

ORIGINAL

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:
TOUCH AMERICA HOLDINGS, INC.,
et al.,

) Case No. 03-11915 (KJC)
) Jointly Administered
) Bidding Procedures Order
) Objection Deadline: July 3, 2003 at 4:00 p.m.
) Hearing Date: July 9, 2003 at 2:00 p.m.
) Sale Order
) Objection Deadline: July 21, 2003 at 4:00 p.m.
) Hearing Date: July 28, 2003 at 2:00 p.m.

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COMMISSION
CLERK

NOTICE OF HEARING DATES AND OBJECTION DEADLINES
WITH RESPECT TO THE MOTION FOR ORDER, PURSUANT TO 11 U.S.C. §§ 105(a),
362, 363, 364, 365 AND 1146(c) AND FED. R. BANKR. P. 2002, 6004 AND 6006,
APPROVING (i) NOTICE AND BIDDING PROCEDURES, (ii) BID PROTECTIONS,
INCLUDING A BREAK-UP FEE, AND (iii) ASSET PURCHASE AGREEMENT; (B)
AUTHORIZING SALE AND TRANSFER OF ASSETS TO 360NETWORKS
CORPORATION OR TO ANOTHER HIGHEST OR OTHERWISE BEST BIDDER;
AND (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

TO: OFFICE OF THE UNITED STATES TRUSTEE, COUNSEL TO 360NETWORKS
CORPORATION, COUNSEL TO QWEST AND TO ALL THOSE PRESENTLY
KNOWN TO ASSERT CLAIMS AGAINST THE DEBTORS

On June 23, 2003, the above-captioned debtors and debtors in possession (the
“Debtors”), filed and served the attached Motion For Order, Pursuant to 11 U.S.C. §§ 105(a),
362, 363, 364, 365 and 1146(c) and Fed. R. Bankr. P. 2002, 6004 and 6006, (A) Approving (i)
Notice and Bidding Procedures, (ii) Bid Protections, Including a Break-Up Fee, and (iii) Asset
Purchase Agreement; (B) Authoring Sale and Transfer of Assets to 360Networks Corporation or
to Another Highest or Otherwise Best Bidder; and (C) Authorizing Assumption and Assignment
of Certain Executory Contract and Unexpired Leases (the “Motion”)

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS +
SEC
OTH [Signature]

The Motion contemplates two hearings with respect to the relief sought therein. The first hearing (the "Bidding Procedures Hearing") will be held before the Honorable Kevin J. Carey at the United States Bankruptcy Court for the Eastern District of Pennsylvania, Robert N.C. Nix Sr Federal Courthouse, 900 Market Street, Philadelphia, PA 19107 on July 9, 2003 at 2:00 p m., on the entry of an order (the "Bidding Procedures Order") approving: (i) Notice and Bidding Procedures, (ii) Bid Protections, Including a Break-Up Fee, and (iii) Form of Asset Purchase Agreement

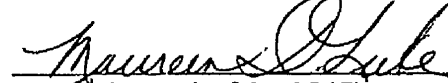
Any objections to the entry of the Bidding Procedures Order must be in writing, filed with the Bankruptcy Court and served so as to be received by (i) Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, Wilmington, DE 19801, Attn: Robert S. Brady, Esq ; (ii) Willkie Farr & Gallagher, 787 Seventh Avenue, New York, New York 10019, Attn: Alan J Lipkin, Esq.; (iii) the Debtors, Touch America Holdings, Inc., 130 North Main, Butte, MT 59701, Attn: Michael Zimmerman; and (iv) the United States Trustee for the District of Delaware, 844 King Street, Suite 2313, Lockbox 35, Wilmington, DE 19801, Attn: Margaret Harrison, Esq. (collectively, the "Notice Parties") before 4:00 p m. prevailing Eastern Time on July 3, 2003 Only those objections made in writing and timely filed and received will be considered by the Court at the Bidding Procedures Hearing.

The second hearing (the "Sale Hearing") will be held before the Honorable Kevin J. Carey at the United States Bankruptcy Court for the Eastern District of Pennsylvania, Robert N.C. Nix Sr Federal Courthouse, 900 Market Street, Philadelphia, PA 19107 on July 28, 2003 at 2:00 p m., on the entry of an order (the "Sale Order"): Authorizing Sale and Transfer of Assets to 360networks Corporation or to Another Highest or Otherwise Best Bidder and Authorizing Assumption and Assignment of Certain Executory Contract and Unexpired Leases.

Any objections to the entry of the Sale Order must be in writing, filed with the Bankruptcy Court and served so as to be received by the Notice Parties, before 4:00 p m. prevailing Eastern Time on July 21, 2003. Only those objections made in writing and timely filed and received will be considered by the Court at the Sale Hearing.

Dated: June 23, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Proposed Counsel for Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)
) Case No. 03-11915 (KJC)
TOUCH AMERICA HOLDINGS, INC.,)
et al.,) Jointly Administered
)
) Bidding Procedures Order
) Objection Deadline: July 3, 2003 at 4:00 p.m. (E.T.)
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) Sale Order
) Objection Deadline: July 21, 2003 at 4:00 p.m. (E.T.)
) Hearing Date: July 28, 2003 at 2:00 p.m. (E.T.)

**MOTION FOR ORDER, PURSUANT TO 11 U.S.C. §§ 105(a), 362,
363, 364, 365 AND 1146(c) AND FED. R. BANKR. P. 2002, 6004 AND 6006,
(A) APPROVING (i) NOTICE AND BIDDING PROCEDURES, (ii) BID PROTECTIONS,
INCLUDING A BREAK-UP FEE, AND (iii) ASSET PURCHASE AGREEMENT; (B)
AUTHORIZING SALE AND TRANSFER OF ASSETS TO 360NETWORKS
CORPORATION OR TO ANOTHER HIGHEST OR OTHERWISE BEST BIDDER;
AND (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The above-captioned debtors and debtors in possession (collectively, the “Sellers”), hereby move this Court, pursuant to 11 U.S.C. §§ 105(a), 362, 363, 364, 365 and 1146(c) and Fed. R. Bankr. P. 2002, 6004 and 6006, for (a) entry of an order (the “Bidding Procedures Order”), substantially in the form attached hereto as Exhibit A, approving the bidding procedures annexed as Exhibit B to the Bidding Procedures Order (the “Bidding Procedures”), including the payment of the Break-Up Fee; and (b) entry of an order (the “Sale Order”), substantially in the form attached hereto as Exhibit B (i) approving, subject to higher or otherwise better offers, the Asset Purchase Agreement by and among Touch America Holdings, Inc., those of its subsidiaries signatories thereto, and 360networks Corporation (together with its successors and permitted assigns, the “Purchaser”), dated as of June 18, 2003, attached hereto as Exhibit C (including all exhibits, schedules and related

agreements executed in connection therewith, the "Agreement"; (ii) authorizing, subject to higher or otherwise better offers, the sale of certain of the Sellers' assets to the Purchaser in accordance with the terms, and subject to the conditions, of the Agreement; (iii) authorizing, subject to higher or otherwise better offers, the assumption by the Sellers and assignment to the Purchaser of certain executory contracts and unexpired leases, and (iv) granting certain related relief. In support of this Motion, the Sellers respectfully represent as follows:

Jurisdiction

1. Pursuant to 28 U.S.C. § 1334, this Court has jurisdiction over this Motion, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a), 362, 363, 364, 365 and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

Background

2. On June 19, 2003 (the "Petition Date", each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No statutory committees have yet been appointed in these chapter 11 cases, and no trustee or examiner has been appointed.

4. Touch America Holdings, Inc. ("Touch America Holdings") was incorporated in Delaware on September 27, 2000. Touch America Holdings resulted from the reorganization of The Montana Power Company ("Montana Power"), a diversified electric and natural gas business, to become Touch America Holdings, a stand-alone, publicly traded telecommunications business. In this reorganization, Montana Power merged with The Montana

Power, L.L.C. (“MPLLC”), which was a wholly owned subsidiary of Touch America Holdings. On February 15, 2002, MPLLC was sold to NorthWestern Corporation, a South Dakota based energy company.

5. The telecommunications business that Touch America Holdings owns, and through which it operates Touch America, Inc. (“TAI”), began its operations in 1983, primarily providing network construction and private line services to carrier and enterprise customers. As the telecommunications business rapidly expanded in the late 1990s, TAI also rapidly expanded.

6. At the present time, TAI develops, owns, and operates a 21,000-mile fiber optic network, of which approximately fifty (50) percent is lit, and provides broadband telecommunications services, including data and video transport, to customers throughout the United States and currently serves over 8,500 customer accounts, including other communications service providers, banks, retail chains and governmental agencies. TAI provides these customers with a variety of telecommunications products and services, including private line services, ATM/Frame Relay Services and Internet Access.

7. The affiliates of Touch America Holdings that also filed for bankruptcy protection on the Petition Date are: (a) Entech LLC (“Entech”), a wholly owned subsidiary of Touch America Holdings, that holds indemnity and certain other obligations remaining after the sale of the non-utility energy businesses, (b) Touch America Intangible Holding Company, LLC (“Touch America Intangibles”), a wholly owned subsidiary of TAI, that holds intangible assets acquired in the course of constructing TAI’s network, (c) Touch America Purchasing Company, LLC (“Touch America Purchasing”), a wholly owned subsidiary of TAI and a special purpose entity created to purchase inventory related to the construction of TAI’s network, (d) American Fiber Touch, LLC, a wholly owned subsidiary of TAI, created for the purpose of network

construction (that has been completed) and on-going post-construction maintenance and (e) Sierra Touch America, LLC, another wholly owned subsidiary of TAI, whose purpose is certain, as yet, unfinished network construction and post-construction maintenance.

8. Like other telecommunications companies, Touch America's business has been affected by the prolonged United States economic downturn. The demand for fiber optic network capacity has been significantly lower than expected. Lowered demand has resulted in intense price competition, which, in turn, has reduced revenues and profits.

9. In addition, a substantial portion of Touch America's revenue is derived from service contracts with other telecommunications companies. As economic conditions have worsened, Touch America has found it increasingly difficult to collect payments from these customers. Due to the general industry upheaval, Touch America has also been unable to access capital markets.

10. The negative effect of industry-wide economic pressures has been exacerbated by a legal conflict with TAI's largest customer, Qwest International, Inc. ("Qwest"). TAI has a material dispute with Qwest regarding services that TAI and Qwest provided to each other under certain contractual arrangements related to TAI's June 30, 2000 acquisition from Qwest of wholesale, private line, long-distance, and other telecommunications services businesses. The dispute involves, among other things, costs that Qwest billed to TAI that TAI believes are invalid as well as revenue that TAI believes Qwest owes TAI for services TAI has provided. This multi-million dollar contractual dispute was ultimately referred to arbitration, and on March 24, 2003, the arbitrator issued an interim opinion and award, which awarded Qwest \$59,600,000. On March 28, 2003, the New York Stock Exchange ("NYSE") suspended trading

in Touch America Holdings stock and on May 14, 2003, the NYSE delisted Touch America Holdings.

11. The foregoing events and circumstances have required Touch America to evaluate its options for maximizing the value of its businesses and assets for the benefit of its creditors. Touch America has determined that the best way to obtain maximum value is by finding a purchaser for substantially all or portions of Touch America's assets.

12. To this end, Touch America has entered into an asset purchase agreement with 360networks, which is subject to higher and better offers and the approval of the Bankruptcy Court. Shortly after the Petition Date, Touch America will seek Court approval of the sale of Touch America's assets and the related bidding procedures for such sale.

13. In addition, prior to the Petition Date, Touch America determined that it was necessary to reduce its workforce in order to reduce expenses and preserve assets in the chapter 11 liquidation process. Thus, the number of Touch America employees was significantly reduced to those employees who are necessary for the administration of the bankruptcy cases and the completion of the sale process.

14. As of the Petition Date, Touch America Holdings had approximately \$10,000,000 in cash.

RELIEF REQUESTED

15. Prior to the Petition Date, the Sellers entered into the Agreement, pursuant to which they agreed, subject to the approval of this Court, to (i) sell to the Purchaser all of the Sellers' assets, goodwill, rights and claims (with the exception of the Excluded Assets¹) primarily

¹ All capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Agreement.

used in the business operations conducted by the Sellers and their Affiliates relating to the provision of any dedicated internet services, global service provider services or private line services, dark fiber and conduit leases or any services relating thereto (the “Relevant Business”) (collectively, the “Purchased Assets”), and (ii) assume and assign to the Purchaser certain of their executory contracts and unexpired leases related to the Relevant Business (the “Assumed Agreements”), as well as certain Customer Contracts, all subject to higher or otherwise better offers. After extensive marketing by the Sellers, with the assistance of their advisors, Evercore Partners L.P. (“Evercore”), the Sellers have come to the conclusion that, in their business judgment, the purchase price offered by the Purchaser is the highest and best value achievable for the Purchased Assets. The Sellers hereby seek approval of the Bidding Procedures, which, they believe, will ensure that the maximum value achievable is obtained for the Purchased Assets. The Purchaser has agreed, subject to the payment of the Break-Up Fee, that the Agreement will serve as a “stalking horse” bid, which other potential bidders can use as a starting point for other higher or otherwise better offers.

PROPOSED SALE

A. Reason Sale Is Necessary

16. As stated above, the Sellers’ business has been strongly affected by the prolonged United States economic downturn. The demand for fiber optic network capacity has been significantly lower than expected. Lowered demand has resulted in intense price competition, which, in turn, has reduced revenue and profits. In addition, a substantial portion of Touch America’s revenue is derived from service contracts with other telecommunications companies. As economic conditions have worsened, Touch America has found it increasingly difficult to collect payments from these customers. Certain of Touch America’s

telecommunication customers have filed for bankruptcy and rejected their long term contracts with the Sellers. The wave of telecommunications bankruptcies, including those of Winstar, Global Crossing, Williams Communications, McLeod USA, PSINet, and Teligent, has resulted in commercial lenders and investors shunning the industry, and the Sellers have been unable to raise sufficient capital to maintain operations. Having considered the possibility of a stand-alone plan of reorganization or liquidation, the Sellers have concluded that it is in the best interests of their estates and creditors to undertake the sale of the Purchased Assets under section 363(b) of the Bankruptcy Code.

17. The sale of the Purchased Assets pursuant to the terms of the Agreement will raise up to \$28 million and eliminate potential claims against the Sellers' estates through the Purchaser's assumption of the Assumed Liabilities.

B. Marketing Efforts Leading to the Agreement

18. Prior to entering into the Agreement, the Sellers undertook extensive effort to identify potential purchasers and negotiate the best possible terms for the sale. In November 2002, the Sellers retained Evercore as their advisors to, among other things, solicit offers for the Sellers' assets from qualified purchasers. Since December 2002, Evercore has contacted over twenty-five potential purchasers for initial discussion regarding the sale of the Sellers' assets, including the Purchased Assets. Of these parties, fifteen executed a Non-Disclosure Agreement and received additional information, including a Confidential Information Memorandum ("CIM") and access to due diligence information and materials.

19. Due diligence conducted by prospective purchasers and their advisers included a detailed analysis of (a) the Sellers' historical and projected financials, (b) the Sellers' customer base, (c) the Sellers' network assets (including leases, rights of way, swaps, IRUs and

network equipment), (d) the Sellers' nonoperational assets, (e) the Sellers' liabilities, (f) the Sellers' individual business lines, (g) the profitability of the Sellers' individual business lines, and (h) litigated matters involving the Sellers.

20. As part of this process, the Sellers negotiated with several interested parties, including the Purchaser, and concluded, in their business judgment, that the proposal from the Purchaser, as reflected in the Agreement, offered the most advantageous terms and greatest economic benefit to the Sellers' estates. In addition, the Purchaser's proposal was the only offer the Sellers received from an entity that had the desire and the ability to complete the transaction in the time frame required by the Sellers.

21. In consideration of the Purchaser's execution of the Agreement and as partial reimbursement of the Purchaser's expending time and costs in connection with its due diligence, development of business models and plans for the Purchased Assets, and the negotiation of the Agreement and the transactions contemplated thereby, the Sellers have paid the Purchaser \$500,000 as the Signing and Commitment Fee.

C. The Agreement

22. The Agreement contemplates the sale to the Purchaser of substantially all of the Sellers' assets, in each case, relating to the Relevant Business (except for the Excluded Assets), including the following: all Personal Property primarily used in the Relevant Business; the Relevant Network; all Inventory; all prepaid expenses (other than those relating solely to Excluded Assets and Excluded Liabilities); work-in-process or partially earned service revenues relating to the Assumed Customer Contracts that are not fully earned or payable as of the Closing Date; all Intellectual Property; all rights under Assumed Agreements; all relevant books and records; to the extent legally assignable, all relevant permits or applications therefor; all of the

Sellers' claims, deposits, prepayments, prepaid assets, refunds, causes of action, rights of recovery, setoff and recoupment, including any rights under any insurance policies, in each case, except to the extent related solely to the Excluded Assets or Excluded Liabilities; all refunds of, or credits for, Taxes which the Purchaser paid or that constitute Assumed Liabilities; and any other tangible or intangible assets of any Seller primarily related to the Relevant Business, other than Excluded Assets and Excluded Liabilities.

23. The principal terms of the Agreement are as follows:

- a. Purchase Price. The Base Price for the Purchased Assets is \$28 million, subject to certain adjustments. The portion of the Base Price payable to the Sellers at the Closing is \$12.8 million. In addition, \$3.2 million is payable into an Escrow Account that will serve as security (and a cap) for the Sellers' obligations to indemnify the Purchaser for breach of Sellers' representations and warranties for a period of 365 days after the Closing. Section 2.6 of the Agreement also provides for certain adjustments to the Base Price within 120 days after the Closing to account for post-closing determinations of prepaid expenses and property taxes. The remaining portion of the Base Price (\$12 million, subject to the Sellers' achieving certain revenue targets) is payable as a Post-Closing Payment, with 20% of the Post-Closing Payment payable into the Escrow Account.
- b. Assumed Liabilities. The Purchaser will assume and perform certain liabilities arising from the ownership of the Purchased Assets and operation of the Relevant Business from and after the Closing (except for the Excluded Liabilities), provided that the liabilities under the Assumed Agreements will be assumed by the Purchaser as of the applicable Assumption Date; in addition, the Purchaser is assuming liability for (a) the Purchaser's Property Tax portion of the Straddle Period Property Taxes, and (b) service credits pursuant to service level agreements that constitute Assumed Customer Contracts to the extent that the amount of such service credits result in an Adjustment.
- c. Conduct of Business. Sellers have agreed to certain restrictions in the operation of the Relevant Business through the Closing Date, including their ability to amend, modify, terminate or extend certain agreements, or effect settlements with certain third parties.
- d. Conditions to Closing. The Closing is conditioned on the satisfaction or waiver of the following, among other things:

- (i) Each party's performance in all material respects of all obligations under the Agreement;
 - (ii) Each party's representations and warranties being true in all material respects in accordance with the Agreement;
 - (iii) Delivery of the various transaction documents, consents and the Base Price;
 - (iv) Nonoccurrence of any event, effect or change that constitutes a Material Adverse Effect;
 - (v) Receipt of all consents and approvals of any Governmental Agency or regulatory authority necessary to permit the Purchaser and the Sellers to perform their obligations under the Agreement (or waivers of such consents and approvals, including termination or expiration of any waiting periods imposed in connection therewith);
 - (vi) Entry of the Sale Order by the Court, and its becoming a Final Order;
 - (vii) Continuing of certain scheduled key contracts in full force and effect; and
 - (viii) Receipt by the Purchaser of consent from its lenders.
- e. **Break-Up Fee.** Subject to approval by the Court, the Sellers have agreed that, if (a) at or before the Closing Date, they are in material breach of the Agreement, and such breach is not cured within five business days; (b) they agree in writing, publicly announce, or are authorized by their Boards of Directors to (x) proceed with an Alternative Transaction other than in accordance with the Bidding Procedures or (y) not to proceed with the sale of the Purchased Assets; (c) the Court approves an Alternative Transaction or an Alternative Transaction is consummated, (d) they file a motion in the Court seeking authorization for a sale to a Third Party of all or material portion of the Purchased Assets, (e) they file, prior to the Closing, a plan of reorganization in form or substance not satisfactory to the Purchaser; or (f) prior to the Closing, these chapter 11 cases are either voluntarily dismissed or converted to cases under chapter 7 of the Bankruptcy Code, then the Purchaser will be entitled to receive a Break-Up fee (without regard to the actual amounts expended or incurred by the Purchaser) in an amount equal to \$1,000,000, which payment shall serve as liquidated damages to the Purchaser.

