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**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

DISTRIBUTION CENTER

In re	)	Chapter 11
)	
PATHNET, INC.,	)	Case No. 01-12265-SSM
Debtor.)	
)	
In re	)	Chapter 11
)	
PATHNET TELECOMMUNICATIONS, INC.,	)	Case No. 01-12264-SSM
Debtor.)	
)	
In re	)	Chapter 7
)	
PATHNET OPERATING, INC.,	)	Case No. 01-12266-SSM
Debtor.)	
)	
In re	)	Chapter 7
)	
PATHNET OPERATING OF VIRGINIA, INC.,	)	Case No. 01-12267 - SSM
Debtor.)	
)	
In re	)	Chapter 7
)	
PATHNET FIBER EQUIPMENT, LLC,	)	Case No. 01-12268-SSM
Debtor.)	
)	
In re	)	Chapter 7
)	
PATHNET REAL ESTATE, LLC,	)	Case No. 01-12269-SSM
Debtor.)	

AUS _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC _____
OTH _____

**JOINT MOTION OF PATHNET, INC., PATHNET TELECOMMUNICATIONS, INC.
AND GORDON P. PEYTON, AS CHAPTER 7 TRUSTEE OF PATHNET OPERATING,
INC. AND ITS RELATED CHAPTER 7 DEBTOR ESTATES FOR ORDER
APPROVING SETTLEMENT AGREEMENT AMONG PATHNET, INC., PATHNET
TELECOMMUNICATIONS, INC., THE BANKRUPTCY ESTATES OF PATHNET
OPERATING, INC., PATHNET REAL ESTATE, LLC, PATHNET FIBER
EQUIPMENT, LLC AND PATHNET OPERATING OF VIRGINIA, LLC, THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF PATHNET, INC. AND
PATHNET TELECOMMUNICATIONS, INC., NORTEL NETWORKS, INC. AND
CISCO SYSTEMS CAPITAL CORPORATION (THE "SETTLEMENT AGREEMENT")**

Pathnet, Inc. (“PNI”), an above-captioned Chapter 11 debtor and debtor-in-possession, Pathnet Telecommunications, Inc. (“PTI”), an above-captioned Chapter 11 debtor and debtor-in-possession, and Gordon P. Peyton, as Chapter 7 Trustee of Pathnet Operating, Inc. (“POI”), an above-captioned Chapter 7 debtor, and its related above-captioned Chapter 7 debtor estates (the “Movants”) by their respective undersigned counsel, as and for their joint motion for approval of the Settlement Agreement in their respective bankruptcy cases before this Court, respectfully represent as follows:

Background

1. On April 2, 2001, PNI, PTI, POI, Pathnet Operating of Virginia L.L.C. (“POV”), Pathnet Fiber Equipment, L.L.C. (“PFE”), and Pathnet Real Estate L.L.C. (“PRE”) filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware under Chapter 11 of Title 11, United States Code, 11 U.S.C. 101 *et. seq.* (the “Bankruptcy Code”). By order of the Delaware Bankruptcy Court, the cases were transferred to this Bankruptcy Court.

2. On April 19, 2001 the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) was appointed in these cases.

3. On July 19, 2001, the Bankruptcy Court entered the Stipulation and Consent Order (1) Converting Cases to Chapter 7 and (2) Authorizing the Extension of Limited Use of Cash Collateral, which order converted the bankruptcy cases of POI, PRE, and PFE to cases under Chapter 7 of the Bankruptcy Code. On July 24, 2001, the Bankruptcy Court entered an order converting the bankruptcy case of POV to a case under Chapter 7 of the Bankruptcy Code. Thereafter, Gordon Peyton was appointed as Chapter 7 Trustee (the “Trustee”) of POI, PRE, PFE and POV (collectively the “Converted Cases”).

4. On March 12, 2002, the Bankruptcy Court confirmed the First Amended Joint Plan of Liquidation of PNI and PTI (collectively the "Chapter 11 Debtors").

5. Shortly before, on March 8, 2002, the Trustee commenced an adversary proceeding by POI against PNI in the Bankruptcy Court, Adversary Proceeding No. 02-8044-SSM, alleging that certain transfers of over \$11 million in the aggregate made by POI to PNI constituted breaches of fiduciary duty, pursuant to Virginia law, avoidable fraudulent transfers pursuant to Sections 544 and 548 of the Bankruptcy Code, avoidable preferential transfers pursuant to Section 547 of the Bankruptcy Code, avoidable transfers pursuant to Section 549 of the Bankruptcy Code, and seeking turnover of property of the estate of POI pursuant to Sections 542 and 550 of the Bankruptcy Code (the "Trustee Adversary Proceeding"). In the proceeding, the Trustee sought to impose a constructive trust to recover said monies which funds constituted essentially the entire estate of PNI, that would otherwise be available for distribution to creditors under PNI's Plan of Liquidation.

6. On April 11, 2002, PNI answered the complaint filed by the Trustee in the Trustee Adversary Proceeding, asserting various defenses and counterclaims alleging that (i) certain transfers of approximately \$10 million in the aggregate made by PNI to or for the benefit of POI were avoidable fraudulent transfers pursuant to Sections 544 and 548 of the Bankruptcy Code, and (ii) PNI was entitled to an administrative priority expense claim of approximately \$6.7 million (collectively, the "PNI Counterclaims"). In addition, in accordance with an administrative bar order established by this Court, on October 7, 2002, PNI filed an administrative expense claim in the POI bankruptcy case in the amount of \$5,322,345.00 (the "PNI Administrative Claim"), based upon its position as established at that point in the Trustee Adversary Proceeding.

