

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:

INTERNET COMMERCE &
COMMUNICATIONS, INC.,
f/k/a RMI.NET, Inc.,
EIN 84-1322326,

Debtor.

Case No. 01-21097 DEC
Chapter 7
(converted from Chapter 11)

IN RE:

APPLICATION METHODS, INC.,
a/k/a E-SELL COMMERCE SYSTEMS,
EIN 84-1321266,

Debtor.

Case No. 01-21098 SBB
Chapter 7
(converted from Chapter 11)

IN RE:

IDEALDIAL CORPORATION,
a/k/a ROCKY MOUNTAIN
BROADBAND, INC., and a/k/a CNS,
EIN 84-1027910,

Debtor.

Case No. 01-21099 SBB
Chapter 7
(Converted from Chapter 11)

**(Jointly Administered Under
Case No. 01-21097 DEC)**

**NOTICE PURSUANT TO LOCAL RULE 202 OF MOTION
FOR APPROVAL OF PROPOSED SETTLEMENT OF DISPUTES
BETWEEN THE ESTATES AND RFC CAPITAL CORPORATION**

TO ALL PARTIES IN INTEREST:

NOTICE IS HEREBY GIVEN that Glen R. Anstine, Trustee has requested approval of a proposed settlement of controversies between the Estates and RFC Capital Corporation ("**RFC**").

I. THE DISPUTES

Prior to the Petition Date (July 31, 2001), RFC loaned funds to one or more of the Debtors. To secure repayment of the loan, the Debtors granted RFC a security interest ("**RFC's Security Interest**") in a broad range of the Debtors' assets, including, without limitation, the Debtors' accounts receivable. On the Petition Date, RFC was owed in excess of \$5.9 million. Although RFC has liquidated some of its collateral, RFC contends it is still owed approximately \$4.4 million. Several disputes exist between the Trustee and RFC. These disputes, and other matters, are described as follows.

A. Dispute Re: Allocation of Sale Proceeds. On October 30, 2001, the Court entered an Order Authorizing Sale of Property Not in the Ordinary Course of Business Pursuant to 11 U.S.C. § 363(b)(f) and (m) (the "**Sale Order**"). Pursuant to the Sale Order, the majority of the Debtors' assets were sold free and clear of all liens and interests for total consideration of \$1.1 million. With RFC's consent, the Sale Order also provided that \$75,000 of the \$1.1 million would be set aside as a carveout for certain estate professionals, thus leaving net sale proceeds of \$1,025,000 (the "**Sale Proceeds**"). The Sale Order further provided that all liens and interests attached to the Sale Proceeds in the same amount, validity, and priority as they did to the assets themselves. The Sale Order did not allocate the Sale Proceeds among the various categories of assets sold (*i.e.*, customer lists, equipment, furniture, contract rights, general intangibles, goodwill).

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etc.) and, to date, no such allocation has been made by the Court. Following the sale (a) RFC asserted that RFC's Security Interest extends to all of the Sale Proceeds, and (b) the City and County of Denver ("**Denver**") asserted tax liens and other interests in a substantial portion of the Sale Proceeds. On June 19, 2002, an agreement was reached between the Trustee, RFC and Denver regarding certain aspects of Denver's claim. Pursuant to said agreement, the Trustee holds \$158,000 of the Sale Proceeds plus accrued interest in a segregated account (with interest, the "**\$158,000 Fund**"). In said agreement, the Trustee has acknowledged that Denver's tax liens are valid and attach to the \$158,000 Fund, subject only to possible application of 11 U.S.C. §724(b). RFC has waived all claim to or interest in the \$158,000 Fund, except potential administrative claims and superpriority administrative expense claims. A dispute still remains between the Trustee and RFC regarding the validity, priority, and extent of RFC's Security Interest in the Sale Proceeds other than the \$158,000 Fund (i.e., \$867,000.00). On May 6, 2002, RFC commenced RFC Capital Corporation v. Anstine, Adv. Pro. No. 02-1203 EEB (the "**Sale Proceeds Proceeding**") to resolve the dispute. (The Sale Proceeds Proceeding has been placed in abeyance, pending the outcome of the motion to approve the proposed settlement.) Pursuant to an Order entered on March 5, 2002, the Trustee disbursed \$525,000.00 of the Sale Proceeds (along with \$3,072.87 in interest) to RFC on April 2, 2002. Such disbursement was without prejudice to the Trustee's rights in the subsequently filed Sale Proceeds Proceeding. Following the segregation of the \$158,000 Fund and the disbursement of \$525,000.00, the Trustee held \$342,000.00 in Sale Proceeds, plus interest.

