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ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
FOCAL COMMUNICATIONS)
CORPORATION, et al.,¹) Case No. 02-13709 (KJC)
) (Jointly Administered)
)
Debtors.)

Related Docket No. 14

Hearing Date: January 23, 2003 at 4:00 p.m. prevailing Eastern time (only if necessary)
Objection Deadline: January 13, 2003 at 04:00 p.m. prevailing Eastern time

**NOTICE OF MOTION FOR ORDER PURSUANT TO SECTIONS 365 AND 554
OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING
PROCEDURES FOR THE REJECTION OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL
PROPERTY AND ABANDONMENT OF PROPERTY OF THE DEBTORS**

To: (a) the Office of the United States Trustee, (b) counsel to the Prepetition Senior Secured Lenders, (c) counsel to NTFC Capital Corporation; (d) each of the Convertible Secured Noteholders; (e) BNY Midwest Trust Company, as Bond Indenture Trustee; (f) the contract counter party or landlord(s) with respect to each of the Debtors' contracts and leases; (g) each of the Debtors' twenty (20) largest unsecured creditors, and (h) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure

Focal Communications Corporation, and its direct and indirect wholly-owned subsidiaries (collectively, the "Debtors") have filed with the United States Bankruptcy Court for

¹ The Debtors are the following entities: Focal Communications Corporation, Focal Communications Corporation of California, Focal Communications Corporation of Colorado, Focal Communications Corporation of Connecticut, Focal Communications Corporation of Florida, Focal Communications Corporation of Georgia, Focal Communications Corporation of Illinois, Focal Communications Corporation of Massachusetts, Focal Communications Corporation of Michigan, Focal Communications Corporation of the Mid-Atlantic, Focal Communications Corporation of Minnesota, Focal Communications Corporation of Missouri, Focal Communications Corporation of New England, Focal Communications Corporation of New Jersey, Focal Communications Corporation of New York, Focal Communications Corporation of Ohio, Focal Communications Corporation of Pennsylvania, Focal Communications Corporation of Texas, Focal Communications Corporation of Virginia, Focal Communications Corporation of Washington, Focal Communications Corporation of Wisconsin, Focal Financial Services, Inc., Focal International Corp., Focal Telecommunications Corporation, Focal Equipment Finance, LLC and Focal Fiber Leasing, LLC

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the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court") the annexed *Motion For Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving Procedures for the Rejection of Executory Contracts and Unexpired Leases of Nonresidential Real Property and Abandonment of Property of the Debtors* (the "Motion").

You are required to file in writing any objection or response to the relief requested in the Motion with the United States Bankruptcy Court for the District of Delaware, Marine Midland Plaza, 824 Market Street, 5th Floor, Wilmington, Delaware 19801 **no later than January 13, 2003 at 4:00 p.m. prevailing Eastern time.**

At the same time, you must also serve a copy of the objection or response upon: (1) counsel to the Debtors, Pachulski, Stang, Ziehl, Young & Jones P.C., 919 North Market Street, 16th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esquire; (2) counsel to Prepetition Senior Secured Lenders, Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square, P.O. Box 636, Wilmington, Delaware 19899, Attn: Eric M. Davis, Esquire; and counsel to Prepetition Senior Secured Lenders, Skadden Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attn: Jay Goffman, Esquire; (3) Office of the U. S. Trustee, 844 King Street, Room 2313, Wilmington, Delaware 19801, Attn: David Buchbinder, Esquire, and (4) Proposed Counsel to any Official Committee that is appointed in these cases.

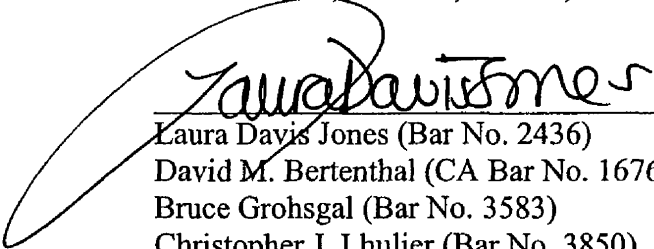
IF AN OBJECTION OR RESPONSE IS FILED AND SERVED, A HEARING ON THE MOTION WILL BE HELD ON JANUARY 23, 2003 AT 4:00 P.M. PREVAILING

EASTERN TIME, BEFORE THE HONORABLE KEVIN J. CAREY, UNITED STATES
BANKRUPTCY COURT, 844 KING STREET, COURTROOM 2B, WILMINGTON, DE
19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE
COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT
FURTHER NOTICE OR HEARING.