7. On May 6, 2002, PNI commenced an adversary proceeding against Nortel Networks, Inc. (“Nortel Networks”) and Cisco Systems Capital Corporation (“Cisco”) in the Bankruptcy Court, Adversary Proceeding No. 02-08068-SSM, generally alleging that Nortel Networks and Cisco as the secured creditors of POI (the “Secured Creditors”) were liable for the transfers described in the PNI Counterclaims (the “PNI Adversary Proceeding”). PNI sought recovery from the Secured Creditors to the extent funds were recovered by the Trustee in the Trustee Adversary Proceeding and for other funds expended by PNI on the theory that funds expended or transfers made pursuant to an Intercompany Services Agreement or otherwise on behalf of POI were really for the benefit of the Secured Creditors.

8. PNI disputed the claims made in the Trustee Adversary Proceeding, the Trustee disputed the PNI Counterclaims made in the Trustee Adversary Proceeding and in the PNI Administrative Claim, and Nortel Networks and Cisco disputed the claims made in the PNI Adversary Proceeding (collectively, the claims and counterclaims made in the Trustee Adversary Proceeding, the PNI Adversary Proceeding, the PNI Counterclaims, and the PNI Administrative Claim shall be referenced as the “Disputed Claims”).

9. In both the Trustee Adversary Proceeding and the PNI Adversary Proceeding, substantial discovery was undertaken, thousands of pages of documents were exchanged, experts were retained and prepared reports, ten witnesses were deposed with at least ten more examinations scheduled to be taken and numerous discovery disputes were addressed, at times requiring court resolution. In addition, in the PNI Adversary Proceeding, the Secured Creditors made a motion to dismiss, which was denied and there was other motion practice engaged in and contemplated by the parties.

10. Notwithstanding the parties' belief in their respective positions, the parties sought to settle these matters in lieu of further litigation, in view of the substantial risks, additional time and costs associated with ongoing litigation. After lengthy negotiations, the parties have entered into the Settlement Agreement, a copy of which is annexed hereto as Exhibit A, which, as a global settlement, resolves the Disputed Claims and provides for other related relief.

11. By this joint motion, PNI, PTI, and the Trustee seek approval of the Settlement Agreement on behalf of their respective estates and submit, as set forth more fully below, that the Settlement Agreement is fair and in the best interests of all the affected parties, including these estates and their creditors.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings is appropriate in this district pursuant to 28 U.S.C. § 1408. The statutory predicate for the relief requested in this Motion is Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9019 and Sections 363 and 105 of the Bankruptcy Code.

RELIEF REQUESTED

13. By this motion, PNI, PTI, and the Trustee respectfully request that the Court enter an order approving the Settlement Agreement. The Settlement Agreement and all of the terms and conditions provided therein will not take effect until approved by order of the Court.

I. The Legal Standard

14. Bankruptcy Rule 9019(a) states, in pertinent part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Accordingly, Bankruptcy Rule 9019(a) authorizes the Court to approve post-petition settlements of claims and controversies. *See In re Three Rivers Woods, Inc.*, 2001 WL

720620, at *5 (Bankr. E.D. Va. 2001) (citing *In re Frye*, 216 B.R. 166, 170 (Bankr. E.D. Va. 1997)).

15. In determining whether to approve a compromise or settlement, a court should consider the following factors: (1) “the probability of the trustee’s success in any ensuing litigation”; (2) “any collection difficulties”; (3) “the complexity, time and expense of the litigation”; and (4) “the interest of the creditors with proper deference to their reasonable views.” *In re Austin*, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995). See also *In re Three Rivers Woods, Inc.*, 2001 WL 720620, at *6 (citing these factors).

16. When asked to approve a settlement under Bankruptcy Rule 9019, a court should determine whether the settlement falls “below the lowest point in the range of reasonableness.” *Id.* at 400 (citing cases); *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Since compromises are favored in the bankruptcy courts, “a compromise or settlement will most likely gain approval if it is both ‘fair and equitable,’ as well as representative of the best interests of the estate as a whole.” *In re Three Rivers Woods* at *6 (quoting *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995), and citing *In re Austin*, 186 B.R. at 400).

II. The Significant Terms of Settlement Agreement

17. Set forth below is a summary of the significant terms and conditions of the Settlement Agreement. The summary is qualified in its entirety by reference to the Settlement Agreement, which is annexed hereto as Exhibit A. The terms of the settlement are as follows:

a. Settlement Payment

Within three business days of the order(s) approving the settlement agreement becoming final, PNI will pay the Trustee the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000).

b. Exchanges of Waivers and Releases

General releases are being exchanged among the Chapter 11 Debtors, the Trustee, on behalf of the Converted Debtors, the Creditors' Committee, and the Secured Creditors and their respective agents, professionals and other enumerated related parties, with the exception that (i) the releases by the Secured Creditors relate only to these bankruptcy cases and (ii) the Trustee and the Secured Creditors are not releasing any claims they may have against agents, professionals of, or other enumerated parties related to the Converted Debtors.

c. Stipulation for Dismissal of Adversary Proceedings and
Withdrawal of Administrative Claims

Upon the Trustee's receipt of the settlement papers, the parties will file stipulations dismissing with prejudice the Trustee Adversary Proceeding, the PNI Adversary Proceeding, and withdrawing the PNI Administrative Claim.

**III. The Settlement Agreement is Fair, Reasonable and in the Best Interests
of the Respective Bankruptcy Estates and the Creditors Thereof**

18. The Movants strongly believe the Settlement Agreement is fair, reasonable and in the best interests of the respective bankruptcy estates and the creditors thereof as contemplated by Bankruptcy Rule 9019.