24 The Sellers shall be responsible for the payment of the cure amounts necessary to assume and assign the Assigned Agreements, except that, in no event, will the Sellers be required to pay cure amounts in excess of the Maximum Cure Amount (unless the Purchaser agrees to fund any cure amounts in excess of the Maximum Cure Amount). On the Closing Date, the Sellers intend to assume and assign to the Purchaser the following Initial Assumed Agreements: (a) all executory contracts identified on Schedule 1.1 to the Agreement, (b) all unexpired leases identified on Schedule 1.2 to the Agreement, and (c) certain Customer Contracts (collectively, the “Initial Assumed Agreements”), provided, however, that, at any time at least five business days prior to the Closing Date, the Purchaser may designate any contract or lease listed on Schedules 1.1 or 1.2 to be an Excluded Agreement, and such agreement will not be assumed and assigned to the Purchaser².

25. After the Closing Date, the Purchaser will have the following rights with respect to additional contracts or leases:

- a. On or prior to the date which is three (3) months following the Closing Date (the “Election Date”) (provided, however, that, with respect to any Undesignated Agreement that is first identified to the Purchaser after the Closing Date, the Election Date will in no event be earlier than twenty (20) Business Days after such Undesignated Agreement has been delivered to the Purchaser), the Purchaser may identify, in writing, any Undesignated Agreement that the Sellers must assume and assign to it;
- b. Not later than twenty (20) Business Days subsequent to the date that any Customer Contract is included, added or deemed added to the Customer Contract Schedule and a copy of such Customer Contract is delivered to Purchaser, the Purchaser may, by written notice, designate such Customer Contract for assumption;

² Similarly, under the Agreement, the Purchaser may, until five business days prior to the Closing Date, designate for assumption and assignment agreements theretofore designated as Excluded Agreements

- c At any time between the date that is fifteen business days prior to the Closing Date and the Election Date, the Purchaser may, by written notice, direct the Sellers not to reject any Undesignated Agreement prior to a date certain, so long as such date is no later than 60 days following the Closing.

26. Finally, the Agreement provides that the Purchaser's claims with respect to Adjustments, certain indemnification obligations, and the Break-Up Fee will constitute a superpriority administrative claim under section 364(c)(1) of the Bankruptcy Code, with priority over any and all administrative claims specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code, except for the Sellers' obligations under their DIP Financing (collectively, the "Purchaser's Superpriority Claims").

BIDDING PROCEDURES

A. Bidding Procedures

27. In connection with the proposed sale of the Purchased Assets, the Sellers also seek approval of the Bidding Procedures, including the Break-Up Fee. The Sellers have determined that the proposed structure for the Bidding Procedures is the one most likely to maximize the realizable value of the Purchased Assets for the benefit of the Sellers' estates, particularly in light of the extensive marketing efforts that have already been made.

28. The proposed Bidding Procedures are annexed to the proposed Bidding Procedures Order (Exhibit A hereto) as Exhibit B, and are incorporated herein in their entirety³. The Bidding Procedures (a) describe the qualifications required of the Qualified Bidders and Qualified Bids, (b) require a \$1,000,000 good faith deposits from all Qualified Bidders (other than

³ Capitalized terms used in this subsection have the meaning ascribed to them in the Bidding Procedures.

the Purchaser), and (c) set up dates and time for the Bid Deadline and the Auction. The Purchaser is deemed to be a Qualified Bidder for all purposes.

29. Under the proposed Bidding Procedures, the Sellers will be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing. Notwithstanding court approval of the transaction pursuant to the terms of a Qualified Bid, the Good Faith Deposits of all Qualified Bidders will be retained by the Sellers, and all Qualified Bids will remain open, until the end of the business day following the closing of the transaction with the Successful Bidder. The proposed Bidding Procedures Order also provides that upon failure to consummate the sale because of a breach or failure on the part of the Successful Bidder, the Sellers may select, in their business judgment, the next highest bid to be the Successful Bid without further order of the Court.

30. At or before the Sale Hearing, the Sellers may impose such other terms and conditions as they may determine to be in the best interests of their estates and other parties in interest, so long as such terms and conditions are not inconsistent with the Agreement.

B. Break-Up Fee

31. The Purchaser has expended, and likely will continue to expend, considerable time, money and energy pursuing the acquisition of the Purchased Assets and has engaged in extended arm's-length and good faith negotiations with the Sellers. In recognition of this expenditure of time, energy, and resources, the Sellers have agreed to provide to the Purchaser certain bidding protections, including the Break-Up Fee. Under the Agreement, the Purchaser will receive the Break-Up Fee in the event that (a) at or before the Closing Date, the Sellers are in material breach of the Agreement, and such breach is not cured within five business days; (b) the Sellers agree in writing, publicly announce, or are authorized by their Boards of

Directors to (x) proceed with an Alternative Transaction other than in accordance with the Bidding Procedures or (y) not to proceed with the sale of the Purchased Assets; (c) the Court approves an Alternative Transaction or an Alternative Transaction is consummated, (d) the Sellers file a motion in the Court seeking authorization for a sale to a Third Party of all or a material portion of the Purchased Assets, (e) the Sellers file, prior to the Closing, a plan of reorganization in form or substance not satisfactory to the Purchaser; or (f) prior to the Closing, these chapter 11 cases are either voluntarily dismissed or converted to cases under chapter 7 of the Bankruptcy Code. The proposed Break-Up Fee is equal to \$1,000,000 regardless of the actual amounts expended by the Purchaser. Only one Break-Up Fee is payable.

32. The Sellers respectfully submit that the Break-Up Fee is reasonable because it is not excessive compared to fees and reimbursements approved in other cases in this District. Because break-up fees, similar to those requested herein, are usually necessary to attract initial offers, the courts in this District have routinely approved them in connection with asset sales in chapter 11 cases.

APPLICABLE AUTHORITY

A. Sale Pursuant to Section 363(b)(1)

33. Section 363(b)(1) of the Bankruptcy Code provides that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Ionosphere Clubs, Inc.* 100 B.R. 670 (Bankr. S.D.N.Y. 1989). Section 105(a) of the Bankruptcy Code further provides in relevant part that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

34. The Sellers respectfully submit that the proposed sale satisfies the governing standard for such sales in the Third Circuit. Courts in the Third Circuit interpreting section 363(b)(1) have held that transactions should be approved when they are supported by the sound business judgment of management. See In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (outlining requirements for sale of assets pursuant to section 363); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale and that the transaction is in good faith); see also, In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Industrial Valley Refrig. & Air Cond. Supp., 77 B.R. 15, 20 (Bankr. E.D. Pa. 1987).

35. The “sound business purpose” test requires a debtor to establish four elements to sell property outside the ordinary course of business:

- (a) a “sound business purpose” justifies the sale of assets outside the ordinary course of business;
- (b) adequate and reasonable notice has been provided to interested persons;
- (c) the debtor has obtained a fair and reasonable price; and
- (d) the sale was negotiated in good faith.

See Titusville Country Club, 128 B.R. at 399; In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); Phoenix Steel Corp., 82 B.R. at 335-36; Industrial Valley, 77 B.R. at 21. As demonstrated below, approval of the proposed sale is justified under section 363(b) because it satisfies all of the factors under the “sound business purpose” test.

a. The Proposed Sale Is Supported by the Sellers' Sound Business Judgment

36. Clear business reasons exist to justify the Sellers' sale of the Purchased Assets under section 363(b). The Sellers sought chapter 11 protection to conduct an orderly disposition of their assets. The Sellers have carefully evaluated the expressions of interest and/or bids they have received from various interested parties for some or all of their assets and have concluded that the bid from the Purchaser represents the highest and best bid received.

37. The Sellers and their advisers have concluded that a sale at this time, i.e. before the confirmation of a plan of reorganization is critical for the maximization of value of the Purchased Assets for the benefit of the Sellers' estates and creditors. If the sale does not occur within the next few months, the Sellers' estates and creditors will get a substantially diminished return from the Purchased Assets.

b. The Sellers Will Provide Reasonable Notice of the Proposed Sale to Interested Parties

38. In satisfaction of the requirements of Bankruptcy Rule 2002, the Sellers intend, no later than twenty (20) days prior to the Sale Hearing, to serve copies of this Motion, including all exhibits, by first class mail (unless otherwise indicated), upon: (a) the Office of the United States Trustee; (b) counsel to the Purchaser; (c) counsel to any statutory committees appointed in these cases (collectively, the "Committee") or, if no such committee has yet been appointed, then to each of the thirty largest creditors of the Debtors (on a consolidated basis); (d) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (e) all entities known to have asserted any Lien in or upon any of the Purchased Assets; (f) all federal, state and local taxing or regulatory authorities or recording offices that have (g) jurisdiction over the Relevant Business or any aspect thereof or (ii) a reasonably known interest in the relief

requested in the Motion; (h) all governmental agencies having jurisdiction over the Relevant Business with respect to environmental laws; (i) parties to governmental approvals or permits applicable to the Relevant Business; (j) the United States Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (k) the Federal Communications Commission and applicable state public utility commissions; (l) the Securities and Exchange Commission; (m) all non-Debtor parties to the Initial Assumed Agreements; and (n) all other parties that filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of such service.

39. The Sellers also will publish a notice of the proposed sale in the national editions of either The Wall Street Journal or The New York Times.

c. The Proposed Sale Is for a Fair and Reasonable Price

40. Although a thorough marketing process was conducted prior to the Petition Date, the Sellers have been unsuccessful in locating any other buyer interested in purchasing the Purchased Assets at an aggregate price higher than the Purchase Price. Moreover, the consideration to be received under the Agreement remains subject to higher or otherwise better offers, which further allows the market to test the adequacy of the Purchase Price.

d. The Proposed Sale Was Negotiated in Good Faith

41. The Agreement is the product of good faith, arm's-length negotiations between the Sellers and the Purchaser, and was negotiated with the active involvement of the Sellers' officers and professionals. Moreover, the Purchaser is not affiliated with the Sellers or their respective officers and directors. Thus, the proposed sale satisfies the good faith element of the "sound business purpose" test. Compare In re After Six, Inc., 154 B.R. 876, 883 (Bankr.

E.D. Pa. 1993) (good faith found where officers, directors and employees of debtor had no apparent connection to purchasers) with In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 147-48 (3d Cir. 1986) (“Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989) (good faith lacking where proposed settlement agreement benefited non-debtor insiders); Industrial Valley, 77 B.R. at 22 (evidence of insider dealing fatal to good faith requirement).

B. Request For Approval Of Proposed Sale Free And Clear Of Liens, Claims, Encumbrances And Interests

42. The Sellers seek this Court's authority to sell the Purchased Assets free and clear of any and all liens, claims, encumbrances or interests which may be asserted against the Purchased Assets (collectively, the “Encumbrances”), with the Encumbrances to attach to the sale proceeds.

43. In accordance with section 363(f) of the Bankruptcy Code, a debtor-in-possession may sell property free and clear of any lien, claim or interest in such property if:

- (1) such a sale is permitted under applicable non-bankruptcy law;
- (2) the party asserting such a lien, claim or interest consents to such sale;
- (3) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property;
- (4) the interest is the subject of a bona fide dispute; or
- (5) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

11 U.S.C. § 363(f); In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met).

44. The Sellers expect to meet the criteria set forth in § 363(f). The Sellers intend to provide notice of the proposed sale to the DIP lenders (the “DIP Lender”) who, subject to the Court’s approval, will have a first priority lien on the Purchased Assets .

45. In addition, the Sellers are going to provide notice of the sale to all taxing authorities (the “Applicable Taxing Authorities”) that may, as a result of the transactions contemplated in the Agreement have tax liens on any of the Purchased Assets, as well as to all other parties that are known to the Sellers to hold liens on any of the Purchased Assets. The Sellers submit that to the extent such liens exist, they should attach to the proceeds of the sale of the Purchased Assets with the same validity, priority and force as they currently have with respect to the Purchased Assets, subject to all and any defenses that the Sellers may have.

46. Accordingly, the Sellers submit that the sale of the Purchased Assets free and clear of any Encumbrances satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

C. Assumption and Assignment of the Contracts and Leases

47. By this Motion, the Sellers request that this Court enter an order, pursuant to section 365(a) and (f) of the Bankruptcy Code, authorizing the Sellers to assume and assign to the Purchaser each of the Initial Assumed Agreements.

48. The Sellers respectfully submit that their proposed assumption of the Initial Assigned Agreements, to the extent executory, and their assignment to the Purchaser (or the Successful Bidder) will satisfy the standards governing such actions in the Third Circuit⁴.

⁴ The assumption and assignment of additional Assumed Agreements pursuant to the Agreement will be effected on separate notice and under separate Order.

49. Section 365(a) provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease in the Third Circuit is whether the debtor’s reasonable business judgment supports assumption or rejection.

50. The Purchaser has indicated that it requires the benefits of the Assumed Agreements in order to proceed with the proposed sale. Thus, to secure the benefit of the proposed sale, the Sellers must assume the Assigned Agreements and assign them to the Purchaser. In addition, the Sellers’ decision to assume and assign the Assigned Agreements will be tested by the auction process, which is intended to generate the greatest value for such assets. In light of these reasons, the Sellers believe there is a sound business justification supporting assumption of the Assigned Agreements and their assignment to the Purchaser.

51. Pursuant to section 365(b)(1), for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1). The Sellers intend, as a condition precedent to the assumption and assignment of the Assumed Agreements, to satisfy any outstanding obligations thereunder by curing any defaults, including any actual pecuniary losses, in accordance with the procedures set forth in the Bidding Procedures Order (subject to the limitation of the Maximum Cure Amount).

52. The notice of the proposed Cure Amounts with respect to the Initial Assumed Agreements (that will be filed and served on counter-parties to the Initial Assumed Agreements no later than ten days prior to the objection deadline to the Sale Hearing (the “Cure Amounts Schedule”) will set forth the amounts necessary, in the Sellers’ good faith estimation, to

cure any defaults under the Initial Assumed Agreements. The proposed Bid Procedures Order provides that any non-debtor party to any of the Initial Assumed Agreements shall have the right to object in writing to the Cure Amount set forth on the Cure Amounts Schedule with respect to such agreement, provided that such objection is received on or before five business days prior to the beginning of the commencement of the Sale Hearing. If no objection is timely received, or if a timely objection is received but is not in compliance with the foregoing requirements, the Cure Amount set forth in the Cure Amounts Schedule shall be controlling, notwithstanding anything to the contrary in any Assumed Agreement, proof of claim (whether formal or informal) or any other document or instrument. Any objection to the assumption and assignment of any Initial Assumed Agreement or any Cure Amount shall be heard at the Sale Hearing.

53. In the event that a timely objection to the Cure Amount is filed, and if the difference cannot be reconciled prior to or at the Sale Hearing, the disputed Cure Amount will be segregated by the Sellers, pending the resolution of such dispute.

54. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. See In re Rickel Home Centers, Inc., 209 F.3d 291, 299 (3d Cir. 2000) (“[t]he Code generally favors free assignability as a means to maximize the value of the debtor’s estate”); see also, In re Headquarters Dodge, Inc., 13 F.3d 674, 682 (3d Cir. 1994) (noting purpose of section 365(f) is to assist trustee in realizing the full value of the debtor’s assets).

55. Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should

be given “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989). See also, In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that the debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. Accord In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it a strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

56. In connection with meeting the standard for approval of the proposed sale, the Purchaser (or the Successful Bidder) will have to provide adequate assurance of future performance before the Assumed Agreements may be assigned. The Sellers fully expect that the Purchaser will be able to satisfy this standard.

D. The Purchaser Is a Good Faith Purchaser Under Section 363(m) of the Bankruptcy Code

57. The Sellers additionally request that this Court find that the Purchaser is entitled to the protections provided by section 363(m) of the Bankruptcy Code in connection with the proposed sale.

58. Section 363(m) provides, in pertinent part:

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

11 U.S.C. § 363(m).

59. Section 363(m) thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the transaction is reversed on appeal. By its terms, section 363(m) applies to sales of interests in tangible assets, and an opinion by the United States Court of Appeals for the Third Circuit indicates that section 363(m) also protects the assignee of a debtor's interest in executory contracts under section 365. See Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc., 141 F.3d 490 (3d Cir. 1998) In Krebs, the Court considered “whether assignments of [certain automobile dealership] franchises under section 365 are also sales of estate property subject to section 363(m). Id. at 497. Despite the absence of an explicit reference to assignments of executory contracts under section 365, the Krebs Court concluded that section 363(m) protected an assignment of a debtor's interest in certain automobile franchise agreements pursuant to an auction sale. In light of Krebs, the Sellers respectfully submit that section 363(m) applies to protect the Purchaser.

60. As required by section 363(m), the Sellers and the Purchaser have acted in good faith in negotiating the Agreement. Although the Bankruptcy Code does not define “good faith purchaser,” the Court of Appeals for the Third Circuit, construing section 363(m), has stated that “the phrase encompasses one who purchases in 'good faith' and for 'value'.” In re Abbotts Dairies of Penn., Inc., 788 F.2d 143, 147 (3d Cir. 1986). To constitute lack of good faith, a party's conduct in connection with the sale must usually amount to “fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.” Id. (citing In re Rock Indus. Mach. Corp. 572 F.2d 1195, 1198 (7th Cir. 1978)). See also In re Bedford Springs Hotel, Inc., 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); Matter of

Perona Bros., Inc., 186 B.R. 833, 839 (D.N.J. 1995). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.” In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting In re Rock Indus. Machinery Corp., 572 F.2d at 1998).

61. Here, the sale of the Purchased Assets and the assumption and assignment of the Assigned Agreements are being conducted in good faith. There is no evidence of fraud or collusion in the terms of the proposed sale. To the contrary, the Sellers and the Purchaser negotiated the terms and conditions of the Agreement at arm’s length, assisted by counsel and other advisors of their own choice. The Sellers, on the one hand, and the Purchaser, on the other hand, are not related companies, and do not share corporate officers or directors⁵. Additionally, the terms of the Agreement do not benefit any insiders of the Sellers. Moreover, the terms of the Agreement allow the Sellers to consider higher or otherwise better offers for the Purchased Assets. For these reasons, the Sellers respectfully submit that the Purchaser has acted in good faith within the meaning ascribed to that term by the Court of Appeals for the Third Circuit.

F. Request For Relief From Transfer Taxes Under Section 1146(c)

62. Section 1146(c) of the Bankruptcy Code provides that the making or delivery of an instrument of transfer under a confirmed chapter 11 plan of reorganization may not be taxed under any law imposing a stamp or similar tax. See 11 U.S.C. 1146(c). The Third Circuit has construed this provision to include transfers under a sale outside of, but in furtherance of effectuating, a plan of reorganization. See Director of Revenue, State of Delaware v. CCA

⁵ In the interests of full disclosure, the proposed DIP Lender is both a significant shareholder of, and a lender to, the Purchaser. In addition, the proposed DIP Lender is managed by WL Ross & Co., LLC, whose chairman and chief executive officer, Wilbur Ross, is a member of the Board of the Purchaser.

Partnership (In re CCA Partnership), 70 B.R. 696 (Bankr. D. Del. 1987), aff'd 72 B.R. 765 (D. Del. 1987), aff'd 833 F.2d 304 (3d Cir. 1987); In re Hechinger Investment Co., 254 B.R. 306, 317 (Bankr. D. Del. 2000) (section permits a debtor to sell assets during the case to maximize proceeds in anticipation of the plan it intends to propose), appeal pending. This view is shared by the Courts in the Second Circuit. See e.g., In re Jacoby-Bender, Inc., 40 B.R. 10 (Bankr. E.D.N.Y. 1984), aff'd 758 F.2d 840 (2d Cir. 1985); In re 995 Fifth Ave. Assocs., L.L.P., 116 B.R. 384 (Bankr. S.D.N.Y. 1990), aff'd 127 B.R. 533 (S.D.N.Y. Oct. 23, 1991).

63. The Sellers respectfully request a ruling of this Court that section 1146(c) of the Bankruptcy Code applies to the proposed sale pursuant to the Agreement.

G. Request For Approval Of Break-Up Fee and Overbid Protections

64. The Sellers seek approval of the overbid protections and authority to pay the Break-Up Fee if the Purchaser becomes entitled to it pursuant to the Agreement. The Break-Up Fee is beneficial to the Sellers' estates. The Purchaser's bid for the Purchased Assets has established a floor for further bidding on the Purchased Assets. If the Purchaser is not the successful bidder because the Sellers have received a higher or otherwise better offer, the Sellers will have benefited from the floor established by the Purchaser's proposal.