Dated: December 23, 2002

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



Laura Davis Jones (Bar No. 2436)
David M. Bertenthal (CA Bar No. 167624)
Bruce Grohsgal (Bar No. 3583)
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[Proposed] Counsel for Focal Communications Corporation, et al.,
Debtors and Debtors In Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FOCAL COMMUNICATIONS CORPORATION., <u>et al.</u> , ¹)	Case No. 02- <u>13709</u> ()
)	(Jointly Administered)
Debtors.)	

**MOTION FOR ORDER PURSUANT TO SECTIONS 365 AND 554
OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING
PROCEDURES FOR THE REJECTION OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
AND ABANDONMENT OF PROPERTY OF THE DEBTORS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through undersigned counsel, hereby move the Court for entry of an order pursuant to sections 365 and 554 of title 11 of the United States Code (the “Bankruptcy Code”) authorizing and approving procedures for rejecting executory contracts and unexpired leases of nonresidential real property and abandonment of property of the Debtors (the “Motion”). In support of this Motion, the Debtors respectfully state as follows:²

¹ The Debtors are the following entities: Focal Communications Corporation, Focal Communications Corporation of California, Focal Communications Corporation of Colorado, Focal Communications Corporation of Connecticut, Focal Communications Corporation of Florida, Focal Communications Corporation of Georgia, Focal Communications Corporation of Illinois, Focal Communications Corporation of Massachusetts, Focal Communications Corporation of Michigan, Focal Communications Corporation of the Mid-Atlantic, Focal Communications Corporation of Minnesota, Focal Communications Corporation of Missouri, Focal Communications Corporation of New England, Focal Communications Corporation of New Jersey, Focal Communications Corporation of New York, Focal Communications Corporation of Ohio, Focal Communications Corporation of Pennsylvania, Focal Communications Corporation of Texas, Focal Communications Corporation of Virginia, Focal Communications Corporation of Washington, Focal Communications Corporation of Wisconsin, Focal Financial Services, Inc., Focal International Corp., Focal Telecommunications Corporation, Focal Equipment Finance, LLC and Focal Fiber Leasing, LLC

² The facts and circumstances supporting this Motion are set forth in the Affidavit of M. Jay Sinder, Chief Financial Officer of the Debtors, in Support of First Day Motions, filed contemporaneously herewith.

Jurisdiction

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M) and (O).

2. Venue in these cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 365(a), and 554 of the Bankruptcy Code.

Background

4. On December 17, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

5. Each Debtor continues in possession of its properties and is operating and managing its business as debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

6. No trustee or examiner has been appointed, and no official committee of creditors or equity security holders has been established in any of the Debtors' Chapter 11 cases.

Summary of Operations

7. Focal Communications Corporation ("FCC") and the other captioned Debtors are national communications providers of voice and data services to communications-intensive users in major cities and metropolitan areas in the United States, including in Atlanta, Baltimore, Boston, Chicago/Northwest Indiana, Cleveland, Connecticut, Dallas, Detroit, Fort

Worth, Houston, Los Angeles, Miami/Fort Lauderdale, Minneapolis/St. Paul, New York, New Jersey, Northern Virginia, Oakland, Orange County, California, Philadelphia/Northern Delaware, San Francisco, San Jose, Seattle, and Washington, D.C.

8. The Debtors offer their customers a number of services including: (a) a full range of local and long distance voice telecommunications services (including both inbound and outbound services and conference calling); (b) data services, including high-speed Internet access services, and network access services that permit a customer's employees to access that customer's network remotely on a cost-effective basis; (c) integrated voice and data products that provide local, toll, long-distance and data traffic on a single dedicated circuit; and (d) automated daily call detail records access services, or CDRs, via the Internet, that enable a customer to obtain immediate access to its current daily call records, customer order entry forms, and invoices. As of September 30, 2002, the Debtors had 691,204 lines installed and in service.

