphia/Plymouth Meeting	N/A
Right of Entry	YCI	Mack-Cah / Cal-Tree Realty Associates LP	1400 N. Providence Rd	Right of Entry Agreement	Philadelphia/Media	1,000
Right of Entry	YCI	Mack-Cah / G & G Marco	201 Third St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Mack-Cah / Mack-Cah Inverness	67 Inverness Drive East, Englewood, CO 80112	Right of Entry Agreement	Denver/Englewood	1,500
Right of Entry	YCI	Mack-Cah Realty LP	5350 S Roslyn St, Englewood, CO 80111	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	Mack-Cah Realty LP	384 Inverness Drive South, Englewood, CO 80112	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	Mack-Cah Realty LP	400 Inverness Drive South, Englewood, CO 80112	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	Mack-Cah Realty LP / 795 Folsom Realty Associates LP	795 Folsom St	Right of Entry Agreement	Bay Area/San Francisco	500
Right of Entry	YCI	Mack-Cah Realty LP / Phelan Realty Associates, LP	760 Market Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Mack-Cah Texas Property LP	3030 LBJ Freeway, Dallas TX 75234	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Mack-Cah Texas Property LP	3100 Monticello, Dallas, TX 75205	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Mack-Cah Texas Property LP	10497 Town & Country Way, Houston, TX 77024	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Mack-Cah Texas Property LP	1717 St James Place, Suite 550, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Mack-Cah Texas Property LP	1770 St James Place, Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Mack-Cah Texas Property LP	5300 Memorial, Houston, TX 77014	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Mack-Cah-R-Company No 1 LP	1150 Plymouth Meeting Mall, 502 Germantown Pike	Right of Entry Agreement	Philadelphia/Plymouth Meeting	500
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	11 E Adams St., Chicago, IL 60603	Right of Entry Agreement	Chicago	1,275
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	120 W Madison St., Chicago, IL 60602	Right of Entry Agreement	Chicago	425
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	160 N Wabash Ave., Chicago, IL 60601	Right of Entry Agreement	Chicago	425
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	200 E Jackson Blvd., Chicago, IL 60604	Right of Entry Agreement	Chicago	1,275
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	200 W Jackson Blvd., Chicago, IL 60606	Right of Entry Agreement	Chicago	4,675
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	205 W Randolph St., Chicago, IL 60606	Right of Entry Agreement	Chicago	425
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	216 W Jackson Blvd Chicago, IL 60606	Right of Entry Agreement	Chicago	1,275
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	223 W Jackson Blvd Chicago, IL 60606	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	28 E Jackson Blvd., Chicago, IL 60603	Right of Entry Agreement	Chicago	1,275
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	309 W Washington, Chicago, IL 60606	Right of Entry Agreement	Chicago	425
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	318 W Adams St., Chicago, IL 60606	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	34 N LaSalle St., Chicago, IL 60602	Right of Entry Agreement	Chicago	850
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	8 S Michigan Ave., Chicago, IL 60603	Right of Entry Agreement	Chicago	425
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	1111 Plaza Dr., Schaumburg, IL 60173	Right of Entry Agreement	Chicago/Schaumburg	N/A
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	1701 E Woodfield Rd., Schaumburg, IL 60173	Right of Entry Agreement	Chicago/Schaumburg	N/A
Right of Entry	YCI	Marc Realty, Inc (one contract for 16 bldgs)	999 Plaza Dr., Schaumburg, IL 60173	Right of Entry Agreement	Chicago/Schaumburg	N/A
Right of Entry	YCI	Marc Goodman & Associates	550 W Jackson, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Market & Second, Inc	595 Market St., Suite 2210	Right of Entry Agreement	Bay Area/San Francisco	1,000
Right of Entry	YCI	Market Square Lofts Condominium Association	181 W Harrison, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Marlborough Square Equities LLC	1600 Brough 2050 Chicago Ave	Right of Entry Agreement	San Diego/Riverside	N/A
Right of Entry	YCI	Masonic Hall/BBO	71 West 23rd St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	McCandless Limited	1001 Ellwell Court	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Mile High Properties	1050 17th Street, Denver, CO	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Mills Building LLC	1220 Montgomery St, Suite 1050	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Morriam/BBO	460 Park Ave So	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Morriam/BBO	60 Madison Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Morriam/BBO	90 Wilkam St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Monroe & Adams Delaware, Inc	222 W Adams, Chicago, IL 60605	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Monroe & Adams Delaware, Inc	227 W. Monroe, Chicago, IL 60606	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Monroe/Onton, LLC	555 W Monroe, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Nestegg Service Provider	2627 Redwing Rd., #360, Ft. Collins, CO	Right of Entry Agreement	Denver/FL Collins	N/A
Right of Entry	YCI	New 24 Associates, LP	246 First Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	New Montgomery Associates LLC	74 New Montgomery St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Newmark/BBO	1430 Broadway	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	1501 Broadway	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	1560 Broadway	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	200 Varck St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	230 5th Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	230 W 41st St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	247 W 37th St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	307 W 36th St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	322 8th Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	33 Irving Place	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	330 7th Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	330 W 42nd St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	40 Worth St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	505 8th Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	515 Madison Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	520 8th Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	594 Broadway	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	630 9th Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Newmark/BBO	740 Broadway	Right of Entry Agreement	New York	N/A

Yipes Communications Inc., et., al  
 Right of Entry Contracts  
 (\$ in thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Right of Entry	YCI	NLS Chicago, LLC	203 North LaSalle St Chicago, IL 60601	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Office One, Ltd	2625 Reowing Rd , Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Office One, Ltd	2625 Reowing Rd , Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Office One, Ltd	333 W Drake Rd , Ft Collins, CO 80526	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Office One, Ltd	343 W Drake Rd , Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	One Bush I Delaware, Inc	One Bush Street	Right of Entry Agreement	Bay Area/San Francisco	740
Right of Entry	YCI	One Financial Place, L P	440 South LaSalle Street, Chicago IL	Right of Entry Agreement	Chicago	2,678
Right of Entry	YCI	One Whitehall LP (Rudin)	One Whitehall Street New York, NY 10004	Right of Entry Agreement	New York	420
Right of Entry	YCI	O'Neill Industrial Center, LP	1210 Stanbridge St	Right of Entry Agreement	Philadelphia/Norristown	247
Right of Entry	YCI	Orchard Scott Investors	3033 Scott Boulevard	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	OSEB Associates, L P	1900 Market Street	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	P & S, Ltd , Partnership	111 West Jackson Blvd , Chicago, IL 60604	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Pacific Realty & Management, Inc	833 W Chicago, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Palo Alto Medical Foundation	795 El Camino Real	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Park Plaza Associates	3101 Park Blvd	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Park Plaza Limited Partnership	215 Shuman Blvd, Naperville, IL	Right of Entry Agreement	Chicago/Naperville	2,123
Right of Entry	YCI	Parkway Properties, LP	233 North Michigan Avenue, Chicago, IL	Right of Entry Agreement	Chicago	5,330
Right of Entry	YCI	Peninsula Land and Capitol	2170 Staunton Court	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Peninsula Land and Capitol	550 College Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Pennsylvania Business Delaware, Inc	155 West 56th Street, New York, NY 10019	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Pera / Jones Lang La Salle	8055 E Tufts Ave, Denver, CO 80237	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	PHC Real Estate Limited Partnership	163 West Santa Clara	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Pike Street Delaware, Inc	550 Pike Tower, Seattle WA 98101	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	Poudre School District	10000 E Locust Street, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	1125 Bennett School Rd , Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	1320 E Stuart Street, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	1400 Stover Street, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	2101 S Taft Hill Rd , Ft Collins CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	220 N Grant Ave , Ft Collins	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	223 S Shields Street, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	2407 La Porte, Ft Collins CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	330 E Laurel Street, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	3400 Lamkin Way, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	3401 Auntie Stone st , Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	4100 Cambou Drive, Ft Collins CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	4101 Seneca Street, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	4201 Seneca Street, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	4400 McHenry Ave , Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	4800 Hunsdale Drive, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Poudre School District	4901 Corbett Drive, Ft Collins, CO	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Prairie Land, LLC	2121 Miller Drive, Longmont, CO	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Prairie Land, LLC	2452 Clover Basin Drive, Longmont CO	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Preplance Limited Partnership	5910 N Central Expressway, Dallas, TX	Right of Entry Agreement	Dallas	2,907
Right of Entry	YCI	Preston Commons Limited Partnership	8111 Preston Road, Dallas, TX 75234-5850	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Preston Commons Limited Partnership	8117 Preston Road, Dallas, TX 75225-6330	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Prudential Insurance Company of America	7100 E. Bellevue Ave , Greenwood Village, CO	Right of Entry Agreement	Denver/Greenwood Village	N/A
Right of Entry	YCI	Publity, Incorporated corporation	53 W Jackson Blvd , Chicago, Ill	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	PWREF / MCC - China Basin LLC	185 Berry Street	Right of Entry Agreement	Bay Area/San Francisco	2,000
Right of Entry	YCI	Queen Anne Square, LLC, by Sebey Corporation	200 West Mercer	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	Queen Anne Square, LLC, by Sebey Corporation	220 West Mercer, Seattle, WA 98119	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	RAK Main Place Associates L P	1201 Main Street, Suite 100, Dallas, TX 75202	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	RCPI, Landmark Properties	1270 Avenue of the Americas New York, NY 10020	Right of Entry Agreement	New York	4,422
Right of Entry	YCI	RE/MAX First Associates	4703 A Board Walk, Fort Collins	Right of Entry Agreement	Denver/Ft Collins	N/A
Right of Entry	YCI	Rector Trinity Associates LLC	2 Rector Street, New York, NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Rodin Market Partners	2000 Hamilton St	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	Roger Fields	925 & 977 Commercial Street	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Rolling Meadows Delaware, Inc	2850 W Golf Road, Rolling Meadows IL 60008	Right of Entry Agreement	Chicago/Rolling Meadows	N/A
Right of Entry	YCI	Rouse / Chamberlin, LTD a/n/a Advanced Web Hosting & Design	422 Exton Commons	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Rubenstein	1 Logan Square	Right of Entry Agreement	Philadelphia	32,500
Right of Entry	YCI	Rubenstein	10 Penn Center	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	Rubenstein	2 Logan Square	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	Rubenstein	2000 Market	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	Rubenstein	100 Matsonford Bldg Rd - 1	Right of Entry Agreement	Philadelphia/Radnor	N/A
Right of Entry	YCI	Rubenstein	100 Matsonford Bldg Rd - 2	Right of Entry Agreement	Philadelphia/Radnor	N/A
Right of Entry	YCI	Rubenstein	100 Matsonford Bldg Rd - 3	Right of Entry Agreement	Philadelphia/Radnor	N/A
Right of Entry	YCI	Rubenstein	100 Matsonford Bldg Rd - 4	Right of Entry Agreement	Philadelphia/Radnor	N/A
Right of Entry	YCI	Rubenstein	100 Matsonford Bldg Rd - 5	Right of Entry Agreement	Philadelphia/Radnor	N/A
Right of Entry	YCI	Rubenstein	201 King of Prussia Rd	Right of Entry Agreement	Philadelphia/Radnor	N/A
Right of Entry	YCI	Sage Realty Corporation	320 West 13th Street, New York, NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1020 4th Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1040 Sunset, Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1051 S Pratt Parkway, Longmont,CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	111 Longs Peak Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1200 19th Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1200 S Sunset, Longmont CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1300 S Sunset, Longmont CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1335 S Judson, Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1415 14th Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1440 Collyer, Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1500 14th Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1601 Northwestern Rd , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	1651 Airport Rd , Longmont CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	2236 Vivan, Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	233 E Mountain View Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	29292 Clover Basin Dr , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	333 E Mountain View Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	395 S Pratt Parkway, Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	444 Clover Basin Drive, Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	600 E Mountain View Ave , Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	619 Bowen, Longmont CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	800 E 5th Ave Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	820 Main Street, Longmont, CO 80501	Right of Entry Agreement	Denver/Longmont	N/A
Right of Entry	YCI	Saint Vrain Valley School District RE-1J	5847 San Felipe, Houston TX 77057-3009	Right of Entry Agreement	Houston	15,529
Right of Entry	YCI	Serbo Highland Oaks, Inc	1020 W 31st Street, Downersgrove, IL	Right of Entry Agreement	Chicago/Downersgrove	N/A
Right of Entry	YCI	Serbo Highland Oaks, Inc	1100 W 31st Street, Downersgrove, IL	Right of Entry Agreement	Chicago/Downersgrove	N/A
Right of Entry	YCI	Shorenstein	1 California St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein	2 Hamson St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein	875 N Michigan Ave	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Shorenstein	2 Riverway	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Shorenstein - 333 Market Street Associates	333 Market Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein - 555 California Street LLC	555 California Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein - Fifty California Street Associates	50 California Street	Right of Entry Agreement	Bay Area/San Francisco	24,759
Right of Entry	YCI	Shorenstein - Forty-Five Fremont Associates	45 Fremont Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein - Fremont 425 Market Limited L P	425 Market Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein - Mark and Mission Associates	123 Mission St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein - Russ Building LLC	235 Montgomery Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Shorenstein - SIP North Stetson Venture LLC	130 E Randolph St , Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Shorenstein - SIP North Stetson Venture LLC	180 N Stetson St , Chicago, IL	Right of Entry Agreement	Chicago	N/A

Yipes Communications Inc., et. al  
 Right of Entry Contracts  
 (\$ In thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Right of Entry	YCI	Shorestein - SRI Hills Plaza Venture, LLC	345 Spear Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Sierra Pacific Development Fund II	5850 San Felipe Houston, TX	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Subh & Blanchard Properties	2200 Sixth Avenue, Seattle, WA 98121	Right of Entry Agreement	Seattle	204
Right of Entry	YCI	Sobrato Interest III (Nvidia Corp)	2721 San Thomas Blvd, Building A	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	SP 303 West Madison LLC	303 West Madison, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Space Systems/Loral	3530 W Bayshore Road	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Space Systems/Loral	3825 Fabin Way	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Space Systems/Loral	3963 Fabin Way	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	SpectraSite - N K Leasehold II, LLC	4040 North Central Expressway, Dallas, TX 75204	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	111 Presidential Blvd	Right of Entry Agreement	Philadelphia/Bala Cynwyd	5,200
Right of Entry	YCI	Spectrasite Building Group, Inc	920 Harvest Dr	Right of Entry Agreement	Philadelphia/Blue Bell	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	925 Harvest Dr, Union Meeting Corp Center	Right of Entry Agreement	Philadelphia/Blue Bell	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	1974 Sproul Rd	Right of Entry Agreement	Philadelphia/Broomall	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	412 Creamery Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	429 Creamery Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	435 Creamery Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	440 Creamery Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	442 Creamery Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	457 Creamery Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	467 Creamery Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	486 Thomas Jones Way	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	855 Springdale Dr	Right of Entry Agreement	Philadelphia/Exton	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	500 Office Center Dr	Right of Entry Agreement	Philadelphia/Ft Washington	21,864
Right of Entry	YCI	Spectrasite Building Group, Inc	501 Office Center Dr	Right of Entry Agreement	Philadelphia/Ft Washington	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	520 Virginia Dr	Right of Entry Agreement	Philadelphia/Ft Washington	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	1155 Business Center Dr	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	455 Business Center Drive	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	700 Business Center Dr	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	755 Business Center Dr	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	One Progress Ave	Right of Entry Agreement	Philadelphia/Horsham	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	555 Croton Road	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	610 Freedom Business Center	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	620 Freedom Business Center	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	630 Freedom Business Center	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	640 Freedom Business Center	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	680 Altendale Rd	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	750 Lo 761 Fifth Ave	Right of Entry Agreement	Philadelphia/King of Prussia	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	101 Lindenwood Drive	Right of Entry Agreement	Philadelphia/Malvern	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	301 Lindenwood Drive	Right of Entry Agreement	Philadelphia/Malvern	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	14 Campus Blvd	Right of Entry Agreement	Philadelphia/Newton Square	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	16 Campus Blvd	Right of Entry Agreement	Philadelphia/Newton Square	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	18 Campus Blvd	Right of Entry Agreement	Philadelphia/Newton Square	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	140 W Germantown Pike	Right of Entry Agreement	Philadelphia/Plymouth Meeting	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	2240 Butler Pike	Right of Entry Agreement	Philadelphia/Plymouth Meeting	N/A
Right of Entry	YCI	Spectrasite Building Group, Inc	2250 Butler Pike	Right of Entry Agreement	Philadelphia/Plymouth Meeting	N/A
Right of Entry	YCI	Speker	1000 Manna Blvd	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Speker	3400 Hillview Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Speker	4001 Miranda Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Speker	4005 Miranda Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Speker	4009 Miranda Ave	Right of Entry Agreement	Bay Area/Palo Alto	N/A
Right of Entry	YCI	Speker	4015 Miranda Ave	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	4250 Executive Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	4660 La Jolla Village Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	4810 Eastgate Mall	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	9255 Towne Centre Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	9920 Pacific Heights Blvd	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	101 Metro Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	1731 Technology Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	1735 Technology Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	1740 Technology Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	1741 Technology Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	181 Metro Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	2001 Gateway Pl	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	2033 Gateway Pl	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	2065 Gateway Pl	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	2077 Gateway Pl	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	2099 Gateway Pl	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	224 Airport Pkwy	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Speker	25 Metro Dr	Right of Entry Agreement	Bay Area/San Jose	N/A
Right of Entry	YCI	Speker	2860 Zanker Rd	Right of Entry Agreement	Denver/Bellvue	N/A
Right of Entry	YCI	Speker	2870 Zanker Rd	Right of Entry Agreement	Denver/Bellvue	N/A
Right of Entry	YCI	Speker	2890 Zanker Rd	Right of Entry Agreement	Denver/Bellvue	N/A
Right of Entry	YCI	Speker	3295 Scott Blvd	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Speker	15325 S.E. 30th Place	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Speker	15355 S.E. 30th Place	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Speker	15375 S.E. 30th Place	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Speker	15395 S.E. 30th Place	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	Starplace Limited Partnership	7979 E. Tufts Ave., Denver, CO	Right of Entry Agreement	Denver	2,891
Right of Entry	YCI	StorageTek	One StorageTek Drive, Louisville, CO	Right of Entry Agreement	Denver/Louisville	N/A
Right of Entry	YCI	Sunbelt	One Liberty Place (1650 Market)	Right of Entry Agreement	Philadelphia	2,400
Right of Entry	YCI	Sunbelt - Houston Pennzoil Place LP	711 Louisiana Street, Houston, TX	Right of Entry Agreement	Houston	2,400
Right of Entry	YCI	Swarthmore College	500 College Ave	Right of Entry Agreement	Philadelphia/Swarthmore	N/A
Right of Entry	YCI	TCM Real Estate Limited Partnership	4320 Greenway Dr., Irving, TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	TCPSpectrum Partners, LTD	5668 Washheimer Road, Houston, TX 77057	Right of Entry Agreement	Houston	540
Right of Entry	YCI	The Revere Group, Limited	1751 Lake Cook Road, Deerfield, IL 60015	Right of Entry Agreement	Chicago/Deerfield	N/A
Right of Entry	YCI	The State/Whitehall Company (Rudin)	One Battery Park Plaza, New York, NY 10004	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	The Zellerbach Family Fund	630 Third Street	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Transmeta Corporation	1925 W John Carpenter Freeway, Irving TX 75063	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	Transmeta Corporation (Peery Amltaga Inc - owner)	2540 Mission College Blvd	Right of Entry Agreement	Bay Area/Santa Clara	N/A
Right of Entry	YCI	Tnny Centre LLC	111 Broadway	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Trzechahn	233 S Wacker Dr	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Trzechahn	1201 Elm St	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	13155 Noel Rd	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	13355 Noel Rd	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	13455 Noel Rd	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	3131 McKinney Ave	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	600 North Pearl	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	700 North Pearl	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	7540 LBJ Fwy	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	7615 LBJ Fwy	Right of Entry Agreement	Dallas	N/A
Right of Entry	YCI	Trzechahn	1200 Smith	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Trzechahn	1600 Smith St	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Trzechahn	233 Clay	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Trzechahn	500 Dallas	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Trzechahn	500 Jefferson	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Trzechahn	600 Jefferson	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Trzechahn	601 Jefferson	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	Trzechahn 1065 Avenue of the Americas	1065 Avenue of the Americas, New York, NY	Right of Entry Agreement	New York	1,334

Types Communications Inc., et al  
 Right of Entry Contracts  
 (\$ in thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Right of Entry	YCI	Trzeciahn One NY Plaza LLC	One New York Plaza, New York, NY	Right of Entry Agreement	New York	28,890
Right of Entry	YCI	Trzeciahn Regional Pooling, LLC	10 South Riverside, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Trzeciahn Regional Pooling, LLC	120 South Riverside, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Trzeciahn Regional Pooling, LLC	2 North LaSalle, Chicago, IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	Trzeciahn Regional Pooling, LLC, d/b/a Trzeciahn 100 Street Management	110 Williams Street, New York, NY	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	U. S. Property Fund GMBH & CO KG	4225 Executive Square	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	U. S. Property Fund GMBH & CO KG	100 First Street (Caspian Consulting Group Suites 220,	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	UNICO Properties, Inc.	601 Union Street, Seattle, WA	Right of Entry Agreement	Seattle	2,000
Right of Entry	YCI	Universal Buddhist Church	825 A Kearny St	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	University of Pennsylvania	3341 Smith Walk	Right of Entry Agreement	Philadelphia	N/A
Right of Entry	YCI	WNR Scientific v/o Goshen Parkway Partners	1310 Goshen Parkway	Right of Entry Agreement	Philadelphia/West Chester	N/A
Right of Entry	YCI	Walton Exchange Investors II, LLC	821 2nd Ave., Seattle, WA	Right of Entry Agreement	Seattle	N/A
Right of Entry	YCI	Washington Securities Company	1904 Third Ave., Seattle WA	Right of Entry Agreement	Seattle	18,917
Right of Entry	YCI	Wasilla Four Associates, Inc.	10 East Sixth Ave	Right of Entry Agreement	Philadelphia/Conshohocken	N/A
Right of Entry	YCI	WCB Five Limited Partnership (Archon)	5355 Mira Sorrento Pl	Right of Entry Agreement	San Diego	1,925
Right of Entry	YCI	WCB Five Limited Partnership (Archon)	5375 Mira Sorrento Pl	Right of Entry Agreement	San Diego	N/A
Right of Entry	YCI	WHLC Real Estate Limited Partnership	5333 N State Hwy 161, Irving TX	Right of Entry Agreement	Dallas/Irving	2,714
Right of Entry	YCI	WHLC Real Estate Limited Partnership	5353 N State Hwy 161, Irving TX	Right of Entry Agreement	Dallas/Irving	N/A
Right of Entry	YCI	WHML-S Real Estate Limited Partnership	1333 Butterfield Rd., Downers Grove, IL	Right of Entry Agreement	Chicago/Downersgrove	1,525
Right of Entry	YCI	WHOB-T Real Estate LP (Archon)	1415 & 1515 West 22nd Street, Oak Brook IL	Right of Entry Agreement	Chicago/Oak Brook	2,934
Right of Entry	YCI	WHTRI Real Estate Limited Partnership (Archon)	5660 Greenwood Plaza Blvd., Englewood, CO	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	WHTRI Real Estate Limited Partnership (Archon)	5670 Greenwood Plaza Blvd., Englewood, CO	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	WHTRI Real Estate Limited Partnership (Archon)	5680 Greenwood Plaza Blvd., Englewood, CO	Right of Entry Agreement	Denver/Englewood	N/A
Right of Entry	YCI	Widener University	1 University	Right of Entry Agreement	Philadelphia/Chester	N/A
Right of Entry	YCI	Wiu Wiki Enterprises	4260 E. Evans, Denver, CO 80222	Right of Entry Agreement	Denver	N/A
Right of Entry	YCI	Winthrop	1999 Broadway, Denver, CO 80202	Right of Entry Agreement	Denver	1,050
Right of Entry	YCI	WiredZone Property LP	5959 Corporate Dr., Houston, TX 77036	Right of Entry Agreement	Houston	N/A
Right of Entry	YCI	WM Wingley Jr. Company	400 and 410 N Michigan Ave., Chicago IL	Right of Entry Agreement	Chicago	N/A
Right of Entry	YCI	WXCHA Real Estate Limited Partnership	2515 McKinney Ave., Dallas, TX	Right of Entry Agreement	Dallas	1,247
Right of Entry	YCI	WXISAN Realty, LLC (Archon)	500 Sansome	Right of Entry Agreement	Bay Area/San Francisco	2,727
Right of Entry	YCI	WXIUSCV Real Estate Limited Partnership (Archon)	720 Olive Way, Seattle, WA	Right of Entry Agreement	Seattle	2,310
Right of Entry	YCI	Zar/BBO	220 Bush	Right of Entry Agreement	Bay Area/San Francisco	N/A
Right of Entry	YCI	Zar/BBO	100 Church St	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Zar/BBO	260 Madison Ave	Right of Entry Agreement	New York	N/A
Right of Entry	YCI	Zar/BBO	261 Madison Ave	Right of Entry Agreement	New York	N/A
						<b>5 376,968</b>