65. Bankruptcy courts are guided by the principles of the "business judgment" rule in evaluating a debtor's decision to offer a break-up or topping fee. See The Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 658 (S.D.N.Y. 1992) ("A bankruptcy court should uphold a break-up fee which was not tainted by self-dealing and was the product of arm's-length negotiations."), appeal dismissed, 3 F.3d 49 (2d Cir. 1993); see also, In re 995 Fifth Ave. Assocs., 96 B.R. 24 (Bankr. S.D.N.Y. 1989); cf. In re America West Airlines, Inc., 166 B.R. 908, 913

(Bankr. D. Az. 1994) (applying a “best interest of the estate” standard). Break-Up fees for purchasers of chapter 11 debtors and/or their assets constitute appropriate compensation for the risk involved in preparing and proposing a bid, which thereby enhances the value of the debtor's estate by attracting initial bids and establishing a minimum standard for competing bids. See Integrated Resources, 147 B.R. 650 (break-up fees are “important tools to encourage bidding and to maximize the value of the debtor's assets”); In re Crowthers McCall Pattern, Inc., 166 B.R. 908, 913 (Bankr. S.D.N.Y. 1990) (decision to enter into agreement including break-up fee amply justified by need to prevent prospective bidder from withdrawing from transaction).

66. A break-up fee should be “reasonably related to the bidder's efforts and the transaction's magnitude.” In re Integrated Resources, 147 B.R. at 662-63. In this case, the Break-Up fee is \$1,000,000. The Break-Up Fee is consistent with the range of those that have been approved by this Court in other cases. See e.g., In re Montgomery Ward, 97-1409 (Bankr. D.Del.) (fee of 2.7% upheld); In re MobileMedia Communications, Inc., 97-174 (PJW) (Bankr. D.Del.) (fees of 2.9% and 3.2% upheld); In re HHL Fin'l Servs. Inc., No. 97-398 (SLR) (D. Del. March 31, 1997) (approving 5.5% to 5.9% break-up fees); In re American White Cross Inc., No. 96-1109 (PJW) (Bankr. Del. March 31, 1997) (approving up to 5.8% break-up fee plus up to \$450,000 in expense reimbursement); In re Mid-American Waste Sys., Inc., No. 97-0104 (PJW) (Bankr. Del. Jan. 21, 1997) (3% fee plus up to \$1 million in expenses approved); In re Simmons Upholstered Furniture, Inc., No. 94-635 (HSB) (Bankr. Del. Aug. 10, 1995) (approving 4.64% fee and up to \$650,000 in expenses); In re Smith Corona Corp., No. 95-788 (HSB) (Bankr. Del. 1995) (approving 3.9% fee plus \$500,000 in expenses); In re Edison Bros. Stores Inc., No. 95-1354 (Bankr. Del. Dec. 29, 1995) (approving break-up fees up to 3.5% plus reasonable fees and expenses up to \$100,000).

67. The Sellers believe the Break-Up Fee adequately and reasonably compensates the Purchaser for serving as a “stalking horse” in connection with the Sellers' efforts to sell the Purchased Assets and for any lost opportunity costs to the Purchaser related to the negotiation of the proposed sale. Under these circumstances, the Sellers respectfully submit that the Break-Up Fee is reasonable and should be approved by this Court.

68. Outside the bankruptcy context, courts commonly approve break-up/topping fees. Such fees are presumptively appropriate under the business judgment rule and nonbankruptcy courts rarely rule on their propriety. In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993); see, e.g., Cottle v. Storer Communications, Inc., 849 F.2d 570 (11th Cir. 1988); CRTF Corp. v. Federated Dep't Stores, Inc., 683 F. Supp. 422, 440 (S.D.N.Y. 1988); Samjens Partners I v. Burlington Indus., Inc., 663 F. Supp. 614 (S.D.N.Y. 1987).

69. Similarly, bankruptcy courts are guided by the principles of the business judgment rule in evaluating a debtor's decision to offer bidding protections. See Integrated Resources, 147 B.R. at 658 (“A bankruptcy court should uphold a break-up fee which was not tainted by self-dealing and was the product of arm's length negotiations.”); see also, In re 995 Fifth Ave. Assocs., 96 B.R. 24 (Bankr. S.D.N.Y. 1989); cf. In re Tiara Motorcoach Corp., 212 B.R. 133, 137 (Bankr. N.D. Ind. 1997) (break-up fees “must be carefully scrutinized”).

70. “By design, a ‘break-up fee’ is an incentive payment to an unsuccessful bidder who placed the estate property in a sales configuration mode to attract other bidders to the auction.” Integrated Resources, 147 B.R. at 659 (internal quotation omitted). Bidding protections for purchasers of chapter 11 debtors and/or their assets constitute appropriate compensation for the risk and expense involved in preparing and proposing a bid, which thereby enhances the value

of the debtor's estate by attracting initial bids, establishing a minimum standard for competing bids, and establishing a template against which to bid. See Id., 147 B.R. at 650, 659 (break-up fees are "important tools to encourage bidding and to maximize the value of the debtor's assets."); In re Crowthers McCall Pattern, Inc., 114 B.R. 877, 888 (Bankr. S.D N.Y. 1990) (decision to enter into agreement including break-up fee amply justified by need to prevent prospective bidder from withdrawing from transaction). A break-up fee should be "reasonably related to the bidder's efforts and the transaction's magnitude." Integrated Resources, 147 B.R. at 662-63.

71. In this Circuit, a court should approve a break-up fee as an administrative expense where the fee is "necessary to preserve the value of the estate." In re O'Brien Envtl. Energy, Inc., 181 F.3d 527, 535 (3d Cir. 1999). See also, Texas v. Lowe (In re H.L.S. Energy Co.), 151 F. 3d 434, 437 (5th Cir. 1998); Burlington Northern R.R. Co. v. Dant (In re Dant & Russel, Inc.), 853 F. 2d 700 (9th Cir. 1988). A break-up fee may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Id. at 537. Moreover:

if the availability of break-up fees and expenses were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.

Id.

72. That is the case here. The Sellers have determined in their sound and reasonable business judgment that the Break-Up Fee is beneficial to the Sellers' estates. Naming of the Purchaser as the "stalking horse" fosters the auction process and enhances and preserves the value of the Purchased Assets. The Purchaser's "stalking horse" bid will establish a floor for

further bidding on the Purchased Assets. If the Purchaser's bid is not the successful bid because the Sellers have received a higher or otherwise better offer, the Sellers will have benefited from the floor established by the Purchaser's proposal.

73. The Sellers' current financial condition dictates an expedited sale of the Purchased Assets. The Purchaser has made it clear that it would not have tendered its initial bid without the assurance of a break-up fee. The terms of the bid, as contained in the Agreement, were the product of rigorous negotiations between the parties. The Break-Up Fee is an essential term to the Purchaser, protecting its considerable investment in negotiating and performing due diligence in connection with the proposed sale. Accordingly, the Break-Up Fee undoubtedly "induced [the Buyer] to research the value of the [D]ebtor and to convert that value into a dollar figure on which other bidders can rely." *Id.*

74. The Purchaser has requested that its claim on account of the Break-Up Fee (as well as its claims on account of the Adjustments and certain indemnification obligations with respect to representations and warranties) be accorded a superpriority status under section 364(c)(1) of the Bankruptcy Code, subject only to the superpriority claims of the DIP Lender. The Sellers respectfully submit that such relief is appropriate. The Purchaser has assumed the risk of the Seller's credit with respect to their obligations on account of the Adjustments, the Sellers' potential breach of representations and warranties, and the Break-Up Fee, however, it was only willing to accept such risk on the condition that its claim on account of such obligations be accorded superpriority administrative status. Pursuant to section 105 of the Bankruptcy Code, this Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of the debtor's assets, *see, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986), such as structuring an orderly sale process with a "stalking horse."

NOTICE

75. Notice of this Motion has been given to: (i) the Office of the United States Trustee; (ii) counsel to the Purchaser; (iii) the Debtors' thirty largest unsecured creditors; and (iv) counsel to the DIP Lender; (v) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (vi) all entities known to have asserted any Lien in or upon any of the Purchased Assets; (vii) all federal, state and local taxing or regulatory authorities or recording offices that have (A) jurisdiction over the Relevant Business or any aspect thereof or (B) a reasonably known interest in the relief requested in the Motion; (viii) all governmental agencies having jurisdiction over the Relevant Business with respect to environmental laws; (ix) parties to governmental approvals or permits applicable to the Relevant Business; (x) the United States Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (xi) the Federal Communications Commission and applicable state public utility commissions; and (xii) the Securities and Exchange Commission.

76. In light of the nature of the relief requested herein and the economic burden to the estates if the Sellers are compelled to serve notice of this Motion on their entire creditor body, the Sellers submit that no other or further notice need be given.

NO PRIOR REQUEST

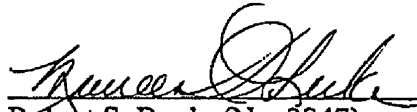
77. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Sellers respectfully request that the Court (i) enter an order in the form attached hereto as Exhibit A approving the Bidding Procedures, including the Break-Up Fee, (ii) enter an order in the form attached hereto as Exhibit B authorizing the sale of the Purchased Assets to the Purchaser or, if applicable, to the bidder submitting the highest or

otherwise best bid, as determined in accordance with the Bidding Procedures, and (iii) grant the Sellers such other and further relief as the Court deems just and appropriate.

Dated: June 23, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Proposed Counsel for Debtors

Exhibit A

The Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
TOUCH AMERICA HOLDINGS, INC., et al.,) Case No. 03-11915 (KJC)
)
Debtors.) (Jointly Administered)

ORDER UNDER 11 U.S.C. §§ 105(a) AND 363 AND FED. R. BANKR. P. 2002 AND 6004: (I) APPROVING (A) NOTICE AND BIDDING PROCEDURES AND (B) BID PROTECTIONS, INCLUDING, BREAK-UP FEE, OVERBID PROTECTIONS, AND NO-SOLICITATION PROVISIONS IN CONNECTION WITH THE PROPOSED SALE OF CERTAIN OF THE DEBTORS' ASSETS; AND (II) SCHEDULING HEARING AND SETTING BIDDING AND OBJECTION DEADLINES IN CONNECTION WITH SUCH SALE

Upon the motion (the "Motion"), of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for, among other things, entry of:-an order (the "Procedures Order") pursuant to 11 U.S.C §§ 105(a) and 363 and Fed. R. Bankr. P. 2002 and 6004, among other things, (i) approving certain bid protections, including a break-up fee (the "Breakup Fee") and certain auction procedures and overbid requirements (collectively with the Breakup Fee, the "Bidding Procedures") with respect to the proposed sale (the "Sale") of certain of the assets of the Debtors to 360networks Corporation (the "Purchaser") pursuant to that certain Asset Purchase Agreement (as amended from time to time, the "Purchase Agreement")¹ by and among the Purchaser and those of the Debtors party to the Purchase Agreement (collectively, the "Sellers"), and certain Ancillary Agreements, substantially in the forms attached as exhibits to the Purchase Agreement (collectively, the "Sellers") to the Purchaser; or another successful bidder (the "Successful Bidder"), (ii) scheduling a date for the hearing to

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Purchase Agreement, as the case may be. To the extent that any terms of this Order and those of the Purchase Agreement are inconsistent, this Order shall control.

approve the Sale (the "Sale Hearing"), (iii) setting auction procedures, bidding and objection deadlines in connection with the Sale, and (iv) approving the form and manner of notice thereof; and a hearing having been held on July 9, 2003 (the "Bidding Procedures Hearing"); and the Court having reviewed and considered: (a) the Motion; (b) the objections thereto, if any; and (c) the arguments of counsel made, and the evidence proffered or adduced, at the Bidding Procedures Hearing; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C §§ 157(a) and 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N), and (O). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409

B. Good and sufficient notice of the relief sought in the Motion with respect to the proposed Bidding Procedures, Breakup Fee, notice procedures and other related matters (as set forth herein) has been given and no other or further notice is required. A reasonable opportunity to object to or be heard regarding such relief has been, and with respect to the further notice required hereby, will be, afforded to all interested persons and entities including the following: (i) the Office of the United States Trustee; (ii) counsel to the Purchaser; (iii) to each of the thirty largest creditors of the Debtors (on a consolidated basis); (iv) counsel to WLR Recovery Fund II, LLP; (v) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (vi) all entities known to have asserted any Lien in or upon any of the

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate See Fed R Bankr P 7052

Purchased Assets; (vii) all federal, state and local taxing or regulatory authorities or recording offices that have (A) jurisdiction over the Relevant Business or any aspect thereof or (B) a reasonably known interest in the relief requested in the Motion; (viii) all governmental agencies having jurisdiction over the Relevant Business with respect to environmental laws; (ix) parties to governmental approvals or permits applicable to the Relevant Business; (x) the United States Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (xi) the Federal Communications Commission and applicable state public utility commissions; and (xii) the Securities and Exchange Commission (collectively, the "Initial Notice Parties") No other or further notice of the request for the relief granted herein need be given

C. The Debtors' proposed notice of the Sale, including, without limitation, the sale of the Purchased Assets and the assumption and assignment of the Assumed Agreements to be assumed at the Closing (collectively, the "Initial Assumed Agreements") attached hereto as Exhibit A is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Sale and Bidding Procedures.

D. The Bidding Procedures, substantially in the form annexed hereto as Exhibit B, are fair, reasonable and appropriate and are designed to maximize the recovery on the Purchased Assets, including the Assumed Agreements

E. The Debtors have demonstrated a compelling and sound business justification, under the circumstances, for authorizing the payment of the Breakup Fee to the Purchaser in accordance with the procedures set forth in the Motion.

F. It appears that the Breakup Fee was negotiated by the parties to the Purchase Agreement in good faith and at arm's-length and is fair and reasonable

G. The Debtors' payment to the Purchaser of the Breakup Fee under the conditions set forth in the Purchase Agreement is: (a) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code; (b) of substantial benefit to the Debtors' estates; (c) reasonable and appropriate, given, among other things, the size and nature of the proposed Sale, the substantial efforts that have been and will be expended by the Purchaser, and the benefits the Purchaser has provided to the Debtors' estates and creditors and all parties in interest herein by helping to maximize the value of the Purchased Assets, (d) not a penalty, but rather, a reasonable estimate of the damages to be suffered by Purchaser in the event the transactions contemplated by the Purchase Agreement are not consummated, and (e) necessary to ensure that the Purchaser will continue to pursue its proposed acquisition of the Purchased Assets. It appears that the Purchase Agreement was the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest or otherwise best consideration for the Purchased Assets (including the Assumed Agreements), while also assuming or otherwise satisfying certain Assumed Liabilities, in order to maximize the value of the Debtors' estates. The payment of the Breakup Fee should be approved because, among other things: (i) no other party to date has been willing to enter into a definitive agreement for the purchase of the Purchased Assets and the assumption of the Assumed Liabilities on terms acceptable to the Debtors; (ii) the protection afforded to the Purchaser by the Breakup Fee was a material inducement for, and an express condition of, the Purchaser's willingness to enter into the Purchase Agreement; (iii) the Purchaser is unwilling to commit to hold open its offer to purchase the Purchased Assets and consummate the other transactions under the terms of the Purchase Agreement unless it is assured of the payment of the Breakup Fee; and (iv) by, inter alia,

inducing the Purchaser's bid and Purchaser's continued expenditure of time and effort concerning the proposed sale, the Break-Up Fee provisions will promote a more competitive bidding environment and thereby maximize the value of the Debtors' estates.

H. The entry of this Order is in the best interests of the Debtors and their estates, creditors and all other parties in interest herein; and it is therefore hereby

ORDERED, ADJUDGED AND DECREED THAT:

Overruling of Objections

1 Any objections to the entry of this Procedures Order or the relief granted herein and in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits with prejudice

Notice of Auction and Sale

2. The notice (the "Notice of Auction and Sale Hearing") of, among other things: (i) the Auction, (ii) the Sale; (iii) the assignment and assumption of the Initial Assumed Agreements; and (iv) the Bidding Procedures, substantially in the form attached hereto as Exhibit C, is approved in all respects.

3 As soon as practicable after the entry of this Procedures Order (and in any event, no later than July 16, 2003), the Debtors shall cause the Notice of Auction and Sale Hearing to be: (i) published in the national editions of either The Wall Street Journal or The New York Times; and (ii) served, pursuant to Bankruptcy Rule 2002(I), on (a) the Initial Notice Parties, (b) counsel to any statutory committee(s) appointed in these cases (collectively, the "Committee"), (iii) all non-Debtor parties to the Initial Assumed Agreements; and (iv) all other parties that filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of such service

4. The service of the Notice of Auction and Sale Hearing (including the publication notice) in compliance with this Order shall be deemed to be good, sufficient and proper notice of the relief sought in the Motion with respect to the Auction, the Sale Hearing, the Sale, and other related matters including to those parties-in-interest unknown to the Debtors, and any requirements for other notice are waived and dispensed with pursuant to Bankruptcy Rules 2002, 6004, 6006 and 9007 and sections 102 and 105 of the Bankruptcy Code, and no other or further notice of the Bidding Procedures, the Sale, or the assumption and assignment of the Initial Assumed Agreements is required.

Notice of Proposed Assignment and Cure Amounts

5. The notice (the "Initial Assumption Notice") of, among other things: (i) the Debtors' intention to assume and assign to the Purchaser, as of the Closing Date, the Initial Assumed Agreements; and (ii) the amounts (each, a "Cure Amount"), if any, required to be paid to cure any monetary defaults related to each such Initial Assumed Agreement, substantially in the form annexed hereto as Exhibit D, is approved in all respects.

6. No later than July 11, 2003, the Debtors shall serve the Initial Assumption Notice on all non-Debtor parties to the Initial Assumed Agreements (collectively, the "Initial Assumption Notice Parties")

7. Each Initial Assumption Notice Party shall have until 4:00 p.m. (Eastern Daylight Savings Time) on July 21, 2003 (the "Assignment Objection Deadline") to file with the Court and serve upon the Debtors' and the Purchaser's respective counsel any objection to either (i) the assumption and assignment of its respective agreement or (ii) the Cure Amount with respect thereto, and must state in its objection (each, an "Assignment Objection") with specificity (y) the reason for its objection to such assumption and assignment, or (z) what Cure

Amount it asserts is required (with appropriate documentation in support thereof) If no Assignment Objection is timely received from any such non-Debtor party: (a) the applicable Initial Assumed Agreement may be assigned to the Purchaser (or the Successful Bidder, as the case may be) on the Closing Date; (b) the applicable Cure Amount shall be fixed at the amount set forth in the Initial Assumption Notice, notwithstanding anything to the contrary in any Initial Assumed Agreement or any other document; and (c) the Initial Assumption Notice Party shall be (i) deemed to have waived and released any right to assert an objection to the proposed assignment of the Initial Assumed Agreement or the Cure Amount with respect thereto, and to have otherwise consented to the assumption and assignment of the applicable Initial Assumed Agreement, and (ii) upon the payment of the applicable Cure Amount, if any, forever barred, permanently enjoined and estopped from asserting or claiming any other or further claims against the Debtors, their estates, the Purchaser (or the Successful Bidder, as the case may be), their respective successors and assigns, the Purchased Assets, or the property or assets of any or all such parties, with respect to such Initial Assumed Agreement or on grounds that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such Initial Assumed Agreement, except with respect to claims or defaults occurring wholly after the Closing Date.

8. If one or more Assignment Objections are received that have not been resolved prior to the Sale Hearing, hearings with respect to any such objections may be held: (a) at the Sale Hearing; or (b) at such other date as the Court may designate. However, if a disputed Cure Amount is not resolved by the time of the Sale Hearing, the relevant Initial Assumed Agreement may be assumed and assigned to the Purchaser, provided that the Cure Amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be

deposited with and held in a segregated account by the Sellers or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties

9 A properly filed Assignment Objection shall reserve such objecting party's rights against the Debtors (but not against any purchaser of the Purchased Assets) with respect to the relevant Cure Amount obligation, but shall not constitute an objection to the remaining relief requested in the Motion.

10. The Debtors and the Purchaser (or the Successful Bidder, as the case may be) are hereby authorized to settle, compromise or otherwise resolve any disputed Cure Amounts with the relevant non-Debtor party to any Initial Assumed Agreement without further Bankruptcy Court approval or notice to any party.

Notice Regarding Undesignated Agreements

11. The notice, annexed hereto as Exhibit E, with regard to the procedures for post-closing assumption of certain agreements (the "Other Assumed Agreements") and assignment thereof to Purchaser (the "Other Assumed Agreements Notice"), is hereby approved.

12. No later than _____, 2003, the Debtors shall serve the Other Assumed Agreements Notice on all non-Debtor parties to each Other Assumed Agreement. Assumption and assignment of each of the Other Assumed Agreements shall be effected pursuant to a separate Order of this Court, upon proper notice and hearing

Purchaser Protections

13 The Debtors are authorized and directed to pay the Breakup Fee to Purchaser, in the manner required under and pursuant to the Purchase Agreement, without further order of the Court.

14. Pursuant to section 364(c)(1) of the Bankruptcy Code, the Purchaser's claim in respect of the Breakup Fee shall have priority over any and all administrative expenses of the kinds specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code, whether such claims arise in proceedings under Chapter 11 or Chapter 7 of the Bankruptcy Code (the "Purchaser Protection Superpriority Claim"), except for the superpriority claims granted to the DIP Lender.