9. The Debtors' customers tend to be the largest, most sophisticated communications users in the United States, including approximately half of the Fortune 100 who currently use the Debtors' services. Other customers include all branches of the federal government, financial exchanges and financial institutions. The Debtors also support a number of dial-up Internet Service Providers, who serve hundreds of thousands of end users. Debtors' telecommunications network processes more than 3.5 billion call minutes per month. The Debtors compete principally on the basis of quality, sophistication, and reliability of services. The Debtors' primary competitors are: the Incumbent Local Exchange Carriers (or "ILECs"), usually Regional Bell Operating Companies; other voice and data communications local

exchange carriers (such as the Debtors); long distance carriers; potential market entrants such as cable companies and wireless telephone system operators; and foreign carriers.

10. The Debtors' historically have utilized the "smart-build" approach to network design in an effort to optimize their return on invested capital. This has been accomplished by the Debtors initially leasing, rather than owning, fiber capacity, concentrating capital expenditures on switching facilities and information systems, and acquiring fiber transport capacity as the volume and demands of their customer traffic warranted it. Because of such increased customer traffic volume in certain of the Debtors' markets, the Debtors began acquiring their own fiber capacity in 1999.

11. The Debtors' services are subject to varying degrees of federal, state and local regulation, including the requirements of common carriage under the Federal Communications Act of 1934 (the "Telecom Act"), which was comprehensively amended by the Telecommunications Act of 1996. Implementation of the Telecom Act is subject to federal and state policy rule-making and judicial review. Under the Telecom Act, any telecommunications carrier may enter a telecommunications market, subject to reasonable state safety, quality and consumer protection regulations. An ILEC in that market is required to permit interconnection between the ILEC's network and the carrier's network. The ILEC and the other carrier are required, under the Telecom Act, to negotiate these arrangements in good faith, failing which either party may request arbitration by the applicable state commission and, if after arbitration an agreement still cannot be reached, the state commission's rules for resolution apply. The Debtors

also are subject to state regulation in all of the states in which they provide their services, and to local regulation.

12. All of the Debtors (other than FCC) are direct or indirect subsidiaries of FCC. For the fiscal year ended December 31, 2001, the Debtors generated consolidated net revenue of \$332 million and a net operating loss of \$141 million. The Debtors currently have approximately 835 full time employees.

Facilities

13. The Debtors lease office space in a number of locations, primarily for network equipment installations and sales and administrative offices, totaling approximately 706,058 square feet of leased space.

Equity and Significant Indebtedness

14. FCC's 4,935,829 shares of common stock issued and outstanding at \$.01 par value are traded on the NASDAQ and are widely held. FCC's 50,000 shares of preferred stock issued and outstanding at \$.01 par value is convertible, at the holder's option, into a number of shares of common stock equal to the sum of \$1,000 per share of preferred stock plus accrued and unpaid dividends divided by the conversion price. The conversion price, which is subject to adjustment based on future events, was \$35.69 as of September 30, 2002. FCC has received notification from NASDAQ that its common stock has not maintained its required \$5 million minimum market value and its minimum \$1.00 per share value, and that FCC has not maintained its required \$10 million minimum stockholders' equity, all of which are conditions for the continued listing of FCC's common stock on the NASDAQ exchange. NASDAQ also notified

FCC that if FCC failed to provide to NASDAQ by December 5, 2002 its plan for regaining compliance with these rules, then FCC's common stock would be delisted. FCC responded to NASDAQ by requesting that FCC's common stock be moved to the NASDAQ's Over-the-Counter Bulletin Board (the OTCBB) voluntarily. NASDAQ has granted FCC's request and FCC's common stock will be traded on the OTCBB under the symbol FCOM effective December 18, 2002.

15. As of the Petition Date, the Debtors maintained a secured credit facility (the "Senior Secured Loan") among the Debtor, Focal Financial Services, Inc. ("FFSP"), the other Debtors as guarantors, and Goldman Sachs Credit Partners L.P., Salomon Smith Barney Inc., and Citicorp USA, Inc. (the "Agents") and certain other lenders (collectively, with the Agents, the "Senior Secured Lenders") under the Amended and Restated Credit and Guaranty Agreement, dated October 26, 2001, as amended (as so amended, the "Prepetition Credit Agreement"). The Senior Secured Loan consists of a Delayed Draw Term Loan of up to \$75 million, the outstanding balance of which is approximately \$75.65 million (consisting of \$75 million in principal and \$650 thousand in accrued interest), and a revolving loan of up to \$150 million, the outstanding balance of which is approximately \$3.15 million following the Debtors' permanent cash prepayment in the amount of \$15 million to the Senior Secured Lenders, which was applied to the revolving loan portion of the Senior Secured Loan prior to the filing of these cases.