## Yipes Communications Inc., et., al.

## Lateral Lease Contracts

(\$ in thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Lateral	YCI	ACSI	4201 SW FREEWAY	Lateral Lease Agreement	Houston	N/A
Lateral	YCI	BLAIR PARK	3701 MARKET ST	Lateral Lease Agreement	Philadelphia	0
Lateral	YCI	BLAIR PARK	4960 ROUTE 8	Lateral Lease Agreement	Philadelphia/ALLISON PARK	0
Lateral	YCI	Blair Park	225 CITY AVE	Lateral Lease Agreement	PHILADELPHIA/BALA CYNWYD	N/A
Lateral	YCI	City of Longmont	350 KIMBARK	Lateral Lease Agreement	Denver/LONGMONT	N/A
Lateral	YCI	City of Palo Alto	925 PAGE MILL RD	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	200 SHERIDAN AVE	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	2 PALO ALTO SQ	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	700 HIGH ST	Lateral Lease Agreement	Bay Area/PALO ALTO	0
Lateral	YCI	City of Palo Alto	795 EL CAMINO REAL	Lateral Lease Agreement	Bay Area/PALO ALTO	0
Lateral	YCI	City of Palo Alto	211 QUARRY RD	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	379 LYTTON	Lateral Lease Agreement	Bay Area/PALO ALTO	0
Lateral	YCI	City of Palo Alto	3101 PARK BLVD	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	3155 PORTER DR	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	245 LYTTON AVE	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	3963 FABIAN WAY	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	2345 YALE ST	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	3875 FABIAN WAY	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	2635 PARK BLVD	Lateral Lease Agreement	Bay Area/PALO ALTO	0
Lateral	YCI	City of Palo Alto	3530 W BAYSHORE	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	400 HAMILTON	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	260 SHERIDAN	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	525 UNIVERSITY AVE	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	1661 PAGE MILL RD	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	577 COLLEGE	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	811 HANSEN	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Palo Alto	529 BRYANT	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	City of Santa Clara	3033 SCOTT BLVD	Lateral Lease Agreement	Bay Area/Santa Clara	0
Lateral	YCI	LEVEL 3	427 S LA SALLE AVE	Lateral Lease Agreement	Chicago	-
Lateral	YCI	LEVEL 3	111 N CANAL ST	Lateral Lease Agreement	Chicago	N/A
Lateral	YCI	LEVEL 3	3180 IRVING BLVD	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	2323 BRYANT	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	1950 STEMMONS FWY	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	1201 ELM ST	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	3500 MAPLE AVE	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	1445 ROSS AVE	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	100 CRESCENT	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	901 MAIN ST	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	2001 ROSS AVE	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	200 CRESCENT CT	Lateral Lease Agreement	Dallas	0
Lateral	YCI	LEVEL 3	300 CRESCENT CT	Lateral Lease Agreement	Dallas	N/A
Lateral	YCI	LEVEL 3	999 18TH ST, South Tower	Lateral Lease Agreement	Denver	N/A
Lateral	YCI	LEVEL 3	910 15TH ST	Lateral Lease Agreement	Denver	N/A
Lateral	YCI	LEVEL 3	950 17TH ST	Lateral Lease Agreement	Denver	N/A
Lateral	YCI	LEVEL 3	1850 PEARL ST	Lateral Lease Agreement	Denver	N/A
Lateral	YCI	LEVEL 3	707 17TH ST	Lateral Lease Agreement	Denver	N/A
Lateral	YCI	LEVEL 3	7100 E BELLEVUE AVE	Lateral Lease Agreement	Denver/GREENWOOD VILLAGE	N/A
Lateral	YCI	LEVEL 3	1000 DENNY WAY	Lateral Lease Agreement	Seattle	N/A
Lateral	YCI	LEVEL 3	2001 6TH AVE	Lateral Lease Agreement	Seattle	N/A
Lateral	YCI	LEVEL 3	1200 3RD AVE	Lateral Lease Agreement	Seattle	N/A
Lateral	YCI	LEVEL 3	650 TOWNSEND	Lateral Lease Agreement	Bay Area/San Francisco	N/A
Lateral	YCI	LEVEL 3	185 BERRY ST	Lateral Lease Agreement	Bay Area/San Francisco	N/A
Lateral	YCI	LEVEL 3	246 1ST ST	Lateral Lease Agreement	Bay Area/San Francisco	N/A
Lateral	YCI	LEVEL 3	536 MISSION ST	Lateral Lease Agreement	Bay Area/San Francisco	N/A
Lateral	YCI	LEVEL 3	11 GREAT OAKS BLVD, RPC	Lateral Lease Agreement	Bay Area/San Jose	0
Lateral	YCI	LEVEL 3 and City of Santa	1380 KIFER RD	Lateral Lease Agreement	Bay Area/Sunnyvale	N/A
Lateral	YCI	MFN	525 W MONROE	Lateral Lease Agreement	Chicago	0
Lateral	YCI	MFN	725 S WELLS	Lateral Lease Agreement	Chicago	0
Lateral	YCI	MFN	233 S WACKER SEARS TOWER TOWER TOWER T	Lateral Lease Agreement	Chicago	0
Lateral	YCI	MFN	350 CERMAK AVE	Lateral Lease Agreement	Chicago	0
Lateral	YCI	MFN	1900 MARKET ST	Lateral Lease Agreement	PHILADELPHIA	N/A
Lateral	YCI	MFN	1500 MARKET ST	Lateral Lease Agreement	Philadelphia	0
Lateral	YCI	Pac Bell	1070 ARASTADERO RD	Lateral Lease Agreement	Bay Area/PALO ALTO	N/A
Lateral	YCI	PSE	1960 CHICAGO	Lateral Lease Agreement	Bay Area/RIVERSIDE	1,485
Lateral	YCI	SBC	3900 MAIN ST	Lateral Lease Agreement	Bay Area/RIVERSIDE	N/A
Lateral	YCI	SBC	1451 RESEARCH PARK DR	Lateral Lease Agreement	Bay Area/RIVERSIDE	1,485
Lateral	YCI	SBC	2200 N PEARL ST	Lateral Lease Agreement	DALLAS	N/A
Lateral	YCI	SBC	8150 CENTRAL EXPRESSWAY	Lateral Lease Agreement	DALLAS	N/A
Lateral	YCI	SBC	5605 N MACARTHUR BLVD	Lateral Lease Agreement	DALLAS/IRVING	N/A
Lateral	YCI	TELERGY	811 10TH AVE	Lateral Lease Agreement	New York	N/A
Lateral	YCI	TELERGY	60 HUDSON	Lateral Lease Agreement	New York	N/A
Lateral	YCI	TELERGY	111 8TH AVE	Lateral Lease Agreement	New York	N/A
Lateral	YCI	Telegy	2 RECTOR ST	Lateral Lease Agreement	NEW YORK	N/A
						\$ 2,970

## Yipes Communications Inc., et , al.

## ILEC Lease Contracts

(\$ in thousands)

Type	Entity	Counter Party	Address	Contract Name	MSA	Proposed Cure Amount
Lateral	YCI	ACSI	500 DALLAS ST	ILEC Agreement	HOUSTON	N/A
Lateral	YCI	ACSI	5444 WESTHEIMER	ILEC Agreement	HOUSTON	N/A
Lateral	YCI	Blair Park	4225 EXECUTIVE DR	ILEC Agreement	Bay Area/LA JOLLA	N/A
Lateral	YCI	Blair Park	401 B ST	ILEC Agreement	Bay Area/SAN DIEGO	N/A
Lateral	YCI	LEVEL 3	8929 AERO DR	ILEC Agreement	Bay Area/SAN DIEGO	N/A
Lateral	YCI	LEVEL 3	4 EMBARCADERO	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	LEVEL 3	555 CALIFORNIA	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	LEVEL 3	999 19TH ST, North Tower	ILEC Agreement	DENVER	N/A
Lateral	YCI	LEVEL 3	700 Milam, Suite 1100, Houston, TX	Customer Agreement	Houston	N/A
Lateral	YCI	LEVEL 3	3341 SMITH WALK	ILEC Agreement	PHILADELPHIA	N/A
Lateral	YCI	Pac Bell	630 3RD ST	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	Pac Bell	123 MISSION	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	Pac Bell	600 UNIVERSITY	ILEC Agreement	SEATTLE	N/A
Lateral	YCI	Pac Bell	601 UNION	ILEC Agreement	SEATTLE	N/A
Lateral	YCI	Pac Bell	720 OLIVE WAY	ILEC Agreement	SEATTLE	1,573
Lateral	YCI	Pac Bell	2211 ELLIOT AVE	ILEC Agreement	SEATTLE	N/A
Lateral	YCI	Pac Bell	821 2ND AVE	ILEC Agreement	SEATTLE	4,140
Lateral	YCI	Pac Bell	1730 MINOR AVE	ILEC Agreement	SEATTLE	1,485
Lateral	YCI	PSE & Qwest	9725 SCRANTON PL	ILEC Agreement	Bay Area/SAN DIEGO	N/A
Lateral	YCI	PSE & Qwest	2601 ELLIOTT	ILEC Agreement	SEATTLE	N/A
Lateral	YCI	SBC	595 MARKET ST	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	SBC	220 MONTGOMERY	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	SBC	235 MONTGOMERY ST	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	SBC	275 BATTERY	ILEC Agreement	Bay Area/SAN FRANCISCO	N/A
Lateral	YCI	SBC	3585 MONROE ST	ILEC Agreement	Bay Area/SANTA CLARA	N/A
Lateral	YCI	SBC	33 W MONROE	ILEC Agreement	CHICAGO	N/A
Lateral	YCI	SBC	2777 N STEMMONS	ILEC Agreement	DALLAS	N/A
Lateral	YCI	SBC	1717 MAIN ST	ILEC Agreement	DALLAS	1,485
Lateral	YCI	SBC	13155 NOEL RD GALLERIA III	ILEC Agreement	DALLAS	1,485
Lateral	YCI	SBC	13355 NOEL RD GALLERIA I	ILEC Agreement	DALLAS	1,485
Lateral	YCI	SBC	5600 N Macarthur Rd	ILEC Agreement	DALLAS	N/A
Lateral	YCI	SBC	14001 N DALLAS PKWY	ILEC Agreement	DALLAS	1,485
Lateral	YCI	SBC	5215 O'CONNOR RD	ILEC Agreement	Dallas/IRVING	N/A
Lateral	YCI	SBC	5221 O'CONNOR BLVD	ILEC Agreement	Dallas/IRVING	N/A
Lateral	YCI	SBC	125 E JOHN CARPENTER FWY	ILEC Agreement	Dallas/IRVING	351
Lateral	YCI	SBC	5601 N MACARTHUR RD	ILEC Agreement	Dallas/IRVING	N/A
Lateral	YCI	SBC	5205 O'CONNOR BLVD	ILEC Agreement	Dallas/IRVING	N/A
Lateral	YCI	SBC	1000 LOUISIANA ST	ILEC Agreement	HOUSTON	3,726
Lateral	YCI	SBC	700 MILAM	ILEC Agreement	HOUSTON	3,726
Lateral	YCI	SBC	700 LOUISIANA ST	ILEC Agreement	HOUSTON	3,726
Lateral	YCI	SBC	1200 SMITH ST	ILEC Agreement	HOUSTON	3,726
Lateral	YCI	SBC	1600 SMITH ST	ILEC Agreement	HOUSTON	1,485
Lateral	YCI	SBC	2800 POST OAK BLVD	ILEC Agreement	HOUSTON	N/A
Lateral	YCI	SBC	333 CLAY ST	ILEC Agreement	HOUSTON	N/A
Lateral	YCI	Worldcom	1700 PACIFIC AVE	ILEC Agreement	DALLAS	1,485
						\$ 31,363

Yipes Communications Inc., et., al.  
**Customer Contracts**  
 (\$ In thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Customer	YCI	3TEC Energy Corporation	Customer Agreement	Houston	N/A
Customer	YCI	3ware, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	4DV NET	Customer Agreement	Denver	N/A
Customer	YCI	AB Financial, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	AB Financial, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	AB Financial, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	ABN Amro Sage	Customer Agreement	Bay Area	N/A
Customer	YCI	ABN Amro Sage	Customer Agreement	Chicago	N/A
Customer	YCI	ABN Amro Sage	Customer Agreement	New York	N/A
Customer	YCI	ABN Amro Sage	Customer Agreement	Chicago	N/A
Customer	YCI	Accenture	Customer Agreement	Dallas	N/A
Customer	YCI	Accenture -Anderson Consultg	Customer Agreement	Bay Area	N/A
Customer	YCI	Access Communications Corporation	Customer Agreement	Dallas	N/A
Customer	YCI	Accretive Technology Group (Flying Crocodile, Inc., LLC)	Customer Agreement	Seattle	N/A
Customer	YCI	ACTS Retirement-Life Communities, Inc.	Customer Agreement	Philadelphia	N/A
Customer	YCI	Advanced Networking Solutions, Inc (Concate Technologes)	Customer Agreement	Philadelphia	N/A
Customer	YCI	Advanced Web Hosting And Design	Customer Agreement	Philadelphia	N/A
Customer	YCI	ADVANCED WEB HOSTING -CPE	Customer Agreement	Philadelphia	N/A
Customer	YCI	Affiliated Network Services, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	AG Consulting	Customer Agreement	Bay Area	N/A
Customer	YCI	Akin Gump Strauss Hauer & Feld, L L P	Customer Agreement	Dallas	N/A
Customer	YCI	Align Technology, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Aiyance International Group, Inc	Customer Agreement	Seattle	N/A
Customer	YCI	Alliance Financial, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Alpha Internet Services, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Alpha Internet Services, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Alpha Internet Services, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Alpha Internet Services, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Alta Vista	Customer Agreement	Bay Area	N/A
Customer	YCI	ALTOUR INTERNATIONAL	Customer Agreement	New York	N/A
Customer	YCI	American Bureau Of Shipping	Customer Agreement	Houston	N/A
Customer	YCI	American Express TBS	Customer Agreement	Chicago	N/A
Customer	YCI	American Spectrum Realty, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Amernat (Visionbahn, inc.)	Customer Agreement	Bay Area	N/A
Customer	YCI	Animas Corporation	Customer Agreement	Philadelphia	N/A
Customer	YCI	Anobi	Customer Agreement	Chicago	N/A
Customer	YCI	Anobi (SpeedTrade)	Customer Agreement	Chicago	N/A
Customer	YCI	ANOBI Technology	Customer Agreement	Chicago	N/A
Customer	YCI	Applied Micro Circuits Corporation	Customer Agreement	Bay Area	N/A
Customer	YCI	Applied Micro Circuits Corporation	Customer Agreement	San Diego	N/A
Customer	YCI	Applied Micro Circuits Corporation	Customer Agreement	Denver	N/A
Customer	YCI	Applied Micro Circuits Corporation	Customer Agreement	San Diego	N/A
Customer	YCI	Applied Micro Circuits Corporation	Customer Agreement	San Diego	N/A
Customer	YCI	Applied Micro Circuits Corporation	Customer Agreement	Denver	N/A
Customer	YCI	Arcadia University (Beaver College)	Customer Agreement	Philadelphia	N/A
Customer	YCI	ARKTEL	Customer Agreement	New York	N/A
Customer	YCI	Arrowhead General Insurance Agency, Inc	Customer Agreement	San Diego	N/A
Customer	YCI	Arrowhead General Insurance Agency, Inc	Customer Agreement	San Diego	N/A
Customer	YCI	Arrowhead General Insurance Agency, Inc	Customer Agreement	San Diego	N/A
Customer	YCI	Asgaard Interactive Multimedia (Hard Radio)	Customer Agreement	Dallas	N/A
Customer	YCI	Aspre Net Managed Systems, Inc	Customer Agreement	New York	N/A
Customer	YCI	Association Forum of Chicagoland	Customer Agreement	Chicago	N/A
Customer	YCI	Astech Intermedia	Customer Agreement	Denver	N/A
Customer	YCI	AT&T	Customer Agreement	Bay Area	N/A
Customer	YCI	AuctionWatch.com	Customer Agreement	Bay Area	N/A
Customer	YCI	August Net Services, LLC	Customer Agreement	Dallas	N/A
Customer	YCI	August Net Services, LLC	Customer Agreement	Dallas	N/A
Customer	YCI	Autodaq Corporation	Customer Agreement	Bay Area	N/A
Customer	YCI	Avanade, Inc	Customer Agreement	Chicago	N/A
Customer	YCI	Avanade, Inc	Customer Agreement	Dallas	N/A
Customer	YCI	Avanade, Inc	Customer Agreement	New York	N/A
Customer	YCI	Avanade, Inc	Customer Agreement	Seattle	N/A
Customer	YCI	Avanade, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	AvanGo, Inc	Customer Agreement	Chicago	N/A
Customer	YCI	Access Networks, LLC	Customer Agreement	Dallas	N/A
Customer	YCI	AXS2000	Customer Agreement	Philadelphia	N/A
Customer	YCI	B2B Connect, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	B2B Connect, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	B2B Connect, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Bain & Company, Inc	Customer Agreement	Dallas	N/A
Customer	YCI	Bairra, Inc	Customer Agreement	New York	N/A
Customer	YCI	Bartli Beck Herman Palenchar & Scott	Customer Agreement	Denver	N/A
Customer	YCI	Belo Management Services, inc	Customer Agreement	Dallas	N/A
Customer	YCI	Bel-Rea Veterinary Technician Training	Customer Agreement	Denver	N/A
Customer	YCI	Belzberg Technologies (aka Electronic Brokerage Systems)	Customer Agreement	Chicago	N/A
Customer	YCI	BlackRock, Inc	Customer Agreement	New York	N/A
Customer	YCI	BlueSail, Inc	Customer Agreement	Chicago	N/A
Customer	YCI	Board Of Trade Cleaning Corporation	Customer Agreement	Chicago	N/A
Customer	YCI	Board Of Trade Cleaning Corporation	Customer Agreement	Chicago	N/A
Customer	YCI	Bonus.com	Customer Agreement	Bay Area	N/A
Customer	YCI	Boston Cabot, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Bolta Capital Management, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	Bryn Mawr College (Trn College)	Customer Agreement	Philadelphia	N/A
Customer	YCI	bSmart to LLC	Customer Agreement	Philadelphia	N/A
Customer	YCI	bSmart to LLC	Customer Agreement	Philadelphia	N/A
Customer	YCI	Builders Bank	Customer Agreement	Chicago	N/A
Customer	YCI	Business Management Systems Corporation	Customer Agreement	Denver	N/A
Customer	YCI	Business Solutions, Inc - dba BSI Consulting	Customer Agreement	Houston	N/A
Customer	YCI	BVTV, Inc	Customer Agreement	Denver	N/A
Customer	YCI	Cabrni College	Customer Agreement	Philadelphia	N/A
Customer	YCI	Calpine Corporation	Customer Agreement	Houston	N/A
Customer	YCI	Calpine Corporation	Customer Agreement	Houston	N/A

Yipes Communications Inc., et , al.

