

ORIGINAL

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

In re:	)	
	)	Chapter 11
PATHNET TELECOMMUNICATIONS	)	
INC., et al.	)	Case Nos. 01-12264-SSM;
	)	01-12265-SSM
Debtors.	)	Jointly Administered

**JOINT MOTION OF THE CHAPTER 11 DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ORDER IN AID OF PLAN CONSUMMATION AND TO SET SUPPLEMENTAL ADMINISTRATIVE-CLAIM BAR DATE FOR CERTAIN TAXING AUTHORITIES**

1. By order dated March 12, 2002, the Court confirmed the First Amended Joint Plan of Liquidation of Pathnet Telecommunications, Inc. and Pathnet, Inc. (the "Plan"). The Plan was filed jointly by PFI and PNI (collectively, the "Debtors"), and by the Official Committee of Unsecured Creditors in these cases (the "Committee," and, collectively with the Debtors, the "Movants"). The Movants file this motion for an order in aid of consummation of the Plan and to set a supplemental administrative-claim bar date for certain taxing authorities.

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CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC \_\_\_\_\_  
OTH None

Michael St. Patrick Baxter  
Dennis B. Auerbach  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N W  
Washington, D.C. 20004-2401  
(202) 662-6000  
*Counsel for the Debtors and Debtors in Possession*

H. Jason Gold, Va. Bar No. 19117  
Alexander M. Laughlin, Va. Bar No. 25237  
WILEY REIN & FIELDING LLP  
7925 Jones Branch Road, Suite 6200  
McLean, Virginia 22102  
(703) 905-2827  
*Local Counsel for the Debtors and Debtors in Possession*

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2. The Movants first seek authority to declare a Plan effective date of on or about January 31, 2003, and to make full distributions to PNI and PTI claimholders on or as soon as practicable after that date.

3. The Plan contemplates that a PNI Liquidating LLC and a PTI Liquidating LLC (collectively, the “Liquidating LLCs”) may be established, at the election of the Committee, to effectuate distributions to the holders of PNI and PTI allowed unsecured claims, and to investigate and prosecute potential avoidance actions. The Movants have determined, however, that the creation of Liquidating LLCs for these purposes would unnecessarily increase costs and delay distribution, and would thus be contrary to the best interests of the unsecured creditors of PNI and PTI. The Movants thus seek authority to consummate the Plan by having the Debtors make the distributions contemplated thereunder without invoking the mechanism for establishing the Liquidating LLCs.

4. In determining that the Liquidating LLCs should not be established, the Movants have considered possible avoidance actions that could be brought by PNI or PTI. The Movants have concluded that the cost and delay associated with asserting any such avoidance actions outweighs the possible benefits to the unsecured creditors of PNI and PTI.

5. The Movants have evaluated two distinct categories of potential avoidance claims and has determined that neither should be pursued. The first category of potential claims involves intercompany transfers between PNI and PTI. The Movants are aware that approximately \$24.7 million was paid by PTI to PNI during the 12 months before the Debtors’ bankruptcy filings, including compensation for services provided by PNI to PTI and other amounts owing to PNI. The Movants also are aware that substantial cash was

transferred by PNI to PTI during the 12 months before the Debtors' bankruptcy filings, in return for a \$50-million, unsecured promissory note.

6. While the Movants believe arguments could be formulated that certain of the above-referenced transfers may be avoidable, the Movants also believe that pursuing any such claims on behalf of either PNI or PTI would make no economic sense, and, in fact, would harm the creditors of both estates. The Movants have reached this conclusion for the following reasons:

(a) It is unclear whether any of the transfers in question are, in fact, avoidable. Moreover, given that the transfers in question go in both directions, it is also unclear whether either estate would be left with a significant net claim against the other if avoidance actions were pursued.

(b) For avoidance actions to be investigated and pursued by one estate against the other, separate counsel, and, potentially, separate accountants, for each estate would have to be retained. This would result in substantial expense to each estate, and further delay in distributing funds to unsecured creditors of both estates.