16. Contemporaneously with the Senior Secured Loan transaction, the Debtors also borrowed \$100 million from a group of institutional investors, most or all of whom also

were existing shareholders of FCC (collectively, the "Convertible Secured Noteholders"), pursuant to a Preferred Stock Purchase and Loan Commitment Agreement dated August 9, 2001, as amended (as so amended, the "Convertible Secured Notes Loan Agreement") among the Debtor FCC, the other Debtors as guarantors, and the Convertible Secured Noteholders, which loan is evidenced by secured notes (the "Convertible Secured Notes") convertible into shares of FCC's common stock on terms more particularly set forth in a Conversion Agreement dated as of October 26, 2001. The outstanding balance of the Convertible Secured Notes is approximately \$109.2 million (consisting of \$100 million in principal and \$9.2 million in accrued interest).

17. The Debtors also maintain a secured equipment loan facility in the maximum amount of \$50 million (the "NTFC Loan") between FCC, the other Debtors as guarantors, and NTFC Capital Corporation ("NTFC"), under the Loan and Security Agreement dated December 30, 1998, as amended (as so amended, the "NTFC Loan Agreement"). The outstanding balance of the NTFC Loan is approximately \$17.14 million (consisting of \$17 million in principal and \$140 thousand in interest).

18. FCC also has issued: (i) its 12.125% Senior Unsecured Discount Notes due 2008 in the aggregate original principal amount of \$270 million issued as of February 12, 1998 (the "2008 Unsecured Bonds") pursuant to an Indenture dated February 18, 1998 (the "2008 Indenture") between FCC, as issuer, and BNY Midwest Trust Company (as successor to Harris Trust and Savings Bank), as Bond Indenture Trustee (the "2008 Indenture Trustee"), the current accreted value of which after certain retirements is approximately \$129.6 million; and (ii)

its 11.875% Senior Unsecured Notes due 2010 in the aggregate original principal amount of \$275 million issued as of January 12, 2000 (the "2010 Unsecured Bonds") pursuant to an Indenture dated January 12, 2000 (the "2010 Indenture") between FCC, as issuer, and BNY Midwest Trust Company (as successor to Harris Trust and Savings Bank), as Bond Indenture Trustee (the "2010 Indenture Trustee"), the outstanding balance of which after certain retirements is approximately \$118 million (consisting of \$113.9 million in principal and \$4.1 million in interest).

19. The Prepetition Credit Agreement and the Convertible Secured Notes Loan Agreement and related loan documents provide that the Senior Secured Loan is secured by first priority security interests and liens, and the Convertible Secured Notes are secured by second priority security interests and liens, in substantially all of the Debtors' assets, the primary exclusion being the equipment and other personal property that is subject to the liens and security interests of NTFC. The NTFC Loan Agreement and related loan documents provide that the NTFC Loan is secured by first priority security interests and liens on the equipment and other personal property financed by the NTFC Loan.

Factors Leading to and Commencement of the Debtors' Chapter 11 Cases

20. The Debtors' businesses have suffered as a result of the market conditions that have ravaged the telecommunications industry. Specifically, the general malaise in the economy resulted in less than forecasted demand for Debtors' sophisticated telecommunications services. The Debtors face an acute liquidity crisis and have defaulted under certain financial covenants of the Prepetition Credit Agreement and the NTFC Loan Agreement, including

minimum revenue and EBITDA requirements. In addition, the Debtors' businesses require significant capital and operating expenditures to finance their businesses, including for the purchase and installation of equipment, for operation of the network, and for employee payroll expense.

21. In response to these financial challenges, the Debtors recently have implemented aggressive cost cutting measures, including a 27% reduction in workforce, while diligently investigating and pursuing their strategic alternatives. While these efforts remain ongoing, and in light of the financial crisis facing the Debtors, the Debtors' Board of Directors and management determined that Chapter 11 provided the best opportunity to preserve and enhance the Debtors' enterprise value, assure continued service to the Debtors' customers, and permit the orderly financial restructuring and reorganization of the Debtors.