15. The rights of the Purchaser to the Breakup Fee and the Purchaser Protection Superpriority Claim shall all survive rejection or breach of the Purchase Agreement by the Sellers, and shall be unaffected thereby.

16. The Breakup Fee shall be the sole remedy of Purchaser for breach of the Purchase Agreement if the Purchase Agreement is terminated under circumstances where the Breakup Fee is payable.

Bidding Procedures

17. The Bidding Procedures attached hereto as Exhibit B (and incorporated herein in their entirety) are approved in all respects and shall apply with respect to, and shall govern all proceedings related to: (i) the Purchase Agreement; (ii) the Auction, (iii) the Sale, and (iv) the assumption and assignment of the Assumed Agreements.

18. Any person wishing to submit a higher or better offer for the Purchased Assets must do so strictly in accordance with the terms of the Bidding Procedures

19. The Purchaser is deemed to be a Qualified Bidder (as defined in the Bidding Procedures) for all purposes.

The Auction

20. The Auction, if required, will commence at 9:30 a.m. (Eastern Time) on July 23, 2003, at the offices of [_____], or at such later time or other place as agreed by the Purchaser and the Sellers, and which the Sellers shall notify all Qualified Bidders who have submitted Qualified Bids

The Sale Hearing

21. A hearing (the "Sale Hearing") to consider: (i) the Sale; (ii) the assumption and assignment of the Initial Assumed Agreements and certain other relief requested in the Motion; and (iii) the entry of the proposed Sale Order, shall be held on July 28, 2003, at 2:00 p.m. (Eastern Time) before this Court

22. Objections to the entry of the Sale Order, if any, must: (a) be in writing; (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the District of Delaware; (c) set forth the name of the objector and the nature and amount of any claim or interest held by and against the Debtors' estates or property; (d) state the legal and factual basis for the objection and the specific grounds therefor; (e) be filed with this Court; and (f) be served upon counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Robert S. Brady, Esquire, counsel to the Proposed Purchaser, Willkie Farr and Gallagher, 787 Seventh Avenue, New York, New York 10019, Attn: Alan J. Lipkin, Esquire, counsel to any official statutory committee appointed in these cases, and the Office of the United States Trustee, 844 N King Street, Room 2311, Wilmington, Delaware 19801, so as to be actually received by no later than 4:00 p.m. (Eastern Time) on July 21, 2003

(the "Objection Deadline") Only timely filed and served responses, objections or other pleadings will be considered by the Court at the Sale Hearing

23. The failure of any person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, the Sale or the consummation and performance of the Purchase Agreement and the transactions contemplated thereby (including, without limitation, the assumption and assignment of the Initial Assumed Agreements).

24. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of said adjournment in Court or on the Court's calendar on the date scheduled for such hearing.

No Solicitation

25. Section 6.7(a) of the Purchase Agreement is approved in its entirety. Pursuant thereto, among other things, Sellers shall not, nor shall they cause their officers, agents, representative and other persons acting on their behalf to, seek or solicit offers for any transaction that would render impossible the transactions between the Sellers and Purchaser contemplated by the Purchase Agreement, except in compliance with the Bidding Procedures and this Order.

26. Section 6.7(b) of the Purchase Agreement is approved in its entirety. Sellers shall promptly notify Purchaser orally and in writing of any request for information, proposal, discussion, negotiation or inquiry received after the date of the Purchase Agreement in connection with any Takeover Proposal and Sellers shall promptly (but in any event within one (1) Business Day) communicate to Purchaser the material terms and conditions of any such proposal, discussion, negotiation or inquiry which it may receive (and will promptly provide to

Purchaser copies of any written materials received by Sellers in connection with such proposal, discussion, negotiation or inquiry) and the identity of the person making such proposal or inquiry or engaging in such discussions or negotiation.

27. Sections 6.7(c) and (d) of the Purchase Agreement are approved in their entirety. Sellers shall not furnish information concerning their business, properties or assets to any Third Party, except pursuant to a confidentiality agreement with terms and conditions no less restrictive than those contained in the Confidentiality Agreement. Sellers shall not release any Third Party from, or waive any provision of, any such confidentiality agreement or any similar confidentiality or standstill agreement to which any Seller is a party. Sellers shall promptly provide to Purchaser any non-public information concerning the Sellers provided to any other Person which was not previously provided to Purchaser. Sellers shall keep Purchaser informed of the status and material details (including amendments or proposed amendments) of any such Takeover Proposal. Sellers shall promptly (and in any event within one business day) notify Purchaser in writing at such time as any Takeover Proposal has been determined to be a Qualified Bid.

Additional Provisions

28 The Debtors are authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established by this Procedures Order.

29 The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

30. The automatic stay provisions of section 362 of the Bankruptcy Code shall not apply to Purchaser's rights to terminate the Purchase Agreement in accordance with the terms thereof.

31. This Procedures Order shall be binding upon, and inure to the benefit of the Purchaser and its affiliates, successors and assigns and the Debtors, and their estates, including any chapter 7 or 11 trustee or other fiduciary appointed for the estates of the Debtors, whether in these cases, subsequent bankruptcy cases or upon dismissal of any of these cases.

32. Service of the notices described herein on the parties entitled to receive such notices pursuant to this Procedures Order shall constitute proper, timely, adequate and sufficient notice thereof and satisfies the requirements of sections 102, 105 and 363(b) and (f) of the Bankruptcy Code and Rules 2002, 6004, 9007 and 9008 of the Bankruptcy Rules

33. Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), this Procedures Order shall not be stayed for ten (10) days after the entry hereof and this Procedures Order shall be effective and enforceable immediately upon entry on this Court's docket.

34. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Procedures Order, including, but not limited to, (i) any matter, claim or dispute arising from or relating to the Breakup Fee, the Bidding Procedures and/or the implementation of this Procedures Order.

Dated: Wilmington, Delaware
_____, 2003

JUDGE

Exhibit A

(To be provided)

Exhibit B

Touch America, Inc.

Bidding Procedures

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the transactions contemplated by the Asset Purchase Agreement (as amended from time to time, the "Purchase Agreement")¹ by and among 360networks Corporation (the "Proposed Purchaser") and those of the Debtors that are parties to the Purchase Agreement (collectively, the "Sellers"), and certain Ancillary Agreements (including the Transition Services Agreement), substantially in the forms attached as exhibits to the Purchase Agreement (collectively, the "Sellers"), concerning the prospective sale (the "Sale") of certain of the Sellers' assets (as defined more specifically in the Purchase Agreement, the "Purchased Assets"). The Sellers have moved for, and will seek, entry of an order by the Bankruptcy Court authorizing and approving the Sale to a Qualified Bidder (as defined below) that the Sellers determine to have made the highest or otherwise best offer for the Purchased Assets.

The Bidding Process

The Sellers will: (i) receive offers from Qualified Bidders; (ii) determine whether any person is a Qualified Bidder; (iii) coordinate the efforts of Qualified Bidders in conducting their respective due diligence investigations regarding the Purchased Assets generally; and (iv) evaluate any offer made by a Qualified Bidder to purchase the Purchased Assets (collectively, the "Bidding Process"). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder, and neither the Sellers nor their representatives are obligated to furnish any information of any kind whatsoever relating to the Sellers or the Purchased Assets to any person who is not a Qualified Bidder. The Sellers have the right to adopt such other rules for the Bidding Process which, in their sole judgment, will better promote the goals of the Bidding Process and which are not inconsistent with any of the other provisions hereof or of any Bankruptcy Court order.

Determination of "Qualified Bidder" Status

In order to participate in the Bidding Process, each person (a "Potential Bidder"), other than the Proposed Purchaser, must deliver (unless previously delivered) to the Sellers:

- (i) An executed confidentiality agreement in form and substance satisfactory to the Sellers; and
- (ii) Current audited financial statements of the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current audited financial statements of the equity holder(s) of the Potential Bidder or such other form of financial disclosure acceptable to the Sellers and their advisors demonstrating such Potential Bidder's ability to adequately fund the newly-formed entity and close a proposed transaction

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement

A "Qualified Bidder" is a Potential Bidder: (x) that timely delivers the documents described in subparagraphs (i) and (ii) above; and (y) that the board of directors of Touch America, Inc., determines is financially able to consummate the purchase of the Purchased Assets. The Proposed Purchaser will be deemed a Qualified Bidder.

No later than two (2) business days after the Sellers receive from a Potential Bidder all of the materials required by subparagraphs (i) and (ii) above, they shall notify such Potential Bidder whether such potential bidder is a Qualified Bidder. At the same time that the Sellers notify the Potential Bidders that it is a Qualified Bidder, the Sellers shall deliver to such Qualified Bidder (unless previously delivered) [(i) a confidential memorandum containing information and financial data relating to the Purchased Assets, and (ii)] a copy of the Purchase Agreement.

Due Diligence for Qualified Bidders

To obtain due diligence access or additional information from the Sellers, a Qualified Bidder must first advise the Sellers in writing of its preliminary (non-binding) proposal regarding: (i) the purchase of the Purchased Assets; (ii) a purchase price range; (iii) the proposed structure and financing of the transaction (including the amount of equity to be committed and sources of financing); (iv) any additional conditions to closing that such Qualified Bidder may wish to impose; and (v) the nature and extent of additional due diligence such Qualified Bidder may wish to conduct. If, based on the preliminary proposal and such additional factors as the Sellers determine are relevant, the Sellers, in their business judgment, determine that the preliminary proposal is reasonably likely to result in a bona fide and serious higher or otherwise better offer for the Purchased Assets, the Sellers will afford the Qualified Bidder access to relevant due diligence information and materials. The Sellers will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. No conditions relating to the completion of additional due diligence will be permitted to exist after the Bid Deadline (as defined below). None of the Sellers, their affiliates or any of their respective representatives are obligated to furnish any information relating to the Purchased Assets to any person except to a Qualified Bidder who makes an acceptable preliminary proposal.

Bid Deadline

A Qualified Bidder who desires to make a bid must deliver a written copy of its bid to (a) Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attention: John O'Connor, Esq. And (b) [Evercore – address to be supplied], not later than 12:00 noon (Eastern Daylight Savings Time) on July 21, 2003 (the "Bid Deadline"). If the Sellers extend the Bid Deadline, they shall promptly notify all Qualified Bidders of such extension.

Determination of "Qualified Bid" Status

A bid received from a Qualified Bidder will constitute a "Qualified Bid" only if it includes all of the Required Bid Documents listed below and meets all of the Bid Requirements set forth below. Notwithstanding the foregoing, the Purchase Agreement will be deemed a

Qualified Bid for all purposes in connection with the Bidding Process, the Auction (as defined below) and the Sale.

Required Bid Documents. All bids must include the following documents (collectively, the "Required Bid Documents"):

- a. A written offer stating that: (i) the Qualified Bidder offers to purchase all or substantially all of the Purchased Assets and assume all or substantially all of the Assumed Liabilities; (ii) the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the acquisition of the Business on terms and conditions no less favorable to Sellers than the Purchase Agreement (other than those relating to the Breakup Fee) within not more than one Business Day after entry by the Bankruptcy Court of the Sale Order; and (iii) the Qualified Bidder's offer is irrevocable until the end of the business day following the closing of the purchase of the Purchased Assets; and
- b. A good faith deposit (the "Good Faith Deposit") in the form of a certified or bank check (or other form acceptable to the Sellers in their sole discretion) payable to the order of the Sellers (or such other party as the Sellers may designate) in an amount of \$1 million; provided, however, that the Proposed Purchaser shall not be required to make the Good Faith Deposit

Bid Requirements. All bids must satisfy the following requirements (collectively, the "Bid Requirements"):

- a. The bid must provide for an aggregate purchase price for the Purchased Assets of at least \$500,000 greater than the sum of: (x) the amount of the Breakup Fee; plus (y) the consideration to the Sellers arising out of the Purchase Agreement including the payment of the Purchase Price and the assumption of the Assumed Liabilities.
- b. The bid must be, in the Sellers' business judgment, on substantially the same or better terms and conditions than those set forth in the Purchase Agreement.
- c. The bid (other than the Proposed Purchaser's bid) is accompanied by satisfactory evidence of committed financing or other ability to perform the acquisition of the Purchased Assets.
- d. The bid is not conditioned upon the Bankruptcy Court's approval of any bid protections, such as a breakup fee, termination fee, expense reimbursement or similar type of payment
- e. The bid acknowledges and represents that the bidder: (1) has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer; (2) has relied solely upon its own

independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; and (3) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures

- f The bid is received by the Bid Deadline.

Auction

If one or more Qualified Bids in addition to that of the Proposed Purchaser is received, the Sellers will conduct an auction (the "Auction") with respect to the Purchased Assets to determine the highest or otherwise best offer for the Purchased Assets (the "Successful Bid"). If no Qualified Bid (other than that of the Proposed Purchaser) is received by the Bid Deadline, the Proposed Purchaser's bid will be deemed the Successful Bid, and Sellers shall proceed with the transactions contemplated by the Purchase Agreement.

The Auction, if required, will commence at 9:30 a.m. (Eastern Daylight Savings Time) on July 23, 2003, at the offices of [] or at such later time or other place as agreed by the Proposed Purchaser and the Sellers, and of which the Sellers will notify all Qualified Bidders who have submitted Qualified Bids.

At least one (1) business day prior to the Auction, the Sellers will provide to the Proposed Purchaser and all other Qualified Bidders a copy of the highest or otherwise best Qualified Bid received and copies of all other Qualified Bids. In addition, the Sellers will inform the Proposed Purchaser and each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all Qualified Bidders that may participate in the Auction and copies of the bids of all such Qualified Bidders

Only the Proposed Purchaser, Sellers, Qualified Bidders who have submitted Qualified Bids, their respective professionals, the United States Trustee, and representatives of any statutory committee appointed in these cases (collectively, the "Committee") will be entitled to attend, participate and be heard at the Auction, and only the Proposed Purchaser and Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.

During the Auction, bidding will begin at the purchase price stated in the highest or otherwise best Qualified Bid (taking into account the Breakup Fee), and will subsequently continue in minimum increments of at least \$250,000 higher than the previous Qualified Bid. Subsequent Qualified Bids submitted by the Proposed Purchaser will be deemed to include a credit in an amount equal to the sum of the Breakup Fee and shall not require a deposit.

Bidding at the Auction will continue until such time as the highest or otherwise best Qualified Bid is determined. Upon conclusion of the Auction, the Sellers will: (i) review each Qualified Bid on the basis of financial and contractual terms and other factors relevant to the Sale process, including those factors affecting the speed and certainty of consummating the

Sale; and (ii) identify the Successful Bid for the Purchased Assets (as defined above, the "Successful Bid")

Acceptance of Qualified Bids

At the Sale Hearing, the Sellers will seek entry of an order authorizing and approving the Sale: (i) if no Qualified Bid is received (other than that of the Proposed Purchaser), to the Proposed Purchaser pursuant to the terms and conditions set forth in the Purchase Agreement; or (ii) if another Qualified Bid is received by the Sellers, to the Proposed Purchaser or such other Qualified Bidder as the Sellers, in the exercise of their business judgment, determine to have made the Successful Bid (the "Successful Bidder"). The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing.

The Sellers' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Sellers' acceptance of the bid, except with respect to the bid of the Proposed Purchaser as reflected in the Purchase Agreement (subject to higher or otherwise better Qualified Bids and subject to Bankruptcy Court approval). The Sellers will be deemed to have accepted any other bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

Following the Sale Hearing approving the Sale of the Purchased Assets to the Successful Bidder, if such Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of such Successful Bidder, the entity that had submitted the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, will be deemed to be the Successful Bid and the Sellers will be authorized, but not required, to consummate the Sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court.

Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders will be retained by the Sellers and all Qualified Bids will remain open until the end of the first business day following the closing of the Sale; provided, however, that in no event shall the Proposed Purchaser be required to make the Good Faith Deposit.

If a Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the Sellers will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit irrevocably will become property of the Sellers' estates.

Modifications

The Sellers may: (a) determine, in their sole discretion, which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid (other than that of the Proposed Purchaser) that, in the Sellers' sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures or the terms and conditions of the Purchase Agreement, or (iii) contrary to the best interests of the Sellers, their estates and their creditors. At or before the Sale Hearing, the Sellers may impose such other terms and conditions upon Qualified Bidders (other than the Proposed Purchaser) as they determine to be in the best interests of the Sellers' estates, their creditors and other parties in interest in these cases

Exhibit C

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
TOUCH AMERICA HOLDINGS, INC., et al.,) Case No. 03-11915 (KJC)
)
Debtors.) (Jointly Administered)

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE THAT:

Pursuant to the ORDER UNDER 11 U.S.C. §§ 105(a) AND 363 AND FED. R. BANKR. P. 2002 AND 6004: (I) APPROVING (A) NOTICE AND BIDDING PROCEDURES AND (B) BID PROTECTIONS, INCLUDING, BREAK-UP FEE, OVERBID PROTECTIONS, AND NO-SOLICITATION PROVISIONS IN CONNECTION WITH THE PROPOSED SALE OF CERTAIN OF THE DEBTORS' ASSETS; AND (II) SCHEDULING HEARING AND SETTING BIDDING AND OBJECTION DEADLINES IN CONNECTION WITH SUCH SALE (the "Procedures Order"),¹ approved by the United States Bankruptcy Court for the District of Delaware (the "Court") on _____, 2003, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), will conduct an auction of certain of the Debtors' assets (the "Purchased Assets"), including certain unexpired leases and executory contracts (the "Assumed Agreements").

The Sale Under the terms of the Asset Purchase Agreement, by and among 360networks Corporation (the "Proposed Purchaser"), and the Debtors (collectively, the "Sellers") (as amended from time to time, the "Purchase Agreement"), the Debtors propose to sell the Purchased Assets, and to assume and assign the Assumed Agreements, to the Proposed Purchaser, free and clear of liens, claims, encumbrances and interests (except for certain express assumed liabilities and permitted liens), all as more fully set forth in the Purchase Agreement, subject to higher and better offers and Court approval.

The Auction If a Qualified Bid (other than the Purchase Agreement) is received, the Debtors will conduct an auction (the "Auction") for the Purchased Assets beginning on July 23, 2003 at 9:30 a.m. (Eastern time) at the offices of _____. Attendance and participation at the Auction is subject to certain terms, conditions and procedures (collectively, the "Bidding Procedures") described in and annexed to the Procedures Order. All interested parties are invited to prequalify for the Auction and to present competing offers to purchase the Purchased Assets, including the Assumed Agreements in accordance with the Bidding Procedures.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures (as defined herein) or the Procedures Order (as applicable)

Bidding at the Auction will commence at the purchase price stated in the highest or otherwise best Qualified Bid (taking into account the Breakup Fee), and will subsequently continue in the increments established by the Bidding Procedures. At the conclusion of the bidding, the Debtors will announce their determination as to the person or entity (the "Successful Bidder") submitting the highest or otherwise best bid for the Purchased Assets (the "Successful Bid").

If the Debtors do not receive any Qualified Bids (other than that of the Proposed Purchaser), the Debtors will report the same to the Court, the Proposed Purchaser's bid will be deemed the Successful Bid, and the Debtors will proceed with the transactions contemplated by the Purchase Agreement. If, however, the Debtors receive one or more Qualified Bids in addition to the Purchase Agreement and the Auction is conducted, the Debtors will notify the Court of the results of the Auction and proceed with a sale to the Successful Bidder. The Debtors will be deemed to have accepted any other bid only when the bid has been approved by the Court at the Sale Hearing.

The Sale Hearing. A hearing (the "Sale Hearing") to approve the Sale of the Purchased Assets, including the assumption and assignment of the Assumed Agreements, to the Successful Bidder (the "Sale Order") will be held on July 28, 2003 at 2:00 p.m. in the United States Bankruptcy Court for the District of Delaware before the Honorable Kevin J. Carey, United States Bankruptcy Judge

Objections to the Sale of the Purchased Assets. Any objection to the entry of the Sale Order must (i) be in writing, (ii) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the District of Delaware, (iii) set forth the name of the objector, (iv) set forth the nature and amount of the objector's claims against or interests in the Debtors' estates or property, (v) state the legal and factual basis for the objection and the specific grounds therefor, (vi) be filed with the United States Bankruptcy Court for the District of Delaware, and (vii) be served upon counsel to the Debtors, Proposed Purchaser, any official statutory committee appointed in these cases, and the Office of the United States Trustee, so as to be actually received by no later than 4:00 p.m. (Eastern Time) on July 21, 2003

This notice is qualified in its entirety by the Procedures Order. All persons and entities are urged to read the Procedures Order and the provisions thereof carefully. To the extent this notice is inconsistent with the Procedures Order, the terms of the Procedures Order shall govern.

Copies of the Procedures Order, the Purchase Agreement and the motion seeking approval of the same are available upon written request to Bankruptcy Management Corporation, 1330 E. Franklin Ave., El Segundo, CA 90245.