A. Avoidance of Risk

19. The Trustee Adversary Proceeding was hotly contested on both sides and each advanced strong arguments. The Trustee took the position (i) that the transfers in question were wrongful and resulted in unjust enrichment to PNI (ii) that the common officers of the entities made the transfers shortly before and with the knowledge of the impending bankruptcy filing and had a fiduciary obligation to POI to maintain its assets and (iii) that the transfers were not in accordance with the strict terms of the above-referenced Intercompany Services Agreement. In

response, PNI maintained (i) that the transfers were made in accordance with the Intercompany Services Agreement and with the course of conduct followed in the past (ii) that the transfers were legitimate expenses and reimbursement obligations of POI and needed to be made prior to the filing to ensure that there was sufficient cash to preserve the going-concern value of the businesses in anticipation of an ultimate sale and (iii) that the payments made to employees were to common employees of the entities, most of whom actually worked for POI.

20. Notwithstanding the parties' confidence in the merits of their respective positions, both sides were aware that they each faced substantial litigation risks which this settlement avoids. The litigation turned on a constructive trust theory, which this Court has recognized as a fact sensitive analysis in other cases, wherein the Court has both granted and denied requests for imposition of a constructive trust. Thus, the outcome of the litigation was impossible to predict and the ramifications to each side were it to lose, were potentially devastating. If the Trustee lost on this theory, he might recover no funds for his estate; if PNI lost, all of the funds in its estate might be depleted.

21. Likewise, the parties faced substantial uncertainty in the PNI Adversary Proceeding because, while PNI prevailed in connection with the Secured Creditors' motion to dismiss, the Court expressed concern about PNI's position vis-à-vis the Secured Creditors with respect to certain of the transfers.

B. Clear Economic Benefits

22. Further, the settlement provides a clear economic benefit to both the Converted Debtors and to PNI. The Trustee will recover a substantial amount of money and PNI, while paying that sizeable sum, limits its exposure and retains sufficient funds to make an immediate distribution to its creditors.

C. Elimination of Costs and Delay of Litigation

23. The parties have already expended substantial sums in vigorously litigating the Disputed Claims. Furthermore, discovery had not been completed in either the Trustee Adversary Proceeding or the PNI Adversary Proceeding. Moreover, a trial of these adversary proceedings would be lengthy and costly. This settlement cuts off the significant expenses which each estate would have continued to face as well as the drain on judicial time and resources. It further enables there to be a prompt distribution of funds in the PNI estate, which would not have been possible with the delays attendant to protracted litigation. Likewise, exchange of general releases by all the parties eliminates the overhang of any issues with respect to PTI, as the parent, and accordingly, a prompt distribution to creditors is achievable in that estate as well.

24. For the foregoing reasons, the Movants submit the Settlement Agreement should be approved under Bankruptcy Rule 9019 and sections 363 and 105 of the Bankruptcy Code.

25. In order to ensure prompt implementation of the terms of the Settlement Agreement, the Movants ask that any order entered approving the Settlement Agreement be effective and enforceable immediately upon entry pursuant to Bankruptcy Rule 6004(g).

26. No prior request has been made to this or any other court for the relief requested herein.

WHEREFORE, the Movants request entry of Order Approving the Settlement Agreements in the respective bankruptcy cases of the relevant parties thereto and such other relief as is just and proper.

GORDON P. PEYTON, TRUSTEE IN BANKRUPTCY
By Counsel

REDMON PEYTON & BRASWELL, LLP

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PATHNET, INC., DEBTOR AND DEBTOR IN POSSESSION
By Counsel

VORYS SATER SEYMOUR AND PEASE LLP

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Special Counsel to Pathnet, Inc.

WHEREFORE, the Movants request entry of Order Approving the Settlement Agreements in the respective bankruptcy cases of the relevant parties thereto and such other relief as is just and proper.

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PATHNET, INC., DEBTOR AND DEBTOR IN POSSESSION
By Counsel

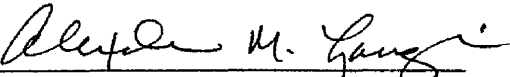
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PATHNET TELECOMMUNICATIONS,
INC., DEBTOR AND DEBTOR IN
POSSESSION
By Counsel

WILEY REIN & FIELDING LLP

By: 

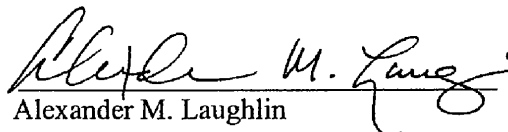
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COVINGTON & BURLING

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Counsel to Pathnet Telecommunications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November 2002, a copy of the foregoing Motion for order approving Settlement Agreement will be mailed, first-class, postage prepaid, to all parties on the attached lists* by Robert L. Berger & Associates, LLC, balloting agent to the Debtors.


Alexander M. Laughlin

* Pursuant to Local Rule 5005-1(C) (8), the attached service lists are not being served on each of the parties, but is attached to the original Certificate of Service filed with the Court.

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“**Agreement**”) is made, executed and entered into as of November ___, 2002 (the “**Execution Date**”), by and among the following entities, each of whom is a “**Party**” and, collectively, the “**Parties**”:

Pathnet, Inc. (“**PNI**”), debtor and debtor in possession in that certain Chapter 11 bankruptcy case entitled In re Pathnet, Inc., filed in the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division (the “**Bankruptcy Court**”), as Bankruptcy Case No. 01-12265-SSM; and

Pathnet Telecommunications, Inc. (“**PTI**” and, collectively with PNI, the “**Chapter 11 Debtors**”), debtor and debtor in possession in that certain Chapter 11 bankruptcy cases entitled In re Pathnet Telecommunications, Inc., filed in the Bankruptcy Court as Bankruptcy Case No. 01-12264-SSM; and