B. Dispute Re: Postpetition Loan. Prior to the October 30, 2001 sale of assets, RFC advanced \$344,951.53 to certain of the Debtors' vendors. The advance was made without prior Court approval. On November 8, 2001, RFC filed RFC Capital Corporation's Motion for Approval of Post-Petition Lending and Granting Security Interest Pursuant to 11 U.S.C. §364 (the "**Postpetition Loan Motion**"). The Trustee objected to the Postpetition Loan Motion and an evidentiary hearing was held. Following the hearing, RFC moved to withdraw the Postpetition Loan Motion. A dispute exists between the Trustee and RFC regarding whether RFC should be permitted to withdraw the Postpetition Loan Motion with prejudice or without prejudice. RFC and the Trustee have briefed the issue, but the Court has not issued its ruling. If RFC prevails, RFC believes it will have the right to file an ordinary Chapter 11 administrative expense claim for the \$344,951.53 it advanced.

C. Dispute Re: Superpriority Administrative Expense Claim. During the course of the Chapter 11 cases, the Court entered several cash collateral orders, pursuant to which the Debtors were authorized to use RFC's cash collateral. Under these orders, RFC was granted a replacement lien in "all post-petition assets of the Debtors" to the extent of cash collateral used ("**RFC's Replacement Lien**"). On May 17, 2002, RFC filed a Motion for Order Granting Superpriority Claim Pursuant to §507(b) (the "**Superpriority Motion**"), asserting that RFC's Replacement Lien failed to provide the promised adequate protection. The Trustee objected to the Superpriority Motion and an evidentiary hearing was held thereon. On September 13, 2002, the Court entered an Order denying the Superpriority Motion. RFC has appealed the order. If RFC were to prevail on the appeal and in a subsequent hearing on its Superpriority Motion, it is likely that no Chapter 11 administrative expense claims other than RFC's would be paid.

D. Dispute Re: Transfer Avoidance Claims. RFC asserts that RFC's Security Interest and/or RFC's Replacement Lien attach to the Estates' potential transfer avoidance claims (e.g., preferences, fraudulent transfers, post-petition transfers) and/or proceeds thereof (the "**Transfer Avoidance Claims**"). As noted above, RFC's Replacement Lien extends to "all post-petition assets" to the extent of cash collateral used. On November 26, 2001, the Official Unsecured Creditors' Committee filed a document in which the Committee argued (in the context of a limited objection to RFC's Postpetition Loan Motion) that the term "all post-petition assets"

does not include “recovers from avoidance actions, including preferences and fraudulent transfers.” The Trustee has not yet taken a position on this issue.

E. Dispute Re: Existing and Subsequent Cash Receipts. As of October 4, 2002, the Trustee held cash (the “**Cash on Hand**”) in the amount of \$685,766.69. The Cash on Hand includes the \$158,000 Fund (with \$356.98 interest), remaining Sale Proceeds in the amount of \$342,000, and other receipts in the amount of \$185,409.71 (the “**Existing Receipts**”). The Trustee anticipates that he will receive additional funds (i.e., subsequent to October 4, 2002) from sources which include, without limitation: (a) prepetition and postpetition accounts receivable, recovery of retainers, deposits, and other prepayments, and tax refunds (collectively, “**Subsequent Cash Receipts**”), and (b) proceeds of Transfer Avoidance Claims. The Trustee acknowledges that the Existing Receipts and Subsequent Cash Receipts may be subject, in whole or in part, to RFC’s Security Interest and/or RFC’s Replacement Lien.

F. Other Matters. The Debtors’ accounts receivable, and certain other assets, were excluded from the October 30, 2001 sale. The Trustee acknowledges that RFC’s Security Interest continues in the accounts receivable. The accounts receivable include a potentially significant, but disputed, receivable from Earthlink (the “**Earthlink Receivable**”), arising from a prepetition sale of certain of the Debtors’ assets to Earthlink. RFC desires to save the expense of foreclosing its lien on the Earthlink Receivable and has asked the Trustee for an assignment thereof. Also, on October 21, 2002, the Trustee received a phone call and a letter from the controller at Accretive Technology Group (“**ATG**”). The controller represents that ATG bought Debtor ICC’s “Wolfenet” customer base in February 2002 and that one of the customers, RUI One Corp (“**RUI**”) mistakenly paid a total of \$1,498.00, in two payments of \$749.00 each, to the Estate. The Trustee confirmed that these payments were received. The Trustee and RFC have agreed that the Trustee should return the \$1,498.00 to ATG. Finally, at least one Chapter 11 administrative expense claimant has suggested that some of RFC’s collateral should be subject to surcharge, pursuant to 11 U.S.C. §506(c).