22. The Debtors currently expect to file their plan (the "Plan") and disclosure statement within approximately one week following the Petition Date. The Plan, which the Debtors have been negotiating with their secured lenders prior to the Petition Date, is expected to provide among other things: (i) for a partial payment of the Senior Secured Loan on the Plan effective date with the balance to be repaid over several years following the Plan effective date; and (ii) for the conversion of the Convertible Secured Notes to preferred stock at the Plan effective date. The Debtors have entered into lock-up agreements and/or support agreements with a substantial majority of the Senior Secured Lenders and with substantially all of the Convertible Secured Noteholders with respect to the proposed Plan.

Relief Requested

23. The Debtors are in the process of consolidating their operations which requires exiting non-core and unprofitable locations in order to minimize costs and strengthen their businesses. In connection therewith, the Debtors anticipate that, in a very short time, they will seek to reject certain executory contracts and unexpired non-residential real property leases. Absent the foregoing procedures for managing this process, the Debtors (i) would have to file numerous and repetitive pleadings, each of which would require independent notice, unnecessarily draining the assets of the Debtors' estates, and (ii) will inevitably suffer delays in rejecting unnecessary leases and executory contracts and incur administrative costs arising from such delays. By this Motion and pursuant to sections 365 and 554 of the Bankruptcy Code, the Debtors seek this Court's approval of procedures for rejecting executory contracts and unexpired leases of non-residential real property and for the abandonment of property of the Debtors.

**Procedures for Rejecting Executory Contracts and Leases and
Abandonment of Property in the Debtors' Chapter 11 Cases**

24. The Debtors request that the following procedures (the "Rejection/Abandonment Procedures") be approved in connection with the rejection of any executory contract, lease, sublease, or interest in such lease or sublease, and any corresponding abandonment of property during the course of the Debtors Chapter 11 Cases:³

³ Contemporaneously herewith, the Debtors are filing a Motion for Order Pursuant to 11 U.S.C. § 365(a) Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases of Nonresidential Real Property. The Lease Rejection/Abandonment Procedures covered by this Motion would not apply to the rejection of the contracts and leases specifically set forth in that motion, or in any similar motion approved by the Court prior to approval of this Motion or that otherwise expressly indicates such does not apply.

(a) The Debtors will file a notice (the "Rejection Notice") to reject any such executory contract, leases, subleases, or interests in such leases or subleases, pursuant to section 365 of the Bankruptcy Code and will serve the Rejection Notice via Federal Express (or similar overnight delivery service) upon: (i) the contract counterparty or landlord(s) affected by the Rejection Notice; (ii) other interested parties to the executory contract or lease (including subtenants), if any, sought to be rejected by the Debtors; (iii) counsel to the official committee of unsecured creditors (the "Committee"), if any; (iv) counsel to the Senior Secured Lenders; (v) counsel to NTFC; (vi) the Convertible Noteholders; and (vii) the Office of the United States Trustee (collectively, the "Service Parties"), advising such parties of the Debtors' intent to reject the specified executory contracts, leases, subleases or interests, the Debtors' intent to abandon any personal property, and the deadlines and procedures for filing objections to the Rejection Notice (as set forth below).

(b) The Rejection Notice shall set forth the following information, as applicable: (i) in the case of a real property lease, the street address of the property underlying the lease and/or sublease, or interest in such lease or sublease which the Debtors seek to reject (to the best of the Debtors' knowledge); (ii) the Debtors' monthly payment obligation, if any, under the contract, lease or sublease or interest in such lease or sublease; (iii) the remaining term of the contract, lease, sublease or interest in such lease or sublease, including options; (iv) the name and address of the contract counterparty, landlord and/or subtenant; (v) a general description of the terms of the executory contract or unexpired lease; and (vi) a disclosure describing the procedures for filing objections, if any.

(c) Should a party-in-interest object to the proposed rejection by the Debtors of an executory contract, unexpired lease or sublease, such party must file and serve a written objection so that such objection is filed with this Court and is actually received by the following parties (collectively, the "Rejection Notice Parties") no later than ten days after the date the Debtors serve the Rejection Notice to reject the particular executory contract, lease, sublease, or interest in such lease or sublease: (a) counsel to the Debtors, Pachulski, Stang, Ziehl, Young & Jones P.C., Attn: Laura Davis Jones, Esq.; (b) counsel to the Committee (if any); (c) counsel to NTFC; (d) the Convertible Noteholders; and (e) counsel to the Senior Secured Lenders.