## Customer Contracts

(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Customer	YCI	Calpine Corporation	Customer Agreement	Bay Area	N/A
Customer	YCI	Cancer Research and Biostatistics (CRAB)	Customer Agreement	Seattle	N/A
Customer	YCI	Capps Studio Limited Partnership	Customer Agreement	Chicago	N/A
Customer	YCI	Capps Studio Limited Partnership	Customer Agreement	Chicago	N/A
Customer	YCI	Capps Studio Limited Partnership	Customer Agreement	Chicago	N/A
Customer	YCI	Carr Futures	Customer Agreement	Chicago	N/A
Customer	YCI	Caspian Consulting Group, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Cassiday, Schade & Gloor	Customer Agreement	Chicago	N/A
Customer	YCI	Ceyond Communications	Customer Agreement	Dallas	N/A
Customer	YCI	CC Networks	Customer Agreement	Denver	N/A
Customer	YCI	CC Networks	Customer Agreement	Denver	N/A
Customer	YCI	Centennial BOCES	Customer Agreement	Denver	N/A
Customer	YCI	Central Control Systems dba Telpic.com	Customer Agreement	Chicago	N/A
Customer	YCI	Changes, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	Changes, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Chapman Schewe, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Classical Archives - Take Charge LLC	Customer Agreement	Bay Area	N/A
Customer	YCI	Classical Archives, LLC	Customer Agreement	Bay Area	N/A
Customer	YCI	Classified Ventures, Inc	Customer Agreement	Chicago	N/A
Customer	YCI	COMMERCE BANK dba MERCANTILE SERVICES	Customer Agreement	New York	N/A
Customer	YCI	Commerz Futures, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Commerz Futures, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Commerz Futures, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Commerz Futures, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Communications & Power Industries	Customer Agreement	Bay Area	N/A
Customer	YCI	Compass Asset Management, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	Compass Asset Management, L L C - Annobi Technology	Customer Agreement	Chicago	N/A
Customer	YCI	COMPLETE NETWORK SOLUTIONS	Customer Agreement	New York	N/A
Customer	YCI	COMPLETE NETWORK SOLUTIONS, INC	Customer Agreement	Chicago	N/A
Customer	YCI	Compuex, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Concat Technologies	Customer Agreement	Philadelphia	N/A
Customer	YCI	Consolidated Commerce	Customer Agreement	Chicago	N/A
Customer	YCI	Convene.com	Customer Agreement	Bay Area	N/A
Customer	YCI	Convene.com	Customer Agreement	Bay Area	N/A
Customer	YCI	Convention Communication Provisioners, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Cooley Godward, L L P	Customer Agreement	Bay Area	N/A
Customer	YCI	Cooper Interaction Design	Customer Agreement	Bay Area	N/A
Customer	YCI	Cooper Interaction Design	Customer Agreement	Bay Area	N/A
Customer	YCI	Cooper Interaction Design	Customer Agreement	Bay Area	N/A
Customer	YCI	Cooper Interaction Design	Customer Agreement	Bay Area	N/A
Customer	YCI	Coradian, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Cornerstone Partners	Customer Agreement	Chicago	N/A
Customer	YCI	Colelignit, Inc (bSmart to LLC)	Customer Agreement	Philadelphia	N/A
Customer	YCI	Cox, Ochel And Walden, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Data Return (Millennium)	Customer Agreement	Dallas	N/A
Customer	YCI	Degenkolb Engineers	Customer Agreement	Bay Area	N/A
Customer	YCI	Deloitte Consulting, Inc	Customer Agreement	New York	N/A
Customer	YCI	Denver Online Development (First Link Technologies)	Customer Agreement	Denver	N/A
Customer	YCI	Deutsch, Inc	Customer Agreement	New York	N/A
Customer	YCI	Digidesign	Customer Agreement	Bay Area	N/A
Customer	YCI	Digital Imaging Resources, Inc	Customer Agreement	Chicago	N/A
Customer	YCI	Digital Technology, Inc	Customer Agreement	Dallas	N/A
Customer	YCI	DISCOVERY COMMUNICATIONS	Customer Agreement	New York	N/A
Customer	YCI	Diversified Technologies U.S.A., Inc	Customer Agreement	Philadelphia	N/A
Customer	YCI	DotSpot Incorporated	Customer Agreement	Chicago	N/A
Customer	YCI	DotSpot Incorporated	Customer Agreement	Chicago	N/A
Customer	YCI	Dresdner RCM Global Investors	Customer Agreement	Bay Area	N/A
Customer	YCI	Dresdner RCM Global Investors	Customer Agreement	Bay Area	N/A
Customer	YCI	Dresdner RCM Global Investors, LLC	Customer Agreement	Bay Area	N/A
Customer	YCI	Drexel University	Customer Agreement	Philadelphia	N/A
Customer	YCI	DrinkerBiddle & Reath L L P	Customer Agreement	Philadelphia	N/A
Customer	YCI	Drivenworks.com Development (dba M4 Internet)	Customer Agreement	Bay Area	N/A
Customer	YCI	DTC Telecom, LLC (Formerly Single Service)	Customer Agreement	Dallas	N/A
Customer	YCI	Dubin & Sweca Holding, Inc - dba Highbridge Capital	Customer Agreement	New York	N/A
Customer	YCI	E Street Communications	Customer Agreement	Denver	N/A
Customer	YCI	ECC Advisors, L L C - dba Easton Hunt Capital, L L P	Customer Agreement	New York	N/A
Customer	YCI	eCitySuites Corporation	Customer Agreement	Houston	N/A
Customer	YCI	eCitySuites Corporation	Customer Agreement	Houston	N/A
Customer	YCI	Einet.Com, Inc	Customer Agreement	Houston	N/A
Customer	YCI	Electronic Brokerage Systems (Beizberg)	Customer Agreement	Chicago	N/A
Customer	YCI	Electronic Global Securities, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Electronic Trader Services, LLC	Customer Agreement	Denver	N/A
Customer	YCI	eLocal, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	Empire One Telecommunications	Customer Agreement	New York	N/A
Customer	YCI	Entropia	Customer Agreement	San Diego	N/A
Customer	YCI	Environmental Chemical Corporation	Customer Agreement	Denver	N/A
Customer	YCI	Environmental Strategies Corporation	Customer Agreement	Denver	N/A
Customer	YCI	eonASP, LLC - Net Works Communications Corporation -	Customer Agreement	Denver	N/A
Customer	YCI	Equus Corporation	Customer Agreement	Chicago	N/A
Customer	YCI	Erika Online, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Exodus Communications, Inc	Customer Agreement	Chicago	N/A
Customer	YCI	Exodus Communications, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Extreme Networks, Inc	Customer Agreement	Dallas	N/A
Customer	YCI	FC Stone, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	Federal Reserve Bank Of Boston	Customer Agreement	New York	N/A
Customer	YCI	Fenwick & West LLP	Customer Agreement	Bay Area	N/A
Customer	YCI	Fenwick And West LLP	Customer Agreement	Bay Area	N/A
Customer	YCI	FiberTower Corporation	Customer Agreement	Bay Area	N/A
Customer	YCI	First Analysis Corporation	Customer Agreement	Chicago	N/A
Customer	YCI	First Futures (Division Of REFCO)	Customer Agreement	Chicago	N/A
Customer	YCI	First Link Technology	Customer Agreement	Denver	N/A
Customer	YCI	First National Communications Network	Customer Agreement	Bay Area	N/A
Customer	YCI	First Options - Chicago	Customer Agreement	Chicago	N/A
Customer	YCI	First Options - Chicago	Customer Agreement	Chicago	N/A
Customer	YCI	First Options Chicago	Customer Agreement	Chicago	N/A

Types Communications Inc., et., al.  
**Customer Contracts**  
 (\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure	
						Amount
Customer	YCI	First Southwest Company	Customer Agreement	Dallas		N/A
Customer	YCI	Flowserve Corporation	Customer Agreement	Dallas		N/A
Customer	YCI	FCC - First Options Chicago	Customer Agreement	Chicago		N/A
Customer	YCI	Fred Hutchinson Cancer Research Center	Customer Agreement	Seattle		N/A
Customer	YCI	Freeborn & Peters	Customer Agreement	Chicago		N/A
Customer	YCI	FreeMarkets, Inc., dba Surplus Record, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	Fred Frank Harris Shriver & Jacobson	Customer Agreement	New York		N/A
Customer	YCI	Front Range Internet	Customer Agreement	Denver		N/A
Customer	YCI	Front Range Internet, Inc	Customer Agreement	Denver		N/A
Customer	YCI	Front Range Internet, Inc	Customer Agreement	Denver		N/A
Customer	YCI	FSI Fonts & Software USA, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	Fl Collins Coloradoan - Fl Collins Newspaper	Customer Agreement	Denver		N/A
Customer	YCI	Fuji Futures, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	Funkhouser Vegosen Liebman & Dunn, Ltd	Customer Agreement	Chicago		N/A
Customer	YCI	Gannaway Web Holdings, LLC (dba WorldNow)	Customer Agreement	New York		N/A
Customer	YCI	GARDEN STATE HOSPICE	Customer Agreement	Philadelphia		N/A
Customer	YCI	Gardner Carlton & Douglas	Customer Agreement	Chicago		N/A
Customer	YCI	Gardner Carlton & Douglas	Customer Agreement	Chicago		N/A
Customer	YCI	Gale Wave Communications, Inc (Viyu Communicabons,	Customer Agreement	Dallas		N/A
Customer	YCI	GATX Capital Corporation	Customer Agreement	Bay Area		N/A
Customer	YCI	Gelber Group LLC	Customer Agreement	Chicago		N/A
Customer	YCI	Genencor International, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	Genenc Trading, Inc	Customer Agreement	New York		N/A
Customer	YCI	Genenc Trading, Inc	Customer Agreement	New York		N/A
Customer	YCI	GETGO Entertainment, Inc - (Westwind Media Com, Inc )	Customer Agreement	Denver		N/A
Customer	YCI	Global Electronic Trading Company - dba GETCO	Customer Agreement	Chicago		N/A
Customer	YCI	Global Electronic Trading Company - dba GETCO	Customer Agreement	Chicago		N/A
Customer	YCI	Globetrotters Engineering Corporation	Customer Agreement	Chicago		N/A
Customer	YCI	GNI, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	GoBeam, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	Golden Gate University	Customer Agreement	Bay Area		N/A
Customer	YCI	Goldenberg, Hehmeyer & Company	Customer Agreement	Chicago		N/A
Customer	YCI	Goldentrace - c/o Snowball	Customer Agreement	Bay Area		N/A
Customer	YCI	Golin Harris International	Customer Agreement	Chicago		N/A
Customer	YCI	Google, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	Gordon & Rees	Customer Agreement	Bay Area		N/A
Customer	YCI	Gray Cary Ware & Freidenrich LLP	Customer Agreement	Bay Area		N/A
Customer	YCI	Gray Cary Ware & Freidenrich LLP	Customer Agreement	San Diego		N/A
Customer	YCI	Gray Cary Ware Freidenrich	Customer Agreement	Seattle		N/A
Customer	YCI	Greater Delaware Valley Society Of Transplant Surgeons	Customer Agreement	Philadelphia		N/A
Customer	YCI	Gulfstar Group II, LTD	Customer Agreement	Houston		N/A
Customer	YCI	H W Lochner, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	Hammer Trading - Division Of REFCO, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	Harold D Rider And Associates	Customer Agreement	Chicago		N/A
Customer	YCI	Hathaway Dinwiddie Construction Company	Customer Agreement	Bay Area		N/A
Customer	YCI	Haverford College (Tri College)	Customer Agreement	Philadelphia		N/A
Customer	YCI	Hesla Corporation	Customer Agreement	Philadelphia		N/A
Customer	YCI	Hobach-Lewin, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	Holland & Knight LLP	Customer Agreement	Chicago		N/A
Customer	YCI	Hotchkiss Associates, L L C	Customer Agreement	Chicago		N/A
Customer	YCI	HTN Resources, Inc (Hit The Net)	Customer Agreement	Dallas		N/A
Customer	YCI	Hurricane Electric Internet Services	Customer Agreement	Bay Area		N/A
Customer	YCI	ICG Commerce	Customer Agreement	Chicago		N/A
Customer	YCI	ICG Commerce, Inc	Customer Agreement	Philadelphia		N/A
Customer	YCI	ICG Commerce, Inc	Customer Agreement	Philadelphia		N/A
Customer	YCI	ICG Commerce, Inc	Customer Agreement	Philadelphia		N/A
Customer	YCI	Idea Integration (T1 Design, LLC)	Customer Agreement	Houston		N/A
Customer	YCI	Idea Integration (T1 Design, LLC)	Customer Agreement	Houston		N/A
Customer	YCI	IDEO Product Development, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	IEG	Customer Agreement	Seattle		N/A
Customer	YCI	IENTRY	Customer Agreement	Philadelphia		N/A
Customer	YCI	IHS Energy	Customer Agreement	Denver		N/A
Customer	YCI	IHS Energy	Customer Agreement	Denver		N/A
Customer	YCI	IKEA North America Services, LLC	Customer Agreement	Philadelphia		N/A
Customer	YCI	IKEA North America Services, LLC	Customer Agreement	Philadelphia		N/A
Customer	YCI	Ikos Partners, LLC	Customer Agreement	Chicago		N/A
Customer	YCI	iManage, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	iCode Telecom Group, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	Infinity Brokerage Services, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	ING North America Insurance Corporation	Customer Agreement	Philadelphia		N/A
Customer	YCI	Inktomi Corporation (Fast Forward Networks)	Customer Agreement	Bay Area		N/A
Customer	YCI	Innodesign, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	iNSORS Integrated Communications, Inc	Customer Agreement	Chicago		N/A
Customer	YCI	IntelHealth, Inc (Aetna Life Insurance Company)	Customer Agreement	Philadelphia		N/A
Customer	YCI	Interactive Classifieds Network Corporation	Customer Agreement	Bay Area		N/A
Customer	YCI	Interfold Internet Services, Inc	Customer Agreement	Denver		N/A
Customer	YCI	Interfold Internet Services, Inc	Customer Agreement	Denver		N/A
Customer	YCI	International Facility Management Association	Customer Agreement	Houston		N/A
Customer	YCI	International Specialists - dba Specialists DPM, LLC	Customer Agreement	Chicago		N/A
Customer	YCI	Internet Commerce & Communications - IHS Energy	Customer Agreement	Denver		N/A
Customer	YCI	Internet Commerce Communications Corporation	Customer Agreement	Denver		N/A
Customer	YCI	Internet Commerce Communications Corporation	Customer Agreement	Denver		N/A
Customer	YCI	Internet Commerce Communications Corporation	Customer Agreement	Denver		N/A
Customer	YCI	Internet Inventions, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	InternNetwork, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	InterVisions Systems, Inc	Customer Agreement	Bay Area		N/A
Customer	YCI	inlurmel, Inc	Customer Agreement	Dallas		N/A
Customer	YCI	ISG Communications	Customer Agreement	Dallas		N/A
Customer	YCI	Jackson & Walker LLP	Customer Agreement	Dallas		N/A
Customer	YCI	Jennison Associates	Customer Agreement	New York		N/A
Customer	YCI	Jones Appareil Group, Inc	Customer Agreement	New York		N/A
Customer	YCI	JS Services	Customer Agreement	Chicago		N/A
Customer	YCI	KBKids.com	Customer Agreement	Denver		N/A

Yipes Communications Inc , et., al.

Customer Contracts

(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount
Customer	YCI	Keen com, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Keep Trading	Customer Agreement	Chicago	N/A
Customer	YCI	Keystone Foods, LLC	Customer Agreement	Philadelphia	N/A
Customer	YCI	Keystone Foods, LLC	Customer Agreement	Philadelphia	N/A
Customer	YCI	Keystone Mercy Health Plan	Customer Agreement	Philadelphia	N/A
Customer	YCI	King, Chapman & Broussard, Inc	Customer Agreement	Houston	N/A
Customer	YCI	LaRocque Trading Group, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	LaSalle University	Customer Agreement	Philadelphia	N/A
Customer	YCI	Leap Wireless International, inc	Customer Agreement	San Diego	N/A
Customer	YCI	LETCO	Customer Agreement	Chicago	N/A
Customer	YCI	Library Video Company	Customer Agreement	Philadelphia	N/A
Customer	YCI	Library Video Company	Customer Agreement	Philadelphia	N/A
Customer	YCI	Lifelike Productions, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	LightOne	Customer Agreement	Denver	N/A
Customer	YCI	LimeLight Technologies, Inc	Customer Agreement	Denver	N/A
Customer	YCI	LimeLight Technology	Customer Agreement	Denver	N/A
Customer	YCI	Lincoln Property	Customer Agreement	Chicago	N/A
Customer	YCI	LIVE PERSON	Customer Agreement	New York	N/A
Customer	YCI	LiveWireNet (Live Wire Networks, Inc.)	Customer Agreement	Denver	N/A
Customer	YCI	M4 Internet	Customer Agreement	Bay Area	N/A
Customer	YCI	Magical Fox, Inc	Customer Agreement	Philadelphia	N/A
Customer	YCI	MAGPI/University Of Pennsylvania	Customer Agreement	Philadelphia	N/A
Customer	YCI	Mail-Well Corporation (Envelope)	Customer Agreement	Chicago	N/A
Customer	YCI	MAN Financial	Customer Agreement	Chicago	N/A
Customer	YCI	Managed Storage International	Customer Agreement	Denver	N/A
Customer	YCI	Manoni Duffy Architecture Design	Customer Agreement	Bay Area	N/A
Customer	YCI	MarCap Corporation	Customer Agreement	Chicago	N/A
Customer	YCI	Mallock Capital LLC	Customer Agreement	Chicago	N/A
Customer	YCI	Mavenck Trading, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	Maxtor Corporation	Customer Agreement	Denver	N/A
Customer	YCI	Maxtor Corporation	Customer Agreement	Denver	N/A
Customer	YCI	MaxUpTime	Customer Agreement	Dallas	N/A
Customer	YCI	Mayer, Brown & Platt	Customer Agreement	New York	N/A
Customer	YCI	Merchant & Gould, P C	Customer Agreement	Seattle	N/A
Customer	YCI	Merchant & Gould, P C	Customer Agreement	Denver	N/A
Customer	YCI	Mesa Networks	Customer Agreement	Denver	N/A
Customer	YCI	Metrocommute com LLC	Customer Agreement	New York	N/A
Customer	YCI	Mile High Properties	Customer Agreement	Denver	N/A
Customer	YCI	Mile High Properties, L L C	Customer Agreement	Denver	N/A
Customer	YCI	Mirror Image Internet, Inc - Denver Gas & Electric	Customer Agreement	Denver	N/A
Customer	YCI	MM Squared, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	MM Squared, L L C	Customer Agreement	Chicago	N/A
Customer	YCI	Moblix	Customer Agreement	Bay Area	N/A
Customer	YCI	MONTGOMERY COUNTY INTERMEDIATE UNIT	Customer Agreement	Philadelphia	N/A
Customer	YCI	Momson Foerster	Customer Agreement	Bay Area	N/A
Customer	YCI	Munch Trade Fairs - North America	Customer Agreement	Chicago	N/A
Customer	YCI	Mushkin, Inc	Customer Agreement	Denver	N/A
Customer	YCI	MusicNet, Inc	Customer Agreement	Seattle	N/A
Customer	YCI	National Restaurant Association Educational Foundation	Customer Agreement	Chicago	N/A
Customer	YCI	Naviste, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Nelson Capital Management	Customer Agreement	Bay Area	N/A
Customer	YCI	Neslego, LLC	Customer Agreement	Denver	N/A
Customer	YCI	Net Works Communications Corporation - dba eonBusiness	Customer Agreement	Denver	N/A
Customer	YCI	Nevada Space Networks, Inc	Customer Agreement	Houston	N/A
Customer	YCI	New 246 Associates, LP (Old Novogradac & Company,	Customer Agreement	Bay Area	N/A
Customer	YCI	New York Connect Net, Ltd	Customer Agreement	New York	N/A
Customer	YCI	NEW YORK UNIVERSITY	Customer Agreement	New York	N/A
Customer	YCI	Nextcard, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	NextSet Software, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Nomad Design & Services	Customer Agreement	Bay Area	N/A
Customer	YCI	North Texas Real Estate Information Systems, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Northern Colorado Internet Co-Op (NCIC)	Customer Agreement	Dallas	N/A
Customer	YCI	Northern Colorado Internet Cooperative	Customer Agreement	Denver	N/A
Customer	YCI	Norwest Venture Partners	Customer Agreement	Bay Area	N/A
Customer	YCI	Norwest Venture Partners	Customer Agreement	Bay Area	N/A
Customer	YCI	Nova Trade Securities, LLC	Customer Agreement	Chicago	N/A
Customer	YCI	nVIDIA Corporation	Customer Agreement	Bay Area	N/A
Customer	YCI	Nvidia, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	O'Connor & Company L L C	Customer Agreement	Chicago	N/A
Customer	YCI	O'Connor & Company L L C	Customer Agreement	Bay Area	N/A
Customer	YCI	O'Connor & Company L L C	Customer Agreement	Chicago	N/A
Customer	YCI	OilRoad Capital Corporation	Customer Agreement	Bay Area	N/A
Customer	YCI	OmniSky Corporation	Customer Agreement	Bay Area	N/A
Customer	YCI	OnFlow, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	OnShore, Inc	Customer Agreement	Chicago	N/A
Customer	YCI	Openfind Information Technology, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	optionsXpress	Customer Agreement	Chicago	N/A
Customer	YCI	Orbit II Partners, L P.	Customer Agreement	New York	N/A
Customer	YCI	Organic, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Onx Real Estate Capital Markets L L C	Customer Agreement	Dallas	N/A
Customer	YCI	Ollen, Johnson, Robinson, Neff & Ragonetti, P C	Customer Agreement	Denver	N/A
Customer	YCI	Pacific Data Images (Pacific Productions)	Customer Agreement	Bay Area	N/A
Customer	YCI	Pacific Exchange	Customer Agreement	Bay Area	N/A
Customer	YCI	Packet Exchange (Bermuda) Limited	Customer Agreement	New York	N/A
Customer	YCI	Palo Alto Medical Foundation	Customer Agreement	Bay Area	N/A
Customer	YCI	Pangea Design	Customer Agreement	Houston	N/A
Customer	YCI	Parallax Funds, L P	Customer Agreement	Bay Area	N/A
Customer	YCI	Parthenon Capital, L L C	Customer Agreement	Bay Area	N/A
Customer	YCI	Parthenon Capital, L L C	Customer Agreement	Bay Area	N/A
Customer	YCI	Partners Specialty Group	Customer Agreement	Philadelphia	N/A
Customer	YCI	patsystems - 141 West Jackson, Suite 3100,	Customer Agreement	Chicago	N/A
Customer	YCI	PayPal, Inc	Customer Agreement	Bay Area	N/A
Customer	YCI	Peak To Peak Internet	Customer Agreement	Denver	N/A

Yipes Communications Inc., et., al.

Customer Contracts

(\$ in thousands)

Type	Entity	Counter Party	Contract Name	MSA	Proposed Cure Amount	
Customer	YCI	Peak6 Investments, LP	Customer Agreement	Chicago	N/A	
Customer	YCI	Penson Financial Services, Inc	Customer Agreement	Dallas	N/A	
Customer	YCI	Perfect com, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	Personify Software, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	PG&E Corporation	Customer Agreement	Bay Area	N/A	
Customer	YCI	Phenomenal Internet Solutions, Inc	Customer Agreement	Philadelphia	N/A	
Customer	YCI	PHILADELPHIA UNIVERSITY	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Pink Sheets LLC	Customer Agreement	New York	N/A	
Customer	YCI	Poudre School District	Customer Agreement	Denver	N/A	
Customer	YCI	PrairieComm, Inc	Customer Agreement	Chicago	N/A	
Customer	YCI	Preferred Trade, Inc (Preferred Capital Markets, Inc )	Customer Agreement	Bay Area	N/A	
Customer	YCI	Professional Communication Services	Customer Agreement	Bay Area	N/A	
Customer	YCI	Progressive Technologies Group, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	Property Capital	Customer Agreement	Bay Area	N/A	
Customer	YCI	Protrader Securities Corporation	Customer Agreement	Chicago	N/A	
Customer	YCI	Pulsify Incorporated	Customer Agreement	Chicago	N/A	
Customer	YCI	Putnam Lovell Securities, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	QOS Networks Services (US), Inc	Customer Agreement	New York	N/A	
Customer	YCI	Quiet Light Securities	Customer Agreement	Chicago	N/A	
Customer	YCI	Radio One Networks, LLC (Westwind Media)	Customer Agreement	Denver	N/A	
Customer	YCI	RealNetworks	Customer Agreement	Seattle	N/A	
Customer	YCI	Relco, Inc	Customer Agreement	Chicago	N/A	
Customer	YCI	Regus Business Centre Corporation	Customer Agreement	Dallas	N/A	
Customer	YCI	Rising Tide Studios, LLC	Customer Agreement	New York	N/A	
Customer	YCI	Risk Information Services	Customer Agreement	Chicago	N/A	
Customer	YCI	Risk Information Systems & Consulting, L L C	Customer Agreement	Chicago	N/A	
Customer	YCI	Robertson Stephens Investment Bankers	Customer Agreement	Bay Area	N/A	
Customer	YCI	Robertson Stephens, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	Run Service	Customer Agreement	Bay Area	N/A	
Customer	YCI	RWE Trading Americas	Customer Agreement	Houston	N/A	
Customer	YCI	S B C Insurance Services	Customer Agreement	Bay Area	N/A	
Customer	YCI	Sanera Systems, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	Santa Clara University	Customer Agreement	Bay Area	N/A	
Customer	YCI	Saul Ewing, L L P	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Schlumberger Omnes, Inc	Customer Agreement	Houston	N/A	
Customer	YCI	Schlumberger Omnes, Inc	Customer Agreement	Houston	N/A	
Customer	YCI	SCT, Inc (Systems & Computer Technology Corporation)	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Single Source Communications, Inc => DTC Telecom LLC	Customer Agreement	Dallas	N/A	
Customer	YCI	Site Specific	Customer Agreement	Seattle	N/A	
Customer	YCI	Skolar, M D	Customer Agreement	Bay Area	N/A	
Customer	YCI	SkyPilot Network, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	Smart & Associates, LLP	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Smart & Associates, LLP	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Softnet Systems, Inc (ISP Channel, Inc.)	Customer Agreement	Bay Area	N/A	
Customer	YCI	SoftSwitch Communications, Inc	Customer Agreement	Dallas	N/A	
Customer	YCI	Soncity, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	Soncity, Inc	Customer Agreement	Dallas	N/A	
Customer	YCI	Soncity, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	Southeastern Universities Research Association, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	Southwest Corporate Federal Credit Union	Customer Agreement	Dallas	N/A	
Customer	YCI	Space Systems Loral	Customer Agreement	Bay Area	N/A	
Customer	YCI	Spear, Leads & Kellogg, Inc	Customer Agreement	New York	N/A	
Customer	YCI	Sprint	Customer Agreement	San Diego	N/A	
Customer	YCI	St Vrain Valley School District	Customer Agreement	Denver	N/A	
Customer	YCI	St Vrain Valley School District	Customer Agreement	Denver	N/A	
Customer	YCI	Stanford Hospital And Clinics	Customer Agreement	Bay Area	N/A	
Customer	YCI	Stedimayer Software, Inc	Customer Agreement	Chicago	N/A	
Customer	YCI	StemCells, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	StorageLink, Inc (Sansia)	Customer Agreement	Bay Area	N/A	
Customer	YCI	Streaming Media Technologies, Inc (Broadcast Media	Customer Agreement	Seattle	N/A	
Customer	YCI	Styleclick Chicago	Customer Agreement	Chicago	N/A	
Customer	YCI	Styleclick Chicago	Customer Agreement	Chicago	N/A	
Customer	YCI	Summit Trading, Inc	Customer Agreement	Houston	N/A	
Customer	YCI	Susquehanna International Group	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Swarthmore College (Tr College)	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Swift Communications, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	SynapticStudio	Customer Agreement	Denver	N/A	
Customer	YCI	TalkingNets, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	Teknowledge Corporation	Customer Agreement	Bay Area	N/A	
Customer	YCI	Telescan, Inc	Customer Agreement	Houston	N/A	
Customer	YCI	Telescan, Inc	BOOKED 12/00	Customer Agreement	Houston	N/A
Customer	YCI	Televoke, Inc	Customer Agreement	Bay Area	N/A	
Customer	YCI	TENET HEALTH SYSTEMS, PHILIDELPHIA, INC	Customer Agreement	Philadelphia	N/A	
Customer	YCI	Terra Soft Solutions, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	Texas Ideagroup, Inc - dba Ideagroup	Customer Agreement	Dallas	N/A	
Customer	YCI	TGS-NOPEC Geophysical Company	Customer Agreement	Houston	N/A	
Customer	YCI	The American Council On Pharmaceutical Education	Customer Agreement	Chicago	N/A	
Customer	YCI	The Bill And Melinda Gates Foundation	Customer Agreement	Seattle	N/A	
Customer	YCI	The Burndge Group, LLC	Customer Agreement	Chicago	N/A	
Customer	YCI	The Chicago Stock Exchange	Customer Agreement	Chicago	N/A	
Customer	YCI	The Entrance Ramp	Customer Agreement	Chicago	N/A	
Customer	YCI	The Group, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	The Group, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	The Group, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	The Group, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	The Group, Inc	Customer Agreement	Denver	N/A	
Customer	YCI	The Hemitage Group	Customer Agreement	Chicago	N/A	
Customer	YCI	The Information Management Group	Customer Agreement	Chicago	N/A	
Customer	YCI	The LaJolla Group	Customer Agreement	San Diego	N/A	
Customer	YCI	THE MARIN GROUP	Customer Agreement	Bay Area	N/A	
Customer	YCI	The Quaker Oats Company	Customer Agreement	Chicago	N/A	
Customer	YCI	The Rudman Partnership	Customer Agreement	Dallas	N/A	
Customer	YCI	The Staubach Company	Customer Agreement	Dallas	N/A	





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6  
7

**PROPOSED ORDER –  
SUBJECT TO  
CHANGE**

8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 In re:  
12 **YIPES COMMUNICATIONS, INC. et al.,<sup>1</sup>**  
13 Debtors.