Gordon P. Peyton, not individually but on behalf of and solely in his capacity as the duly-appointed Chapter 7 Trustee (the “**Trustee**”) of Pathnet Operating, Inc. (“**POI**”), Pathnet Operating of Virginia (“**POV**”), Pathnet Fiber Equipment LLC (“**PFE**”), and Pathnet Real Estate LLC (“**PRE**”) (collectively, the “**Converted Debtors**”), debtors in those certain Chapter 7 bankruptcy cases entitled In re Pathnet Operating, Inc., et al., filed in the Bankruptcy Court as Bankruptcy Case Nos. 01-12266-SSM through 01-12269-SSM, respectively; and

The Official Committee of Unsecured Creditors in the Chapter 11 cases of the Chapter 11 Debtors (the “**Creditors’ Committee**”); and

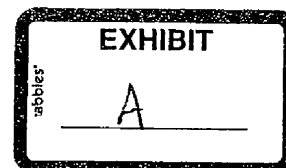
Nortel Networks Inc. (“**Nortel Networks**”); and

Cisco Systems Capital Corporation (“**Cisco**”);

with regard to the following facts, circumstances, beliefs, assertions and allegations (each of which is a “**Recital**”, and all of which are collectively, the “**Recitals**”):

RECITALS

A. On April 2, 2001, the Chapter 11 Debtors and the Converted Debtors filed voluntary petitions (the “**Bankruptcy Cases**”) in the United States Bankruptcy Court for the District of Delaware under Chapter 11 of title 11 United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”). By order of the Delaware Bankruptcy Court, the cases were transferred to the Bankruptcy Court.



B. On July 19, 2001, the Bankruptcy Court entered the Stipulation and Consent Order (1) Converting Cases to Chapter 7 and (2) Authorizing the Extension of Limited Use of Cash Collateral, which order converted the bankruptcy cases of POI, PRE, and PFE to cases under Chapter 7 of the Bankruptcy Code. On July 24, 2001, the Bankruptcy Court entered an order converting the bankruptcy case of POV to a case under Chapter 7 of the Bankruptcy Code.

C. On March 8, 2002, the Trustee commenced an adversary proceeding against PNI in the Bankruptcy Court, Adversary Proceeding No. 02-8044-SSM, alleging that certain transfers of over \$11 million in the aggregate made by POI to PNI constituted breaches of fiduciary duty, pursuant to Virginia law, avoidable fraudulent transfers pursuant to Sections 544 and 548 of the Bankruptcy Code, avoidable preferential transfers pursuant to Section 547 of the Bankruptcy Code, avoidable transfers pursuant to Section 549 of the Bankruptcy Code, and seeking turnover of property of the estate of POI pursuant to Sections 542 and 550 of the Bankruptcy Code (the **"Trustee Adversary Proceeding"**).

D. On March 12, 2002, the Bankruptcy Court confirmed the First Amended Joint Plan of Liquidation of the Chapter 11 Debtors.

E. On April 11, 2002, PNI answered the Complaint filed by the Trustee in the Trustee Adversary Proceeding, asserting various defenses and counterclaims alleging that (i) certain transfers of approximately \$10 million in the aggregate made by PNI to or for the benefit of POI were avoidable fraudulent transfers pursuant to Sections 544 and 548 of the Bankruptcy Code, and (ii) PNI was entitled to an administrative priority expense claim of approximately \$6.7 million (collectively, the **"PNI Counterclaims"**).

F. On May 6, 2002, PNI commenced an adversary proceeding against Nortel Networks and Cisco in the Bankruptcy Court, Adversary Proceeding No. 02-08068-SSM, generally alleging that Nortel Networks and Cisco were liable for the transfers described in the PNI Counterclaims (the **"PNI Adversary Proceeding"**).

G. On October 7, 2002, PNI filed an administrative expense claim in the POI bankruptcy case in the approximate amount of \$6.7 million (the **"PNI Administrative Claim"**).

H. PNI disputes the claims made in the Trustee Adversary Proceeding, the Trustee disputes the PNI Counterclaims made in the Trustee Adversary Proceeding and in the PNI Administrative Claim, and Nortel Networks and Cisco dispute the claims made in the PNI Adversary Proceeding (collectively, the claims and counterclaims made in the Trustee Adversary Proceeding, the PNI adversary proceeding, the PNI Counterclaims, and the PNI Administrative Claim shall be referenced as the **"Disputed Claims"**).

I. The parties recognize and acknowledge the substantial costs of litigation that would be required to resolve the Disputed Claims, as well as the inherent uncertainties in litigation, and possess the good faith belief that the settlement embodied by this Agreement is in their best interests and represents an exchange of reasonably equivalent value.

J. Through this Agreement, the Parties desire, subject to approval of the Bankruptcy Court and the terms and conditions stated herein, to settle the Disputed Claims and fix the claims owing between them.

PURSUANT TO THE RECITALS, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to the terms and conditions of this Agreement, the Parties hereby agree as follows:

ARTICLE I

CONDITION PRECEDENT TO EFFECTIVENESS OF AGREEMENT

1.1. Bankruptcy Court Approval of this Agreement. All of the obligations of this Agreement are conditional upon the Bankruptcy Court issuing one or more final order(s) approving this Agreement (each, an “Approval Order”), authorizing the Chapter 11 Debtors and the Trustee to enter into and perform their respective obligations under this Agreement, and containing the following findings:

- (a) This Agreement was negotiated by the Parties in good faith, at arm’s length, and for good, reasonable and fair consideration as to both Parties;
- (b) The Parties entered into this Agreement in good faith;
- (c) This Agreement is in the best interest of the bankruptcy estate of each of the Converted Debtors and each of the Chapter 11 Debtors;
- (d) The exchange by the Parties of the consideration set forth in this Agreement will constitute a good faith contemporaneous exchange of reasonably equivalent value; and
- (e) The Chapter 11 Debtors, the Creditors’ Committee, the Converted Debtors, the Trustee, Nortel Networks, Cisco, their respective successors and assigns, and any transferees of money paid in connection with this Agreement will each have the protection of all of the aforesaid findings and conclusions.