(d) If the Debtors have deposited monies with a lessor or contract counterparty as a security deposit or other arrangement, such lessor or contract counterparty may not setoff or otherwise use such deposit without the prior authority of the Court.

(e) Absent an objection being filed no later than ten days after the date the Debtors serve the Rejection Notice to reject a particular executory contract, lease, sublease, or interest in such lease or sublease, the rejection of such executory contract, lease, sublease, or interest shall become effective on the rejection date listed on the Rejection Notice, where such rejection date will not be prior to the date on which the Rejection Notice was filed with the Court, as described in paragraph (b) above, without further notice, hearing or order of this Court.

(f) If a timely objection is filed, the Court will schedule a hearing to consider the objection only with respect to the rejection of any executory contract, lease, sublease or interest as to which an objection is properly filed and served. If such objection is

overruled or withdrawn, the rejection of such lease, sublease or interest shall be deemed to have occurred in accordance with subparagraph (e) above.

(g) With respect to any personal property of the Debtors located at any of the premises subject to any Rejection Notice, the Debtors shall remove such property prior to the expiration of the period within which a party must file and serve a written objection pursuant to section (c) above. If the Debtors determine that the value of the property at a particular location is *de minimis* or the costs of removing the property exceed the value of such property, the Debtors shall generally describe the property in the Rejection Notice, and absent an objection filed pursuant to section (c) above, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, where is, effective as of the date of the rejection of the underlying unexpired lease.⁴

25. The Debtors believe that these Rejection/Abandonment Procedures provide a fair and efficient manner for rejecting contracts, leases, subleases, and interests in leases and subleases and corresponding abandonment of property in these Chapter 11 Cases. These procedures will enable the Debtors to minimize unnecessary postpetition obligations and will provide parties with adequate notice of lease rejections and an opportunity to object to such relief within a definitive time period.

⁴ The Debtors only seek the application of the procedures set forth herein insofar as the contracts and leases subject to such procedures constitute executory contracts pursuant to Bankruptcy Code section 365.

Basis for Relief

26. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. See N.L.R.B. v. Bildisco & Bildisco (In re Bildisco & Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); see also In re Buckhead America Corp., 180 B.R. 83 (D. Del. 1995); and In re Taylor, 913 F.2d 102 (3d Cir. 1990). The business judgment standard mandates that a court approve a debtor’s business decision unless the decision is the product of bad faith, whim or caprice. See Lubrizol Enters v. Richmond Metal Finishes, 756 F.2d 1043, 1047 (4th Cir. 1980), cert. denied, 475 U.S. 1057 (1986). Further, “[t]his provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” Stewart Title Guar. Co. v. Old Republic National Title Co., 83 F.3d 735, 741 (5th Cir. 1996) citing In re Murexco Petroleum, Inc., 15 F.3d 60, 62 (5th Cir. 1994). The Rejection/Abandonment Procedures have been approved on the first day in other chapter 11 cases in this District. In re Trend Holdings, LLC, Chapter 11 Case No. 02-13283 (PJW) (Bankr. D. Del. November 8, 2002); In re Peregrine Systems, Inc., Chapter 11 Case No. 02-12740 - 02-12741 (JKF) (Bankr. D. Del. September 24, 2002); In re DESA Holdings Corporation, Chapter 11 Case Nos. 02-11672 (PJW) (Bankr. D. Del. June 11, 2002).

27. In addition, the Debtors seek authority to abandon property, as is, where is, and in accordance with section 554(a) of the Bankruptcy Code, which provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). The Debtors believe that the costs of removing assets at many of the locations whose leases will be subject to rejection herein will likely be greater than the value of such assets. Accordingly, the Debtors believe that any sales which may be consummated as a result of the removal of the property may be offset by the additional carrying costs of the rejected leases or the costs of removal of such property. Accordingly, the Debtors contend that the abandonment of such property will be in the best interest of the Debtors, their estates and their creditors, and will permit the Debtors to exit certain markets efficiently and without incurring additional, unnecessary administrative expenses.