Case No. 02-30750 DM  
Jointly Administered  
Chapter 11

**ORDER AUTHORIZING (1) SALE OF  
SUBSTANTIALLY ALL ASSETS OF  
THE DEBTORS FREE AND CLEAR  
OF ENCUMBRANCES, CLAIMS AND  
INTERESTS, AND (2) ASSUMPTION  
AND ASSIGNMENT OR,  
ALTERNATIVELY, REJECTION OF  
CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED  
LEASES**

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21  
22 Federal Tax I.D. No.: 77-0434300  
23

Date: June 10, 2002  
Time: 9:30 a.m.  
Place: United States Bankruptcy Cou  
235 Pine Street, 22d Floor  
San Francisco, CA  
Judge: Honorable Dennis Montali

24  
25  
26

27 <sup>1</sup> The Debtors are: Yipes Communications, Inc., a California corporation, Yipes Web Services Inc., a California  
corporation, Yipes Communications Group, Inc., a Delaware corporation, Yipes Properties, Inc., a California  
28 corporation, Yipes Transmission, Inc., a California corporation, and Yipes Transmission Virginia, Inc., a Virginia  
corporation.

1 A hearing (“Hearing”) was held before this Court on June 10, 2002, at 9:30 a.m., to  
2 consider the *Motion to (1) Sell Substantially All Assets of the Debtors Free and Clear of*  
3 *Encumbrances, Claims and Interests, and (2) Assume and Assign or, Alternatively, Reject Certain*  
4 *Executory Contracts and Unexpired Leases* (the “Motion”), filed on May 21, 2002, by the debtors  
5 in the above-captioned, jointly administered Chapter 11 cases. Unless otherwise defined, a  
6 capitalized term used in this Order shall have the meaning set forth in the Purchase Agreement or  
7 the Motion. Appearances of parties in interest are noted on the record of proceedings of the  
8 Hearing.

9 The Motion requests the entry of an order pursuant to sections 105, 362, 363, 365, 554,  
10 1121 and 1146 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (“Bankruptcy  
11 Code”), and rules 2002, 4001, 6004, 6006, 6007 and 9019 of the Federal Rules of Bankruptcy  
12 Procedure (“Bankruptcy Rules”) (i) approving the sale (the “Proposed Sale” or “Sale”) of  
13 substantially all of the Debtors’ assets (collectively, the “Acquired Assets”) free and clear of all  
14 identified Encumbrances, claims and interests, except as specifically provided in the Motion, with  
15 such Encumbrances, claims and interests to attach to the proceeds of the Sale (the “Sale  
16 Proceeds”) with the same validity (or invalidity) and priority as existed prior to the Sale, all as  
17 more particularly described in the purchase agreement by and between the Debtors, on one hand,  
18 and PHX Holdings, Inc. (“Holdings”), and PHX Communications, Inc. (“PHX”, and together  
19 with Holdings, the “Purchasers” or the “Lead Bidder”) on the other hand, substantially in the  
20 form of the *Asset Purchase Agreement* attached to the Motion as **Exhibit “A”** (as supplemented  
21 or amended, the “Purchase Agreement”); (ii) authorizing the assumption by the pertinent Debtor  
22 and assignment to the Lead Bidder of certain executory contracts and unexpired leases (the  
23 “Assigned Contracts”); and (iii) granting related relief (*e.g.*, with respect to the estates of each of  
24 the regulated debtors, modifying the automatic stay, appointing a responsible officer, modifying  
25 the exclusive periods for filing and soliciting acceptances of a plan, and permitting abandonment  
26 of property of such estates). The Proposed Sale to the Lead Bidder under the Motion was  
27 expressly subject to competitive bidding for the Acquired Assets. The Purchasers are new entities  
28 formed and capitalized as acquisition vehicles by certain of the DIP Lenders.

1 The Court has reviewed the Motion, and the following pleadings, declarations and other  
2 matters submitted in support of the Motion:

3 (1) *Declaration of Kurt E. Johnson* ("Johnson Declaration"), filed on May 21, 2002,  
4 setting forth evidence of the extent and manner in which the assets of the Debtors were  
5 offered for sale, and disclosing relationships among the Debtors and the Lead Bidder;

6 (2) *Declaration of Henry C. Kevane* ("Kevane Declaration"), filed on May 21, 2002,  
7 (i) setting forth evidence related to certain terms and conditions of the Purchase Agreement  
8 and estimating the amount and disposition of any Sale Proceeds, and (ii) identifying the  
9 possible holders of Encumbrances, claims and interests (collectively, "Encumbrances")  
10 whose property interests are (or may be) affected by the Proposed Sale under B.L.R. 6004;

11 (3) *Declaration of Eric Carlson* ("Carlson Declaration"), filed on May 21, 2002,  
12 setting forth evidence related to the post-petition sale and marketing process for the Acquired  
13 Assets;

14 (4) *Notice of Motion to Sell Substantially all Assets of the Debtors, et seq.* ("Sale  
15 Notice"), filed on May 21, 2002, together with the proof of service of the Sale Notice on  
16 those parties in interest possibly entitled to receive notice of the Proposed Sale under  
17 Bankruptcy Rules 2002 and 6004;

18 (5) *Notice of Motion to Assume and Assign or, Alternatively, Reject Certain*  
19 *Executory Contracts or Unexpired Leases, et seq.* ("Contract Notice"), filed on May 21,  
20 2002, together with the proof of service of the Contract Notice on those parties possibly  
21 entitled to receive notice of the proposed assumption and assignment or, alternatively,  
22 rejection of an executory contract or unexpired lease under Bankruptcy Rule 6006;

23 (6) *Declaration of Promod Haque* ("Haque Declaration"), filed on May 21, 2002,  
24 setting forth evidence in support of a finding of good faith with respect to the lead Bidder  
25 under Section 363(m) of the Bankruptcy Code;

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28 ///

1           (7)     *Submission of Proposed Transaction Agreements Among Certain Debtors and*  
2     *Lead Bidder* (“Submission”), filed on May [ ], 2002, submitting, among other documents,  
3     (i) a proposed agreement (“Interim Services Agreement”) among YTI and YTVI and  
4     Purchasers obligating YTI and YTVI to continue their utility operations in the ordinary  
5     course of business as presently conducted, including to provide access to the regulated  
6     properties and rights that have been customarily provided by YTI and YTVI to Yipes in  
7     connection with the conduct of Yipes’ business, and (ii) a proposed transition agreement  
8     among the Debtors and the Purchasers for post-closing services and access (collectively,  
9     with other documents included in the Submission, the “Transaction Agreements”);

10           (8)     *Certificate of Service*, filed on May [ ], 2002, of this Motion and the Johnson,  
11     Kevane, Carlson and Haque Declarations; and

12           (9)     [Other].

13           On May 17, 2002, this Court entered its *Amended Order Establishing Bidding*  
14     *Procedures, et seq.* (“Procedures Order”) under which the Debtors were authorized to conduct an  
15     auction or series of auctions (“Auction”) for the Acquired Assets, and any additional property of  
16     the estates of the Debtors. Pursuant to the Procedures Order, the Court also (a) authorized the  
17     Debtors to conduct the Auction according to certain bidding procedures and deadlines, (b)  
18     authorized the Debtors, under certain circumstances, to reimburse the Lead Bidder for its actual  
19     and reasonable expenses incurred in connection with the Sale, and (c) scheduled, and shortened  
20     time for, the Hearing.

21           The Debtors conducted the Auction on June 6 and 6, 2002. At the Auction, there was  
22     competitive bidding among the Lead Bidder and its Co-Bidder, if any, and [Insert]. At the  
23     conclusion of the Auction, the Debtors, in consultation with the Official Committee of Unsecured  
24     Creditors (“Committee”) appointed in the Chapter 11 Case of Yipes Communications, Inc.  
25     (“Yipes” or “YCI”), determined that [Insert] (the “Buyer”) had made the highest and best offer to  
26     purchase the Acquired Assets. The bid of [Insert] (“Back-Up Buyer”) was determined by the  
27     Debtors, in consultation with the Committee, to be the next highest bid for the Acquired Assets.  
28     Under the Procedures Order, the bid made by the Back-Up Buyer is irrevocable until June 13,

1 2002. In the event the Proposed Sale to Buyer does not close within three business days  
2 following the date of entry of this Order, the Debtor is hereby authorized to sell the Acquired  
3 Assets to the Back-Up Buyer on substantially the same terms and conditions set forth in the  
4 Purchase Agreement.

5 The Court has further considered the following objections to the Motion: (a) [Insert].  
6 With the exception of the foregoing objections, it appears that no other objections to the Motion  
7 have been timely filed or served by the June 4, 2002, deadline established under the Procedures  
8 Order. The Court has also considered the replies to objections filed by the Debtors. The Court  
9 has further examined the entire record compiled in these Chapter 11 cases, and has considered  
10 the offers of proof, evidence admitted and the arguments and representations of counsel at the  
11 Hearing. Based upon the foregoing matters, and due deliberation having been given to the  
12 transactions contemplated under the Purchase Agreement, and good cause appearing, the Court  
13 makes the following findings of fact, conclusions of law, and order granting the Motion.

14 I.

15 Findings of Fact and Conclusions of Law

16 **IT HAS BEEN DETERMINED BY THE COURT THAT:**

17 A. Jurisdiction and Venue. On March 21, 2002, Yipes filed its petition under  
18 Chapter 11 of the Bankruptcy Code. On April 11, 2002, Yipes Web Services, Inc. ("YWSI"),  
19 filed its petition under Chapter 11 of the Bankruptcy Code. On April 19, 2002, Yipes  
20 Communications Group, Inc. ("YCGI"), Yipes Properties, Inc. ("YPI"), Yipes Transmission,  
21 Inc. ("YTI") and Yipes Transmission Virginia, Inc. ("YTVI") filed their respective petitions  
22 under Chapter 11 of the Bankruptcy Code. Yipes, YWSI, YCGI, YPI, YTI and YTVI are  
23 referred to collectively hereinafter as the "Debtors." Yipes, YWSI, YPI and YTI are each  
24 wholly owned subsidiaries of YCGI. YTVI is a wholly owned subsidiary of YTI. This Court  
25 has jurisdiction to consider the Motion pursuant to 28 USC §§ 157 and 1334. The Motion and  
26 the Hearing are core proceedings under 28 USC § 157(b)(2)(A), (N) and (O). Venue of these  
27 cases in the Northern District of California is proper under 28 USC § 1408.

28 ///

1           B.       Notice of Sale. On May 21, 2002, the Debtors served the Sale Notice and the  
2 Contract Notice by mail to all creditors, equity security holders, parties to executory contracts  
3 and unexpired leases and other parties in interest as provided by Bankruptcy Rules 2002, 6004  
4 and 6006. In addition, on May 21, 2002, the Debtors served the Motion, the Johnson  
5 Declaration, the Kevane Declaration, the Carlson Declaration and the Haque Declaration on  
6 counsel for the Committee, counsel for the Lead Bidder, the Office of the United States  
7 Trustee, the Securities and Exchange Commission, the Internal Revenue Service, the  
8 Lienholders (defined below in paragraph D), parties who have requested that all notices be  
9 mailed to them, and the other parties listed on the proof of service. The proper and timely  
10 service of the Sale Notice and the Contract Notice is evidenced by the proofs of service of such  
11 notifications and the Court finds such notice adequate and sufficient under the particular  
12 circumstances of these Chapter 11 cases. A reasonable opportunity to object and be heard has  
13 been afforded to all parties in interest, including parties (i) who have asserted Encumbrances  
14 against the Acquired Assets and (ii) to executory contracts and unexpired leases. No other or  
15 further notice of the Motion, the Hearing or entry of this Order is necessary or required. The  
16 Procedures Order provided proper and adequate notice of the Auction and the overbid process.

17           C.       Cause for Early Disposition of Assets. Good cause exists for approving the sale  
18 of the Acquired Assets to the Buyer at this time because, among other factors evident from the  
19 record of proceedings in these Chapter 11 cases, (i) as a result of the limited funding available to  
20 the Debtors and the high "burn rate" of the Debtors' operations, the Debtors must conclude a sale  
21 of substantially all their assets before June 103 2002, (ii) the Debtors do not have access to  
22 further internal or external financing to operate their business after June 13, 2002, and (iii) the  
23 sales price for the Acquired Assets, obtained pursuant to Auction, is fair and the best price  
24 reasonably obtainable for the Acquired Assets at this time. Accordingly, in light of the Auction  
25 opportunity for the Acquired Assets and the marketing efforts for such assets, there are sound and  
26 sufficient business justifications to conduct a sale of substantially all of the Debtors' assets before  
27 confirmation of a plan of reorganization.

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1           D.     **Sale Is Appropriate.** The Sale of the Acquired Assets to the Buyer is supported  
2 by sound and sufficient business justifications. The Purchase Price to be paid under the Purchase  
3 Agreement represents adequate and fair value for the Acquired Assets. The Purchasers have  
4 established their right and ability to credit bid the outstanding balance under the DIP Loan as a  
5 portion of the Purchase Price. The amount of the credit bid of the DIP Loan by the Purchasers  
6 has been fully disclosed and such credit bid is hereby approved, subject to the § 5 of the Cash  
7 Collateral Stipulation as set forth in § 2.1(b) of the Purchase Agreement.

8           E.     **Holders of Encumbrances Against Acquired Assets.** Pursuant to B.L.R. 6004-  
9 1, the Debtors have identified, among others, the following holders of pre-petition Encumbrances  
10 whose interests, to the extent valid, perfected, nonavoidable and enforceable, are affected by the  
11 Proposed Sale of the Acquired Assets: (i) Comdisco, Inc., (ii) Extreme Networks Credit Corp.,  
12 (iii) Key Equipment Finance, a division of Key Corporate Capital, Inc., as assignee of Extreme  
13 Networks Credit Corp., (iv) Finova Capital Corp., (v) California State Board of Equalization (for  
14 collection of sales tax claims arising under California Revenue and Taxation Code § 6811 et.  
15 seq.), (vii) certain local municipalities and taxing authorities listed behind the caption page to the  
16 Motion, and (viii) certain co-location, storage, premises and warehouse providers listed behind  
17 the caption page to the Motion. The foregoing parties are collectively referred to hereinafter as  
18 the Lienholders. Among the Excluded Assets (as defined in the Purchase Agreement) are the  
19 Debtors' interests in certain deposit accounts held at Comerica Bank-California ("Comerica"), as  
20 successor in interest to Imperial Bank ("Comerica Accounts"). The Comerica Accounts have  
21 purportedly been pledged to secure (a) obligations to Comerica on account of certain letters of  
22 credit and other financial accommodations made by Comerica to the Debtors, and (b) obligations  
23 to other parties under leases of nonresidential real property and co-location agreements. The  
24 Comerica Accounts are not subject to the Proposed Sale and, accordingly, the Encumbrances of  
25 Comerica in such accounts are not affected by this Order.

26           F.     **Sale Free and Clear.** The Sale of the Acquired Assets free and clear of all  
27 Encumbrances held or alleged by the Lienholders, but subject to the Permitted Encumbrances  
28 under the Purchase Agreement (including the Encumbrances held by Norwest under the Note

1 Purchase Agreement), is appropriate pursuant to 11 U.S.C. § 363(f) in that the sales price payable  
2 by the Buyer is equal to or exceeds the aggregate value of the Encumbrances on the Acquired  
3 Assets, the holders of such Encumbrances could be compelled to accept a money judgment for  
4 such Encumbrances or the holders of such Encumbrances have consented to the sale of the  
5 Acquired Assets free and clear of Encumbrances, claims, interests and encumbrances.

6 G. Assigned Contracts. The assumption and assignment or, alternatively, the  
7 rejection of the Assigned Contracts is a reasonable exercise of the Debtors' business judgment.  
8 The Debtors and the Buyer have modified the scheduled of Assigned Contracts to delete those  
9 contracts or leases that the Buyer has determined not to accept ("Rejected Contracts"). The  
10 Contracts Notice contained a proposed Cure Amount applicable to each of the non-debtor parties  
11 to a proposed Assigned Contract. By virtue of the provisions of this Order and the terms of the  
12 Purchase Agreement, the Debtors have (i) cured, or have provided adequate assurances of cure, of  
13 any and all defaults existing prior to the date of this Order under any of the Assigned Contracts,  
14 except to the extent that a non-debtor party to an Assigned Contract has agreed to different  
15 treatment, within the meaning of Section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided  
16 compensation, or adequate assurance of compensation, to any party for any actual pecuniary loss  
17 to such party resulting from a default prior to the date of this Order under any of the Assigned  
18 Contracts, except to the extent that a non-debtor party to an Assigned Contract has agreed to  
19 different treatment, within the meaning of Section 365(b)(1)(B) of the Bankruptcy Code. The  
20 Buyer has provided adequate assurance of future performance of and under the Assigned  
21 Contracts within the meaning of Sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

22 H. Good Faith. The negotiations which resulted in the Sale of the Acquired Assets to  
23 the Buyer at all times were conducted in good faith and at arms length, with Debtors, on the one  
24 hand, and the Buyer, on the other, being separately represented therein. No consideration is being  
25 paid or received that has not been disclosed in the papers filed with the Court in connection with  
26 the Sale and the Hearing. All affiliations and connections between or among the Buyer and the  
27 Debtors have been fully disclosed in the Johnson Declaration and the Haque Declaration. The  
28 Purchase Agreement represents the highest and otherwise best offer for the Acquired Assets



1 following an active, thorough and open solicitation process reasonably calculated to yield the  
2 highest or otherwise best offer for such assets. It further appears that no party has engaged in any  
3 conduct that would permit the avoidance of the Sale, the recovery of excess value and other costs,  
4 or the imposition of punitive damages, pursuant to Section 363(n) of the Bankruptcy Code.

5 I. **Modification of Automatic Stay.** The Acquired Assets include, among other  
6 property, certain assets, licenses, permits, charters, certificates, franchises and similar grants held  
7 by YTI and YTVI that are subject to the regulation by, or jurisdiction of, certain state and local  
8 governmental units ("Regulated Assets"). The conveyance of the Regulated Assets by the  
9 Debtors to the Buyer is, and shall be effectuated, subject to applicable nonbankruptcy law and  
10 regulations ("Regulatory Law"). The Core Business of the Debtors requires the integrated  
11 operation of the Regulated Assets and the Unregulated assets. Accordingly, inasmuch as the  
12 Buyer's use and enjoyment of the Acquired Assets *other than* the Regulated Assets is dependent  
13 upon the privileges, interests and rights conferred by the Regulated Assets, the Debtors and the  
14 Buyer have agreed to modify the automatic stay in the Chapter 11 cases of YTI and YTVI to  
15 authorize and enable the Buyer to exercise its rights and remedies as a pledgee of the capital  
16 stock, and the holder of a security interest in the Regulated Assets, of such debtors.

17 J. **Plan Election – Modification of Automatic Stay and Shared Exclusivity.**  
18 Section 1.1(f) of the Purchase Agreement provides that, under certain circumstances, the Buyer  
19 shall have an option to propose a plan of reorganization for YTI and YTVI to the extent the Buyer  
20 determines that confirmation of such plan may effectuate a transfer of the Regulated Assets  
21 ("Plan Election"). The Debtors and the Buyer have agreed to (i) modify the automatic stay in the  
22 Chapter 11 cases of YTI and YTVI to authorize and enable the Buyer to exercise its right to  
23 propose a plan in such cases, and (ii) partially terminate the exclusive periods under Section 1121  
24 of the Bankruptcy Code to enable the Buyer to exercise the Plan Election.

25 K. **Responsible Officer of Regulated Sellers.** The Debtors and the Buyer have  
26 further agreed to appoint a responsible officer in the Chapter 11 cases of YTI and YTVI to assure  
27 the performance by such debtors under the Interim Services Agreement and to otherwise  
28 implement the conveyance of the Regulated Assets to the Buyers. The responsible officer shall

1 be mutually satisfactory to the Debtors and Buyer and shall be subject to mutually acceptable  
2 governance provisions.