The Approval Order(s) shall be deemed “final” (i) within 10 calendar days after entry of the Approval Order if no appeal has been filed, or (ii) if the Approval Order is timely appealed, the appeal is resolved and further appeals would not be timely. Until all final Approval Orders are obtained in accordance with this section, this Agreement, with the exception of the terms contained in this Article, shall have no force or effect.

1.2. Obligation to Seek Approval Order. The Chapter 11 Debtors and the Trustee jointly shall file with the Bankruptcy Court one or more motions seeking entry of the Approval Order(s). Each Party will in good faith exercise all reasonable efforts required of such Party to obtain the entry of the Approval Order(s), including promptly executing and delivering any motions, declarations and other items of support reasonably required in connection therewith. Each Party will appear at the hearing on the motion seeking such order and at any subsequent hearings relating to such approval, including any appeal of any action by the Bankruptcy Court relating thereto, to support entry and validity of the Approval Order.

ARTICLE II

TERMS OF SETTLEMENT

2.1. Settlement Payment and Corresponding Allowed Claim. Within three (3) business days after all of the Approval Orders become final, PNI shall pay to the Trustee the total sum of three million five hundred thousand dollars (\$3,500,000.00) (the “**Settlement Payment**”). Payment shall be made by wire transfer or cashier’s check such that the Trustee (or his counsel) receives said funds within the aforementioned (3) business days.

2.2. Contemporaneous Exchange of Waivers and Releases. Contemporaneous with receipt by the Trustee of the Settlement Payment, the waivers and releases stated in Article III of this Agreement shall take effect.

2.3. Stipulation for Dismissal of Adversary Proceedings and Withdrawal of Administrative Claim. Upon the Trustee’s receipt of the Settlement Payment, the Parties shall promptly file one or more stipulations for the dismissal with prejudice of the Trustee Adversary Proceeding and the PNI Adversary Proceeding and the withdrawal of the PNI Administrative Claim.

ARTICLE III

RELEASE OF CLAIMS

3.1. Release of Claims by the Trustee.

(a) Contemporaneous with receipt by the Trustee of the Settlement Payment, the Trustee, on behalf of each of the Converted Debtors and their respective estates, shall be deemed to release and discharge any and all claims or interests which he may now own or hold, or may have previously owned or held, against the Chapter 11 Debtors and their respective estates from any and all claims, demands, controversies, actions, causes of action, suits, proceedings, obligations, liabilities, fines, penalties, costs, expenses, and damages of whatsoever

character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, and liquidated or unliquidated.

(b) Contemporaneous with receipt by the Trustee of the Settlement Payment, the Trustee, on behalf of each of the Converted Debtors and their respective estates, shall be deemed to release and discharge any and all claims or interests which it may now own or hold, or may have previously owned or held, against the Creditors' Committee and its respective members, agents, insurers, attorneys, employees, administrators and predecessors (acting in their capacity as such), from any and all claims, demands, controversies, actions, causes of action, suits, proceedings, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, and liquidated or unliquidated.

3.2. Release of Claims by the Chapter 11 Debtors and the Creditors' Committee. Contemporaneous with the release by the Trustee becoming effective, the Chapter 11 Debtors and the Creditors' Committee shall be deemed to release and discharge any and all claims or interests which they may now own or hold, or may have previously owned or held, against the Converted Debtors and their respective estates, the Trustee, Nortel Networks or Cisco, and their respective agents, insurers, attorneys, employees, administrators and predecessors (acting in their capacity as such), from any and all claims, demands, controversies, actions, causes of action, suits, proceedings, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, and liquidated or unliquidated.

3.3 Release of Claims by Nortel Networks and Cisco. Contemporaneous with the release by the Trustee becoming effective, Nortel Networks and Cisco shall each be deemed to release and discharge any and all claims or interests which it may now own or hold, or may have previously owned or held, against the Chapter 11 Debtors and their respective estates, the Creditors' Committee and their respective members, agents, insurers, attorneys, employees, administrators and predecessors (acting in their capacity as such), from any and all claims, demands, controversies, actions, causes of action, suits, proceedings, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, and liquidated or unliquidated in any way related to or arising out of the Bankruptcy Cases.

3.4. Retention of Claims by the Trustee. No provision of this Agreement shall be construed to effect any release by the Trustee of any claims, demands, controversies, actions, causes of action that the Trustee has or may have against any agents, insurers, attorneys, accountants, financial advisors, officers, directors, employees, administrators and predecessors (acting in their capacity as such), of any of the Converted Debtors.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1. **Legal Capacity to Contract and Perform.** Each Party represents that, subject to the approval of the Bankruptcy Court and entry of the Approval Order, it has the requisite power, authority and legal capacity to make, execute, enter into, and deliver this Agreement and to fully perform its duties and obligations under this Agreement, that neither this Agreement nor the performance by such Party of any duty or obligation under this Agreement will violate any other contract, agreement, covenant, obligation, or restriction by which such Party is bound, and that it is without knowledge of facts that would make this Agreement (or portions thereof) capable of avoidance now or in the future.

4.2. **No Prior Assignments.** Each Party represents that it has not pledged, transferred, or assigned to any third party any right, interest, claim, or cause of action being transferred, conveyed, released, or compromised pursuant to this Agreement, and such Party shall indemnify all other Parties from and against any third party claim asserting such an pledge, transfer or assignment of any such right, interest, claim or cause of action.

4.3. **No Undisclosed Inducements.** Each Party represents that it executed and entered into this Agreement in reliance solely upon its own independent investigation and analysis of the facts and circumstances, and that no representations, warranties, or promises other than those set forth in this Agreement were made by any Party or any employee, agent, or legal counsel of any Party to induce said Party to execute this Agreement.