Dated: July _____, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847)

Pauline K. Morgan (No. 3650)

Maureen D. Luke (No. 3062)

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Wilmington, DE 19899-0391

Telephone: (302) 571-6600

Counsel for Debtors

Exhibit D

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
TOUCH AMERICA HOLDINGS, INC., et al.,) Case No 03-11915 (KJC)
)
Debtors.) (Jointly Administered)

NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF CONTRACT(S)

PLEASE TAKE NOTICE that the above captioned debtors and debtors-in-possession (collectively, the "Debtors") filed the:

MOTION FOR ORDER, PURSUANT TO 11 U.S.C. §§ 105(a), 362, 363, 364, 365 AND 1146(c) AND FED. R BANKR. P. 2002, 6004 AND 6006, APPROVING (i) NOTICE AND BIDDING PROCEDURES, (ii) BID PROTECTIONS, INCLUDING A BREAK-UP FEE, AND (iii) ASSET PURCHASE AGREEMENT; (B) AUTHORIZING SALE AND TRANSFER OF ASSETS TO 360NETWORKS CORPORATION OR TO ANOTHER HIGHEST OR OTHERWISE BEST BIDDER; AND (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES (Docket No. __) (the "Sale Motion").

PLEASE TAKE FURTHER NOTICE that, on July 9, 2003, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") will hold a hearing to consider the relief requested in the Sale Motion with respect to the bidding procedures proposed therein.

PLEASE TAKE FURTHER NOTICE that, among other things, the Sale Motion seeks approval of the Asset Purchase Agreement, by and among 360networks Corporation (the "Purchaser"), and the Debtors (collectively, the "Sellers") (as amended from time to time, the "Purchase Agreement"), pursuant to which the Debtors are selling certain of their assets (the "Purchased Assets") and assuming and assigning certain executory contracts and unexpired leases (collectively, the "Proposed Assumed Contracts") to the Purchaser or an alternative successful bidder (a "Successful Bidder"), free and clear of liens, claims, encumbrances and interests (except for certain express assumed liabilities and permitted encumbrances), subject to higher and better offers in accordance with certain Court-approved bidding procedures, and Bankruptcy Court approval.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Purchase Agreement, the Sale Motion and the procedures sought to be approved thereby, the Debtors hereby provide notice of their intent to assume the Proposed Assumed Contracts identified on Exhibit 1 attached hereto, and to assign such Proposed Assumed Contracts to the Purchaser in connection with the proposed sale pursuant to terms of the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that, pursuant to Sections 2.8 and 2.9 of the Purchase Agreement, the Purchaser has (subject to certain time limitations described in the Purchase Agreement) the right to designate certain of the Proposed Assumed Contracts that the Purchaser does not intend to assume (all such contracts, the "Excluded Contracts"). The Debtors will send a notice (the "Excluded Contract Notice") to all counterparties to the Excluded Contracts informing them that, among other things, such Excluded Contracts will not be assumed and assigned pursuant to the Purchase Agreement

PLEASE TAKE FURTHER NOTICE that with respect to each Proposed Assumed Contract that is not an Excluded Contract (collectively, the "Assumed Contracts"), on the Closing Date, or as soon thereafter as practicable, the Debtors will pay, as the amount necessary to "cure" any and all "defaults" (each within the meaning of Bankruptcy Code section 365(b)) outstanding under such Assumed Contract, the amount (the "Cure Amount") set forth opposite such Assumed Contract on Exhibit 1 hereto. The Debtors' records reflect that other than the Cure Amount(s), all prepetition and postpetition amounts owing under the Assumed Contract(s) have been paid, and that there are no other defaults outstanding under the Assumed Contract(s). Postpetition amounts owing under the Assumed Contract(s) will continue to be paid by the Debtors until the assumption and assignment of the Assumed Contract(s)

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed assumption and assignment of any Proposed Assumed Contract in connection with the sale and as proposed in the Sale Motion, or to the amount of the Cure Amount stated on Exhibit 1 hereto with respect to such Proposed Assumed Contract, must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware, and be served upon counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Robert S. Brady, Esquire, counsel to the Proposed Purchaser, Willkie Farr and Gallagher, 787 Seventh Avenue, New York, New York 10019, Attn: Alan J. Lipkin, Esquire, counsel to any official statutory committee appointed in these cases, and the Office of the United States Trustee, 844 N. King Street, Room 2311, Wilmington, Delaware 19801, so as to be actually received by no later than 4:00 p.m. (Eastern Time) on July 21, 2003 (the "Objection Deadline"). Objections to the Cure Amount must state with specificity what cure amount is believed to be required, and provide appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that if no objection is filed and served as set forth above with respect to the proposed assumption and assignment of an Assumed Contract, (a) the applicable Assumed Contract shall be assigned to the Purchaser (or the Successful Bidder, as the case may be; hereafter, this qualification is implied, where applicable,) on the Closing Date, (b) the Cure Amount shall be fixed at the amount set forth on Exhibit 1 hereto, notwithstanding anything to the contrary in any Assumed Contract or any other document, and (c) the non-Debtor party to such Assumed Contract shall be (i) deemed to have waived and

released any right to assert an objection to the proposed assumption and assignment of its Assumed Contract or the Cure Amount with respect thereto, and to have otherwise consented to the assumption and assignment of such Assumed Contract, and (ii) forever barred, permanently enjoined and estopped from asserting or claiming any other or further claims against the Debtors, their estates, the Purchaser, their respective successors and assigns, the Purchased Assets, or the property or assets of any or all such parties, as to such Assumed Contract or on grounds that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such Assumed Contract, except with respect to defaults occurring wholly after the Closing Date.

PLEASE TAKE FURTHER NOTICE that, upon assignment, the Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including provisions of the type described in sections 365(b)(2), (e)(1) and (f)(1) of the Bankruptcy Code) which prohibits, restricts or conditions such assignment or transfer. Unless a non-Debtor party to an Assumed Contract objects to the Sellers' assumption and assignment thereof to the Purchaser as set forth above, and such objection is sustained by the Bankruptcy Court, the non-Debtor party to such Assumed Contract shall be deemed to have consented to such assignment under Bankruptcy Code section 365(c)(1)(B), and the Purchaser shall enjoy all of the rights and benefits under each such Assumed Contract as of the applicable assumption date, without the necessity of obtaining such non-Debtor party's consent to the assumption and assignment thereof.

PLEASE TAKE FURTHER NOTICE that, upon assignment of the Assumed Contracts, the Purchaser is assuming all liabilities arising under the Assumed Contracts on and after the Closing Date, and the Debtors and their estates shall be relieved from any liability for any breach of any Assumed Contract after such assignment to and assumption by the Purchaser.

PLEASE TAKE FURTHER NOTICE that if the Sale Order (as defined in the Purchase Agreement) is entered, Purchaser will have no liability or responsibility for any liability or other obligation of the Debtors arising under any Assumed Contract prior to the assignment to and assumption by the Purchaser of such Assumed Contract on the applicable assumption date, except as provided in the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that, upon assignment of the Assumed Contracts, no default shall exist under any Assumed Contract and no non-Debtor party to any Assumed Contract shall be permitted to declare a default by the Purchaser under such Assumed Contract or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the Assumed Contract, including any failure to pay any amounts necessary to cure any Debtor's defaults thereunder. Upon entry of the Sale Order (as defined in the Purchase Agreement) and assumption and assignment of the Assumed Contracts, the Purchaser shall be deemed in compliance with all terms and provisions of such Assumed Contracts.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed and served to the assumption and assignment of an Assumed Contract, a hearing with respect to the objection will be held on July 28, 2003 at 2:00 p.m. in the United States Bankruptcy Court for

the District of Delaware, before the Honorable Kevin J. Carey, United States Bankruptcy Judge, or on such other date and time as the Bankruptcy Court may schedule.

Copies of the Sale Motion, the Procedures Order and related documents are available upon written request to Bankruptcy Management Corporation, 1330 E. Franklin Ave., El Segundo, CA 90245

Dated: July ____, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847)

Pauline K. Morgan (No. 3650)

Maureen D. Luke (No. 3062)

Edward J. Kosmowski (No. 3849)

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Wilmington, DE 19899-0391

Telephone: (302) 571-6600

Counsel for Debtors

Exhibit E

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
TOUCH AMERICA HOLDINGS, INC., et al.,) Case No. 03-11915 (KJC)
)
Debtors.) (Jointly Administered)

NOTICE OF ADDITIONAL ASSUMPTION AND ASSIGNMENT OF CONTRACT(S)

PLEASE TAKE NOTICE that the above captioned debtors and debtors-in-possession (collectively, the "Debtors") filed the:

MOTION FOR ORDER, PURSUANT TO 11 U.S.C. §§ 105(a), 362, 363, 364, 365 AND 1146(c) AND FED. R. BANKR. P 2002, 6004 AND 6006, APPROVING (i) NOTICE AND BIDDING PROCEDURES, (ii) BID PROTECTIONS, INCLUDING A BREAK-UP FEE, AND (iii) ASSET PURCHASE AGREEMENT; (B) AUTHORIZING SALE AND TRANSFER OF ASSETS TO 360NETWORKS CORPORATION OR TO ANOTHER HIGHEST OR OTHERWISE BEST BIDDER; AND (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES (Docket No. __) (the "Sale Motion").

PLEASE TAKE FURTHER NOTICE that, on _____, 2003, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered an Order approving the relief requested in the Sale Motion [Docket No] (the "Sale Order").

PLEASE TAKE FURTHER NOTICE that, among other things, the Sale Order approved the Asset Purchase Agreement, by and among _____ (the "Purchaser"), and the Debtors (collectively, the "Sellers") (as amended from time to time, the "Purchase Agreement"), pursuant to which the Debtors are selling certain of their assets (the "Purchased Assets") and assuming and assigning certain executory contracts and unexpired leases (collectively, the "Assumed Contracts") to the Purchaser, free and clear of liens, claims, encumbrances and interests (except for certain express assumed liabilities and permitted encumbrances).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Purchase Agreement, the Sale Motion and the Sale Order, the Debtors hereby provide notice of their intent to assume the additional contracts (the "Additional Assumed Contracts") identified on Exhibit 1 attached hereto, and to assign such Additional Assumed Contracts to the Purchaser in connection with the sale pursuant to terms of the Purchase Agreement

PLEASE TAKE FURTHER NOTICE that with respect to each Additional Assumed Contract, the Debtors will pay, as the amount necessary to "cure" any and all "defaults" (each within the meaning of Bankruptcy Code section 365(b)) outstanding under such Additional Assumed Contract, the amount (the "Cure Amount") set forth opposite such Additional Assumed Contract on Exhibit 1 hereto. The Debtors' records reflect that other than the Cure Amount(s), all prepetition and postpetition amounts owing under the Additional Assumed Contract(s) have been paid, and that there are no other defaults outstanding under the Additional Assumed Contract(s). Postpetition amounts owing under the Additional Assumed Contract(s) will continue to be paid by the Debtors until the assumption and assignment of the Additional Assumed Contract(s). The Purchaser will be responsible for the payment under the Additional Assumed Contracts for the amounts incurred after the date of such assignment.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed assumption and assignment of any Additional Assumed Contract in connection with the sale and as approved in the Sale Order, or to the amount of the Cure Amount stated on Exhibit 1 hereto with respect to such Additional Assumed Contract, must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware, and be served upon counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Robert S. Brady, Esquire, counsel to the Proposed Purchaser, Willkie Farr and Gallagher, 787 Seventh Avenue, New York, New York 10019, Attn: Alan J. Lipkin, Esquire, counsel to any official statutory committee appointed in these cases, and the Office of the United States Trustee, 844 N. King Street, Room 2311, Wilmington, Delaware 19801, so as to be actually received by no later than 4:00 p.m. (Eastern Time) on _____, 2003 (the "Objection Deadline"). Objections to the Cure Amount must state with specificity what cure amount is believed to be required, and provide appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that if no objection is filed and served as set forth above with respect to the proposed assumption and assignment of an Additional Assumed Contract, (a) the applicable Additional Assumed Contract shall be assigned to the Purchaser on the applicable date listed in Exhibit 1 hereto (in accordance with the terms of the Purchase Agreement), (b) the Cure Amount shall be fixed at the amount set forth on Exhibit 1 hereto, notwithstanding anything to the contrary in any Additional Assumed Contract or any other document, and (c) the non-Debtor party to such Additional Assumed Contract shall be (i) deemed to have waived and released any right to assert an objection to the proposed assumption and assignment of the applicable Additional Assumed Contract or the Cure Amount with respect thereto, and to have otherwise consented to the assumption and assignment of such Additional Assumed Contract, and (ii) forever barred, permanently enjoined and estopped from asserting or claiming any other or further claims against the Debtors, their estates, the Purchaser, their respective successors and assigns, the Purchased Assets, or the property or assets of any or all such parties, as to such Additional Assumed Contract or on grounds that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such Additional Assumed Contract, except with respect to defaults occurring wholly after the applicable assumption date.

PLEASE TAKE FURTHER NOTICE that, upon assignment, the Additional Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding any provision in any such Additional Assumed Contract (including provisions of the type described in sections 365(b)(2), (e)(1) and (f)(1) of the Bankruptcy Code) which prohibits, restricts or conditions such assignment or transfer. Unless a non-Debtor party to an Additional Assumed Contract objects to the Sellers' assumption and assignment thereof to the Purchaser as set forth above, and such objection is sustained by the Bankruptcy Court, the non-Debtor party to such Additional Assumed Contract shall be deemed to have consented to such assignment under Bankruptcy Code section 365(c)(1)(B), and the Purchaser shall enjoy all of the rights and benefits under each such Additional Assumed Contract as of the applicable assumption date, without the necessity of obtaining such non-Debtor party's written consent to the assumption and assignment thereof.

PLEASE TAKE FURTHER NOTICE that, upon assignment of the Additional Assumed Contracts, the Purchaser is assuming all liabilities arising under the Additional Assumed Contracts on and after the applicable assumption date, and the Debtors and their estates shall be relieved from any liability for any breach of any Additional Assumed Contract after such assignment to and assumption by the Purchaser on the applicable assumption date.

PLEASE TAKE FURTHER NOTICE that Purchaser will have no liability or responsibility for any liability or other obligation of the Debtors arising under any Additional Assumed Contract prior to the assignment to and assumption by the Purchaser of such Additional Assumed Contract on the applicable assumption date, except as provided in the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that, upon assignment of the Additional Assumed Contracts, no default shall exist under any Additional Assumed Contract and no non-Debtor party to any Additional Assumed Contract shall be permitted to declare a default by the Purchaser under such Additional Assumed Contract or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the Additional Assumed Contract, including any failure to pay any amounts necessary to cure any Debtor's defaults thereunder. Upon assumption and assignment of the Additional Assumed Contracts, the Purchaser shall be deemed in compliance with all terms and provisions of such Additional Assumed Contracts

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed and served to the assumption and assignment of an Additional Assumed Contract, a hearing with respect to the objection will be held on _____, 2003 at ____:____ m. in the United States Bankruptcy Court for the District of Delaware, before the Honorable Kevin J. Carey, United States Bankruptcy Judge, or on such other date and time as the Bankruptcy Court may schedule.

Dated: July ____, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847)

Pauline K. Morgan (No. 3650)

Maureen D. Luke (No. 3062)

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Counsel for Debtors

Exhibit B

The Sale Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)
) Chapter 11
)
TOUCH AMERICA HOLDINGS, INC , et al.,) Case No. 03-11915 (KJC)
)
Debtors.) (Jointly Administered)

**ORDER UNDER 11 U.S.C. §§ 105(a), 362, 363, 364, 365 AND
1146(c) AND FED. R. BANKR. P. 2002, 6004 AND 6006
AUTHORIZING AND APPROVING: (I) ASSET PURCHASE
AGREEMENT; (II) SALE OF CERTAIN OF THE DEBTORS'
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES; (III) ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; AND (IV) CERTAIN RELATED RELIEF**

Upon the motion (the "Motion"), of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for, among other things, entry of an order (the "Sale Order") under 11 U.S.C. §§ 105(a), 362, 363, 364, 365 and 1146(c) and Fed. R. Bankr. P. 2002, 6004 and 6006 (i) approving the Asset Purchase Agreement (as amended from time to time, the "Purchase Agreement")¹ by and among 360networks Corporation (the "Purchaser") and those of the Debtors party to the Purchase Agreement (collectively, the "Sellers"), a copy of which is attached hereto as Exhibit A, and certain Ancillary Agreements, substantially in the forms attached as exhibits to the Purchase Agreement, (ii) authorizing the Sellers to sell (the "Sale") to the Purchaser certain assets (as defined more specifically in the Purchase Agreement, the "Purchased Assets") free and clear of all free and clear of all Encumbrances (as defined herein), and exempt under 11 U.S.C. § 1146(c) from any stamp, transfer, sales, recording or similar tax,

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Agreement, as the case may be

(iii) authorizing the assumption and assignment of the Assumed Agreements, and (iv) granting certain related relief; and this Court having entered an order on _____, 2003 (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures with respect to, and notice of, the Sale; and the Auction having been conducted in accordance with the Bidding Procedures Order; and the Sellers having determined that the Purchaser has submitted the highest or otherwise best bid for the Purchased Assets; and a hearing having been held on _____, 2003 (the “Sale Hearing”); and adequate and sufficient notice of the Bidding Procedures, the Purchase Agreement and all transactions contemplated thereunder and in this Sale Order having been given to all parties in interest in these cases; and all such parties having been afforded an opportunity to be heard with respect to the Motion and all relief requested therein; and the Court having reviewed and considered: (i) the Motion; (ii) the objections thereto if any; and (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and after due deliberation thereon; and good and sufficient cause appearing therefor, it hereby is

FOUND AND DETERMINED THAT:²

A This Court has jurisdiction over the Motion under 28 U.S.C §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409

B The statutory predicates for the relief sought in the Motion are sections 105(a), 362, 363, 364 365 and 1146(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (as

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate See Fed. R. Bankr. P. 7052.

amended, the “Bankruptcy Code”), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

C. This Court entered the Bidding Procedures Order on _____, 2003, and the Bidding Procedures Order has become a final and non-appealable order.

D. As evidenced by the affidavits of service and publication filed with this Court and based on representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Sale and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Assumed Agreements, has been provided in accordance with Bankruptcy Code sections 102(1), 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006, and in compliance with the Bidding Procedures and the Purchase Agreement; (ii) such notice was good, sufficient and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Sale Hearing, the Sale or the transactions contemplated thereby (including, without limitation, the assumption and assignment of the Assumed Agreements), is or shall be required.

E. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee; (ii) counsel to the Purchaser; (iii) counsel to the Official Committee of Unsecured Creditors appointed in these cases (the “Committee”); (iv) WLR Recovery Fund II, LP (the “DIP Lender”); (v) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (vi) all entities known to have asserted any Lien in or upon any of the Purchased Assets; (vii) all federal, state and local taxing authorities that have jurisdiction over the Relevant Business; (viii) all regulatory authorities or recording offices that

have a reasonably known interest in the relief requested in the Motion; (ix) all governmental agencies having jurisdiction over the Relevant Business with respect to environmental laws; (x) parties to governmental approvals or permits applicable to the Relevant Business; (xi) the United States Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (xii) the Federal Communications Commission and applicable state public utility commissions; (xiii) the Securities and Exchange Commission; (xiv) all non-Debtor parties to the Initial Assumed Agreements; and (xv) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of the Bidding Procedures Order

F. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale Motion are deemed to have consented to the Sale on the terms contained herein pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who did object are adequately protected by having their Encumbrances, if any, attach to the cash proceeds of the Sale, subject to the terms hereof. Accordingly, the Sellers may sell the Purchased Assets free and clear of all Encumbrances because each entity benefiting from an Encumbrance with respect to any Purchased Assets to be transferred on the Closing Date: (i) has consented to the Sale (including the assumption and assignment of the Initial Assumed Agreements) or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Encumbrance; or (iii) the provisions of section 363(f) of the Bankruptcy Code otherwise have been satisfied.

G Good and sufficient reasons for approval of the Purchase Agreement and the Sale have been articulated. The relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

H. The Debtors have demonstrated both: (i) good, sufficient and sound business purpose and justification; and (ii) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to Bankruptcy Code section 363(b), in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value of the Debtors' estates; the Sale will provide the means for the Debtors to maximize distributions to creditors and enable the successful confirmation of a chapter 11 plan; and absent consummation of the Sale, the Debtors may be forced to immediately discontinue their operations and liquidate.

I. Each Seller has full corporate power and authority to execute the Purchase Agreement, and all other documents contemplated thereby (including, without limitation, the Ancillary Agreements), and to consummate the transactions contemplated by the Purchase Agreement. The Purchase Agreement and all of the transactions contemplated thereby have been duly and validly authorized by all necessary corporate action of each of the Sellers. No consents or approvals, other than the consent and approval of this Court and those expressly provided for in the Purchase Agreement, are required for each of the Sellers to consummate the Sale.