3 L. **Exemption From Taxes.** The Sale of the Acquired Assets, which will maximize  
4 the assets of the Debtors' estates for distribution to creditors, is being undertaken in  
5 contemplation of the confirmation of a plan of reorganization and therefore is necessary to the  
6 confirmation and consummation of any plan of reorganization. Accordingly, the Sale is "under a  
7 plan" within the meaning of Section 1146(c) of the Bankruptcy Code and such sale is a  
8 transaction described in and subject to the provisions of Section 1146(c) of the Bankruptcy Code.

9 M. **Retention of Jurisdiction.** It is necessary and appropriate, in order to assure  
10 compliance with this Order, for this Court to retain jurisdiction to (i) interpret, enforce and  
11 resolve any disputes regarding the provisions of the Purchase Agreement and this Order, (ii)  
12 protect the Buyer (or any of the Acquired Assets) from any Lien, (iii) compel delivery to the  
13 Buyer of any of the Acquired Assets in the possession of parties other than the Debtors, including  
14 determinations that there was consent to the assumption and assignment of the Assigned  
15 Contracts, (iv) determine the validity, extent and priority of (alleged) Encumbrances, from which  
16 the Acquired Assets have been sold free and clear, on the sale proceeds, and (v) hear contested  
17 matters to determine the amounts, if any, due under any of the Assigned Contracts.

18 N. **Cause for Reduction of Stay Periods.** Good cause exists to shorten the 10-day  
19 stay of effectiveness under Bankruptcy Rules 6004(e) and 6006(d) because (1) expedited closing  
20 of the transactions contemplated by the Purchase Agreement has the support of the major  
21 parties in interest, (2) creditors who have objected to the Motion, if any, have had or will have  
22 an adequate opportunity to review any changes to Purchase Agreement as relevant to the  
23 objecting creditors' claims, and (3) there is economic benefit to the Debtors and creditors if the  
24 consummation of the transactions contemplated by the Purchase Agreement occurs as soon as  
25 practicable after the conditions precedent to closing of the Sale are satisfied.

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II.

Order Granting Motion

Based upon the record of the Hearing, and the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED THAT:**

1. **Motion Granted.** The Motion is granted. Any objections to the Motion, unless previously withdrawn, are overruled. All withdrawn objections, if any, are hereby withdrawn with prejudice. The Sale of the Acquired Assets to the Buyer, pursuant to the terms of the Purchase Agreement and this Order, is hereby authorized under Sections 105, 363 and 365 of the Bankruptcy Code. The Debtors are authorized to (a) take such actions as may be necessary or appropriate to carry out the Sale, and (b) execute the Purchase Agreement and the Transaction Agreements and such other documents and instruments as may be required to implement the Sale.

2. **Implementation of Conveyance of Regulated Assets.**

(a) **Interim Services Agreement.** YTI and YTVI are authorized and directed to take all actions necessary or appropriate, including the execution, delivery, filing and recordation of any document, to implement, effectuate and consummate the transfer of the Regulated Assets to the Buyer in accordance with the Regulatory Law. YTI and YTVI are further authorized and directed to enter into and perform the Interim Services Agreement in substantially the form attached to the Submission. The Interim Services Agreement that has been filed with the Court is approved and the parties thereto are authorized and directed to fulfill their respective rights and obligations thereunder.

(b) **Modification of Automatic Stay.** The automatic stay under Section 362 of the Bankruptcy Code shall be modified from and after the First Closing to permit the Purchasers to (i) exercise their respective rights and remedies under the Security Agreement with respect to the Regulated Stock and the Regulated Assets under § 6.8(d) of the Purchase Agreement, and (ii) exercise the Plan Election under § 1.1(f) of the Purchase Agreement, provided that, Purchasers shall give Debtors three days' advance notice of the enforcement of any rights under clause (i).

1 (c) Partial Termination of Exclusive Periods. The exclusive periods in effect  
2 in the Chapter 11 cases of YTI and YTVI under Section 1121 of the Bankruptcy Code  
3 shall be deemed partially terminated to permit the Purchasers to exercise the Plan  
4 Election under § 1.1(f) of the Purchase Agreement.

5 (d) Abandonment. The Purchasers are authorized to designate any Regulated  
6 asset for abandonment to the applicable Regulated Seller under § 6.8(b) of the Purchase  
7 Agreement.

8 (e) Appointment of Estate Representative for YTI and YTVI. [Insert] is  
9 appointed as the representative of the estates of YTI and YTVI (“Regulatory Officer”)   
10 upon the date of entry of this Order for the purpose of exercising the rights, power and  
11 authority of YTI and YTVI in connection with the consummation of the Purchase  
12 Agreement and compliance with the provisions of the Regulatory Law applicable to such  
13 debtors. The Regulatory Officer, as the representative of the estates of YTI and YTVI,  
14 is further authorized to execute such certificates or instruments of YTI and YTVI  
15 pursuant to applicable provisions of the Regulatory Law without (i) further action by  
16 their respective directors or stockholders, or (ii) further notice to creditors or approval  
17 of this Court. The Regulatory Officer is authorized to perform, and cause YTI and  
18 YTVI to perform, under the Interim Services Agreement. The Bankruptcy Court will  
19 have sole jurisdiction over claims and causes of action against the Regulatory Officer  
20 arising out of the performance of his duties, and the Regulatory Officer may not be  
21 sued, or have claims asserted against him, in any other forum without leave of the  
22 Bankruptcy Court.

23 (f) Regulatory Compliance. Nothing contained in any order of any type or  
24 kind entered in these Chapter 11 cases, or any related proceeding, subsequent to the entry  
25 of this Order, shall conflict with or derogate from the provisions of this Order.

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1           3.     Sale Free and Clear.

2           (a)     Upon the closing of the Sale to the Buyer, pursuant to Sections 105(a) and  
3           363(f) of the Bankruptcy Code, the Acquired Assets shall be transferred, sold and  
4           delivered to the Buyer free and clear of all liens claims and interests, including all  
5           Encumbrances, to the fullest extent allowed by law, including, without limitation, any  
6           security interest, mortgage, lien, charge against or interest in property, adverse claim,  
7           claim of possession, license or restriction of any kind (including, but not limited to, any  
8           restriction on the use, receipt of income or other exercise of any attributes of ownership or  
9           any option to purchase, option, charge or retention agreement which is intended as  
10          security) or other matters of any person or entity that encumber or relate to, or purport to  
11          encumber or relate to, the Acquired Assets, except as specifically provided in the Purchase  
12          Agreement or this Order, provided that, the Acquired Assets shall be sold (x) subject to  
13          the Permitted Encumbrances, and (y) subject to the provisions of § 1.5 of the Agreement  
14          related to putative Encumbrances held by owners of Premises (as defined in the Purchase  
15          Agreement).

16          (b) All Encumbrances, except for the Permitted Encumbrances, shall attach to the  
17          Sale Proceeds in the order of their priority, and with the same validity, priority, force and  
18          effect which they had against the Acquired Assets, provided that, nothing contained in this  
19          Order shall be deemed an acknowledgment, consent or waiver by the Debtors as to the  
20          amount, priority or allowance of any Claim or validity, force and effect, or immunity from  
21          avoidance, of any Encumbrance.

22          (c) The Sellers and Buyer have agreed that Buyer shall not assume any liability or  
23          obligation of any of the Debtors, except as expressly provided in the Purchase Agreement.  
24          The Court finds that Buyer is relying in good faith on this limitation of its assumed  
25          liabilities in setting the Purchase Prices and other benefits under the Purchase Agreement.  
26          This Court finds that it would be inequitable for any party that has received notice of the  
27          Hearing to assert claims of successor liability against the Buyer. Accordingly, since no  
28          party has opposed the Motion on grounds that successor liability may be imposed upon

1 the Buyer, the Court finds that the Buyer is not a successor to any of the Debtors or their  
2 respective bankruptcy estates by reason of any theory of law or equity (including any  
3 theory of successor liability, de facto merger, or substantial continuity).

4 (d) This Order is and shall be effective as a determination that, upon transfer of the  
5 Acquired Assets to the Buyer, all Encumbrances (other than the Permitted Encumbrances)  
6 against the Acquired Assets conveyed to the Buyer have been and hereby are terminated  
7 and declared to be unconditionally released, discharged and terminated. This Order shall  
8 be binding upon and govern the acts of all entities including all filing agents, filing  
9 officers, administrative agencies or units, governmental departments or units, secretaries  
10 of state, federal, state and local officials and all other persons and entities who may be  
11 required to report or insure any title or state of title in or to the Acquired Assets conveyed  
12 to the Buyer. All Encumbrances of record as of the date of this Order, except as otherwise  
13 provided in this Order, shall be forthwith removed and stricken as against the Acquired  
14 Assets. All entities described in this paragraph are authorized and specifically directed to  
15 strike all such recorded Encumbrances against the Acquired Assets from their records.

16 4. **Good Faith.** The Buyer is a good faith purchaser for value for all purposes,  
17 including, without limitation, within the meaning of a good faith purchaser as used in Section  
18 363(m) of the Bankruptcy Code, and Buyer is entitled to the protections afforded such purchasers  
19 pursuant to Section 363(m) of the Bankruptcy Code.

20 5. **Assumption and Assignment Approved.** The Debtors are authorized to assume  
21 and assign to the Buyer the Assigned Contract pursuant to Sections 365(b) and (f) of the  
22 Bankruptcy Code. Upon the assignment of such contracts to the Buyer, pursuant to Section  
23 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any liability for any breach  
24 of such contracts occurring after the effective date of such assignment. With respect to each  
25 Assigned Contract, each non-debtor counter-party to such contract that has not filed a timely  
26 objection to the relief sought in the Motion on the ground that such party's consent is required  
27 for the Debtors to assume and assign such contract, or that some other cure is required, is  
28 hereby deemed to have given the consent (to the extent required, if any) contemplated by

1 Sections 365(c)(1)(B) and (f)(1) of the Bankruptcy Code to the assumption of such contract by  
2 the pertinent Debtor and the assignment of such contract to the Buyer. No amounts are due to  
3 cure any defaults or other obligations under or in respect of any of the Assigned Contracts (x)  
4 except as otherwise identified in the Motion or the Contract Notice, and (y) provided that, any  
5 non-debtor counter-party to an Assigned Contract that has filed a timely objection to the  
6 Motion, which objection specifically disputes the cure amount proposed by the Debtors shall be  
7 entitled to the cure amount that shall be agreed upon among the Debtors and such objecting  
8 party or, if no agreement can be reached, a cure payment as set forth in a final order of this  
9 Court.

10 6. **Rejection Approved.** Any Assigned Contract that has been deleted by the  
11 Debtors or the Buyer from the list of Assigned Contracts attached as Exhibit B to the Motion  
12 shall be deemed rejected under Section 365(a) of the Bankruptcy Code on the later to occur of  
13 (i) the First Closing under the Purchase Agreement, and (ii) such other date as the Debtors may  
14 fix at the Hearing. Each party to an executory contract or unexpired lease that has been  
15 rejected shall file a proof of claim for damages arising from the rejection of such agreement on or  
16 before July 31, 2002, pursuant to Federal Rule of Bankruptcy Procedure 3002(c)(4),

17 7. **Retention of Jurisdiction.** This Court retains jurisdiction to (a) interpret,  
18 implement and enforce the terms and provisions of this Order and the terms of the Purchase  
19 Agreement, all amendments thereto and any waivers and consents thereunder and of each of the  
20 agreements executed in connection therewith, (b) compel delivery of all the Acquired Assets to  
21 the Buyer; (c) resolve any disputes arising under or related to the sale of the Acquired Assets or  
22 assignment of the Assigned Contract to the Buyer, (d) adjudicate all issues concerning alleged  
23 Encumbrances and any other alleged interest in and to the Acquired Assets or the Sale Proceeds,  
24 and (e) resolve any dispute with a taxing authority under § 2.2 of the Purchase Agreement.

25 8. **Tax Exemption.** Pursuant to Section 1146(c) of the Bankruptcy Code, the  
26 making or delivery of an instrument of transfer related to the Acquired Assets shall not be taxed  
27 under any law imposing a transfer, stamp, sales, excise or similar tax.

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9. **Reduction of Stay Periods.** This Order shall be effective immediately upon entry pursuant to Bankruptcy Rules 9014 and 7062. Pursuant to Bankruptcy Rules 6004(g) and 6006(d), the automatic 10-day stay of the effectiveness of this Order is hereby reduced to two calendar days after the date of entry of this Order.

10. **Construction of Order.** The failure to reference a particular provision of the Purchase Agreement in this Order shall not affect the validity or enforceability of such provision. Each provision of the Purchase Agreement shall be deemed authorized and approved by this Order and shall have the same binding effect of every other provision of the Purchase Agreement, whether or not mentioned in this Order.

DATED: \_\_\_\_\_

UNITED STATES BANKRUPTCY JUDGE

Respectfully submitted:

**PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.**

By: \_\_\_\_\_  
Henry C. Kevane

Attorneys for Debtors and Debtors in Possession

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6  
7 **UNITED STATES BANKRUPTCY COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 In re:  
11 **YIPES COMMUNICATIONS, INC., et al.,<sup>1</sup>**  
12 Debtors.

Case No. 02-30750 DM

Jointly Administered

Chapter 11

**DECLARATION OF KURT E. JOHNSON  
IN SUPPORT OF MOTION TO (1) SELL  
SUBSTANTIALLY ALL ASSETS OF THE  
DEBTORS FREE AND CLEAR OF LIENS,  
CLAIMS AND INTERESTS, AND (2)  
ASSUME AND ASSIGN, OR  
ALTERNATIVELY, REJECT CERTAIN  
EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES**

Date: June 10, 2002

Time: 9:30 a.m.

Place: United States Bankruptcy Court  
235 Pine Street, 22nd Floor  
San Francisco, CA

Judge: Honorable Dennis Montali

20 Federal Tax I.D. No.: 77-0434300  
21  
22

23 I, Kurt E. Johnson declare and state as follows:

24 1. I am the Vice President, Finance, of the Debtors in the above-captioned cases. I  
25 am also the designated responsible individual (the "Responsible Individual") for each of the

26 <sup>1</sup> The Debtors are: Yipes Communications, Inc., a California corporation ("Yipes Communications"), Yipes Web  
27 Services Inc. ("Yipes Web Services"), a California corporation, Yipes Communications Group, Inc., a Delaware  
28 corporation ("Yipes Group"), Yipes Properties, Inc. a California corporation ("Yipes Properties"), Yipes  
Transmission, Inc., a California corporation, ("Yipes Transmission"), and Yipes Transmission Virginia, Inc., a  
Virginia corporation. ("Yipes Virginia") (collectively, the "Debtors").

1 Debtors pursuant to B.L.R. 4002-1.

2 2. I make this Declaration in support of the Debtors' *Motion to (1) Sell Substantially*  
3 *All Assets of the Debtors Free and Clear of Liens, Claims, and Interests, and (2) Assume and*  
4 *Assign, Or, Alternatively, Reject of Certain Executory Contracts and Unexpired Leases* (the "Sale  
5 Motion"),<sup>2</sup> filed on or about May 21, 2002, which I have read and reviewed. I also submit this  
6 Declaration pursuant to the *Guidelines for Early Disposition of Assets in Chapter 11 Cases: The*  
7 *Sale of Substantially All Assets Under § 363* established by the San Jose Division of the United  
8 States Bankruptcy Court for the Northern District of California.

9 3. I hereby adopt each of the factual allegations in the Motion and incorporate them  
10 into this Declaration by reference. I have personal knowledge of the facts set forth herein and, if  
11 called as a witness, I could and would testify competently to the matters set forth herein. Where  
12 facts are alleged on information or belief, I believe them to be true. Except as otherwise  
13 indicated, all statements in this Declaration are based on my personal knowledge, my review of  
14 relevant documents or my opinion based on my experience with the Debtors' operations and  
15 financial condition.

16 4. In my capacity as the Responsible Individual for each of the Debtors and pursuant  
17 to my relationship with them as Vice President, Finance, I am familiar with the Debtors'  
18 operations, including their financial performance and financial relationships. I am also familiar  
19 with the Debtors' books and records as they relate to their financial operations and corporate  
20 relationships.

21 **The Debtors' Efforts to Pursue Alternatives to the Proposed Sale**

22 5. Over the past two years, the Debtors have incurred significant losses. The Debtors  
23 reported a net loss of approximately \$75.8 million for the year 2000 and a net loss of  
24 approximately \$130.1 million for the year 2001.

25 6. The primary cause of these losses was the costs associated with the construction  
26 and maintenance of the Debtors' network and operations. These losses were compounded by a  
27 lack of access to capital markets to fund the Debtors' operations. The Debtors developed two

28 <sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

1 strategies in order to reverse their negative cash flow. First, the Debtors attempted to obtain a  
2 loan in order to finance their operations and continue the development of their business model,  
3 which is premised on high-speed telecommunications services through the Debtors' managed  
4 optical network. Second, the Debtors explored the possibility of merging with another entity.  
5 The Debtors' former Chief Executive Officer, Gerald Parrick, and their former Chief Financial  
6 Officer, Robert D. Valdez, led these fundraising efforts.<sup>3</sup>

7 The Debtors' Efforts to Obtain Debt Financing

8 7. Beginning in the first half of 2001, the Debtors took part in discussions with a  
9 significant number of investment banks to discuss financing alternatives. One of these financing  
10 alternatives included a potential high yield debt offering of between \$150 million and \$200  
11 million (the "Proposed Debt Offering") in order to continue funding and developing the Debtors'  
12 business.

13 8. As a result of capital market conditions in general and in the telecommunications  
14 sector specifically, the Debtors found that that there was minimal interest on the part of lenders to  
15 fund the Proposed Debt Offering.<sup>4</sup> In light of their inability to obtain the necessary funding in the  
16 form of the Proposed Debt Offering, the Debtors considered alternative financing methods, such  
17 as a potential merger with another entity or the possibility of an equity investment in the Debtors  
18 by a third party.

19 The Debtors' Merger Discussions and Proposed Equity Financing

20 9. In the second half of 2001, the Debtors held very preliminary merger discussions  
21 with three companies. These discussions were ultimately unsuccessful. During the same  
22 timeframe, the Debtors approached a number of strategic investors regarding the possibility of  
23 leading a \$100 million equity investment in the Debtors.

24 10. Around September 2001, the Debtors hired Canadian Imperial Bank of Commerce  
25 ("CIBC") to market and raise the \$100 million equity investment in the Debtors through a

26 <sup>3</sup> Previously, Mr. Valdez was Managing Director and Head of Mergers & Acquisitions at SG Cowen and  
27 Managing Director, Co-Head of the High Technology Group at Kidder Peabody and Senior Vice President  
28 in the Mergers & Acquisitions group at Lehman Brothers.

<sup>4</sup> The Debtors discussed financing alternatives with many investment banks, including JP Morgan,  
Goldman Sachs, Robertson Stephens, Salomon Smith Barney, UBS Warburg, Lehman Brothers, Dain  
Rauscher and Merrill Lynch, among others.

1 preferred stock offering. CIBC prepared an offering memorandum for additional outside  
2 investors. However, the Debtors were unable to obtain a lead investor. Consequently, the  
3 Debtors and CIBC were ultimately unsuccessful in accessing additional sources of investment  
4 capital.

5 The Note Purchase Agreement

6 11. As a result of a lack of access to the capital markets through either public or  
7 private debt and equity markets and due to the lack of suitable merger candidates, the Debtors  
8 decided to pursue an "inside" round of debt financing with their existing primary investors that  
9 ultimately resulted in the Note Purchase Agreement. The Note Purchase Agreement was funded  
10 to provide up to \$55 million for the Debtors' operations and is secured by substantially all of the  
11 Debtors' assets. Although the Note Purchase Agreement provided for availability of \$55 million,  
12 the release of these funds was tied to the satisfaction of various conditions, including reductions  
13 in the Debtors' "burn rate" with their fiber and Internet transit providers, among others. The  
14 Debtors then endeavored to renegotiate certain of their fiber contracts, pursuant to which they had  
15 either purchased fiber capacity in excess of their needs and/or were paying more than the current  
16 market rate for fiber.

17 12. In mid-March 2002, the Noteholders curtailed additional distributions of funds to  
18 the Debtors. Around this same time, one of the Debtors' fiber providers threatened to terminate  
19 service, which would have resulted in the shutdown of the Debtors' operations. Without the  
20 necessary cash to continue operations coupled with the fiber provider's threat to terminate  
21 service, Yipes Communications commenced its Chapter 11 case on March 21, 2002 to preserve  
22 the going concern value of the Debtors' business. To facilitate the sale of the Debtors' assets,  
23 certain affiliates of Yipes Communications filed their own respective Chapter 11 cases on April  
24 11, 2002 and April 19, 2002 in order to effectively transfer the Debtors' assets to a potential  
25 purchaser.

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1 The Marketing of the Debtors' Assets

2 The Time Constraints on Marketing the Debtors' Assets

3 13. The Debtors were successful in initially obtaining \$5.4 million of post-petition  
4 financing pursuant the DIP Agreement.<sup>5</sup> However, the Debtors realized that any marketing of the  
5 sale of substantially all of their assets would have be effectuated quickly due to the limited  
6 available amount of DIP financing and in light of the cash requirements necessary to pay the  
7 Debtors' post-petition operating expenses.

8 The Efforts to Market the Debtors' Assets

9 14. In the context of these time and cash constraints, the Debtors and their financial  
10 advisors, Ernst & Young Corporate Finance LLC ("EYCF"), quickly went to work in order to  
11 conduct a timely and comprehensive sale process. The Debtors engaged EYCF immediately  
12 following the filing of Yipes Communications' Chapter 11 case in order to, among other things,  
13 expeditiously and thoroughly market the Debtors' assets. The Debtors' senior managers and I  
14 have taken an active role in the Sale process. Working with EYCF, we assisted in the  
15 development of the offering memorandum and the creation of a list of prospective buyers and  
16 investors. Further, we prepared and made information available in a data room to prospective  
17 buyers, made management presentations and answered questions, as required, at the request of  
18 various parties. The Debtors and EYCF have also worked to market what, in our view, is the  
19 most economically feasible future model for the Debtors' business. This model focuses on the  
20 nine core cities (the "Core Business") in which the Debtors provide services. In addition, the  
21 Debtors and EYCF developed business models and projections for the Debtors' non-core business  
22 in order to market those assets. EYCF's efforts to market the Debtors' assets, as well as the  
23 strategies used to attract potential bidders, are described in the *Declaration of Eric Carlson in*  
24 *Support Motion To (1) Sell Substantially All Assets of the Debtors Free and Clear of Liens,*  
25 *Claims, and Interests, and (2) Assume and Assign, Or, Alternatively, Reject Certain Executory*  
26 *Contracts and Unexpired Leases* filed concurrently herewith.

27 <sup>5</sup> The Debtors and the DIP Lenders expect to extend the term of the DIP Agreement and to provide for  
28 additional funding to allow the Debtors to continue their operations through June 12, 2002. A final  
hearing on the DIP Agreement has been scheduled for May 28, 2002 to approve the expenditure of  
approximately \$2.1 million in additional funds necessary to complete the Sale process.

1                   **The Purchase Agreement and the Decision to Sell the Acquired Assets**

2           15.     At the same time that EYCF and the Debtors were marketing the Debtors to  
3 potentially interested buyers and/or investors, the Debtors commenced detailed discussions with  
4 the Norwest Parties regarding the structure and terms of the Purchase Agreement. In addition, the  
5 Debtors investigated the possibility of arrangements with potential buyers of non-core business  
6 assets. Under this arrangement, the Debtors believed that they could obtain the highest and best  
7 return for the sale of their assets.