4.4. **No Admission of Liability.** This Agreement has been negotiated and executed for the purpose of settling the various disputes described herein and obtaining the release of claims that the Parties may have against one another as described herein. The execution of this Agreement by any Party does not constitute, infer or evidence the truth of any claim, the admission of any liability, the validity of any defense or the existence of any circumstance or fact which could constitute a basis for any claim, liability or defense, other than for the purpose of enforcing the terms and provisions of this Agreement.

4.5. **Representation by Counsel.** Each Party represents that it has acted pursuant to the advice of legal counsel of its own choosing in connection with the negotiation, preparation, and execution of this Agreement, or that it was advised to obtain the advice of such legal counsel, had ample opportunity to obtain the advice of such legal counsel, and willfully declined to obtain the advice of such legal counsel. Each Party and/or its counsel has participated, or had an opportunity to participate, in the drafting and negotiation of this Agreement, and for all purposes it shall be deemed that the Parties jointly drafted this Agreement.

4.6. **Truth and Accuracy of Representations and Warranties.** Each of the representations, warranties and covenants set forth in this Agreement shall be, and the Party

making the same shall cause them to be, true and correct as of the time of execution of this Agreement.

4.7. **Survival.** Each of the statements, representations, warranties, covenants, disclosures, disclaimers, waivers and other agreements contained in this Agreement shall survive the execution of this Agreement, the payment of any settlement consideration provided for in this Agreement, and the dismissal of any legal actions referenced in this Agreement.

4.8. **Good Faith and Fair Dealing.** This Agreement was negotiated in good faith and at arm's length, and the terms represent good, reasonable, and fair consideration, and an exchange of reasonably equivalent value between the Parties.

ARTICLE V

GENERAL TERMS AND PROVISIONS:

5.1. **Entire Agreement.** This Agreement shall constitute the sole and entire agreement between the Parties with respect to the settlement of disputes and release of claims provided for herein. Any and all prior or contemporaneous agreements and negotiations, whether oral or written, with respect to the subject matter of this Agreement, are hereby superseded. No employee or agent of any Party has authority to orally modify any term or condition of this Agreement, or to make any representation or agreement other than as contained in this Agreement. Unless any representation or agreement is contained in this Agreement or is added pursuant to a written agreement executed by all Parties, it shall not be binding nor otherwise affect the validity of this Agreement.

5.2. **Binding On Successors.** This Agreement shall be binding upon the successors, agents, and assigns of the respective Parties, and any parent, subsidiary, and affiliated entity of each Party.

5.3. **Amendment of Agreement.** No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by each Party hereto.

5.4. **Construction of Agreement.** The provisions of this Agreement shall be liberally construed to effectuate the intended settlement of the disputes and the release of all related claims. Section headings have been inserted for convenience only and shall not be given undue consideration in resolving questions of construction or interpretation. For purposes of determining the meaning of, or resolving any ambiguity with respect to, any word, phrase, term or provision of this Agreement, each Party shall be deemed to have had equal bargaining strength in the negotiation of this Agreement and equal control over the preparation of this document, such that neither the Agreement nor any uncertainty or ambiguity herein shall be arbitrarily construed or resolved against any Party under any rule of construction.

5.5. **Further Assurances.** Each Party shall promptly execute any and all instruments and documents and take all other actions, including without limitation the payment of money, that may be required to effectuate the Settlement.

5.6. **Gender and Quantitative Use.** Wherever the context of this Agreement may so require, the gender shall include the masculine, feminine and neuter, and the quantitative usage of any word, term or phrase shall include the singular and plural.

5.7. **Enforcement of Agreement.** Each Party to this Agreement shall have the right to enforce by proceedings at law or in equity all of the terms and provisions of this Agreement, including without limitation the right to prosecute proceedings at law or in equity against the person(s) who have violated or who are attempting to violate any of such terms or provisions, to enjoin such person(s) from doing so, to cause such violation to be remedied, and/or to recover damages for such violation.

5.8. **Waiver.** The failure by any Party to enforce any term or provision of this Agreement shall not constitute a waiver of the right to enforce the same term or provision, or any other term or provision, thereafter. No waiver by any Party of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

5.9. **Litigation Costs and Attorneys' Fees.** If any Party(s) shall commence legal proceedings against any other Party(s) to enforce the provisions of this Agreement or to declare any rights or obligations under this Agreement, then the prevailing Party(s) shall recover from the losing Party(s) its/their costs of suit, including attorneys' fees, as shall be determined by the court.

5.10. **Severability.** In the event that any term or provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, then the term or provision shall be severed, and the remainder of this Agreement shall remain valid and enforceable.

5.11. **Governing Law and Consent to Jurisdiction.** This Agreement is made under and shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia, without giving effect to the principles of conflicts of law. All Parties consent to the jurisdiction of the United States District Court and the United States Bankruptcy Court which are located in the Eastern District District of Virginia, Alexandria Division, for the purpose of resolving any disputes which may arise under this Agreement. If for any reason said District Court or Bankruptcy Court shall decline to accept such jurisdiction, then the Parties shall be deemed to have consented to the jurisdiction of Virginia Courts and to venue in Alexandria, Virginia.

5.12. Time is of the Essence. With respect to all dates and time periods set forth or referred to in this Agreement, time is of the essence, such that each Party will perform all acts required of such Party pursuant to this Agreement by the date or within the time period required pursuant to this Agreement.

5.13. Costs of Negotiation, Documentation and Performance. Each Party will bear its own attorneys' fees, costs and expenses incurred in connection the Disputed Claims, the negotiation and documentation of this Agreement, and the performance of its obligations under this Agreement.

5.14. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which is an original, and all of which together constitute one and the same agreement.