J. The Purchase Agreement was negotiated, proposed and entered into by the Sellers and the Purchaser without collusion, in good faith and from arm's-length bargaining positions. The Purchaser is not an "insider" of any of the Debtors, as that term is defined in Bankruptcy Code section 101. Neither the Debtors nor the Purchaser have engaged in any conduct that

would cause or permit the Purchase Agreement to be avoided under Bankruptcy Code section 363(n).

K. The Purchaser is a good faith purchaser under Bankruptcy Code section 363(m) and, as such, is entitled to all of the protections afforded thereby. The Purchaser will be acting in good faith within the meaning of Bankruptcy Code section 363(m) in closing the transactions contemplated by the Purchase Agreement and at all times after the entry of this Sale Order.

L. The consideration to be provided by the Purchaser pursuant to the Purchase Agreement: (i) is fair and reasonable; (ii) is the highest and best offer for the Purchased Assets; and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

M. The Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

N. The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement will be a legal, valid, and effective transfer of the Purchased Assets, and vests or will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of Liens (as such term is defined in the Bankruptcy Code) (other than the Permitted Liens), Claims (as such term is defined in the Bankruptcy Code), liabilities (other than the Assumed Liabilities), equity interests, mortgages, security interests, conditional sales or other title retention agreements, pledges, claims, judgments, demands, encumbrances (including, without limitation, Claims: (i) that purport to give to any party a right or option to effect any forfeiture,

modification or termination of the Sellers' or the Purchaser's interests in the Purchased Assets; or (ii) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (all of the foregoing, collectively, the "Encumbrances"), with all such Encumbrances to attach to the Sellers' interest in the proceeds of the Sale (the "Sale Proceeds").

O. Neither the Purchaser nor its affiliates, successors or assigns, as a result of any action taken in connection with the purchase of the Purchased Assets: (a) is a successor to the Debtors; (b) has, de facto or otherwise, merged with or into the Debtors; or (c) is a continuation or substantial continuation of the Debtors or any enterprise of the Debtors.

P. The Sale must be approved and consummated promptly in order to preserve the viability of the Debtors' businesses as a going concern, to maximize the value of the Debtors' estates and to position the Debtors to emerge from chapter 11. The Sale is a prerequisite to the Debtors' ability to confirm and consummate a Chapter 11 plan. The Sale is in contemplation of a chapter 11 plan and, accordingly, constitutes a transfer to which Bankruptcy Code section 1146(c) applies.

Q. The Debtors have demonstrated that assuming and assigning the Initial Assumed Agreements in connection with the Sale is an exercise of their sound business judgment, and that such assumption and assignment is in the best interests of the Debtors' estates.

R. The Purchaser is deemed to have provided adequate assurance of future performance with respect to each Initial Assumed Contract.

S As of the Closing Date, subject to the payment of the applicable Cure Amounts, each Initial Assumed Agreement will be in full force and effect and enforceable against the non-Debtor party thereto in accordance with its terms.

T The Debtors have or will have, to the extent necessary, satisfied the requirements of Bankruptcy Code sections 365(b)(1) and 365(f) in connection with the assumption and assignment of the Initial Assumed Agreements, and shall, upon the payment of the Cure Amounts and the assignment thereof to the Purchaser on the Closing Date, be relieved from any liability for any breach thereof; and therefore it hereby is

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED (other than with respect to matters already addressed by the Procedures Order)
2. Any objections to the entry of this Sale Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are denied and overruled on the merits with prejudice.

Approval of the Purchase Agreement

3. The Purchase Agreement and the Ancillary Agreements and all of the terms and conditions thereof, including, but not limited to, the sale of the Purchased Assets and assumption of the Assumed Liabilities, in exchange for the consideration provided in the Purchase Agreement, are hereby approved.
4. Pursuant to Bankruptcy Code section 365, the Debtors will be deemed to have assumed the Purchase Agreement as of the Closing Date.

5 Pursuant to Bankruptcy Code sections 363(b) and (f), the Debtors are authorized and (subject to the applicable closing conditions set forth in the Purchase Agreement) directed to consummate the Sale, pursuant to and in accordance with the terms and conditions of the Purchase Agreement.

6 The Debtors are authorized and (subject to the applicable closing conditions set forth in the Purchase Agreement) directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, collectively with all additional instruments and documents (including, without limitation, the Ancillary Agreements) that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be requested by the Purchaser for the purpose of transferring the Purchased Assets to the Purchaser or as may be necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Purchase Agreement, the Ancillary Agreements, or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

Transfer of Purchased Assets

7. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Sale Order, pursuant to Bankruptcy Code sections 105(a) and 363(f), the Purchased Assets shall be transferred to the Purchaser and, as of the Closing Date or the applicable Assumption Date, as the case may be, shall be free and clear of all Encumbrances, with all such Encumbrances to attach to the Sale Proceeds, in the order of their priority, with the

same validity, force and effect which they now have against the Purchased Assets, subject to any rights, claims and defenses the Debtors may possess with respect thereto.

8. Except as expressly permitted by the Purchase Agreement, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, holding Encumbrances on the Purchased Assets (whether based on Claims that are legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date or the transfer of the Purchased Assets to the Purchaser, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing against the Purchaser, its property, its successors and assigns, its affiliates or the Purchased Assets, such persons' or entities' Interests or Claims (with the exception of Permitted Liens and Assumed Liabilities). Following the Closing Date, no holder of an Encumbrance against the Debtors (other than holders of Permitted Liens or Assumed Liabilities) shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets on the basis of such Encumbrances, and all such Encumbrances, if any, shall be, and hereby are channeled, transferred and attached solely and exclusively to the Sale Proceeds.

9 The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement shall not result in: (i) the Purchaser having any liability or responsibility for any Claim against the Debtors or against an insider of the Debtors (other than for Permitted Liens or

Assumed Liabilities); or (ii) the Purchaser having any liability or responsibility to the Debtors except pursuant to the Purchase Agreement, the Ancillary Agreements and this Sale Order.

10. The Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets other than as expressly set forth in the Purchase Agreement. Without limiting the effect or scope of the foregoing, the transfer of the Purchased Assets from the Debtors to the Purchaser does not and will not subject the Purchaser or its employees, officers, directors, advisors, affiliates, successors or assigns or their respective properties (including the Purchased Assets) to any liability for Claims against the Debtors or the Purchased Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions. Neither the Purchaser nor its affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets to: (a) be a successor to the Debtors; (b) have, de facto or otherwise, merged with or into any of the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of any of the Debtors. Neither the Purchaser nor its affiliates, successors or assigns is acquiring or assuming any liability, warranty or other obligation of the Debtors, including, without limitation, any tax incurred but unpaid by the Debtors prior to the Closing Date, including, but not limited to, any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, fixed or audited, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, except as otherwise expressly provided in the Purchase Agreement.

11. The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid and effective transfer of the Purchased Assets, and shall vest the Purchaser with all right, title and interest of the Debtors in and to the Purchased Assets free and clear of all Encumbrances.

12. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets or a bill of sale transferring good and marketable title in the Purchased Assets to the Purchaser. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement

13. This Order is and shall be effective as a determination that, all Encumbrances (including, without limitation, all Liens other than Permitted Liens) shall be, and are, without further action by any person or entity, released with respect to the Purchased Assets as of the Closing Date (or with respect to Assumed Contracts and Assumed Leases assumed after the Closing Date, as of the Assumption Date).

14. This Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, public utility commissions, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any

documents or instruments, or who may be required to report or insure, or approve the transfer of, any title or state of title in or to any of the Purchased Assets.

15 The transactions contemplated by the Purchase Agreement, and the execution, delivery and/or recordation of any and all documents or instruments necessary or desirable to consummate the transactions contemplated by the Purchase Agreement shall be, and hereby are, exempt from the imposition and payment of all recording fees and taxes, stamp taxes and/or sales, transfer or any other similar taxes, pursuant to section 1146(c) of the Bankruptcy Code.

**Assumption and Assignment
of Assumed Agreements**

16. The Debtors are authorized, in accordance with Bankruptcy Code sections 105(a), 363 and 365, to: (a) subject to the payment of the relevant Cure Amounts, assume and assign to the Purchaser, effective upon the Closing Dates, all of Sellers' right, title and interest in and to the Initial Assumed Agreements, free and clear of all Encumbrances; and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer such right, title and interest to the Purchaser.

17. Subject to the payment of the applicable Cure Amounts, the Initial Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract or Assumed Lease (including provisions of the type described in sections 365(b)(2), (e)(1) and (f)(1) of the Bankruptcy Code) which prohibits, restricts or conditions such assignment or transfer. The non-Debtor party to each Initial Assumed Agreement shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Purchaser shall enjoy all of the rights and benefits under each such Initial

Assumed Agreement as of the applicable Assumption Date without the necessity of obtaining such non-Debtor party's written consent to the assumption and assignment thereof.

18 Pursuant to section 365(k) of the Bankruptcy Code, as of the Closing Date, the Debtors and their estates shall be relieved from any liability for any breach of any Initial Assumed Agreement

19. If the counter party to any Assumed Agreement has not objected to the applicable Cure Amount listed by the Debtors, upon payment of said Cure Amount by the Debtors, such counter party shall be forever barred, estopped, and permanently enjoined from asserting against the Debtors, their estates, the Proposed Purchaser, or the property of any of them, any default existing as of the Closing Date, and the payment of the Cure Amount shall be in full satisfaction of (i) any and all defaults or offsets under such counterparty's Assumed Agreement and (ii) any and all claims that may arise against the Debtor in connection with such Assumed Agreement. If the Debtors receive a Cure Amount Objection with respect to any Initial Assumed Agreement, they shall attempt to resolve such disputed Cure Amount with the party asserting the objection. If consensual resolution of the Cure Amount Objection cannot be reached, the Debtors will: (i) pay in full the undisputed portion of such Cure Amount on or before the Closing Date; and (ii) segregate the disputed portion of such Cure Amount (the "Segregated Amounts") pending the resolution of the Cure Amount Objection by this Court or by mutual agreement of the parties. On and after the Closing Date, an objector's only recourse for satisfaction of its Cure Amount shall be to the Segregated Amounts.

20 Subject to the terms hereof with respect to the Segregated Amounts, all defaults or other obligations of the Debtors under the Initial Assumed Agreements arising or accruing prior

to the Closing Date have been cured or shall promptly be cured by the Debtors in accordance with the terms hereof such that the Purchaser shall have no liability or obligation with respect to any default or obligation under any Initial Assumed Agreement arising or accruing prior to the Closing Date. Each non-Debtor party to any Initial Assumed Agreement is forever barred, estopped and permanently enjoined from asserting against the Purchaser or its property or affiliates, or any thereof, any breach or default under any Initial Assumed Agreement, any claim of lack of consent relating to the assignment thereof, or any counterclaim, defense, setoff, right of recoupment or any other matter arising prior to the Closing Date for such Initial Assumed Agreement or with regard to the assumption and assignment thereof pursuant to the Purchase Agreement or this Order.

21. Upon payment of the Cure Amounts (or segregating appropriate amounts with respect to such Cure Amounts in accordance herewith) and assignment of the Initial Assumed Agreements to the Purchaser on the Closing Date, no default shall exist under any Initial Assumed Agreement, and no non-Debtor party to any Initial Assumed Agreement shall be permitted to declare a default by the Purchaser under such Initial Assumed Agreement or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the Initial Assumed Agreements. Upon entry of this Sale Order and assumption and assignment of the Initial Assumed Agreements, the Purchaser shall be deemed in compliance with all terms and provisions of the Initial Assumed Agreements.

22. Sellers shall diligently and in good faith pursue the assumption by the applicable Debtors and assignment to the Purchaser of any Undesignated Agreements that subsequently

become Assumed Contracts or Assumed Leases pursuant to Section 2.9 of the Purchase Agreement, and shall cooperate with the Purchaser in securing any counter-party consents that in the Purchaser's judgment are necessary or appropriate given the nature or legal status of the particular contract or lease with respect to which assumption and assignment is sought.

Additional Provisions

23. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement is fair and reasonable and may not be avoided under Bankruptcy Code section 363(n).

24. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Purchaser, unless such authorization is duly stayed pending such appeal. The Purchaser is a good-faith purchaser of the Purchased Assets, and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m).

25. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith (including, but not limited to, the Ancillary Agreements) in all respects, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel assumption of the Assumed Liabilities by the Purchaser; (c) resolve any disputes arising under or related to the

Purchase Agreement, except as otherwise provided therein, and (d) interpret, implement and enforce the provisions of this Sale Order.

26 Pursuant to section 364(c)(1) of the Bankruptcy Code, the Purchaser's claims (i) in respect of the Adjustments, including interest with respect thereto; and (ii) in respect of certain specified indemnification obligations of the Sellers pursuant to Section 10.2 of the Purchase Agreement, shall have priority over any and all administrative expenses of the kinds specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code, subject only to the superpriority claims granted to the DIP Lender

27 All entities who are presently, or on the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements) may be, in possession of some or all of the Purchased Assets hereby are directed to surrender possession of the Purchased Assets either to: (i) the Debtors prior to the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements), for subsequent transfer to the Purchaser on the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements); or (ii) to the Purchaser on the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements).

28. On or before the Closing Date (or the applicable Assumption Date), each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Purchased Assets, if any, as such Interests may have been recorded or otherwise exist.

29 If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens or other documents or agreements evidencing Encumbrances with respect to the Debtors and/or the Purchased Assets shall not have delivered to the Debtors and the Purchaser prior to the Closing Date (or relevant Assumption Date, as the case may be), in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to the Debtors and/or the Purchased Assets or otherwise, then: (i) the Debtors hereby are authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such assets and contracts; and (ii) the Purchaser hereby is authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances on the Purchased Assets as of the Closing Date (or the applicable Assumption Date, as the case may be) of any kind or nature whatsoever (other than the Permitted Liens and Assumed Liabilities)

30. Any amounts payable by the Sellers pursuant to the Purchase Agreement or any of the documents delivered by the Sellers pursuant to or in connection with the Purchase Agreement shall: (i) constitute administrative priority expenses of the Sellers' estates pursuant to Bankruptcy Code sections 503(b) and 507(a)(1), except as otherwise specifically provided in the Purchase Agreement; (ii) be paid by the Sellers in the time and manner provided in the Purchase Agreement without further order of this Court; and (iii) not be discharged, modified or otherwise affected by any plan of reorganization of any of the Sellers.

31. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, the Purchaser and their respective affiliates, successors and assigns, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding

32. All persons who hold Encumbrances on (other than Permitted Liens and Assumed Liabilities) the Debtors are forever barred, estopped and permanently enjoined from asserting or prosecuting any claims or causes of action against the Purchaser, its affiliates, or any of its respective officers, directors, employees, attorneys or advisors, arising out of or in connection with the Sale.

33. After the Closing Date, no person or entity, including, without limitation, any federal, state or local taxing authority, may: (a) attach or perfect a lien or security interest against any of the Purchased Assets on account of; or (b) collect or attempt to collect from the Purchaser or any of its affiliates, any tax (or other amount alleged to be owing by one or more of the Debtors) (i) for any period commencing before and concluding prior to or after the Closing Date, or (ii) assessed prior to and payable after the Closing Date, except as otherwise specifically provided in the Purchase Agreement

34. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the Purchase Agreement.

35. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the

Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

36. Nothing contained in any chapter 11 plan confirmed in these cases or any order confirming any such plan or in any other order in these cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Purchase Agreement or this Sale Order.

37. The failure specifically to include any particular provisions of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent.

38. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and 6006(d), this Sale Order shall not be stayed for ten (10) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein and the Debtors and the Purchaser intend to close the Sale as soon as practicable. Therefore, any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

Dated: Wilmington, Delaware
 _____, 2003

JUDGE

Exhibit C

The Purchase Agreement

ASSET PURCHASE AGREEMENT

BY AND AMONG

360NETWORKS CORPORATION

TOUCH AMERICA HOLDINGS, INC.

AND

THE SUBSIDIARIES OF TOUCH AMERICA HOLDINGS, INC.
LISTED ON THE SIGNATURE PAGE HERETO

DATED AS OF JUNE 19, 2003

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of June 19, 2003, is entered into by and among Touch America Holdings, Inc., a Delaware corporation (including any successor, "Touch America"), and the direct and indirect subsidiaries of Touch America listed on the signature pages hereto, (including their respective successors, each a "Seller" and together with Touch America, the "Sellers"); and 360networks Corporation (including its successors and permitted assigns, "Purchaser"), a corporation continued federally under the laws of Canada

RECITALS

WHEREAS, Touch America is engaged directly and through the other Sellers and their corporate Affiliates, in the Business; and

WHEREAS, Touch America and the other Sellers intend to file voluntary petitions for relief pursuant to Section 301 of Title 11 of the United States Code, 11 U.S.C. Section 101 et seq. (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court (the "Bankruptcy Court") for the District of Delaware (the "Bankruptcy Cases"); and

WHEREAS, Touch America owns, directly or indirectly, all of the issued and outstanding equity interest of each other Seller; and

WHEREAS, Sellers desire to sell and transfer to Purchaser, and Purchaser desires to purchase and assume from Sellers, the Purchased Assets and Purchaser is willing to assume, and Sellers desire that Purchaser assume, the Assumed Liabilities; and

WHEREAS, upon the terms and subject to the conditions set forth herein, and as authorized under Sections 105, 363, 365 and 1146 of the Bankruptcy Code, Purchaser will purchase from Sellers the Purchased Assets and Purchaser will assume from Sellers the Assumed Liabilities; and

WHEREAS, certain terms used in this Agreement are defined in Article I.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings specified in this Section:

"Additional Relevant Equipment Locations" means those facility locations generally depicted on Schedule 1.11.

"Adjustments" shall have the meaning set forth in Section 2.4.

"Adjustment Report" has the meaning set forth in Section 2.6(a).

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by Contract or otherwise.

"Aged Property Taxes" shall have the meaning set forth in Section 6.3(b).

"Agreement" shall have the meaning set forth in the preamble, and shall include all Schedules and Exhibits hereto.

"Alternative Transaction" means any one of the following transactions with or by a Third Party: (a) a merger, consolidation or similar transaction involving any Seller, or (b) a sale, lease or other disposition directly or indirectly by merger, consolidation, tender offer, share exchange or otherwise of Purchased Assets representing 5% or more of the aggregate Purchased Assets; provided that this definition shall not include any transaction relating to the Excluded Matters; provided, however, that as used in Article XII, the phrase "representing 5% or more of" in the foregoing clause (b) shall be replaced with the words "representing 10% or more of the Purchased Assets".

"Ancillary Agreements" means, collectively, the Transition Services Agreement, the Assumption Agreement, the Bill of Sale, the Escrow Agreement, the Hennessy Building POP Lease and the Intellectual Property Assignment Agreement.

"Arbiter" shall have the meaning set forth in Section 2.7(b).

"Assessment Date" means with respect to each Governmental Agency that imposes Property Taxes, the calendar date as of which the amount of the real or personal property tax is fixed for purposes of determining the amount of the Property Tax payable. The Assessment Date for certain states is set forth in Schedule 1.7.

"Assumed Contracts" means the Contracts to which any Seller is a party, which are: (a) set forth on Schedule 1.1, (b) Assumed Customer Contracts, or (c) Undesignated Agreements which, on or prior to the applicable Election Date, Purchaser elects, in writing, in accordance with this Agreement, to require Seller to assume and assign to Purchaser.

"Assumed Customer Contract" shall have the meaning set forth in Section 2.8(b)

"Assumed Leases" means the Leases to which any Seller is a party, which are: (a) set forth on Schedule 1.2 and Schedule 1.2.1, or (b) Undesignated Agreements which, on or prior to the applicable Election Date, Purchaser elects, in writing, in accordance with this Agreement, to require Seller to assume and assign to Purchaser.

"Assumed Liabilities" means only the following Liabilities of Sellers relating to the Relevant Business: (a) with respect to Assumed Contracts and Assumed Leases, any Liability arising with respect to the performance after the Assumption Date of the Assumed Contracts and the Assumed Leases, excluding any Liability resulting from any breach thereof by any Seller on or prior to the Assumption Date, (b) any Liability arising after the Closing Date in connection with the operation of the Relevant Business or the ownership of the Purchased Assets by Purchaser, (c) Straddle Period Property Taxes to the extent provided in Section 6.3(a), and (d) service credits pursuant to service level agreements that constitute Assumed Customer Contracts, only to the extent that the amount of such service credits results in an Adjustment pursuant to Section 2.4(a); in each case excluding Excluded Liabilities.