II. THE PROPOSED AGREEMENT

On or about October 25, 2002, the Trustee and RFC executed a Settlement Agreement (the “**Agreement**”). From the Trustee’s perspective, the principal terms of the Agreement are as follows:

a. The Trustee will disburse to RFC the sum of **\$343,347.03**. This sum is comprised of the following: (i) \$233,000.00 – from Sale Proceeds, and (ii) \$110,347.03 – from Existing Receipts. The Trustee will confess the validity, priority, and extent of RFC’s Security Interest and Replacement Lien in the \$343,347.03 as well as the \$525,000.00 (plus interest) disbursed to RFC on April 2, 2002. **Thus, RFC will ultimately receive \$758,000.00 from the Sale Proceeds (\$525,000.00 plus \$233,000.00), plus interest thereon, and \$110,347.03 of the Existing Receipts.**

b. After the disbursement to RFC, the Trustee will hold the sum of **\$340,921.66**. This sum is comprised of the following: (i) \$158,356.98 -- the \$158,000 Fund (with \$356.98 interest), (ii) \$109,000.00 -- remaining Sale Proceeds, and (iii) \$73,564.68 -- remaining Existing Receipts (less \$1,498.00 to ATG). (The Trustee will disburse \$1,498.00 to ATG.) RFC will waive any and all claim to these funds.

c. All Subsequent Cash Receipts (i.e., from October 4, 2002, forward) from prepetition and postpetition accounts shall be immediately forwarded to RFC by the Trustee, free of any claim by the Trustee. All other Subsequent Cash Receipts below the total

amount of \$15,000 shall be retained by the Trustee, free of any claim by RFC. RFC will retain its Security Interest in Subsequent Cash Receipts exceeding \$15,000 in total, and any such receipts which are part of RFC's collateral will be turned over to RFC.

d. The Postpetition Loan Motion shall be deemed withdrawn with prejudice, RFC will withdraw its appeal of the Order denying its Superpriority Motion, and the Sale Proceeds Proceeding will be dismissed with prejudice, the parties to bear their own costs and attorney's fees.

e. RFC will waive RFC's Security Interest and RFC's Replacement Lien in respect to all Transfer Avoidance Claims and all proceeds thereof.

f. The Trustee shall be deemed to have assigned to RFC all right, title, and interest of the Estates in and to any receivable or amount owed to the Estates by Earthlink and any and all claims, of any nature whatsoever, against Earthlink held by the Estates. Such assignment is without any warranties or representations.

g. The Trustee and the Estates, on one hand, and RFC, on the other hand, will be deemed to have "agreed not to seek from the other" any payment of claims except (i) claims arising under this Agreement and (ii) RFC's obligation to pay to the Estates any surplus funds collected from liquidation of its collateral, after full satisfaction of all obligations owed by the Debtors to RFC. Without limiting the generality of the foregoing: (a) RFC shall not seek payment from the Trustee or the Estates of any administrative expense claim, superpriority administrative expense claim, or prepetition claim and (b) the Trustee and Estates release RFC and shall not seek payment from RFC of any §506(c), Transfer Avoidance Claims, any other claims under Chapter 5 of the Bankruptcy Code and any other claims not covered by the Agreement.

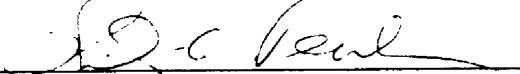
A copy of the pleading is available for inspection in the Bankruptcy Court Clerk's Office, 721 19th Street, Denver, Colorado 80202 or upon request from the undersigned attorney.

Pursuant to Rule 202 of the Local Rules of Bankruptcy Procedure, if you desire to oppose this action you must file a written objection and request for a hearing with the Court on or before Dec. 4, 2002, and serve a copy thereof on the undersigned attorney. Objections and requests for hearing shall clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the Court.

In the absence of a timely and substantiated objection and request for hearing by an interested party, the court may approve or grant the aforementioned motion or application without any further notice to creditors or other interested parties.

Dated: November 6, 2002

PEARLMAN & DALTON, P.C.

by 

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ATTORNEYS FOR CHAPTER 7 TRUSTEE