8           16.     As noted above, the Debtors and EYCF constructed a data room that they made  
9 available to all potentially interested parties in order to review contracts and historical financial  
10 data. The Norwest Parties attended several in-person management presentations and participated  
11 on several conference calls with management to discuss the various issues associated with the  
12 transaction. The Norwest Parties and their counsel also spent additional time in the data room  
13 after such meetings in order to continue their due diligence.

14           17.     From May 14, 2002, through May 21, 2002, EYCF, the Debtors and their general  
15 bankruptcy counsel, Pachulski, Stang, Ziehl, Young & Jones P.C., discussed and negotiated  
16 definitive terms of the Purchase Agreement with the Norwest Parties and their professionals. The  
17 Purchase Agreement includes the purchase of the Core Business assets by the Norwest Parties.  
18 A copy of the Purchase Agreement is attached to the Motion as Exhibit "A".

19                   **The Debtors' Pre-petition Relationships with the Norwest Parties**

20           19.     The Purchasers of the Debtors' assets are new acquisition vehicles that have been  
21 formed and will be capitalized by certain (if not all) of the Norwest Parties. The Norwest Parties  
22 and other DIP Lenders are the majority holders of the preferred stock of Yipes Group, Yipes  
23 Communications' corporate parent. Three of the Norwest Parties, Norwest, Sprout and NEA,  
24 owned approximately 61% of the Yipes Group's preferred stock as of March 21, 2002. Norwest,  
25 Sprout and NEA, are also parties to the Note Purchase Agreement.

26           20.     In addition to the Norwest Parties and DIP Lenders' connections with the Debtors,  
27 certain of the Debtors' officers also hold interests in the Note Purchase Agreement. Gerald  
28 Parrick, the Debtors' former Chief Executive Officer and current non-officer Chairman of the

1 Board, and Stan Moore, Vice President, Law and Public Policy of Yipes Communications, are  
2 participants in the Note Purchase Agreement in the amounts of \$6,490 and \$2,593, respectively.

3 21. Some of the representatives or designees of the Norwest Parties were also former  
4 directors of certain of the Directors. Promod Haque of Norwest, Keith Geeslin of Sprout and  
5 Peter Morris of NEA were members of the Board of Directors of Yipes Group until April 24,  
6 2002, when each of them resigned. Representatives of certain other potential Norwest Parties,  
7 specifically Focus Venture Partners, Soros and JP Morgan/H&Q, maintain Board of Director  
8 observation rights with respect to Yipes Group.

9 **The Debtors' Post Sale Relationships with the Norwest Parties and Other Secured Creditors**

10 22. Neither I, nor to the best of my knowledge, any other member of the Debtors'  
11 senior management, have engaged in any discussions about future employment with the Norwest  
12 Parties, except for Larry Bercovich, Assistant General Counsel of Yipes Communications. Mr.  
13 Bercovich has been approached by the Norwest Parties in connection with possibly accepting  
14 employment with the Norwest Parties prior to the Sale Hearing. I am informed and believe that  
15 discussions between Mr. Bercovich and the Norwest Parties are currently ongoing.

16 23. To the best of my knowledge, no post-sale agreements have been made between  
17 the Debtors' senior management and the Norwest Parties, any of the other Noteholders or other  
18 secured creditors, except for Mr. Bercovich described above. However, I believe that is likely  
19 that the Norwest Parties, if they are the Buyers, will need further transitional assistance or a  
20 permanent management team comprised of other members of the Debtors' senior management.  
21 Therefore, I anticipate that additional discussions relating to the Norwest Parties' employment of  
22 certain of the Debtors' senior management staff will take place after approval of the Sale Motion.

23 **Insider Compensation and Benefits Resulting from the Sale**

24 24. I am not aware of any insider compensation or other benefits resulting from the  
25 Sale of the Debtors' assets, except to the extent discussed above.

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**The Sale is in the Best Interests of the Debtors' Estates**

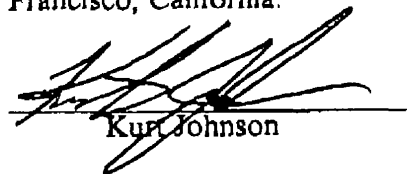
25. I, along with the Debtors' management and EYCF, believe that under the present circumstances and in light of the terms of the DIP Agreement and the constraints on the Debtors' operations, the Purchase Price represents a fair value for the Purchased Assets and the Proposed Sale will maximize the value of the Debtors' business.

26. Exigent circumstances require a prompt sale. In fact, I believe that the Debtors' business will suffer irreparable harm if a sale does not close by June 12, 2002 because the Debtors will no longer have the ability to continue their operations. I also believe that any further delay in the sale of the Debtors' assets may result in significant loss of customers, who may not want to continue their relationships with the Debtors in light of the Debtors' inability to operate their business after June 12, 2002. If the Debtors lose their customers, I believe that the value of their assets would drop precipitously.

27. Therefore, I believe that it is crucial for the Debtors to close the Sale with either the Norwest Parties, or to a buyer who submits a higher and better offer for the Debtors' assets, as soon as possible in order to preserve the going concern value of the Debtors' business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of May, 2002 , at San Francisco, California.

  
Kurt Johnson

PACHULSKI, SVARG, ZIEHL, YOUNG & JONES P.C.  
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5 Attorneys for Debtors and Debtors in Possession

6 **UNITED STATES BANKRUPTCY COURT**

7 **NORTHERN DISTRICT OF CALIFORNIA**

8 **SAN FRANCISCO DIVISION**

9 In re:

10 **YIPES COMMUNICATIONS, INC., et al.,<sup>1</sup>**

11 Debtors.

Case No. 02-30750 DM

Jointly Administered

Chapter 11

**DECLARATION OF ERIC CARLSON IN  
SUPPORT OF MOTION TO (1) SELL  
SUBSTANTIALLY ALL ASSETS OF THE  
DEBTORS FREE AND CLEAR OF LIENS,  
CLAIMS AND INTERESTS, AND (2)  
ASSUME AND ASSIGN, OR  
ALTERNATIVELY, REJECT CERTAIN  
EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES**

Date: June 10, 2002

Time: 9:30 a.m.

Place: United States Bankruptcy Court  
235 Pine Street, 22d Floor  
San Francisco, CA

Judge: Honorable Dennis Montali

20 Federal Tax I.D. No.: 77-0434300

21  
22 I, Eric Carlson, declare and state as follows:

23 1. I am a Managing Director of Ernst & Young Corporate Finance LLC  
24 ("EYCF"). EYCF has been retained to serve as financial advisors to the Debtors to, among  
25 other things, market and sell the Debtors' assets. EYCF maintains an office at 1451 California  
26 Ave., Palo Alto, California 94304.

27 <sup>1</sup> The Debtors are: Yipes Communications, Inc., a California corporation, Yipes Web Services Inc., a California  
28 corporation, Yipes Communications Group, Inc., a Delaware corporation, Yipes Properties, Inc., a California  
corporation, Yipes Transmission, Inc., a California corporation, and Yipes Transmission Virginia, Inc., a Virginia  
corporation (collectively, the "Debtors").

1 2. I submit this declaration in support of the *Motion (1) To Sell Substantially All*  
2 *Assets of the Debtors Free and Clear of Liens, Claims, and Interests, and (2) Assume and*  
3 *Assign, Or, Alternatively, Reject Certain Executory Contracts and Unexpired Leases* (the  
4 "Motion").<sup>2</sup> I also submit this Declaration under the *Guidelines for Early Disposition of Assets*  
5 *in Chapter 11 Cases: The Sale of Substantially All Assets Under § 363* established by the San  
6 Jose Division of the United States Bankruptcy Court for the Northern District of California.  
7 Except as otherwise indicated, all statements in this Declaration are based on my personal  
8 knowledge or opinion based on my review of relevant documents. If I were called to testify in  
9 this matter, I would and could competently testify to each of the statements in this Declaration.  
10 I make this Declaration to explain the marketing process undertaken by EYCF and the Debtors  
11 in connection with the sale (the "Sale") of substantially all of the Debtors' assets.

12 3. EYCF was engaged on March 21, 2002 and began working immediately with the  
13 Debtors and their general bankruptcy counsel, Pachulski, Stang, Ziehl, Young and Jones P.C.  
14 ("PSZYJ"), to conduct a methodical and comprehensive sale process consistent within the  
15 deadline imposed under the DIP Agreement by which a Sale must be consummated. In  
16 addition, EYCF tailored its marketing efforts to comply with the deadlines set forth in the  
17 *Order Approving Bidding Procedures, Granting Approval of Expense Reimbursement Provision*  
18 *and Scheduling Hearing for the Sale of the Debtors' Assets* (the "Procedures Order") entered  
19 on May 1, 2002 (and the Amended Procedures Order entered on May 17, 2002). The tasks  
20 performed and results of the marketing efforts are set forth below.

21 **The Marketing Process**

22 4. In late March 2002 and early April 2002, EYCF prepared a comprehensive  
23 offering memorandum (the "Confidential Memorandum") and related solicitation materials.  
24 The Confidential Memorandum and solicitation materials were extensively reviewed with the  
25 Debtors' senior management ("Senior Management"). At the same time, EYCF began  
26 identifying those parties that would be solicited in respect of the Sale. EYCF targeted a  
27 relatively large group of parties that it determined might be interested in an acquisition of the

28 <sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

1 Debtors' assets and who had the financial wherewithal to complete such a transaction. EYCF  
2 also communicated with Senior Management to be sure that all appropriate potential buyers or  
3 investors had been identified.

4 5. The Confidential Memorandum included an overview of the Debtors' business  
5 and practices and relevant non-financial information on each Metropolitan Service Area  
6 ("MSA") in which the Debtors conduct business. The Confidential Memorandum also  
7 contained projected financial information concerning those nine MSA's considered core to the  
8 ongoing business of the Debtors (the "Core Business") and that Senior Management believed to  
9 be the most economically viable to a potential purchaser. The Confidential Memorandum  
10 provided instructions to parties who might be interested in bidding either on the Core Business  
11 or for non-Core Business assets on how to contact EYCF to obtain additional information.

12 6. Beginning on April 10, 2002, in advance of the Confidential Memorandum being  
13 completed and in the interests of time, EYCF began calling the parties that it identified as  
14 potential buyers and began distributing non-disclosure agreements to such buyers in preparation  
15 for distribution of the Confidential Memorandum.

16 7. On April 17, 2002, EYCF began distributing the Confidential Memorandum to  
17 parties targeted as potential purchasers and who had executed non-disclosure agreements with  
18 the Debtors. Given the stringent time constraints of these cases, interested parties were  
19 encouraged to immediately begin due diligence upon execution of a non-disclosure agreement  
20 in order to be in a position to bid on the Debtors' assets at the Auction.

21 8. By May 15, 2002, EYCF had solicited a total of 163 parties. These parties  
22 included "strategic" parties (entities whose existing business has some synergies with the  
23 Debtors' business) and "financial" parties (entities that might be interested in an acquisition of  
24 the Debtors for investment purposes). Of the 163 parties contacted, 51 have expressed various  
25 levels of interest, 46 received non-disclosure agreements, 33 executed non-disclosure  
26 agreements and received the Confidential Memorandum and six have visited the data room.  
27 The results of the solicitation are further summarized below:  
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	Strategic	Financial	Total	%
<b>Interested Parties:</b>				
Visited Data Room	4	2	6	4%
Reviewing Confidential Memorandum	23	4	27	17%
Total Executed NDA's	27	6	33	20%
Reviewing NDA	6	7	13	8%
Total NDA's Sent	33	13	46	28%
Other	2	3	5	3%
<b>Total Interested Parties</b>	<b>35</b>	<b>16</b>	<b>51</b>	<b>31%</b>
<b>Not Interested</b>	<b>32</b>	<b>80</b>	<b>112</b>	<b>69%</b>
<b>Total Parties Contacted</b>	<b>67</b>	<b>96</b>	<b>163</b>	<b>100%</b>

	Strategic	Financial	Total	%
<b>Summary of Interested Parties</b>				
Interested in 9-City Model	15	15	30	59%
Interested in Non-Core Assets	20	1	21	41%
Total	35	16	51	100%

As described in the table above, six parties performed various levels of due diligence which included access to information located in the Debtors' data room and interviews with and presentations by members of the Debtors' management. The information contained in the data room included, but was not limited to (i) historical financial and non-financial information related to each MSA; (ii) substantially all contracts and agreements related to each MSA and corporate activities; and (iii) customer and building information. Copies of the majority of this information were made available for interested parties to take to their respective offices in order to facilitate the due diligence process.<sup>3</sup> The parties performing due diligence spent varying amounts of time at the Debtors' headquarters ranging from one day to two full weeks. Throughout these visits, EYCF carefully monitored each party's progress and information requests to facilitate the flow of information to all potential investors.

9. As of May 15, 2002, 51 parties continued to express varying levels of non-binding interest in bidding against the Lead Bid or in bidding for some of the non-Core Business assets at the Auction.

<sup>3</sup> Certain information deemed to be proprietary and confidential by the Debtors was not made available for copying, but was available for review in the data room, including certain customer-related information and certain information relating to the Debtors' intellectual property.

1 The Purchase Agreement

2 10. At the same time EYCF marketed the Debtors' assets to potentially interested  
3 strategic and financial buyers and investors, the Debtors commenced detailed discussions with  
4 the Norwest Parties regarding the structure and terms of a possible lead bid, including the  
5 contracts to be assumed and assigned and other relevant issues associated with making such a  
6 bid. The Norwest Parties attended several in-person management presentations and  
7 participated on several conference calls with the Debtors' management to discuss the various  
8 issues associated with the transaction. In addition, the Norwest Parties and their counsel also  
9 spent time in the data room after such meetings in order to continue their due diligence.

10 11. During the period from April 29, 2002 through May 21, 2002, EYCF, the  
11 Debtors and PSZYJ discussed and negotiated the terms of the Purchase Agreement with the  
12 Norwest Parties. The Purchase Agreement attached as Exhibit "A" to the Motion delineates  
13 the definitive terms of the transaction negotiated between the Debtors and the Norwest Parties  
14 for the sale of substantially all of the Debtors' assets.

15 Consultation with the Committee

16 12. Since the appointment of the Official Committee of Unsecured Creditors (the  
17 "Committee"), its legal counsel, Murphy, Sheneman, Julian and Rogers P.C. ("MSJR") has  
18 been fully apprised of the status of the marketing process, the status of the due diligence efforts  
19 of interested parties and the status of discussions with the Norwest Parties regarding the  
20 negotiation of the terms of the Purchase Agreement. EYCF and the Debtors worked with  
21 MSJR in developing and structuring the bidding procedures. EYCF also provided each  
22 Committee member with information to use in communicating with other third parties  
23 regarding the status of the marketing process. The Committee also provided EYCF with the  
24 names of three to five potential bidders on Debtors' assets. All of these parties had either  
25 already been contacted by EYCF or were subsequently contacted by EYCF.

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Conclusion

13. I believe that EYCF has exhaustively marketed the Debtors' assets to the best extent possible within the time constraints imposed by the DIP Agreement. EYCF did not limit its efforts to any particular group of candidates and encouraged all identified potential buyers or potential investors to make a bid to purchase the Debtors' assets. The net cast by EYCF was wide, and no potential candidates were discouraged from participating in the process. Under the circumstances, and given that no alternative lead bid proposals have been received, I believe that the Proposed Sale is the best available transaction and yields the highest return to the Debtors and their bankruptcy estates. Further, my belief is that the competitive bidding procedures approved in the Amended Procedures Order provides a strong basis for interested parties to provide competing or alternative bids at the Auction. Given these marketing efforts and the time constraints of this case, I believe that the Debtors will obtain the highest price for a sale of substantially all of their assets, either through the Proposed Sale or pursuant to a higher and better offer submitted by a competing bidder.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21st day of May, 2002, at SAN FRANCISCO, CA.

  
Eric Carlson

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.  
ATTORNEYS AT LAW  
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Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re:

YIPES COMMUNICATIONS, INC. et al.,<sup>1</sup>

Debtors.

Chapter 11  
Jointly Administered Under:  
Case No. 02-30750 DM

**NOTICE OF HEARING TO CONSIDER PROPOSED (1) SALE  
OF SUBSTANTIALLY ALL ASSETS OF THE DEBTORS  
FREE AND CLEAR OF LIENS, CLAIMS AND  
ENCUMBRANCES, AND (2) ASSUMPTION AND  
ASSIGNMENT OR, ALTERNATIVELY, REJECTION OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES**

Date: June 10, 2002  
Time: 9:30 a.m.  
Place: United States Bankruptcy Court  
235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, CA  
Judge: Honorable Dennis Montali

Federal Tax I.D. No.: 77-0434300

**TO ALL CREDITORS, EQUITY SECURITY HOLDERS AND OTHER PARTIES IN INTEREST:**

1. **PLEASE TAKE NOTICE** that a hearing (the "Hearing") will be held on June 10, 2002, at 9:30 a.m., before the Honorable Dennis Montali at 235 Pine Street, 22<sup>nd</sup> Floor, San Francisco, California, to consider the Debtors' *Motion (1) To Sell Substantially All Assets of the Debtors Free and Clear of Liens, Claims and Interests, and (2) Assume and Assign or, Alternatively, Reject Certain Executory Contracts and Unexpired Leases* (the "Motion"). The Motion was filed on May 21, 2002. The Hearing may be adjourned from time to time without further notice of the adjourned Hearing date or dates. On May 17, 2002, the Court entered an order (the "Order") approving certain amended bidding procedures (the "Amended Bidding Procedures") and scheduling the Hearing. A copy of the Order and the attached Amended Bidding Procedures is included herewith.
2. The Motion seeks approval of a proposed sale of substantially all of the Debtors' assets to PHX Holdings, Inc., and PHX Communications, Inc. (the "Purchasers"). The Purchasers are acquisition vehicles that have been formed and capitalized by Norwest Venture Partners VII, L.P., and certain of the Debtors' post-petition lenders (collectively, the "Norwest Parties"). The Norwest Parties are also (1) the lenders to the Debtors pursuant to a debtor-in-possession credit agreement (the "DIP Loan"), (2) secured noteholders against the Debtors pursuant to a pre-petition convertible note purchase agreement ("Notes"), and (3) majority holders of certain preferred stock in Yipes Communications Group, Inc. Representatives or designees of the Norwest Partners were also former directors of Yipes Communications Group, Inc. Based on the foregoing connection, the Purchasers may be considered insiders of the Debtors under the Bankruptcy Code.
3. The proposed sale of the Debtors' assets to the Purchasers is subject to competitive bidding. Pursuant to the Amended Bidding Procedures, the Debtors will conduct an auction on June 5 and 6, 2002, of substantially all of their assets to other interested bidders that qualify under such procedures. A sale to the prevailing bidder(s) at the auction will be considered by the Bankruptcy Court at the Hearing.

<sup>1</sup> The Debtors are: Yipes Communications, Inc., a California corporation, Yipes Web Services Inc., a California corporation, Yipes Communications Group, Inc., a Delaware corporation, Yipes Properties, Inc., a California corporation, Yipes Transmission, Inc., a California corporation, and Yipes Transmission Virginia, Inc., a Virginia corporation (collectively, the "Debtors").

4. The Motion requests the entry of an order pursuant to sections 105, 362, 363, 365, 554, 1121 and 1146 of Title 11 of the United States Code and Rules 2002, 4001, 6004, 6006, 6007 and 9019 of the Federal Rules of Bankruptcy Procedure (i) approving the sale (the "Sale") of substantially all of the Debtors' assets (the "Acquired Assets") free and clear of all identified liens, claims and interests, except as specifically provided in the Motion, with such liens, claims and interests to attach to the proceeds of the Sale with the same validity (or invalidity) and priority as existed prior to the Sale, by and between the Debtors, on the one hand, and the Purchasers on the other hand, substantially in the form of the Asset Purchase Agreement (as supplemented or amended, the "Purchase Agreement") attached to the Motion as Exhibit "A"; (ii) authorizing the assumption by the pertinent Debtor and assignment to the Purchasers or, alternatively, the rejection of certain executory contracts and unexpired leases; and (iii) granting related relief. A copy of the Motion and the Purchase Agreement may be inspected at the Office of the Clerk of the Court at the above-captioned address. The Motion is based on the memorandum of points and authorities contained therein, the Declarations of Henry C. Kevane, Kurt E. Johnson, Promod Haque, and Eric Carlson in support thereof and any exhibits attached thereto, the statements, arguments and representations of counsel who appear at the Hearing, the record in the above-captioned cases, any other evidence properly before the Court prior to or at the Hearing and all matters of which the Court may properly take judicial notice.

5. **PLEASE TAKE FURTHER NOTICE** that, at the Hearing, the Court will consider the Debtors' request to sell the Acquired Assets consisting of substantially all of the Debtors' operating assets (including intellectual property) in certain core cities (San Francisco, San Diego, Chicago, Dallas, Houston, Seattle, New York, Denver and Philadelphia) and all rights under certain assumed and assigned executory contracts (including customer agreements) and unexpired leases, to the Purchasers for (i) a cash consideration price of \$2 million (\$1 million of which will be escrowed pending the satisfaction of certain regulatory conditions); (ii) the assumption of certain of the Debtors' liabilities, contractual obligations and secured claims as set forth in the Purchase Agreement, including the Debtors' obligations under the Notes; (iii) a credit bid of the then-outstanding balance owed to the Norwest Parties pursuant to the DIP Loan and (iv) any additional consideration that may be supplied by a co-bidder with the Purchasers, if any, for operating assets in certain non-core cities (Atlanta, Boston, Miami, Pittsburgh and Washington, D.C.). The Sale is subject in all respects to the terms and conditions of the Purchase Agreement.

6. **NOTICE TO GOVERNMENTAL UNITS:** Please take further notice that, among the Acquired Assets that will be sold to the Purchasers are any of the Debtors' licenses, franchises, permits, easements and other regulatory authorizations (collectively, "Permits") issued to each of the Debtors by any state or local governmental entities, including state and local public services and public utilities or similar entities. If and to the extent the approval of any of such entities is required under applicable law as a condition to the validity and effectiveness of a transfer of a Permit, the Debtors and Purchasers shall seek such approval.

7. **PLEASE TAKE FURTHER NOTICE** that, pursuant to section 363(f) of the Bankruptcy Code, the Debtors intend to sell the Acquired Assets free and clear of any interests, including any liens, claims or encumbrances (collectively, "Liens"), in the Acquired Assets (except for Liens assumed by the Purchasers under the Purchase Agreement). The Motion identifies by name all known holders of Liens (a "Lienholder") whose property rights are (or may be) affected by the Motion. The Lienholders shall also be provided with a copy of the Motion and moving papers. If any Lienholder in any of the Acquired Assets fails to timely file and serve an objection to the Motion, the Acquired Assets shall be sold free and clear of the Liens held by such Lienholder pursuant to section 363(f) of the Bankruptcy Code. The Debtors reserve all rights to contest the validity, enforceability or perfection of, or to avoid, any Liens asserted by any Lienholder.

8. **PLEASE TAKE FURTHER NOTICE** that any opposition to the relief requested in the Motion must be filed with the Bankruptcy Court and served on or before June 4, 2002, upon (i) Pachulski, Stang, Ziehl, Young & Jones P.C., counsel for the Debtors, 3 Embarcadero Center, Suite 1020, San Francisco, CA 94111, Attn: Henry C. Kevane, Esq.; (ii) Murphy, Sheneman, Julian & Rogers P.C., counsel for the Official Committee of Unsecured Creditors, 101 California Street, Suite 3900, San Francisco, CA 94111, Attn: John D. Fredericks, Esq.; (iii) Brobeck, Phleger & Harrison LLP, counsel for the Purchasers, One Market, Spear Street Tower, San Francisco, CA 94105, Attn: G. Larry Engel, Esq.; and (iv) Office of the United States Trustee, 250 Montgomery Street, Suite 1000, San Francisco, California, 94104, Attn: Edward G. Myrtle, Esq. The Debtors may file a reply to any timely filed objections on or before June 7, 2002.