"Assumption Agreement" means the Assumption Agreement to be executed at Closing by Purchaser, in the form attached hereto as Exhibit A

"Assumption Date" means the date as of which an Assumed Contract or Assumed Lease is assumed by a Seller in the Bankruptcy Cases and assigned to the Purchaser pursuant to an Order of the Bankruptcy Court (which may be the Sale Order), in accordance with the terms of this Agreement. The Assumption Date with respect to the Assumed Contracts listed on Schedule 1.1, the Assumed Leases listed on Schedule 1.2 and the Customer Contracts that are Assumed Customer Contracts as of the Closing Date, shall be the Closing Date.

"Bankruptcy Cases" shall have the meaning set forth in the Recitals hereto

"Bankruptcy Code" shall have the meaning set forth in the Recitals hereto

"Bankruptcy Court" shall have the meaning set forth in the Recitals hereto.

"Base Price" shall have the meaning set forth in Section 2.3.

"Basket" shall have the meaning set forth in Section 10.2(a).

"Best Efforts" means the efforts that a commercially reasonable Person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as is reasonably possible.

"Bidding Procedures Order" shall have the meaning set forth in Section 6.1(a).

"Bill of Sale" means the General Assignment and Bill of Sale to be executed at Closing by Sellers, in the form attached hereto as Exhibit B.

"Breakup Fee" shall have the meaning set forth in Section 12.2.

"Building" means the "Hennessy Building," which is owned by Touch America and located at 130 No. Main, Butte, Montana 59701.

"Business" means the Relevant Business and the Retained Business, collectively, as of the date hereof

"Business Day" means a day, other than a Saturday or a Sunday, on which commercial banks are not required or authorized to close in the City of New York.

"Business Employee Offeree" shall have the meaning set forth in Section 11.1(b).

"Business Employee Offeree Schedule" shall have the meaning set forth in Section 11.1(b).

"Business Employee Schedule" shall have the meaning set forth in Section 11.1(a).

"Business Employees" means all employees of Sellers who, on the applicable date perform services that are reasonably necessary or fundamental to the Relevant Business

"Cap" shall have the meaning set forth in Section 10.2(a).

"Closing" shall have the meaning set forth in Section 9.1.

"Closing Date" shall have the meaning set forth in Section 9.1.

"COBRA" shall have the meaning set forth in Section 11.3.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" shall have the meaning set forth in Section 3.5.

"Confidentiality Agreement" means that certain Confidentiality Agreement, dated as of September 11, 2002, between an Affiliate of Purchaser and Touch America.

"Contracts" means all contracts, agreements, binding commitments, binding arrangements and instruments to which any Seller is a party and relating to the Relevant Business, including any tariffs under which Sellers purchase services.

"Control Group" means a controlled group of corporations of which any Seller is a member within the meaning of Section 414(b) of the Code, any group of corporations or entities under common control with any Seller within the meaning of Section 414(c) of the Code or any affiliated service group of which any Seller is a member within the meaning of Section 414(m) of the Code.

"Cure Amounts" means all amounts payable in order to effectuate, pursuant to the Bankruptcy Code, the assumption by the Sellers and the assignment to the Purchaser of any Assumed Contract or Assumed Lease.

"Customer Contract" shall have the meaning set forth in Section 2.8(a).

"Customer Contract Election Date" shall have the meaning set forth in Section 2.8(b).

"Customer Contract Schedule" shall have the meaning set forth in Section 2.8.

"Damages" means any losses, amounts paid in settlement, claims, damages, Liabilities, obligations, judgments and reasonable out-of-pocket costs (including, costs of investigation or enforcement), expenses and attorneys' fees, including, (i) any consequential damages or (ii) any special or punitive damages assessed against an Indemnified Party in a Third Party action.

"Deductible" shall have the meaning set forth in Section 10.2(a).

"DIP Financing" means the arrangements and agreements with respect to debtor-in-possession financing in the aggregate principal amount of \$5,000,000 pursuant to that certain Loan Agreement by and among WLR Recovery Fund II, LP and Sellers, which agreement shall be in a form and on terms reasonably acceptable to WLR Recovery Fund II, LP and Sellers.

"Election Date" means the date which is three (3) months following the Closing Date; provided, however, with respect to any Undesignated Agreement that is first identified to Purchaser after the Closing Date, the Election Date shall in no event be earlier than twenty (20) Business Days after Sellers deliver to Purchaser a true, correct and complete copy of the Undesignated Agreement.

"Employee Benefit Plan" means any Employee Pension Benefit Plan, Employee Welfare Benefit Plan, Multiemployer Plan, retirement, savings stock purchase, stock option, severance, employment, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation and all other employee benefit plans, agreements, programs, policies or other arrangements (whether or not

subject to ERISA) as to which both (A) any employee or former employee of the Business has any present or future right to benefits, and (B) Sellers or any of their affiliates have any present or future Liability.

"Employee Pension Benefit Plan" shall have the meaning set forth in Section 3(2) of ERISA.

"Employee Welfare Benefit Plan" shall have the meaning set forth in Section 3(l) of ERISA.

"Environmental Laws" means any Legal Requirement relating to protection of human health, safety, the environment, and natural resources, including Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term will encompass each of the following statutes, and the regulations promulgated thereunder, in each case as in effect as of Closing: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq., "CERCLA"); (b) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq., "RCRA"); (c) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq., "HMTA"); (d) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq., "TSCA"); (e) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (f) the Clean Air Act and Amendments (42 U.S.C. Section 7401 et seq.); (g) the Safe Drinking Water Act (21 U.S.C. Section 349); 42 U.S.C. Section 201 and Section 300 et seq.; (h) the National Environmental Policy Act of 1969 (42 U.S.C. Section 4321); (i) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C., "SARA"); and (j) Title III of the Superfund Amendment and Reauthorization Act (42 U.S.C. Section 11,001 et seq.).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" means a financial institution acting as escrow agent pursuant to the Escrow Agreement, that is mutually acceptable to Purchaser and Sellers.

"Escrow Agreement" means the escrow agreement to be entered into by and among the Escrow Agent, Sellers and Purchaser as of the Closing Date substantially in the form of Exhibit C hereto.

"Escrow Amount" shall have the meaning set forth in Sections 2.5(b) and 2.5(c) (if applicable).

"Escrowed Funds" means amounts on deposit with the Escrow Agent pursuant to the terms of the Escrow Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Agreements" means (a) those Contracts and Leases listed on Schedule 1.6, (b) Excluded Customer Contracts, and (c) any Undesignated Agreement that does not become an Assumed Contract or an Assumed Lease on or before the Election Date.

"Excluded Assets" means, collectively:

- (a) All cash, cash equivalents or Receivables of Sellers;
- (b) the Building and any associated office furniture, supplies, and other similar items of Personal Property that are not used primarily in connection with the operation and maintenance of a telecommunications network in the operation and maintenance of the Relevant Network;
- (c) any assets of any Employee Benefit Plan maintained by Sellers or any of their Affiliates;
- (d) any rights of Seller under this Agreement and the Ancillary Agreements;
- (e) any assets, properties or rights of Sellers that are listed on Schedule 1.3;
- (f) Excluded Agreements, subject to Purchaser's rights under Section 2.9(a) with respect to Undesignated Agreements;
- (g) any books, records and information related primarily to any of the Excluded Assets or Excluded Liabilities; provided, however, Seller shall furnish Purchaser copies of such books and records to the extent they relate to Assumed Contracts, Assumed Leases, Assumed Liabilities or Purchased Assets or are otherwise reasonably related to the Relevant Business;
- (h) the capital stock or other equity interest of any Seller or any of its subsidiaries;
- (i) such other assets of Sellers as Purchaser shall expressly elect prior to the Closing Date to be "Excluded Assets" pursuant to a written notice to Sellers at least one (1) Business Day before the Closing Date;
- (j) all rights and privileges arising under that certain Limited Liability Company Agreement of TW Wireless, L.L.C. by and among

Touch America, Inc. and US West Wireless, L.L.C. dated as of July 23, 1999, and its membership interests in TW Wireless, L.L.C.;

- (k) all rights and privileges under that certain Unit Redemption, Release, and Sale Agreement by and among Touch America, Inc., Sierra Pacific Communications, Inc. and Sierra Touch America LLC dated as September 9, 2002; and
- (l) all rights and privileges arising under that certain Operating Agreement of FTV Communications, L.L.C. by and among Touch America, Inc., Vyvx, Inc. and First Point Communications, Inc. dated as of September 4, 1997, and Touch America, Inc.'s membership interests in FTV Communications, L.L.C.

"Excluded Customer Contract" shall have the meaning set forth in Section 2.8(b).

"Excluded Liabilities" means all Liabilities of Sellers other than the Assumed Liabilities (for the avoidance of doubt, to the extent a Liability is listed as both an Assumed Liability and an Excluded Liability, such Liability shall constitute an Excluded Liability). Without limiting the generality of the foregoing, the Excluded Liabilities include (a) any Liability of any Seller: (i) arising prior to or on the Closing Date, or (ii) arising after the Closing Date to the extent related to any Excluded Asset, (b) any Liability of any Seller arising under any Environmental Law, (c) any Liability of any Seller or any of its Affiliates with respect to (i) Taxes, for any period ended on or prior to the Closing Date, (ii) any Taxes in connection with the consummation of the transactions contemplated hereby (including any transfer taxes or income Taxes arising as a result of the transfer by Sellers to Purchaser of the Purchased Assets), (iii) any Taxes under any Tax sharing agreement to which any Seller is a party and (iv) any Taxes of any Person, which any Seller has assumed or becomes liable for as a transferee or successor, by contract, law or otherwise, (d) any Liability of Sellers with respect to Indebtedness or Excluded Agreements, (e) without limiting Purchaser's obligations under Section 11.1(b), any Liability of Sellers with respect to Business Employees or former employees of any Seller or any of their Affiliates or Employee Benefits Plans, including any Liability of any Seller arising out of the WARN Act, (f) any Liability of any Seller arising out of: (i) any business or property formerly owned or operated by Sellers or any of their predecessors but not owned or operated by Sellers immediately prior to the Closing, (ii) any product shipped or manufactured by, or any services provided by, the Sellers prior to the Closing Date, or (iii) any claim of any creditor or equity holder of Sellers or any of their Affiliates in their capacity as such, whether arising prior to, on or after the Closing; (g) any Liability of any Seller arising on or before the Closing Date to any Affiliate of such Seller; (h) any Liability of any Seller with respect to an Assumed Contract or Assumed Lease arising on or prior to the Assumption Date, and (i) service credits under Assumed Customer Contracts with

respect to periods prior to the Assumption Date, except to the extent constituting Assumed Liabilities pursuant to clause (e) of the definition of such term.

"Excluded Matters" means the Excluded Assets and the Excluded Liabilities that are not Transition Matters and do not arise out of Transition Matters.

"FCC" means the Federal Communications Commission.

"FCC Applications" shall have the meaning set forth in Section 6.9(a).

"Final Order" means an order or judgment of the Bankruptcy Court, as entered on the docket of the Bankruptcy Court, that has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, seek review or rehearing or petition for certiorari has expired and no timely-filed appeal or petition for review, rehearing, remand or certiorari is pending; or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure or other rules governing procedure in cases before the Bankruptcy Court or any higher court to which the order or judgment was appealed or from what certiorari was sought, may be filed with respect to such order shall not cause such order not to be a Final Order.

"Financial Statements" shall have the meaning set forth in Section 3 5(b).

"GAAP" means United States generally accepted accounting principles, as in effect from time to time.

"GAAP Consistency" means in accordance with GAAP applied on a basis consistent with that used in the preparation of the Financial Statements.

"GSP Business" means the global service provider segment of the Relevant Business. Listed on Schedule 1 8 are the Customer Contracts of Sellers relating to the GSP Business

"Governmental Agency" means (a) any international, foreign, federal, state, county, local or municipal government or administrative agency or political subdivision thereof, (b) any governmental agency, authority, board, bureau, commission, department or instrumentality, (c) any court or administrative tribunal, (d) any non-governmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction, (e) any arbitration tribunal or other non-governmental authority with applicable jurisdiction, or (f) any regulatory authority, including the FCC and State PUCs.

"Governmental Approval" shall have the meaning set forth in Section 3.2.

"Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law or the Release of which is prohibited or regulated under any Environmental Law. Without limiting the generality of the foregoing, the term will include: (a) "hazardous substances" as defined in CERCLA, SARA, or Title III of the Superfund Amendments and Reauthorization Act, each as amended to date, and regulations promulgated thereunder; (b) "hazardous waste" as defined in RCRA and regulations promulgated thereunder; (c) "hazardous materials" as defined in the HMTA, as amended to date, and regulations promulgated thereunder; (d) "chemical substance or mixture" as defined in the TSCA as amended to date, and regulations promulgated thereunder; (e) "petroleum," including crude oil or any fraction; and (f) "natural gas," including liquids and synthetic gas usable for fuel.

"Hennessy Building POP Lease" has the meaning set forth in Section 6.14.

"Indebtedness" of any Person means (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all direct or indirect guarantees or credit supports by such Person of Indebtedness of others, (g) all capital lease obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Party" shall have the meaning set forth in Section 10.4.

"Indemnifying Party" shall have the meaning set forth in Section 10.4.

"Insurance Policies" shall have the meaning set forth in Section 3.17.

"Intellectual Property" means all of the following, owned or used in connection with the Relevant Business: (a) trademarks and service marks (registered or unregistered), trade dress, product configurations, trade names and other names and

slogans embodying business or product goodwill or indications of origin, all applications or registrations in any jurisdiction pertaining to the foregoing and all goodwill associated therewith; (b) patents, patentable inventions, discoveries, improvements, ideas, know-how, formula methodology, processes, technology, computer programs and software (including password unprotected interpretive code or source code, object code, development documentation, programming tools, drawings, specifications and data) and all applications and patents in any jurisdiction pertaining to the foregoing, including re-issues, continuations, divisions, continuations-in-part, renewals or extensions; (c) trade secrets, including confidential and other non-public information, and the right in any jurisdiction to limit the use or disclosure thereof; (d) copyrights in writings, designs, software programs, mask works or other works, applications or registrations in any jurisdiction for the foregoing and all moral rights related thereto; databases and all database rights; (e) the Software; (f) Internet Web sites, domain names and applications and registrations pertaining thereto; (g) licenses, immunities, covenants not to sue and the like relating to the foregoing; (h) books and records describing or used in connection with the foregoing; and (i) claims or causes of action arising out of or related to infringement or misappropriation of the foregoing.

"Intellectual Property Assignment Agreement" shall have the meaning set forth in Section 9.2.

"Interim Balance Sheet" shall have the meaning set forth in Section 3.5(c).

"Interim Balance Sheet Date" means April 30, 2003.

"Inventory" shall have the meaning set forth in Section 3.7.

"Knowledge" Sellers shall be deemed to have "Knowledge" of a particular fact or other matter if (a) any employee of any Seller is actually aware of such fact or other matter; or (b) any of such individuals would reasonably be expected to discover or otherwise become aware of such fact or other matter as a result of a reasonable inquiry.

"Lapse Request" shall have the meaning set forth in Section 5.1(b).

"Last Assessment Date" shall have the meaning set forth in Section 6.3(a)(i).

"Leased Property" shall have the meaning set forth in Section 3.8(b).

"Leases" shall have the meaning set forth in Section 3.8(b).

"Legal Requirement" means any Order, statute, law, rule, regulation, constitutions, ordinance or treaty of any Governmental Agency or judicial interpretations with respect to the foregoing.

"Lender Approval" shall have the meaning set forth in Section 7.2(j).

"Liability" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, equitable interest, conditional sale or other title retention device or arrangement, occupancy agreement, license or lease, or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Major Customers" shall have the meaning set forth in Section 3.22.

"Major Suppliers" shall have the meaning set forth in Section 3.22.

"Material Adverse Effect" means a material adverse effect with respect to the assets, liabilities, results of operations, facilities, properties or operational or financial condition of the Relevant Business, taken as a whole, but excluding (i) the Excluded Matters and (ii) the filing and pendency of the Bankruptcy Cases.

"Maximum Cure Amount" has the meaning set forth in Section 2.14.

"Multiemployer Plan" shall have the meaning set forth in Section 3(37) of ERISA.

"Next Assessment Date" shall have the meaning set forth in Section 6.3(a)(i).

"Objection Notice" shall have the meaning set forth in Section 2.6.

"Offer Letter" shall have the meaning set forth in Section 11.1(b).

"Order" means any award, decree, consent decree, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Agency.

"Ordinary Course of Business" means: (a) consistent with the past practices of the Business on or prior to December 31, 2002 and in the ordinary course of the normal day-to-day operations of the Business; and (b) similar in nature and magnitude to actions customarily taken, without any authorization by the board of directors of Sellers, in the ordinary course of the normal day-to-day operations of Sellers on or prior to December 31, 2002

"Owned Real Property" shall have the meaning set forth in Section 3.8(a).

"Permit" means any permit, approval, authorization, license, variance permission or product registration required by a Governmental Agency under any Legal Requirement in relation to the Relevant Business or the Purchased Assets.

"Permitted Liens" means, with respect to any Purchased Asset, (a) liens for Taxes that constitute an Assumed Liability; (b) with respect to real property: (i) any covenants, conditions, restrictions, easements, encroachments, encumbrances, right of way, zoning restriction or other minor imperfections of title (other than a Lien securing any Indebtedness) with respect to such asset which, individually or in the aggregate, does not materially detract from the value of, or materially interfere with the present occupancy, operation or use of, such asset and the continuation of the present occupancy, operation or use of such asset; and (ii) mechanic's, materialmen's and similar liens with respect to amounts not yet due and payable; (c) Liens securing capital leases that are Assumed Contracts; (d) Liens created solely by action of Purchaser at Closing and (e) Liens created in connection with the DIP Financing.

"Person" means any individual, partnership, corporation, trust, association, limited liability company, Governmental Agency or any other entity.

"Personal Property" means all of the machinery, fiber optic cable, equipment, test equipment, computers, tools, discs, molds and parts, vehicles, furniture, furnishings, Inventory, office supplies and other supplies, and other tangible personal property, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person (but excluding any Intellectual Property and Software) used in connection with the Relevant Business, including all warranties and licenses received from manufacturers and sellers of the aforesaid items or the Relevant Network Equipment and any related claims, credits and rights of recovery with respect to such items.

"Positive Gross Margin" means total gross revenue collected minus off-net costs, to the extent that such difference is positive.

"Post-Closing Payment" means \$12,000,000.00, provided, however, that in the event the product of (x) 0.70 and (y) all revenue generated by the GSP Business in the ninety (90) day period after Closing that Purchaser collects in the one-hundred eighty (180) day period after Closing is less than \$12,000,000.00, then the Post-Closing Payment shall equal \$12,000,000.00 less the amount of such deficit. For clarity, in no event shall the Post-Closing Payment be greater than \$12,000,000.00 or less than zero. For example, in the event Purchaser collects (in the one-hundred eighty (180) day period after Closing) \$14,500,000 in revenue generated by the GSP Business in the ninety (90) day period after Closing, the Post-Closing Payment shall be \$10,150,000.00 (\$12,000,000 - (\$12,000,000 - (0.70 x \$14,500,000))).

"Post-Closing Payment Date" means the date that is twenty (20) days following the date on which the Post-Closing Payment is finally determined in accordance with Sections 2.6 and 2.7

"Proceedings" has the meaning set forth in Section 3.18(a).

"Property Taxes" shall have the meaning set forth in Section 6.3

"Purchase Price" shall have the meaning set forth in Section 2.3.