5.15. Notices. Except as otherwise provided by this Agreement, any payments to be made or any notices or other communications to be given pursuant to this Agreement shall be delivered to the appropriate Party at the address shown below, until written notice of a different address is given by such Party in accordance with this Section. Any payments to be made pursuant to this Agreement shall be deemed made only upon actual receipt. Any notices or other communications must be in writing. Any notices or other communications given by personal service shall be deemed to have been received upon delivery. Any notices or other communications given by first class mail, postage prepaid, addressed to the address required by this Section, shall be deemed to have been received three (3) business days following the deposit thereof with the United States Post Office. Any notices or other communications given by overnight courier service shall be deemed to have been received on the date of delivery confirmed by the courier service. Any notice give by facsimile transmission shall be deemed to have been received on the date upon which the recipient's facsimile machine electronically confirms the receipt of such notice, provided that a copy of any such notice given by facsimile transmission shall also be sent to the recipient by first class mail, postage prepaid, addressed to the address required by this Section. Telephone numbers, if listed below, have been listed for convenience purposes only, and not for the purposes of giving notice pursuant to this Agreement.

Chapter 11 Debtors:

COVINGTON & BURLING
Michael St. Patrick Baxter
Dennis Auerbach
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
Telephone: (202) 662-6000
Facsimile: (202) 662-6291

With a copy to:

WILEY, REIN & FIELDING LLP
H. Jason Gold
Alexander M. Laughlin

7925 Jones Branch Road
Suite 6200
McLean, Virginia 22102
Telephone: (703) 905-2800
Facsimile: (703) 905-2820

And with a copy to:

STROOCK & STROOCK & LAVAN LLP
Lawrence M. Handlesman
180 Maiden Lane
New York, New York 10038
Telephone: (212) 806-5426
Facsimile: (212) 806-6006

And with a copy to:

Vorys, Sater, Seymour and Pease LLP
Malcolm M. Mitchell
277 South Washington Street, Suite 310
Alexandria, Virginia 22314
Telephone: (703) 837-6970
Facsimile: (703) 518-2754

Creditors' Committee:

STROOCK & STROOCK & LAVAN LLP
Lawrence M. Handlesman
180 Maiden Lane
New York, New York 10038
Telephone: (212) 806-5426
Facsimile: (212) 806-6006

And with a copy to:

Vorys, Sater, Seymour and Pease LLP
Malcolm M. Mitchell
277 South Washington Street, Suite 310
Alexandria, Virginia 22314
Telephone: (703) 837-6970
Facsimile: (703) 518-2754

Trustee:

Gordon P. Peyton, Chapter 7 Trustee
Redmon, Peyton & Braswell, L.L.P.
510 King Street
Suite 301
P.O. Box 25456
Alexandria, Virginia 22313-5456
Telephone: (703) 684-2000
Facsimile: (703) 684-5109

With a copy to:

REDMON, PEYTON & BRASWELL, L.L.P.
H. Bradley Evans, Jr.
E. Andrew Burcher
510 King Street, Suite 301
P.O. Box 25456
Alexandria, Virginia 22313-5456
Telephone: (703) 684-2000
Facsimile: (703) 684-5109

Nortel Networks:

NORTEL NETWORKS INC.
Attn: Charles Helm
GMS 991 15 A40
2221 Lakeside Blvd.
Richardson, TX 75082-4399
Telephone: (972) 685-7839
Facsimile: (972) 684-3679

With a copy to:

PIPER RUDNICK LLP
John G. McJunkin
R. Timothy Bryan
1200 Nineteenth Street, NW
Washington, D.C. 20036
Telephone: (202) 861-3900
Facsimile: (202) 223-2085

Cisco:

CISCO SYSTEMS CAPITAL CORPORATION
Attn: Michael Hicks
55 Hayden Avenue
Suite 4200
Lexington, MA 02421
Telephone: (781) 372-8515
Facsimile: (208) 692-2905

With a copy to:

MURPHY SHENEMAN JULIAN & ROGERS
Cccily Dumas
101 California Street
Suite 3900
San Francisco, CA 94111

Telephone: (415) 398-4700
Facsimile: (415) 421-7879

And with a copy to:

PEPPER HAMILTON LLP
K. Stewart Evans, Jr.
600 Fourteenth Street, NW
Washington, D.C. 20005
Telephone: (202) 777-6566
Facsimile: (202) 777-8865

{signatures appear on following page}

The undersigned have made, executed, and delivered this Agreement as of the Execution Date set forth in the introductory paragraph.

DATED: November 25, 2002

PATHNET, INC.

By: Daniel K. Gray
Daniel Gray
Responsible Officer

DATED: November 25, 2002

PATHNET TELECOMMUNICATIONS, INC.

By: Daniel K. Gray
Daniel Gray
Responsible Officer

DATED: _____, 2002

THE BANKRUPTCY ESTATES OF
PATHNET OPERATING, INC.,
PATHNET REAL ESTATE, L.L.C.
PATHNET FIBER EQUIPMENT, L.L.C.
PATHNET OPERATING OF VIRGINIA,
L.L.C.

By: _____

Gordon P. Peyton, not individually but on behalf of and solely in his capacity as the duly-appointed Chapter 7 Trustee for the bankruptcy estates of Pathnet Operating, Inc., Pathnet Real Estate, L.L.C., Pathnet Fiber Equipment, L.L.C., and Pathnet Operating of Virginia, L.L.C.

The undersigned have made, executed, and delivered this Agreement as of the Execution Date set forth in the introductory paragraph.

DATED: _____, 2002

PATHNET, INC.

By: _____
Daniel Gray
Responsible Officer

DATED: _____, 2002

PATHNET TELECOMMUNICATIONS, INC.