9. The Debtors will supply a copy of the Motion and the Purchase Agreement if you reimburse the Debtors for copying and postage costs. You may request a copy of the Motion and the Purchase Agreement by contacting Patricia Jeffries at (415) 263-7000.

Dated: May 21, 2002

By: \_\_\_\_\_ /S/

Henry C. Kevane  
Attorneys for Yipes Communications, Inc., et al.  
Debtors and Debtors in Possession  
PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C



1 WILLIAM P. WEINTRAUB, ESQ. (SBN 108125)  
HENRY C. KEVANE, ESQ. (SBN 125757)  
2 JOSHUA M. FRIED, ESQ. (SBN 181541)  
MAXIM B. LITVAK, ESQ. (SBN 215852)  
3 PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.  
Three Embarcadero Center, Suite 1020  
4 San Francisco, CA 94111-5994  
Telephone: (415) 263-7000  
5 Facsimile: (415) 263-7010

**FILED**  
MAY 17 2002

UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

6 Attorneys for Debtors and Debtors in Possession

7 **UNITED STATES BANKRUPTCY COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 In re:

11 **YIPES COMMUNICATIONS, INC., et al.,<sup>1</sup>**

12  
13 Debtors.

Chapter 11

Jointly Administered

Case No. 02-30750 DM

**AMENDED ORDER APPROVING  
BIDDING PROCEDURES, GRANTING  
APPROVAL OF EXPENSE  
REIMBURSEMENT PROVISION AND  
SCHEDULING HEARING FOR THE  
SALE OF THE DEBTORS' ASSETS**

Date May 17, 2002

Time: 1:30 p.m.

Place: United States Bankruptcy Court  
235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, CA

Judge: Honorable Dennis Montali

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19 Federal Tax I.D. No.: 77-0434300

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21 On May 1, 2002, the Court entered its order approving the motion (the "Motion") of the  
22 above-captioned debtors and debtors in possession (the "Debtors") for an order approving bidding  
23 procedures (the "Bidding Procedures"), granting approval of an expense reimbursement provision  
24 and scheduling a hearing for the sale of substantially all of the Debtors' assets (the "Procedures  
25 Order"). On May 17, 2002, the Court considered the Debtors' oral motion to extend the dates and  
26 deadlines set forth in the Procedures Order and in the Bidding Procedures in connection with the

27 <sup>1</sup> The Debtors are the following entities: Yipes Communications, Inc., a California corporation, Yipes Web  
28 Services, Inc., a California corporation, Yipes Communications Group, Inc., a Delaware corporation, Yipes  
Properties, Inc., a California corporation, Yipes Transmission, Inc., a California corporation, and Yipes Transmission  
Virginia, Inc., a Virginia corporation (collectively, the "Debtors").

COPY

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.  
ATTORNEYS AT LAW  
SAN FRANCISCO, CALIFORNIA

1 sale of substantially all of the Debtors' assets. This Order supersedes the Procedures Order and  
2 approves the new dates and deadlines set forth below and in the attached amended bidding  
3 procedures (the "Amended Bidding Procedures"). Adequate notice of the Debtors' oral motion to  
4 amend the Procedures Order to modify the applicable dates and deadlines set forth in this Order  
5 and in the Amended Bidding Procedures attached hereto has been given under the particular  
6 circumstances and it appears to the Court that no other or further notice need be provided.

7 Accordingly, after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY**  
8 **ORDERED THAT:**

- 9 1. The Amended Bidding Procedures annexed hereto as Exhibit "A" (as amended  
10 from the Bidding Procedures attached as Exhibit "A" to the original Procedures  
11 Order), are approved. The Debtors are authorized to market and solicit bids for  
12 the property of the estates in the manner and according to the timetable set forth in  
13 the Amended Bidding Procedures.
- 14 2. The Amended Bidding Procedures may be adopted and disseminated by the  
15 Debtors for the purpose of (a) scheduling and conducting an auction (the  
16 "Auction") at which the Debtors will solicit bids for the Acquired Assets (and any  
17 additional property of the estate) of the Debtors and (b) conducting a sale to the  
18 highest and best offeror(s) at the Auction of substantially all of the Debtors' assets  
19 free and clear of all liens, claims, interests and encumbrances and the assumption  
20 and assignment of certain (to be designated) executory contracts and unexpired  
21 leases (the "Sale").
- 22 3. The Debtors' intend to file a motion to approve the proposed Sale (the "Sale  
23 Motion") on or before May 21, 2002.
- 24 4. If the Sale Motion is filed on or before May 21, 2002, the hearing (the "Sale  
25 Hearing") to consider the Sale of the Acquired Assets (and any additional  
26 property of the estates, to the extent sold at the Auction) shall be held before this  
27 Court on June 10, 2002 at 9:30 a.m. Any objections to the Sale Motion must be  
28 filed on or before June 4, 2002 and served upon (i) counsel to the Debtors; (ii)

1 counsel to the official committee of unsecured creditors (the "Creditors'  
2 Committee"); (iii) counsel to the Debtors' secured lenders; and (iv) the Office of  
3 the United States Trustee. The Debtors may file a reply to any timely objections  
4 on or before June 7, 2002. The Sale Hearing may be adjourned from time to time  
5 without further notice of the adjourned date or dates. At the Sale Hearing, the  
6 Court may enter such orders as it deems appropriate under applicable law and as  
7 required by the circumstances and equities of these cases.

8 5. If the Sale Motion is filed on or before May 21, 2002, the Debtors shall provide,  
9 via first class mail, notice of the Sale Motion together with a copy of this Order  
10 and the Amended Bidding Procedures attached hereto to (i) the Office of the  
11 United States Trustee; (ii) all parties who have filed requests for special notice in  
12 the Debtors' chapter 11 cases; (iii) all of the Debtors' creditors; (iv) counsel to the  
13 Debtors' secured lenders, (v) counsel to the Creditors' Committee, (vi) the  
14 Securities and Exchange Commission; (vii) the Internal Revenue Service; (viii) all  
15 of the Debtors' equity security holders; (ix) each potential investor and purchaser  
16 then identified by either the Debtors' management and Debtors' financial advisors  
17 or then suggested by the Committee; and (x) lienholders whose property rights are  
18 affected by the Motion. Such notice shall constitute good and sufficient notice of  
19 this Order, the Amended Bidding Procedures, the Sale Motion and all proceedings  
20 to be held thereon.

21 6. If the Sale Motion is filed on or before May 21, 2002, the Debtors shall conduct  
22 the Auction for the Acquired Assets, if required pursuant to the Amended Bidding  
23 Procedures, on June 5 and 6, 2002. The Debtors may adjourn the Auction to a  
24 later date without further notice of the adjourned date other than an announcement  
25 at the Auction. Any Alternative Bid to the Lead Bid must be submitted on or  
26 before May 30, 2002.

27 7. Immediately following the Auction for the Acquired Assets, any property of the  
28 estates that is not included in the Acquired Assets purchased at the Auction (the

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“Remaining Assets”) may be sold in such lots or combination of lots as the Debtors and the Creditors’ Committee deem necessary and appropriate to obtain the highest and best offer for the property of the estates. The Debtors shall seek approval of the sale of the Remaining Assets at the Sale Hearing.

- 8. The Debtors are authorized, in accordance with the Amended Bidding Procedures, to reimburse the Lead Bidder (from the proceeds of a Sale) for its actual, reasonable costs and expenses associated with the formulation of the Lead Bid in the event that the Lead Bidder is overbid at the time of the Auction and is not the ultimate purchaser of the Acquired Assets.
- 9. Nothing in this Order or the Amended Bidding Procedures shall waive, release, or prejudice the rights and remedies of:

- (1) any holder of a claim which is secured by a valid perfected, and non-avoidable lien (a “Valid Lien”) on the Acquired Assets or other property of the estate which is offered for sale at the Auction from (i) asserting a lien on the proceeds of sale under section 363(f) of title 11 of the United States Code (the “Bankruptcy Code”) to the extent of its Valid Lien and/or (ii) making a credit bid up to the amount of its claim at the Auction under section 363(k) of the Bankruptcy Code for the property which is subject to the Valid Lien, and/or (iii) filing a motion at any time before the final Sale Hearing requesting adequate protection for such Valid Lien under sections 362 and/or 363 of the Bankruptcy Code;

- (2) any party to an executory contract or unexpired lease from (i) requesting that said executory contract or lease be assumed and assigned under sections 365(b) and (f) of the Bankruptcy Code if and to the extent that the Acquired Assets or other property offered for sale at the Auction is subject to said executory contract or lease, and/or (ii) requesting compliance with Bankruptcy Code sections 365(d)(10), 503, 363;

- (3) any party to an executory contract or lease that was rejected or terminated, or alleged to have been terminated pre-petition, from (i) requesting a determination that such contact or lease is not executory, assumable or assignable, and/or (ii) requesting compliance with Bankruptcy Code sections 362, 363 or 503; and/or (iii) asserting that any effort to sell property subject to an executory contract or unexpired lease free and clear of such executory contract or unexpired lease is invalid and impermissible under the law; or

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(4) the Debtors, the official committee of unsecured creditors, or any party in interest from (i) disputing the validity, priority, amount, allowance, or seeking to avoid any claim or request for payment of administrative expense or any alleged lien upon or alleged leasehold interest in the Acquired Assets or other property of the estate which is offered for sale at the Auction, or (ii) requesting the Court under section 363(k) of the Bankruptcy Code to condition or restrict the credit bid of any holder of a Valid Lien on property offered for sale.

The foregoing reservations of rights set forth in this paragraph are intended to be declarative of existing law.

10. Nothing either expressly stated or implied by any provision in this Order or the attached Amended Bidding Procedures shall prevent bidders from communicating directly with any parties (except with customers of the Debtors) who have a relationship with the Debtors, provided that (x) such communications remain subject to applicable nonbankruptcy law, and (y) the Court retains jurisdiction to enforce the rules against collusive bidding and to uphold the fairness of the sale process under section 363(n) of the Bankruptcy Code and other applicable law.
11. The limited notice of the Motion provided by the Debtors to the parties set forth in the Motion is adequate and sufficient under the circumstances and is hereby approved.

**MAY 17 2002**

DATED: \_\_\_\_\_

**DENNIS MONTALI**

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

## AMENDED BIDDING PROCEDURES

Yipes Communications, Inc. ("Yipes" or "Debtor"), the debtor in possession in Chapter 11 Case No. 02-30750 DM, pending in the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court"), and certain of its affiliated companies ("Affiliates") which are may become debtors in possession under Chapter 11 cases to be jointly administered with the Debtor's Chapter 11 cases, propose the following procedures to govern the submission of competing bids in connection with the potential sale and assignment of substantially all of the Debtor's assets (the "Acquired Assets"). The Acquired Assets may include property of the respective estates of the Affiliates. The Debtor will file a motion(s) to transfer the Acquired Assets as a sale under section 363 of the Bankruptcy Code and an assignment of executory contracts and unexpired leases under section 365 of the Bankruptcy Code as soon as practicable.

These bidding procedures have been jointly developed with the input of (x) the lenders (the "DIP Lenders") party to that certain Debtor-in-Possession Term Loan and Security Agreement dated as of April 10, 2002, by and among Norwest Venture Partners VII, L.P., as agent (the "Agent"), the DIP Lenders, Yipes, as a borrower and any "Additional Borrowers" party thereto and (y) the Official Committee of Unsecured Creditors appointed in the Chapter 11 case of Yipes ("Committee"). These bidding procedures are subject to the approval of the Bankruptcy Court.

A. Lead Bid The DIP Lenders have indicated an intent to submit an offer to purchase the Acquired Assets on or before April 26, 2002. If and to the extent such proposal is acceptable to the Debtor, after consultation with the Committee, and is filed with the Bankruptcy Court, the DIP Lenders in their capacity as purchasers shall become the lead bidders. Accordingly, the DIP Lenders are referred to herein as the "Purchaser" or the "Lead Bidder" and the bid submitted by the DIP Lenders is referred to herein as the "Lead Bid". If and to the extent another offer to purchase the Acquired Assets is submitted to and accepted by the Debtor, after consultation with the Committee, the foregoing terms shall refer to such offeror and proposal. The Committee or any party in interest reserves the right to object to any proposed Purchaser, Lead Bid or Alternative Bid.

B. Alternative Bid Deadline. All alternative bids (each an "Alternative Bid") to the Lead Bid must be submitted not later than 11:00 a.m. (PDT) on May 30, 2002, (the "Alternative Bid Deadline") to:

Yipes Communications, Inc.  
114 Sansome Street, 14<sup>th</sup> Floor  
San Francisco, California 94104  
Attn: Secretary, Vice-President and General Counsel

with copies to:

Pachulski, Stang, Ziehl Young & Jones, P.C.  
Three Embarcadero Center, Suite 1020

San Francisco, California 94111-5994  
Attn: Henry Kevane

and with copies to:

Ernst & Young Corporate Finance LLC  
1451 California Avenue  
Palo Alto, California 94304  
Attn: Eric Carlson/Alex Stevenson

and with copies to:

Murphy, Sheneman, Julian & Rogers  
101 California Street, 39<sup>th</sup> Floor  
San Francisco, California 94104  
Attn: Margaret Sheneman

Debtor will notify Lead Bidder of the receipt of each Alternative Bid and of the identity of each person or entity proposing an Alternative Bid. In addition, the Debtor shall provide the Lead Bidder and its counsel copies of the Initial Auction Bid (as defined below). If an Alternative Bid is not received by the Alternative Bid Deadline, the party submitting such bid shall not be entitled to participate in the auction for the Acquired Assets.

B. Qualified Alternative Bids. Debtor will consider an Alternative Bid only if the Alternative Bid is a "Qualified Alternative Bid." To be a Qualified Alternative Bid, the Alternative Bid must, to the satisfaction of the Debtor and the Committee:

1. identify the proponent of the Alternative Bid and a representative who is authorized to appear and act on behalf of the bidder;
2. propose in writing an all cash transaction that Debtor believes in good faith and upon consultation with the Committee has a value greater than or equal to the sum of (w) the purchase price (the "Purchase Price") set forth in the Lead Bid plus (x) \$250,000 (on account of the "Expense Amount," defined below) plus (y) \$250,000. A valid credit bid shall be deemed to constitute "cash" for purposes of this Section B(2). Any disputes regarding the validity of a credit bid shall be determined by the Bankruptcy Court;
3. consist of an agreement substantially in the form of the purchase agreement (the "Purchase Agreement") proposed by the Lead Bidder, marked to show changes thereto;
4. be on terms and conditions not materially more burdensome or conditional than the terms of the Lead Bid, including but not limited to, price and time of closing;

5. propose to purchase *at least* the Acquired Assets, and may propose to acquire other property of the estate in addition to the Acquired Assets. Notwithstanding the foregoing, the parties agree that nothing in this Section B(5) is intended to prevent the Debtor or bidders from combining one or more bids covering some but not all of the Acquired Assets (each a "Partial Bid") into a single combined bid (a "Combined Bid") covering all of the Acquired Assets, provided that, all parties proposing the Partial Bids constituting the proposed Combined Bid have consented. The parties further agree that a Combined Bid covering all of the Acquired Assets shall be deemed to satisfy the requirements of this Section B(5). In the event that a Combined Bid is designated as a Qualified Alternate Bid, such Combined Bid shall be treated as a single Qualified Alternative Bid and the proponents of such Combined Bid shall be treated as a single Qualified Bidder for purposes of these bidding procedures. A credit bid under Section 363(k) of the Bankruptcy Code may be treated as a Partial Bid for the property subject to a valid, perfected and unavoidable lien but the Court shall retain jurisdiction to determine, in the event of a dispute, the value of such bid to the estates, among other matters reserved to the Court's jurisdiction under Section 363(k) of the Bankruptcy Code.

6. not be subject to termination except on the same terms as the Purchase Agreement; and

7. be accompanied by relevant financial information for the prospective bidder to enable Debtor to determine the (a) financial wherewithal and ability to consummate a purchase of the Acquired Assets, including creditworthiness and (b) ability to provide adequate assurances of future performance to any non-debtor contracting parties to agreements that may be assumed by Debtor and assigned to the bidder;

8. not be conditional on the outcome of any unperformed due diligence by the bidder, the receipt of equity or debt financing, the approval of the Board of Directors, shareholder, or other corporate approval, or other third party consents (except, if applicable, Hart-Scott-Rodino filings);

9. comply with the requirements of the Bankruptcy Code and the Bankruptcy Rules; and

10. be accompanied by an earnest money deposit of \$500,000 (in the form of a wire transfer or cashier's check payable to Debtor's counsel) which shall be non-refundable and retained by the Debtor in the event such Alternative Bid is accepted by the Debtor and approved by the Bankruptcy Court (but shall not constitute liquidated damages).

C. Auction, Bidding Increments, and Bids Remaining Open. Debtor shall conduct an auction (the "Auction") at the offices of Pachulski, Stang, Ziehl, Young & Jones, P.C., or such other location as may be appropriate in light of the number of Qualified Alternative Bids on June 5 and 6, 2002, , beginning at 10:00 a.m. (PDT) or such later time or as Debtor shall notify all Qualified Bidders who have submitted Qualified Alternative Bids. Only Purchaser, Debtor, representatives of the Creditors' Committee and any Qualified Bidders who have timely submitted Qualified Alternative Bids shall be entitled to attend the Auction. Only Purchaser and Qualified Bidders shall be entitled to make any additional bids ("Subsequent Bids") at the



Auction. Debtor may announce at the Auction additional procedural rules that it determines to be reasonable under the circumstances (e.g., the amount of time allotted to make subsequent alternative bids) for conducting the Auction so long as such rules are not inconsistent with these Bidding Procedures. The Debtor and the Committee, after the Alternative Bid Deadline but before the Auction, will evaluate the bids received and make an initial determination which bid reflects the highest and best offer for the Acquired Assets (the "Initial Auction Bid"). The Debtor will announce the Initial Auction Bid at the Auction. Qualified Bidders may participate at the Auction by telephone, but only if there is physically present at the Auction a representative with authority to act for the Qualified Bidder

1. At the Auction, bidding shall begin with the highest Qualified Alternative Bid and continue in minimum increments of \$250,000 higher than the amount of each prior bid.

2. The Auction shall continue in one or more rounds of bidding and shall conclude after each participating bidder has had the opportunity to submit at least one additional Subsequent Bid, or the Debtor (in consultation with the Committee) determines that each bidder has had an adequate and sufficient opportunity to make a final bid. For the purpose of evaluating the value of the consideration provided by each Subsequent Bid (including any Subsequent Bid by Purchaser), the value shall be the net consideration payable to or realized by the Debtor, after giving effect to the Expense Amount. The Debtor may seek the presence of a court reporter at the auction.

3. At the conclusion of the bidding, Debtor shall consult with the Committee and announce its determination as to the bidder submitting the successful bid. Debtor shall submit the successful bid to the Bankruptcy Court for approval at the Sale Hearing. The Committee reserves the right to make an alternative recommendation to the Court of the highest and best bid. The Bankruptcy Court shall, at the Sale Hearing, have exclusive jurisdiction to determine as a core proceeding the successful bid for the Acquired Assets.

4. If Debtor does not receive any Qualified Alternative Bids, Debtor will report the same to the Bankruptcy Court and will proceed with a sale to the Lead Bidder pursuant to the terms of the Purchase Agreement.

5. At the Auction, Debtor, in consultation with the Committee and their respective legal professionals and advisors, shall make the initial determination in its sole discretion whether an Alternative Bid meets the qualifications described herein and whether a Qualified Alternative Bid or Subsequent Bid constitutes the highest and/or best offer. The Bankruptcy Court shall have exclusive jurisdiction to determine at the Sale Hearing and as a core proceeding any dispute.

6. All bids made at the Auction will be irrevocable until June 13, 2002. In the event a competing bidder is the prevailing bidder at the Auction, but such party fails to consummate such transaction by the closing date for such bid, the Debtor shall be authorized to consummate the transaction with the next highest bidder at the final price submitted by such bidder at the Auction without further hearing or order of the Bankruptcy Court (and without waiver of any rights and remedies against the bidder that failed to close).

D. Expense Reimbursement. In the event the Lead Bidder is overbid at the time of the Auction and is not the ultimate purchaser of the Acquired Assets, the Lead Bidder will be entitled to reimbursement of (the "Expense Amount") equal to its actual, reasonable costs and expenses (including fees and expenses of outside professionals, but not salaries of internal employees) incurred in connection with the Lead Bid (up to \$250,000). The Expense Amount will be paid only if and when Debtor receives 100% of the purchase price from the successful bidder for the assets which are the subject of the Purchase Agreement. The Lead Bidder will not be entitled to payment of the Expense Amount if the Lead Bidder is the ultimate purchaser of the Acquired Assets and the Lead Bidder's Asset Purchase Agreement is approved by the Court. The Bankruptcy Court will have exclusive jurisdiction to determine as a core proceeding any dispute about the Expense Amount.

E. Advertising. Debtor may advertise the date, time, and place of the Auction, and these bidding procedures, in such media as it deems appropriate consistent with the costs of such advertising. In addition, Debtors will post a copy of these sales procedures, once approved by the Bankruptcy Court, on Debtor's web site, which is [www.yipes.com](http://www.yipes.com). In addition, Debtors will send a copy of the order establishing sales procedures to each potential investor and purchaser identified by either the Debtor's management and Debtor's financial advisors or suggested by the Committee as soon as practicable after entry of the order.

F. Remaining Lots. Following the Auction, any property of the estate that is not included in the Acquired Assets that are purchased at the Auction, may be offered in such lots or combination of lots as the Debtor and the Committee deem necessary or appropriate to obtain the highest and best offers for the property of the estate. The motion to transfer the Acquired Assets will also provide notice of the possible sale of additional or remainder assets at the Sale Hearing.

G. Due Diligence. The Debtors have established a data room with information pertinent to the Acquired Assets. Prospective bidders who want information about the Debtors and their assets should contact one of the following professionals of Ernst & Young Corporate Finance LLC, 1451 California Avenue, Palo Alto, California 94304.

Eric Carlson, Managing Director	650-849-4798
Joe Muscat, Managing Director	650-496-4517
Alex Stevenson, Director	650-849-4798
John Watson, Director	650-849-4792
Craig Hook, Vice President	650-496-4667
Facsimile	650-496-4672

All prospective bidders must execute confidentiality agreements satisfactory to the Debtors. Prospective bidders who have previously executed confidentiality agreements with the Debtors will be expected to execute new confidentiality agreements satisfactory to the Debtors in order to have access to the Debtors' confidential information

1 HENRY C. KEVANE, ESQ. (SBN 125757)  
JOSHUA M. FRIED, ESQ. (SBN 181541)  
2 PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.  
Three Embarcadero Center, Suite 1020  
3 San Francisco, CA 94111-5994  
Telephone: (415) 263-7000  
4 Facsimile: (415) 263-7010

5 Attorneys for Debtors and Debtors in Possession

6 **UNITED STATES BANKRUPTCY COURT**  
7 **NORTHERN DISTRICT OF CALIFORNIA**  
8 **SAN FRANCISCO DIVISION**

9 In re:

10 **YIPES COMMUNICATIONS, INC. et al.,<sup>1</sup>**

11 Debtors.

Case No. 02-30750 DM

(Jointly Administered)

Chapter 11

13 **DECLARATION OF HENRY C.**  
14 **KEVANE IN SUPPORT OF MOTION**  
15 **TO (1) SELL SUBSTANTIALLY ALL**  
16 **ASSETS OF THE DEBTORS FREE**  
17 **AND CLEAR OF LIENS, CLAIMS AND**  
18 **INTERESTS; AND (2) ASSUME AND**  
19 **ASSIGN OR, ALTERNATIVELY,**  
20 **REJECT CERTAIN EXECUTORY**  
21 **CONTRACTS AND UNEXPIRED**  
22 **LEASES**

Date: June 10, 2002

Time: 9:30 a.m.