(c) If either estate were successful in bringing an avoidance action against the other, it likely would have only a general unsecured claim against the other estate, with a value of less than two cents on the dollar given the amounts available for distribution to unsecured creditors. The legal and other professional fees associated with investigating and pursuing the avoidance claim would likely far exceed the benefit to unsecured creditors in real-dollar terms.

(d) Perhaps most importantly, the creditors of PNI and PTI are substantially the same, and there is thus no point to one estate pursuing avoidance claims against the other. Approximately \$496 million in claims have been asserted against PTI, excluding

claims that have already been disallowed by the Court. This includes a \$120-million claim by PNI, and a claim of \$369,677,633.24 by The Bank of New York, as indenture trustee for certain bondholders (the “**Bondholders**”), which is owed jointly by PTI and PNI. Only about \$6.5 million of outstanding claims against PTI (i.e., approximately 1.3 percent of total PTI outstanding claims) are held by entities other than PNI and the Bondholders. Bondholder claims also constitute approximately 94 percent of the allowed unsecured claims against PNI.

(c) The Bondholders would thus be the principal beneficiaries of any avoidance recovery by one Debtor against the other. Any such increased recovery the Bondholders might receive in their capacities as creditors of one Debtor would necessarily be offset by a reduced recovery in their capacities as creditors of the other.

(f) In short, a successful avoidance recovery by one estate against the other would have the principal effect of merely transferring funds from one pocket of the Bondholders to the other, with only lawyers and other professionals benefiting from the shuffle. The Movants have determined that, under the circumstances, avoidance actions by one estate against the other should not be pursued.

7. The Movants have also considered potential avoidance actions by PNI and PTI against third parties. While the Movants believe arguments could be made that certain payments to third parties could be avoided, they have concluded that the cost, delay and risk associated with pursuing such litigation outweighs the potential benefits to unsecured creditors. The Movants believe that there may be defenses available to defeat such claims, and that it is by no means certain that such avoidance actions would prevail. In addition, the unsecured creditors have already waited more than 18 months to be paid and will receive very minimal distributions. They have no interest in being further delayed and

having additional professional fees incurred based on the prospect of perhaps adding an additional penny on the dollar to their distributions.

8. By this Motion, the Movants also seek entry by the Court of an order establishing a supplemental administrative-claim bar date for the filing of post-petition tax claims by taxing authorities that did not receive notice of the April 11, 2002 deadline for filing administrative claims established by the Plan.<sup>1</sup> The Debtors recently have received notices from certain taxing authorities that failed to file timely administrative claims, asserting that personal property and other taxes are due them for the years 2001 and/or 2002. A number of these jurisdictions inadvertently were not given notice of the administrative-claim deadline. The Movants submit that these and other taxing authorities that did not receive notice of the administrative-claim deadline should be required to file motions for the allowance of administrative claims, if any, on or before January 17, 2003 or such other date as may be determined by the Court, and that any motion for allowance of an administrative tax claim not filed by such deadline should be forever barred. The Movants further request that the Court's order provide that any objection by either of the Movants to an administrative claim filed by a taxing authority on or before January 17, 2002, shall be heard on ten-days notice of such objection.

9. The setting of above-referenced bar date and ten-day notice period for objections will permit the Debtors to make full distribution to creditors on or about January 31, 2003, without the need for a claim reserve. A copy of this Motion is being

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<sup>1</sup> Taxing authorities that did receive notice of the Plan and the deadline for filing administrative claims set forth therein would, of course, be bound by the April 11, 2002 deadline. The new bar date would only apply to jurisdictions that did not receive such notice.

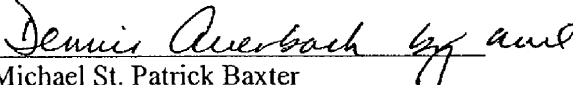
served on all taxing authorities known to the Debtors that may have post-petition tax claims against PNI and/or PTI to ensure adequate notice of the proposed bar date.