By: _____
Daniel Gray
Responsible Officer

DATED: 11-25, 2002

THE BANKRUPTCY ESTATES OF
PATHNET OPERATING, INC.,
PATHNET REAL ESTATE, L.L.C.
PATHNET FIBER EQUIPMENT, L.L.C.
PATHNET OPERATING OF VIRGINIA,
L.L.C.

By: 

Gordon P. Peyton, not individually but on behalf of and solely in his capacity as the duly-appointed Chapter 7 Trustee for the bankruptcy estates of Pathnet Operating, Inc., Pathnet Real Estate, L.L.C., Pathnet Fiber Equipment, L.L.C., and Pathnet Operating of Virginia, L.L.C.

11/25/2002 14:49 FAX 212 806 6190
Nov-25-2002 11:20am From-

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36t

DATED: _____, 2002

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
PATHNET, INC. AND PATHNET
TELECOMMUNICATIONS, INC.

By: _____

Its: _____

DATED: _____, 2002

NORTEL NETWORKS INC.

By: _____

Its: _____

DATED: 11/25, 2002

CISCO SYSTEMS CAPITAL
CORPORATION

By: DA Rogan

DAVID A. ROGAN
PRESIDENT, CISCO CAPITAL

Its: _____

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PAGE 03

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002

DATED: Nov 25, 2002

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
PATHNET, INC. AND PATHNET
TELECOMMUNICATIONS, INC.

By: [Signature]

Its: Member

DATED: _____, 2002

NORTEL NETWORKS INC.

By: _____

Its: _____

DATED: _____, 2002

CISCO SYSTEMS CAPITAL
CORPORATION

By: _____

Its: _____

DATED: _____, 2002

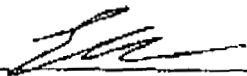
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
PATHNET, INC. AND PATHNET
TELECOMMUNICATIONS, INC.

By: _____

Its: _____

DATED: _____, 2002

NORTEL NETWORKS INC.

By:  _____

Elias Makris
Director, Customer Finance

Its: _____

DATED: _____, 2002

CISCO SYSTEMS CAPITAL
CORPORATION

By: _____

Its: _____

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11/25/2002 13:36 2128783561

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CLEARWATER CAPITAL P

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PAGE 84

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003

APPROVED AS TO FORM:

DATED: _____, 2002

COVINGTON & BURLING

By: _____
Michael St. Patrick Baxter

Attorneys for Pathnet, Inc. and Pathnet
Telecommunications, Inc.

DATED: November 25, 2002

STROOCK & STROOCK & LAVAN

By: Lawrence M. Handelsman
Lawrence Handelsman

Attorneys for Official Committee of
Unsecured Creditors of Pathnet, Inc. and
Pathnet Telecommunications, Inc. and
Special Counsel to Pathnet, Inc.

DATED: _____, 2002

REDMON, PEYTON & BRASWELL

By: _____
H. Bradley Evans, Jr.

Attorneys for Gordon P. Peyton,
Chapter 7 Trustee for the bankruptcy
estates of Pathnet Operating, Inc., Pathnet
Real Estate, L.L.C., Pathnet Fiber
Equipment, L.L.C., and Pathnet
Operating of Virginia, L.L.C.

DATED: _____, 2002

PIPER RUDNICK LLP

By: _____
John G. McJunkin

Attorneys for Nortel Networks Inc.

APPROVED AS TO FORM:

DATED: _____, 2002

COVINGTON & BURLING

By: _____
Michael St. Patrick Baxter

Attorneys for Pathnet, Inc. and Pathnet
Telecommunications, Inc.

DATED: _____, 2002

STROOCK & STROOCK & LAVAN

By: _____
Lawrence Handelsman

Attorneys for Official Committee of
Unsecured Creditors of Pathnet, Inc. and
Pathnet Telecommunications, Inc. and
Special Counsel to Pathnet, Inc.

DATED: _____, 2002

REDMON, PEYTON & BRASWELL

By: _____
H. Bradley Evans, Jr.

Attorneys for Gordon P. Peyton,
Chapter 7 Trustee for the bankruptcy
estates of Pathnet Operating, Inc., Pathnet
Real Estate, L.L.C., Pathnet Fiber
Equipment, L.L.C., and Pathnet
Operating of Virginia, L.L.C.

DATED: 11/25/02, 2002

PIPER RUDNICK LLP

By: _____
John G. McKin

Attorneys for Nortel Networks Inc.

APPROVED AS TO FORM:

DATED: _____, 2002

COVINGTON & BURLING

By: _____
Michael St. Patrick Baxter

Attorneys for Pathnet, Inc. and Pathnet
Telecommunications, Inc.

DATED: _____, 2002

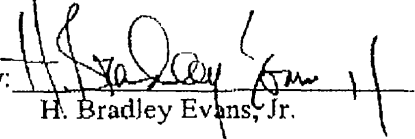
STROOCK & STROOCK & LAVAN

By: _____
Lawrence Handelsman

Attorneys for Official Committee of
Unsecured Creditors of Pathnet, Inc. and
Pathnet Telecommunications, Inc. and
Special Counsel to Pathnet, Inc.

DATED: 11/23, 2002

REDMON, PEYTON & BRASWELL

By: 
H. Bradley Evans, Jr.

Attorneys for Gordon P. Peyton,
Chapter 7 Trustee for the bankruptcy
estates of Pathnet Operating, Inc., Pathnet
Real Estate, L.L.C., Pathnet Fiber
Equipment, L.L.C., and Pathnet
Operating of Virginia, L.L.C.

DATED: _____, 2002

PIPER RUDNICK LLP

By: _____
John G. McJunkin

Attorneys for Nortel Networks Inc.

DATED: 11/25, 2002

MURPHY SHENEMAN JULIAN &
ROGERS

By: *Cecily A. Dumas*
Cecily Dumas

Attorneys for Cisco Systems Capital
Corporation