Place: United States Bankruptcy Court  
235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, CA

Judge: Honorable Dennis Montali

Federal Tax I.D. No.: 77-0434300

22 I, Henry C. Kevane, declare as follows:

23 1. I am a shareholder in the law firm of Pachulski, Stang, Ziehl, Young & Jones P.C.  
24 (the "Firm"). The Firm is general bankruptcy counsel for each of above-captioned Debtors in the  
25 above-referenced, jointly administered chapter 11 cases. I make this declaration in support of the

26 <sup>1</sup> The Debtors are: Yipes Communications, Inc., a California corporation ("Yipes Communications"), Yipes Web  
27 Services Inc., a California corporation ("Yipes Web Services"), Yipes Communications Group, Inc., a Delaware  
28 corporation ("Yipes Group"), Yipes Properties, Inc., a California corporation ("Yipes Properties"), Yipes  
Transmission, Inc., a California corporation ("Yipes Transmission"), and Yipes Transmission Virginia, Inc., a  
Virginia corporation ("Yipes Virginia") (collectively, the "Debtors").

1 *Motion to (1) Sell Substantially All Assets of the Debtors Free and Clear of Liens, Claims, and*  
2 *Interests; and (2) Assume and Assign, or, Alternatively, Reject Certain Executory Contracts and*  
3 *Unexpired Leases* (the “Motion”). I also submit this declaration under the *Guidelines for Early*  
4 *Disposition of Assets in Chapter 11 Cases: The Sale of Substantially All Assets Under § 363*  
5 established by the San Jose Division of the United States Bankruptcy Court for the Northern  
6 District of California. I have personal knowledge of the facts set forth herein and, if called as a  
7 witness, I could and would testify competently to the matters set forth herein. Where facts are  
8 alleged on information or belief, I believe them to be true. Unless otherwise noted, all capitalized  
9 terms shall have the meanings ascribed to them in the Motion.

### 10 Background

11 2. Yipes Communications filed an emergency Chapter 11 petition March 21, 2002, in  
12 response to a threat of imminent service termination from one of its fiber optic network service  
13 providers. Since then, the company has devoted all its efforts to keeping its customer base intact  
14 in order to reach a possible sale of its business. As described below, Yipes Communications  
15 arranged for debtor in possession financing from certain of its pre-petition investors and lenders  
16 to sustain operations pending a sale. In connection with the debtor in possession financing  
17 process, the company carefully evaluated its post-petition obligations in order to adequately  
18 assure itself, and the creditor constituency, that the sale timetable would not lead to the accrual of  
19 administrative liabilities beyond the company’s reasonably anticipated resources. Certain of  
20 Yipes Communications’ affiliates filed their own respective Chapter 11 cases (on April 11 and  
21 April 19, 2002) in order to more effectively transfer the assets of those affiliates to a possible  
22 buyer. Virtually all of Yipes Communications’ fiber, co-location, right-of-entry, transit, real  
23 estate and equipment agreements have been thoroughly scrutinized for possible rejection or  
24 renegotiation. In many cases, Yipes Communications has substantially reduced the ongoing costs  
25 of its operations in order to enhance its going concern value.

26 3. On April 26, 2002, the company received a proposed term sheet for an acquisition  
27 of substantially all of its assets from Norwest Venture Partners VII, L.P. (“Norwest”) as a  
28 representative of certain other venture capital investment firms (“Investors”). This term sheet

1 was filed with the Bankruptcy Court on April 26. The term sheet contemplated a two-stage  
2 process for the acquisition of the Debtors' non-regulated and regulated assets, the latter being  
3 done pursuant to applicable non-bankruptcy law following a closing for the non-regulated assets.

4 4. Following the submission of Norwest's term sheet, Norwest prepared and  
5 proposed definitive documentation in the form of an asset purchase agreement. On May 21,  
6 2002, the Debtors and Norwest negotiated on the principal terms and conditions for the sale of  
7 substantially all of the Debtors' assets (the "Acquired Assets"). These terms are set forth in the  
8 Asset Purchase Agreement among the Debtors and PHX Holdings, Inc. and PHX  
9 Communications, Inc. (as Purchasers). The Purchasers are investment vehicles formed by  
10 Norwest for the purpose of purchasing the Acquired Assets. A copy of the APA is attached as  
11 Exhibit A to the Motion. **The APA may be subject to further changes, additions and**  
12 **omissions prior to the hearing on the Motion.** The Debtors intend to submit a final version of  
13 the APA shortly before the hearing on the Motion

14 **The Sale Motion**

15 5. Pursuant to the Motion, the Debtors seek an order authorizing (i) the sale of the  
16 Acquired Assets to the Purchasers free and clear of liens, claims and interests (except as  
17 specifically provided in the Motion), with such liens, claims, and interests to attach to the  
18 proceeds of the Sale (the "Sale Proceeds"); (ii) the assumption by the pertinent Debtor and the  
19 assignment to the Purchasers, or alternatively, the rejection, of certain executory contracts and  
20 unexpired leases described on Exhibit "B" attached to the Motion (iii) granting other related relief  
21 such as the appointment of a responsible officer in the regulated Debtors' estates, modification of  
22 the stay with respect to the Purchasers' proposed security interest in assets of the regulated  
23 Debtors and the right of the Purchasers to require abandonment of an asset of the regulated  
24 Debtors. The Sale is subject to certain Court-approved overbid procedures that authorize the  
25 Debtors to sell the Acquired Assets to a qualified competing bidder if that bidder submits a higher  
26 and better offer for the Acquired Assets than the one set forth in the Purchase Agreement.

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1 Proceeds of the Sale

2 6. The estimated aggregated value of the Purchase Price offered by the Purchasers is  
3 expected to be approximately \$19.2 million. This amount is the balance of the DIP Loan (which  
4 is estimated to be \$8.2 million on June 12, 2002), the approximately \$9 million balance under the  
5 Note Purchase Agreement and \$2 million in cash proceeds, half of which will be escrowed (the  
6 "Escrowed Cash") pending the satisfaction of certain regulatory conditions attached to the  
7 delivery of assets and rights held by Yipes Transmission and Yipes Virginia

8 Disposition of the Sale Proceeds

9 7. The Debtors expect to distribute the Sale Proceeds to creditors pursuant to a  
10 confirmed plan of reorganization in accordance with the priorities set forth under Bankruptcy  
11 Code. Although the value of the consideration for the Purchased Assets is expected to be  
12 approximately \$19.2 million, most of such value is represented by the assumption or forgiveness  
13 of secured debt. The Purchase Agreement provides for \$2 million in cash consideration.  
14 Uncertainties surrounding the cash distribution to the Debtors' (e.g., the contingency of the  
15 release of the Escrowed Cash upon satisfaction of certain regulatory conditions described in the  
16 Purchase Agreement) make estimation of the proposed distributions to unsecured creditors  
17 impossible to quantify at this time. Assuming the Sale to the Purchasers closes on June 12, 2002,  
18 and that the preliminary projections of unsecured claims provided by the Debtors are correct,  
19 general unsecured creditors may receive only a de minimus distribution on account of their  
20 claims. **This estimate does not take into account the possible value of any Excluded Assets  
21 retained by the Debtors under the Purchase Agreement.**

22 Holders of Liens Against the Acquired Assets.

23 8. The Proposed Sale of the Acquired Assets will be free and clear of liens, claims  
24 and interests of the Lienholders set forth behind the caption page to the Motion. Pursuant to  
25 B.L.R. 6004-1(a), the Debtors have disclosed the identity of the Lienholders whose interests are  
26 (or may be) affected by the Proposed Sale of the Acquired Assets. The Debtors will serve the  
27 Lienholders with a copy of the Motion and related pleadings in accordance with B.L.R. 6004-  
28 1(a). The Sale of the Acquired Assets free and clear of the Liens held by the Lienholders is

1 appropriate pursuant to 11 U.S.C. § 363(f)(3) because the Purchase Price to be paid by the  
2 Purchasers is equal to or will exceed the aggregate value of all Liens on the Acquired Assets. In  
3 addition, pursuant to 11 U.S.C. § 363(f)(2), any Lienholder shall be deemed to consent to the Sale  
4 of the Acquired Assets free and clear of its Lien to the extent that such Lienholder does not timely  
5 object to the Motion. Finally, the sale of the Acquired Assets free and clear of the Lienholders'  
6 Liens is also appropriate pursuant to 11 U.S.C. § 363(f)(5) because the Lienholders could be  
7 compelled to accept a monetary judgment in satisfaction of their claims pursuant to sections 11  
8 U.S.C. § §1129(b)(2) and 502(d).

9 **Sales Contingencies**

10 9. The Purchase Agreement contains several customary conditions precedent to a  
11 buyer's obligation to close. In addition, each of the Assigned Contracts attached as Exhibit "B"  
12 to the Motion must be renegotiated and modified by the Debtors and the respective non-debtor  
13 parties to such Assigned Contracts on terms satisfactory to the Purchasers as provided in section  
14 7.10 of the Purchase Agreement. Further, Yipes Transmission and Yipes Virginia must enter into  
15 a service agreement to provide the Purchasers the regulatory services required to maintain the  
16 operation of the Core Business pending the completion of the transfer of Regulated Assets. The  
17 Sale is also contingent on the restructuring of the Debtors' secured claims that constitute  
18 Assumed Liabilities pursuant to section 1.3 of the Purchase Agreement, in a manner satisfactory  
19 to the Purchasers.

20 **Retention of Counsel**

21 10. Yipes Communications. As noted above, Yipes Communications commenced its  
22 chapter 11 case on March 21, 2002. The Firm commenced rendering services to Yipes  
23 Communications on March 22, 2002. The Firm did not receive any pre-petition payments nor did  
24 it expend any professional time in connection with Yipes Communications prior to the  
25 commencement of Yipes Communications' case. On April 2, 2002, the Court approved the  
26 retention of the Firm as general bankruptcy counsel for Yipes Communications and also  
27 authorized the payment of a post-petition retainer to the Firm in the amount of \$250,000 (the  
28 "Yipes Communications Retainer"). Yipes Communications was the source of the Yipes

1 Communications Retainer. The Firm has applied the Yipes Communications Retainer in  
2 connection with the Firm's post-petition services to Yipes Communications. As of April 30,  
3 2002, the Firm had accrued approximately \$130,865.00 in compensation for services relating to  
4 Yipes Communications for which it had not yet been paid.

5 11. Yipes Web Services. Yipes Web Services commenced its chapter 11 case on  
6 April 11, 2002. The Firm did not receive any pre-petition payments from Yipes Web Services  
7 prior to the commencement of its case. On May 1, 2002, the Court approved the retention of the  
8 Firm as general bankruptcy counsel for Yipes Web Services and also authorized payment of a  
9 post-petition retainer to the Firm in the amount of \$37,500.00 (the "Web Services Retainer"). As  
10 of April 30, 2002, the Firm had accrued approximately \$7,267.00 in compensation for services  
11 relating to Yipes Web Services for which it has not yet been paid.

12 12. Yipes Group, Yipes Properties, Yipes Transmission and Yipes Virginia  
13 (collectively, the "April 19<sup>th</sup> Debtors"). The April 19<sup>th</sup> Debtors each commenced their chapter 11  
14 cases on April 19, 2002. The Firm commenced rendering pre-petition services to these Debtors  
15 on or about April 10, 2002. Yipes Group advanced the Firm a pre-petition retainer in the amount  
16 of \$75,000.00 (the "Yipes Group Retainer") for services already rendered and to be rendered by  
17 the Firm in connection with the April 19<sup>th</sup> Debtors' chapter 11 cases. The Firm applied and  
18 deducted \$28,209.48 from the Yipes Group Retainer on account of services rendered and costs  
19 incurred prior to April 19, 2002. On May 1, 2002, the Court approved the retention of the Firm as  
20 general bankruptcy counsel for each of the April 19<sup>th</sup> Debtors *nunc pro tunc* as of April 19, 2002.

### 21 Communications With Creditors and Shareholders

22 13. Prior the commencement of the Debtors' chapter 11 cases, I am informed and  
23 believe that the Debtors engaged in various communications with fiber and other critical  
24 providers in an attempt to reduce the amount paid for services under agreements with these  
25 parties. In addition, I believe that the Debtors engaged in numerous communications with the  
26 Noteholders prior to the commencement of Yipes Communications' chapter 11 case regarding the  
27 release of funds pursuant to the Note Purchase Agreement. Norwest and two of the other  
28 Noteholders (Sprout Venture Capital and New Enterprises Associates or their various respective



1 affiliates) owned approximately 60.9% of Yipes Communications' preferred stock as of March  
2 21, 2002.

### 3 Creditors Committee

4 14. No Creditor's Committee existed prior to the commencement of the Debtors'  
5 chapter 11 cases. On April 2, 2002, the U.S. Trustee appointed an official committee of  
6 unsecured creditors in Yipes Communications' chapter 11 case. No committee of unsecured  
7 creditors has been appointed in any of the other Debtors' Chapter 11 cases.

### 8 Creditor Contact List

9 15. A verified list of Yipes Communications' 20 largest unsecured creditors, along  
10 with facsimile and phone numbers for contact persons for such creditors, was filed on March 22,  
11 2002. A verified copy of Yipes Web Services' 20 largest unsecured creditors, along with  
12 facsimile and phone numbers for contact persons for each such creditor was filed on April 12,  
13 2002. Verified copies of the 20 largest unsecured creditors, along with facsimile and phone  
14 numbers for contact persons for such creditors for the April 19<sup>th</sup> Debtors were filed on April 19,  
15 2002.

### 16 Administrative Debts

17 16. Administrative claims will be funded through a combination of cash on hand at the  
18 Debtors as of their respective filing dates of \$3,466,000, estimated collections of pre-petition and  
19 post-petition receivables of \$3,151,000, and an estimated \$8.4 million of available proceeds of the  
20 financing provided under DIP Agreement. To the extent that the Debtors' cash on hand, pre- and  
21 post-petition receivables, and the funds available under the DIP Agreement are insufficient to pay  
22 the Debtors' administrative debts, such debts would be payable from the Sales Proceeds.

### 23 Debt Structure of the Debtors

24 17. Secured Claims. Yipes Group, Norwest and other secured lenders are parties to  
25 the Note Purchase Agreement. Yipes Communications guaranteed Yipes Group's obligations  
26 under the Note Purchase Agreement and various related agreements, which as of March 21, 2002,  
27 totaled approximately \$9 million. In addition, the amount owed under the DIP Agreement as of  
28 June 12, 2002 is expected to total \$8.2 million.

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.  
ATTORNEYS AT LAW  
SAN FRANCISCO, CALIFORNIA

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18. Unsecured Claims. Collectively, the Debtors estimate that they will owe approximately \$670,000 in priority claims and \$185 million in unsecured claims as of June 12, 2002. The unsecured claims include claims that are subject to reduction through renegotiation of the Debtors' contracts to reduce any cure amounts under the Assigned Contracts. The Debtors' unsecured claims may also be reduced pursuant to claims that are disallowed pursuant to 11 U.S.C. § 502(b).

I declare under penalty of perjury that the foregoing is true and correct  
Executed on the 21<sup>st</sup> day of May, 2002, at San Francisco, California.

  
Henry C. Kevane

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2 ROBERTO J. KAMPFNER State Bar No.: 179026  
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4 One Market  
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9 Attorneys for Norwest Venture Partners VII, L.P.

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 (San Francisco Division)

13 In re )  
14 YIPES COMMUNICATIONS, INC., et. al.<sup>1</sup> )  
15 Debtor. )

16 Case No. 02-30750 DM  
17 CHAPTER 11  
18 **DECLARATION OF PROMOD HAQUE**  
19 **RE: GOOD FAITH IN CONNECTION**  
20 **WITH THE SALE OF**  
21 **SUBSTANTIALLY ALL OF THE**  
22 **ASSETS OF DEBTORS**  
23 Date: June 10, 2002  
24 Time: 10:00 a.m.  
25 Address: 235 Pine Street,  
26 Courtroom 22  
27 San Francisco, California  
28 Judge: Honorable Dennis Montali

29 I, Promod Haque, declare as follows pursuant to 28 U.S.C. § 1746:

30 1. I am currently a senior officer of the general partner of Norwest Venture  
31 Partners VII, L.P. ("Norwest") and have served in such capacity at all times relevant to the matters  
32 set forth herein. I am over the age of eighteen years old and am otherwise competent to make this  
33 declaration. In addition, this declaration is based on my own personal knowledge of the matters set  
34 forth herein.

35  
36 <sup>1</sup> The Debtors are: Yipes Communications, Inc., a California corporation, Yipes  
37 Communications Group, Inc., a Delaware corporation, Yipes Properties, Inc., a California  
38 corporation, Yipes Transmission, Inc., a California corporation, Yipes Transmission of Virginia,  
39 Inc., a Virginia corporation and Yipes Web Service, Inc., a California corporation.

1 forth herein, and, if called as a witness in this action, I could, and would, and do, testify as follows.

2           2.       PHX Communications, Inc. (“PHX”) and PHX Holdings, Inc. (“Holdings”;  
3 and together with PHX, “Purchasers”) are parties to that certain Asset Purchase Agreement (the  
4 “Sale Agreement”) dated as of May 21, 2002, by and between Purchasers and the above-captioned  
5 debtors (the “Debtors”). Norwest, New Enterprises Associates, Sprout Group/DLJ, JP Morgan  
6 Partners, Quantum, Focus Ventures and Glynn Ventures are investing substantial amounts in the  
7 Purchasers as preferred shareholders in a conventional venture capital equity financing sufficient to  
8 accomplish the performance of the Closings under the Sale Agreement.

9           3.       As an officer of Norwest, a major investor in the Purchasers, I was primarily  
10 responsible for negotiating the terms of the asset sale (the “Asset Sale”) contemplated in the Sale  
11 Agreement and coordinating with the other investors in Purchasers. As set forth more particularly  
12 in the Sale Agreement, the Purchasers are acquiring the Debtor’s assets “for value”. The amount of  
13 the Purchase Price is based on representations from the Debtors regarding their ability to re-  
14 negotiate certain contracts with essential vendors and to adhere to a newly proposed business plan  
15 based on nine “core” cities.

16           4.       Moreover, I am unaware of any agreement by, between or among the  
17 Purchasers or the investors therein (the “Investors”), on one hand, and the Debtors or other  
18 potential bidders, on the other, pursuant to which any party has agreed to provide or receive any  
19 consideration or compensation that has not been disclosed to this Court in connection with the  
20 approval of the Sale Agreement or that would be inconsistent with a good faith purchase finding by  
21 this Court.

22           5.       To my knowledge, the Purchasers and the Investors have complied with the  
23 bidding procedures approved by the Court in the Order Establishing Bidding Procedures, Granting  
24 Approval of Expense Reimbursement Provision and Scheduling Hearing for the Sale of the  
25 Debtors’ Assets entered in the Debtors’ bankruptcy cases in order to encourage competitive  
26 bidding with respect to the Asset Sale.

27           6.       To my knowledge, the Purchasers and the Investors have taken no action to  
28 obtain an unfair advantage over other bidders. To the contrary, the Investors have provided the

1 Debtors with debtor-in-possession financing which has made the bidding expected to occur  
2 between Purchasers and Cable & Wireless with respect to the Asset Sale possible. In fact, had the  
3 Investors not funded the loans made under the debtor-in-possession credit agreement, the Debtors  
4 would have been forced to cease operations and to liquidate their assets under chapter 7 of the  
5 Bankruptcy Code at distressed prices and with little or no benefit to creditors of the Debtors'  
6 estates.

7           7. Among the various actions that the Purchasers and Investors have taken for  
8 the benefit of the Asset Sale process and the Debtors' estates, and at their own expense or to their  
9 detriment are the following:

10           (a) At the request of the Debtors and the Creditors Committee, the  
11 Purchasers and Investors extended the original sale process, providing other potential bidders more  
12 time to make more informed and accurate bids. This is especially important since the operation of  
13 Debtors' core business depends upon the successful reduction in the operating costs associated  
14 with equipment financings and essential vendor services, which renegotiation process has not been  
15 quick or easy.

16           (b) At the request of the Debtors, Purchasers and Investors increased the  
17 debtor-in-possession financing to accommodate delays in the sales process. Originally, debtor-in-  
18 possession financing was expected to total \$5.4 million. It is now expected to total \$8.2 million.

19           (c) Thus far, the Purchasers and Investors have accommodated the  
20 request of the Debtors to allow them to renegotiate the key contracts with vendors of essential  
21 goods and services, so that the resulting contracts are generally available to all bidders, as  
22 distinguished from Purchasers negotiating their own new contracts with such vendors to the  
23 exclusion of other bidders. This, in particular, is a significant benefit to other bidders who I believe  
24 could not re-negotiate such contracts on their own.

25           (d) On various occasions, the Purchasers and Investors have shared their  
26 perspective with the Debtors on the issues which affect the value or attractiveness of the Debtors'  
27 assets for sale, which generally benefit the open platform approach for sale advanced by the  
28 Debtors by enabling the Debtors to confront issues generally for the benefit of potential bidders.

1 (e) In response to the Debtors' request, Purchasers have promoted the  
2 opportunity for bidders to bid for "noncore assets" (either as co-bidders or separately) by  
3 expressing a willingness under certain circumstances to provide certain services or support for  
4 noncore business operations.

5 8. To my knowledge, the Purchasers and Investors conducted all of their  
6 negotiations with the Debtors in connection with the Asset Sale and the Sale Agreement in good  
7 faith and at arms' length and, to my knowledge, the Sale Agreement is not the product of any  
8 collusion between any of the Purchasers or the Investors and the Debtors of any kind or nature  
9 whatsoever.

10 9. To my knowledge, neither the Purchasers nor the Investors have entered into  
11 any agreements with other potential bidders or the Debtors to control the price of the Debtors'  
12 assets at the sale hearing. However, we have discussed possible co-bidding opportunities with  
13 persons which might be persuaded to bid on noncore assets, which Purchasers do not expect to  
14 purchase.

15 10. The Purchasers have been in negotiations with Mr. Larry Bercovich, an in-  
16 house counsel for the Debtors, in order to hire Mr. Bercovich as an employee of the Purchasers  
17 prior to the First Closing Date. I do not believe that Mr. Bercovich's potential early departure will  
18 affect the Debtors' ability to competitively market their assets during the sales process, as such task  
19 is under the direction of Ernst & Young Corporate Finance, LLC.

20 11. Although representatives from Norwest, New Enterprises Associates, Sprout  
21 Group/DLJ (including myself as a representative of Norwest) sat on the board of directors of Yipes  
22 Communications Group, Inc. prior to the Yipes Communications petition date, all such  
23 representatives have since resigned and were not directors of Yipes Communications or otherwise  
24 "in control" of the Debtors during the negotiations regarding the Asset Sale, and no such  
25 representatives or Investors negotiated or approved the terms of the Asset Sale for or on behalf of  
26 the Debtors. Independent directors of Debtors have made the decisions regarding Debtors'  
27 dealings with the Purchasers, the Investors or the lenders providing debtor-in-possession financing  
28 to the Debtors.

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I declare under penalty of perjury that the foregoing is true and correct. Executed  
this 21th day of May, 2002, in Palo Alto, California.

\_\_\_\_\_/s/\_\_\_\_\_  
Promod Haque