28. The Debtors submit that adoption of the Rejection/Abandonment Procedures represents (i) the sound exercise of the Debtors’ business judgment and (ii) a fair balancing of the need of a lessor or executory contract counter-party for certainty with the Debtors’ need to move quickly and to cut off the needless accrual of administrative rent and other post-petition charges. Establishing the Rejection/Abandonment Procedures will minimize the Debtors’ postpetition obligations if the Debtors determine, in their sole discretion, that such lease or contract is unlikely to yield sufficient value to justify the expense of maintaining the lease or contract. The Rejection/Abandonment Procedures also afford parties in interest the opportunity to appear and be heard with respect to the rejection of the leases and contracts and

corresponding abandonment of property. In addition, the Rejection/Abandonment Procedures will save substantial legal expense and Court time that would otherwise be incurred if multiple hearings were held on separate motions with respect to every lease or contract that the Debtors determine should be rejected and what property to be abandoned. Accordingly, the Debtors believe adoption of the Rejection/Abandonment Procedures is in the best interest of their estates.

No Prior Request

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

Notice

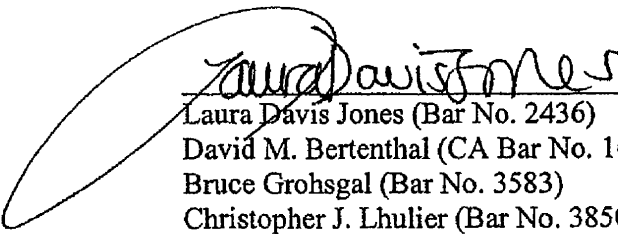
30. Notice of this Motion has been given to (i) the Office of the United States Trustee; (ii) counsel to the Debtors' Senior Secured Lenders; (iii) counsel to NTEFC Capital Corporation; (iv) each of the Convertible Secured Noteholders; and (v) BNY Midwest Trust Company, as Bond Indenture Trustee. Within three (3) business days of entry of the Order the Debtors will serve notice of this Motion and the Order upon (i) each of the Debtors' twenty (20) largest unsecured creditors, (ii) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure, and (iii) the contract counterparty or landlord(s) with respect to each of the Debtors' contracts and leases. The Notice shall provide that (a) any objections to entry of the order must be (i) filed no later than twenty (20) days following the date of service of the order and (ii) served upon counsel to the Debtors, counsel to the Committee of Unsecured Creditors (if any), counsel to the Senior Secured Lenders, and the Office of the United States Trustee; and (b) if no objections are timely filed and served in accordance with the

notice, the Court may grant final relief as requested in the Motion without further notice or hearing. In the event the Debtors discover additional counterparties to contracts and leases who did not initially receive the Notice, the Debtors will promptly serve the Notice on such additional parties. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, authorizing and approving the Rejection/Abandonment procedures, and granting such other and further relief as may be just and proper.

Dated: December 18, 2002

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



Laura Davis Jones (Bar No. 2436)
David M. Bertenthal (CA Bar No. 167624)
Bruce Grohsgal (Bar No. 3583)
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[Proposed] Counsel for Focal Communications Corporation, et al., Debtors and Debtors In Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
FOCAL COMMUNICATIONS)
CORPORATION., et al.,¹) Case No. 02-13709 ()
) (Jointly Administered)
)
Debtors.)

**ORDER PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE
AUTHORIZING AND APPROVING PROCEDURES FOR THE REJECTION OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF NONRESIDENTIAL
REAL PROPERTY AND ABANDONMENT OF PROPERTY OF THE DEBTORS**

Upon consideration of the motion of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), seeking entry of an order pursuant to sections 365 and 554 of the Bankruptcy Code authorizing and approving the Lease Rejection/Abandonment Procedures (the “Motion”); and the Court being satisfied that the relief requested herein is in the best interest of the Debtors’ estates and creditors; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and it

¹ The Debtors are the following entities: Focal Communications Corporation, Focal Communications Corporation of California, Focal Communications Corporation of Colorado, Focal Communications Corporation of Connecticut, Focal Communications Corporation of Florida, Focal Communications Corporation of Georgia, Focal Communications Corporation of Illinois, Focal Communications Corporation of Massachusetts, Focal Communications Corporation of Michigan, Focal Communications Corporation of the Mid-Atlantic, Focal Communications Corporation of Minnesota, Focal Communications Corporation of Missouri, Focal Communications Corporation of New England, Focal Communications Corporation of New Jersey, Focal Communications Corporation of New York, Focal Communications Corporation of Ohio, Focal Communications Corporation of Pennsylvania, Focal Communications Corporation of Texas, Focal Communications Corporation of Virginia, Focal Communications Corporation of Washington, Focal Communications Corporation of Wisconsin, Focal Financial Services, Inc., Focal International Corp., Focal Telecommunications Corporation, Focal Equipment Finance, LLC and Focal Fiber Leasing, LLC.