10. Finally, as the Court is aware, a settlement (subject to Court approval) has been reached of pending litigation between PNI, the Chapter 7 Trustee of Pathnet Operating, Inc. (the "POI Trustee"), Nortel Networks, Inc. and Cisco Systems Capital Corporation. Under the settlement agreement, the POI Trustee has not released any claims he may have against any agents, insurers, attorneys, accountants, financial advisors, officers, directors, or administrators of POI or any of the other converted Pathnet debtors (acting in their capacities as such). The Movants are advised that, while the POI Trustee has reserved his right to assert claims against the afore-mentioned parties, he has no present intention to do so. The Movants submit that they should be authorized to make full distributions under the Plan, without reserving for unasserted indemnification claims against PNI or PTI by any of the afore-mentioned parties in their capacities with respect to POI or the other converted debtors (which, in all likelihood, are time-barred).

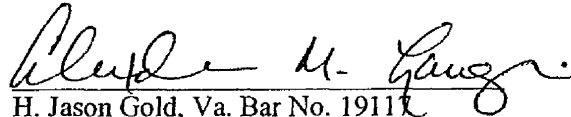
#### Conclusion

For the foregoing reasons, the Movants request that the Court enter an order in aid of consummation of the Plan and to set a supplemental administrative-claim bar date for certain taxing authorities, substantially in the form of Exhibit A hereto.

Respectfully submitted,

  
Michael St. Patrick Baxter  
Dennis B. Auerbach  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2401  
(202) 662-6000

**Counsel for the Debtors**



H. Jason Gold, Va. Bar No. 19112  
Alexander M. Laughlin, Va. Bar No. 25237  
WILEY REIN & FIELDING LLP  
7925 Jones Branch Drive, Suite 6200  
McLean, Virginia 22102  
(703) 905-2800

**Local Counsel for the Debtors**

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Lawrence M. Handelsman  
STROOCK & STROOCK & LAVAN LLP  
180 Maiden Lane  
New York, NY 10036-4982  
(212) 806-5400

**Counsel for the Official Committee of  
Unsecured Creditors**

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Malcolm M. Mitchell, Jr., Va. Bar No. 18098  
VORYS SATER SEYMOUR & PEASE LLP  
277 S. Washington Street, Suite 310  
Alexandria, VA 22314  
(703) 837-6999

**Local Counsel for the Official Committee  
of Unsecured Creditors**


November 27, 2002

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H. Jason Gold, Va. Bar No. 19117  
Alexander M. Laughlin, Va. Bar No. 25237  
WILEY REIN & FIELDING LLP  
7925 Jones Branch Drive, Suite 6200  
McLean, Virginia 22102  
(703) 905-2800

**Local Counsel for the Debtors**

---

  
Lawrence M. Handelsman  
STROOCK & STROOCK & LAVAN LLP  
180 Maiden Lane  
New York, NY 10036-4982  
(212) 806-5400

**Counsel for the Official Committee of  
Unsecured Creditors**

---

Malcolm M. Mitchell, Jr., Va. Bar No. 18098  
VORYS SATER SEYMOUR & PEASE LLP  
277 S. Washington Street, Suite 310  
Alexandria, VA 22314  
(703) 837-6999

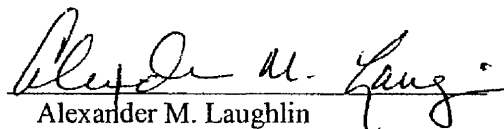
**Local Counsel for the Official Committee  
of Unsecured Creditors**

November 27, 2002



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of November, 2002, the foregoing Joint Motion of the Chapter 11 Debtors and the Official Committee of Unsecured Creditors for Order in Aid of Plan Consummation and to Set Supplemental Administrative-Claim Bar Date for Certain Taxing Authorities will be mailed via first class mail postage pre-paid to all creditors and parties in interest as set forth on the attached service 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.  
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