appearing that venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Lease Rejection/Abandonment Procedures are approved in connection with the rejection of any executory contract, lease or sublease, or interest in such lease or sublease, and corresponding abandonment of property of the Debtors during the Chapter 11 Cases as follows:

(a) The Debtors will file a notice (the "Rejection Notice") to reject any such executory contract, leases, subleases, or interests in such leases or subleases, pursuant to section 365 of the Bankruptcy Code and will serve the Rejection Notice via Federal Express (or similar overnight delivery service) upon: (i) the contract counterparty or landlord(s) affected by the Rejection Notice; (ii) other interested parties to the executory contract or lease (including subtenants), if any, sought to be rejected by the Debtors; (iii) counsel to the official committee of unsecured creditors (the "Committee"), if any; (iv) counsel to the Senior Secured Lenders; (v) counsel to NTFC; (vi) the Convertible Noteholders; and (vii) the Office of the United States Trustee (collectively, the "Service Parties"), advising such parties of the Debtors' intent to reject the specified executory contracts, leases, subleases or interests, the Debtors' intent to abandon any personal property, and the deadlines and procedures for filing objections to the Rejection Notice (as set forth below).

(b) The Rejection Notice shall set forth the following information, as applicable: (i) in the case of a real property lease, the street address of the property underlying the lease and/or sublease, or interest in such lease or sublease which the Debtors seek to reject (to the best of the Debtors' knowledge); (ii) the Debtors' monthly payment obligation, if any, under the contract, lease or sublease or interest in such lease or sublease; (iii) the remaining term of the contract, lease, sublease or interest in such lease or sublease, including options; (iv) the name and address of the contract counterparty, landlord and/or subtenant; (v) a general description of the terms of the executory contract or unexpired lease; and (vi) a disclosure describing the procedures for filing objections, if any.

(c) Should a party-in-interest object to the proposed rejection by the Debtors of an executory contract, unexpired lease or sublease, such party must file and serve a written objection so that such objection is filed with this Court and is actually received by the following parties (collectively, the "Rejection Notice Parties") no later than ten days after the date the Debtors serve the Rejection Notice to reject the particular executory contract, lease, sublease, or interest in such lease or sublease: (a) counsel to the Debtors, Pachulski, Stang, Ziehl, Young & Jones P.C., Attn: Laura Davis Jones, Esq.; (b) counsel to the Committee (if any); (c) counsel to NTFC; (d) the Convertible Noteholders; and (e) counsel to the Senior Secured Lenders.

(d) If the Debtors have deposited monies with a lessor or contract counterparty as a security deposit or other arrangement, such lessor or contract counterparty may not setoff or otherwise use such deposit without the prior authority of the Court.

(e) Absent an objection being filed no later than ten days after the date the Debtors serve the Rejection Notice to reject a particular executory contract, lease, sublease, or interest in such lease or sublease, the rejection of such executory contract, lease, sublease, or interest shall become effective on the rejection date listed on the Rejection Notice, where such rejection date will not be prior to the date on which the Rejection Notice was filed with the Court, as described in paragraph (b) above, without further notice, hearing or order of this Court.

(f) If a timely objection is filed, the Court will schedule a hearing to consider the objection only with respect to the rejection of any executory contract, lease, sublease or interest as to which an objection is properly filed and served. If such objection is overruled or withdrawn, the rejection of such lease, sublease or interest shall be deemed to have occurred in accordance with subparagraph (e) above.

(g) With respect to any personal property of the Debtors located at any of the premises subject to any Rejection Notice, the Debtors shall remove such property prior to the expiration of the period within which a party must file and serve a written objection pursuant to section (c) above. If the Debtors determine that the value of the property at a particular location is *de minimis* or the costs of removing the property exceed the value of such property, the Debtors shall generally describe the property in the Rejection Notice, and absent an objection filed pursuant to section (c) above, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, where is, effective as of the date of the rejection of the underlying unexpired lease.

without further notice or hearing. In the event the Debtors discover additional counterparties to contracts and leases who did not initially receive the Notice, the Debtors will promptly serve the Notice on such additional parties.

Dated: December____, 2002

United States Bankruptcy Judge