"Purchased Assets" means all of Seller's properties, assets, goodwill, rights and claims of whatever kind and nature, real or personal, tangible or intangible, known or unknown, actual or contingent and wherever situated, which are used in, held for use by, or related to in any manner the Relevant Business, but excluding all Excluded Assets, as the same may exist on the Closing Date, including the following:

- (a) all Personal Property owned or possessed by any Seller which are primarily used in, held for use by, or primarily related to the Relevant Business, including the vehicles described on Schedule 1.9;
- (b) the Relevant Network;
- (c) all Inventory and inventory of the Relevant Business held at any location controlled by any Seller or its Affiliates and any inventory of the Relevant Business previously purchased by any Seller and in transit to any Seller;
- (d) all prepaid expenses (other than those relating solely to Excluded Assets and Excluded Liabilities);
- (e) work-in-process or partially earned service revenues relating to the Assumed Customer Contracts that are not fully earned or payable as of the Closing Date;
- (f) all of the Intellectual Property;
- (g) all rights under all Assumed Contracts and Assumed Leases, including: (i) any Seller's right to receive goods and services pursuant to such agreements and to assert claims and take other rightful actions in respect of breaches, defaults and other violations of such Assumed Contracts and Assumed Leases and (ii) all security deposits and bonds with respect to Assumed Contracts and Assumed Leases;

- (h) all books and records relating to the Relevant Business (including such books and records as are contained in computerized storage media), including, books and records primarily related to inventory, purchasing, accounting, sales, pricing, research and development, quality control, engineering, manufacturing, maintenance, repairs, marketing, banking, Receivables, Intellectual Property, shipping records, personnel files for Transferred Employees and all files, customer and supplier lists, records, literature and correspondence and other communication; provided, however, that Sellers shall be entitled to make and retain copies of such books and records: (i) to the extent they relate to Excluded Assets or Excluded Liabilities, (ii) to the extent necessary for the administration of any action to which it is a party, the filing of any Tax Return or compliance with applicable laws, (iii) to the extent consisting of personnel files or (iv) to the extent they relate to the services provided under the Transition Service Agreement;
- (i) to the extent legally assignable, all Permits held by Sellers or applications therefor;
- (j) claims, deposits, prepayments, prepaid assets, refunds, causes of action, rights of recovery, rights of setoff and rights of recoupment of or made by Sellers as of the Closing Date, including, any such rights of Sellers under any property, casualty, workers' compensation or other Insurance Policy, except to the extent constituting or related solely to Excluded Assets or Excluded Liabilities;
- (k) all refunds of, or credits for, Taxes which Purchaser paid or that constitute an Assumed Liability; and
- (l) any other tangible or intangible assets of Seller primarily related to the Relevant Business and which are of a nature not customarily reflected in the books and records of a business, such as assets which have been written off for accounting purposes but which are still used by, or of value to, the Relevant Business.

"Purchaser" shall have the meaning set forth in the preamble hereto.

"Purchaser Protection Superpriority Claims" shall have the meaning set forth in Section 6.1.

"Purchaser's Allocation" shall have the meaning set forth in Section 2.12(a).

"Purchaser's Property Tax Portion" shall have the meaning set forth in Section 6.3(a)(i).

"Qualified Bid" shall have the meaning set forth in the Bidding Procedures Order

"Qwest" means Qwest Communications International and its Affiliates

"Qwest Proceedings" shall have the meaning set forth in Section 3.28.

"Receivables" means all accounts receivable, trade accounts and trade notes of Sellers arising from the Relevant Business prior to the Closing Date and fully earned and payable as of the Closing Date.

"Related Person" means any member of the immediate family of any Affiliate of any Seller or of any director, manager, member or officer of any Seller or any Affiliate of any Seller.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, migrating, dumping, burying, abandoning or disposing into the environment.

"Relevant Agreements" shall have the meaning set forth in Section 5.1(b).

"Relevant Agreements Consent" shall mean the written consent of Purchaser approving (a) any action of Sellers for which the consent of Purchaser is required pursuant to Section 5.1, or (b) a waiver of any requirement set forth in Section 5.1, but only to the extent that (i) such written consent indicates on its face that it is a "Relevant Agreements Consent", (ii) the written consent is delivered pursuant to the notice provisions of Section 13.1 or the e-mail notification provisions of Section 5.1(e), and (iii) the written consent is signed by Lin Gentemann, Chris Mueller or such other person specifically designated by Purchaser to Sellers as authorized to execute Relevant Agreements Consents.

"Relevant Business" means the business operations conducted by the Sellers and their Affiliates on the date of this Agreement relating to the provision of any dedicated internet services, global service provider services, private line services (including broadband capacity and transport services), dark fiber and conduit leases and "indefeasible rights of use" or any services related to any of the foregoing.

"Relevant Equipment" means (a) all of the electronic and support equipment associated with the provision of private line services in the possession of the Sellers or located in the sites shown on Schedules 1.11, and 1.2, whether used in connection with the Relevant Fiber and Microwave Network or otherwise, including: (i) Dense Wave Division Multiplexing and transmission equipment including all Add-Drop Multiplexers, regeneration and amplification equipment and associated software and support systems; (ii) all SONET OC3, OC12, OC48 and OC192 equipment including multiplexers and transmission equipment and associated software and support systems;

(iii) all asynchronous multiplexing and transmission equipment supporting DS1 and DS3, Ethernet, Gigabit Ethernet or other services, and associated software and support systems; (iv) all Nortel DX, HDX and other optical switching equipment including associated software and support systems; (v) all DC power plant equipment including rectifiers, power distribution frames, breaker distribution panels, batteries, control equipment, AC feeder, switch and fuse box arrangements, including emergency generator equipment and supporting hardware such as fuel tanks, pumps, filters and plumbing systems; (vi) all optical distribution frames, including labeling systems, optical patch cords, racks and rack inserts; (vii) all digital access cross-connect switches (DACS) and associated support and software systems; (viii) all DSX1 and DSX3 cross connect facilities, including associated wiring and coaxial cabling systems; (ix) all DC and electrical cable trough installation, ladder racking, fiber optic cable trough systems and supporting hardware; (x) all heating, ventilation, cooling and humidity control systems and associated control systems; (xi) all fire alarm and fire suppression systems; (xii) all access control and security systems, including card readers, card writers, door strikes and holds, cameras and associated control and software systems; (xiii) all facility alarm monitoring equipment, including associated control and software systems; (xiv) all raised flooring, cage and equipment rack systems installed in the POP and collocation sites across the network; (xv) all network management element management systems and software licenses and Rights-to-Use for all of the above equipment, except where transfer of Right-to-Use are limited by the software provider; (xvi) all equipment racks, cabinets and associated hardware; (xvii) all tools and test equipment including T1/T3 testers, SONET test equipment, 2.5 and 10 gig wave testers, Optical time domain reflectometers, RF spectrum analyzers, optical spectrum analyzers, dispersion analyzers, power meters and associated adapters, patch cords, laptop computers and accessories; (xviii) Digital Microwave Equipment including radios, waveguides, antennas, antenna supports, towers, shelters and power systems; (xix) all spare and inventoried equipment related to the all of the above equipment and systems, including equipment installed in the network but not currently used or assigned to customer circuits; (xx) all records, permits, installation drawings and operation manuals and warranty documentation for all of the above equipment and systems; and (xxi) all Nortel equipment located in the Additional Relevant Equipment Locations, and (b) of the electronic and support equipment associated with or required to support the Internet and Ethernet business located in the sites shown on Schedules 1.11, and 1.2, whether in connection with the Relevant Fiber and Microwave Network or otherwise, including: (i) all of the electronic and support equipment including but not limited to the following; (ii) Cisco routers, including all high-speed interfaces, memory, accessories and associated software and support systems; (iii) all Ethernet switches and hubs and associated software and support systems; (iv) all AC UPS systems with associated batteries, wiring systems and associated software and support systems; (v) all DC power plant equipment including rectifiers, power distribution frames, breaker distribution panels, batteries, control equipment, AC feeder, switch and fuse box arrangements, including emergency generator equipment and supporting hardware such as fuel tanks, pumps, filters and plumbing systems; (vi) all optical distribution frames, including labeling systems, optical patch cords, racks and rack inserts; (vii) all DC and electrical cable trough installation, ladder racking, fiber optic

cable trough systems and supporting hardware; (viii) all heating, ventilation, cooling and humidity control systems and associated control systems; (ix) all fire alarm and fire suppression systems; (x) all access control and security systems, including card readers, card writers, door strikes and holds, cameras and associated control and software systems; (xi) all facility alarm monitoring equipment, including associated control and software systems; (xii) all records, permits, installation drawings and operation manuals and warranty documentation for all of the above equipment and systems; (xiii) all spare and inventoried equipment related to the all of the above equipment and systems, including equipment installed in the network but not currently used or assigned to customer circuits; (xiv) all raised flooring and cage systems installed in the POP and Colo sites across the network; (xv) all network management element management systems and software licenses and Rights-to-Use for all of the above equipment, except where transfer of Right-to-Use are limited by the software provider; (xvi) all equipment racks, cabinets and associated hardware; and (xvii) all tools and test equipment including Ethernet testers, packet sniffers and associated adapters, patch cords, laptop computers and accessories.

"Relevant Fiber and Microwave Network" means that certain fiber optic and radio frequency communications network along the routes and as further described in Schedule 1.10 (and its attachments and depictions) consisting of inside and outside plant, conduit, cable sheathing, fiber optic cable, antennas, towers, waveguides, radios, physical and logical connections, underlying rights and any other contracts or services in connection with or related to the foregoing.

"Relevant Network" means the Relevant Fiber and Microwave Network, the Relevant Equipment, network managements systems, data centers, and contracts and services working together in combination to provide the products and services provided under the Customer Contracts or otherwise used in the operation of the Relevant Business, and all other Personal Property related to the foregoing.

"Renewal Expiration Date" shall have the meaning set forth in Section 5.1(b).

"Renewal Request" shall have the meaning set forth in Section 5.1(b).

"Retained Business" means the business operations conducted by the Sellers and their Affiliates on the date of this Agreement excluding the Relevant Business.

"Sale Motion" shall have the meaning set forth in Section 6.1(a).

"Sale Order" shall have the meaning set forth in Section 6.1(a).

"Schedule Updates" shall have the meaning set forth in Section 5.5.

"Schedules" means, collectively, the various Schedules referred to in this Agreement delivered separately to Purchaser on or before the date of this Agreement and initialed by the parties. No item included on any one Schedule to this Agreement

shall be deemed to be included on any other Schedule to this Agreement, except to the extent expressly cross referenced.

"SEC Reports" shall have the meaning set forth in Section 3.5.

"Section 2.4(a) Agreement" has the meaning set forth in Section 2.4(a).

"Seller" and "Sellers" shall have the meanings set forth in the preamble hereto.

"Sellers' Property Tax Portion" shall have the meaning set forth in Section 6.3(a)(i).

"Services Provided Schedule" shall have the meaning set forth in Section 5.2(c).

"Services Received Schedule" shall have the meaning set forth in Section 5.2(d).

"Signing and Commitment Fee" shall have the meaning set forth in Section 6.13.

"Software" means (a) all computer software owned or used by any Seller primarily in the Relevant Business; (b) the object code, or machine-readable form, of such software; (c) the password unprotected interpretive code or source code, or human readable form, of such software, including, but not limited to, all source files, uncompiled code, graphics, and audio source files, instructions, control logic, flow charts, internal documentation, designs, drawings, prints, technical data and such other documentation as is necessary to recreate, revise, modify or enhance such software or any portion thereof; (d) all materials provided in connection with such software, including, but not limited to, all diskettes, tapes, and print, informational or instructional materials relating to such software; and (e) all copies of any of the foregoing in the possession or control of any Seller

"State PUCs" means state and local public service and public utilities commissions or franchise authorities in each applicable jurisdiction.

"State PUC Applications" shall have the meaning set forth in Section 6.9(b).

"Straddle Period Property Taxes" shall have the meaning set forth in Section 6.3

"Takeover Proposal" means any inquiry, proposal or offer from any Third Party, whether in writing or otherwise, relating to any Alternative Transaction.

"Tax Return" means any report, return, information return or other information required to be supplied to a Governmental Agency in connection with Taxes.

"Taxes" means all federal, state, local and foreign taxes, charges, fees, levies, imposts, duties or other assessments, including, income, gross receipts, excise, employment, sales, use, transfer, telecommunications, license, payroll, franchise, severance, stamp, occupation, windfall profits, environmental (including taxes under Code Section 59A), premium, federal highway use, commercial rent, customs duties, capital stock, paid up capital, profits, withholding, social security, single business and unemployment, disability, real property, personal property, registration, ad valorem, value added, alternative or add-on minimum, estimated, or other tax or governmental fee of any kind whatsoever, imposed or required to be withheld by any Governmental Agency, including any interest, penalties or additions thereto, whether disputed or not

"Third Party" means any Person or group other than Purchaser and/or its Affiliates.

"Touch America" shall have the meaning set forth in the preamble hereto.

"Transferred Employees" shall have the meaning set forth in Section 11.1(b).

"Transition Matters" means the (a) Customer Contracts prior to the Customer Contract Election Date, and (b) the Undesignated Agreements, in either case prior to either (i) the Assumption Date with respect to such Undesignated Agreement, or (ii) the first day on which such Undesignated Agreement may be rejected by Sellers without violating the restrictions on rejection of Contracts and Leases contained in this Agreement.

"Transition Services Agreement" means the transition services agreement to be entered into between Purchaser and Sellers at Closing, in form mutually agreeable to the parties.

"Undesignated Agreement" means any Contract or Lease not listed on Schedule 1.1, 1.2, or 1.6 to this Agreement or on the Customer Contract Schedule.

"Union Welfare Benefit Plan" means a multi-employer Employee Welfare Benefit Plan or fund contributed to pursuant to one or more collective bargaining agreements.

"WARN Act" means the Worker Adjustment and Retraining Notification Act, 29 U.S.C. Sections 2101, et. seq., and any similar provision of any applicable State law.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and

reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP Consistency.

Section 1.3 Rules of Construction. Except to the extent the context otherwise requires or this Agreement expressly states otherwise, the following principles of interpretation shall apply to this Agreement:

- (a) **Headings.** Headings, titles and the table of contents are inserted for convenience only and shall not be deemed a part hereof or taken into consideration in the interpretation or construction of this Agreement.
- (b) **Grammatical Forms.** Words importing the singular also include the plural and the plural the singular; references to a gender include the other gender; and grammatical forms of a term defined herein have meanings corresponding to the defined term.
- (c) **Written Communications.** Communications to be "written" or "in writing" hereunder means any hand-written, typewritten, lithographed or printed communication, including telex, cable and facsimile transmission.
- (d) **Notices.** Any notice, request, consent, approval, instruction, demand or tender to be given hereunder shall be deemed to be required to be given in writing, and the words "notify", "request", "consent", "approval", "instruction", "demand" and "tender" and grammatical variants thereof, shall be construed accordingly.
- (e) **Internal References.** References to "Articles", "Sections", "Recitals", "Exhibits" and "Schedules" are to articles, sections, recitals, exhibits and schedules in or to this Agreement. The words, "hereof", "herein", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision hereof.
- (f) **Document References.** References to any agreement or document are to that agreement or document (including schedules thereto and, where applicable, any of its provisions) as amended, notated, supplemented, assigned or replaced.
- (g) **"Person"/"party" References.** References to a Person or party include its successors and permitted assigns.
- (h) **"Including" References.** References to "include" and "including" shall be construed as "include, without limitation" and "including, without limitation."
- (i) **No Rule of Contra Proferentem.** This Agreement has been freely negotiated by all parties and in the event there is any controversy, dispute or claim involving the meaning, interpretation, validity or enforceability of this

Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against a party by virtue of such party having drafted or determined to have drafted this Agreement or any portion hereof.

- (j) Severability. If any provision of this Agreement, or the application of such provision to any Person or circumstance, is or becomes illegal, invalid, void, voidable or unenforceable by any court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held illegal, invalid, void, voidable or unenforceable, shall not be affected thereby and the provision that is illegal, invalid, void, voidable or unenforceable shall be reformed or modified to reflect the Parties' intent to the maximum extent permitted by applicable Law.
- (k) Legal Review. Each of the parties has had its legal counsel review and participate in the full negotiation and documentation of this Agreement and the parties are and shall be deemed to be familiar with each of the provisions herein and the legal effect thereof.
- (l) Ejusdem Generis Principles Inapplicable. The meaning of general words herein shall not be limited by specific examples introduced by "including", "such as" or "for example" or other expressions.
- (m) Days. References to "days" are to calendar days, and unless otherwise noted, specifically include days falling on weekends, holidays and other non-Business Days.

ARTICLE II PURCHASE AND SALE OF PURCHASED ASSETS AND ASSUMPTION OF ASSUMED LIABILITIES AND CERTAIN COVENANTS OF SELLERS

Section 2.1 Purchase and Sale of Purchased Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing (and on the applicable Assumption Date with respect to Purchased Assets consisting of rights under any Assumed Contract or Assumed Lease assumed by a Seller and assigned to Purchaser after the Closing Date as provided herein) Purchaser shall purchase from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens) and free and clear of all Liabilities (other than Assumed Liabilities).

Section 2.2 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing (and on the applicable Assumption Date with respect to Assumed Liabilities under any Assumed Contract or Assumed Lease assumed by a Seller and assigned to Purchaser after the Closing Date as provided herein), Purchaser shall assume and become responsible for all of the Assumed Liabilities. Notwithstanding anything in this

Agreement to the contrary, no Liabilities of Sellers, including Liabilities for Taxes, whether arising before, after, or in connection with the Closing, shall be assumed by Purchaser or any Affiliate of Purchaser, except for the Assumed Liabilities.

Section 2.3 Purchase Price. On the terms and subject to the conditions set forth in this Agreement, the purchase price for the Purchased Assets shall be \$28,000,000.00 (the "Base Price"), subject to adjustment of the Post-Closing Payment and further adjustments provided in this Article II (as so adjusted, the "Purchase Price"), and shall be payable in accordance with Section 2.5

Section 2.4 Adjustments to Base Price. The Base Price shall be adjusted in the manner provided in this Section 2.4 (collectively, the "Adjustments").

- (a) Reconciliation of Prepaid Items. The Base Price shall be decreased by the sum of (x) cash advances (plus other customer prepayments, security deposits or agreements resulting in invoice credits or other credits) outstanding as of the Assumption Date with respect to each Assumed Contract or Assumed Lease other than prepayments made by Sellers under the agreement listed on Schedule 2.4(a) (the "Section 2.4(a) Agreement"), and (y) the amount of any service credits pursuant to service level agreements that are not satisfied by Sellers on or prior to the Closing Date.
- (b) Adjustment for Property Taxes. The Base Price shall be increased or decreased as provided in Section 6.3(a)(iii).

Section 2.5. Payment of the Purchase Price. On the terms and subject to the conditions set forth in this Agreement:

- (a) At the Closing, Purchaser shall pay an amount equal to the difference between (x) the Base Price, and (y) the sum of (i) \$12,000,000.00 and (ii) the Escrow Amount, in immediately available funds by wire transfer to the Sellers to an account designated in writing by Sellers.
- (b) At the Closing, Purchaser shall pay an amount equal to twenty percent (20%) of the difference between (x) the Base Price, and (y) \$12,000,000.00 (the "Escrow Amount"), in immediately available funds by wire transfer to the Escrow Agent for deposit pursuant to the Escrow Agreement.
- (c) Purchaser shall pay the Post-Closing Payment on the Post-Closing Payment Date; provided, however, that Purchaser shall pay twenty percent (20%) of the Post-Closing Payment in immediately available funds by wire transfer to the Escrow Agent for deposit pursuant to the Escrow Agreement, which funds shall become part of the Escrow Amount.
- (d) Sellers or Purchaser, as the case may be, shall pay the Adjustments as provided in Sections 2.6 and 2.7.

Section 2.6. Post-Closing Calculations.

- (a) As soon as reasonably practical after the Closing, but in no event more than one hundred twenty (120) days after the Closing Date except with respect to the Post-Closing Payment which shall occur one hundred ninety (190) days after the Closing Date, Purchaser shall prepare and deliver to Sellers a report setting forth the calculation of each of the Adjustments and the Post-Closing Payment and the amount payable in accordance with Sections 2.5(c) and 2.7 (each, an "Adjustment Report"). The Adjustment Report shall be prepared in accordance with the terms of this Agreement and GAAP Consistency. Sellers shall provide Purchaser with access during normal business hours to their books, records and facilities in connection with Purchaser's preparation of the Adjustment Report.
- (b) Within twenty (20) days after receipt of an Adjustment Report, Sellers may object to such Adjustment Report by delivering written notice to Purchaser of Sellers' objection to the calculation of Adjustments (the "Objection Notice"). Such Objection Notice shall (i) set forth in detail the items being disputed and the reasons therefor, and (ii) specify Sellers' proposed calculation of each of the Adjustments.
- (c) For fifteen (15) days after receipt of the Objection Notice, Purchaser and Sellers shall attempt to resolve all disputes regarding the Adjustment Report. In the event Purchaser and Sellers cannot resolve all such disputes within such fifteen (15) day period, Touch America or Purchaser may submit the matters in dispute for determination by the Arbitrator or Bankruptcy Court, as applicable.

Section 2.7. Payment of the Post-Closing Purchase Price Adjustment.

- (a) If the Adjustment provided for in Section 2.4 results (i) in an increase to the Base Price, Purchaser shall pay the Adjustment to Sellers, or (ii) in a decrease to the Base Price, Sellers shall pay the Adjustment to Purchaser. Any payment due pursuant to this Section 2.7 to Purchaser shall be paid directly by Sellers and shall not reduce the Escrowed Funds.
- (b) Any payment pursuant to this Section 2.7 (excluding the Post-Closing Payment which shall be paid in accordance with Section 2.5(c)) shall be paid within twenty (20) days after delivery of the Adjustment Report, provided, however, that any disputed amounts subject to an Objection Notice shall be payable after resolution of all disputes (a) by the Bankruptcy Court with respect to disputes involving sums in excess of \$1,000,000, and (b) a nationally recognized independent public accounting firm mutually satisfactory to Purchaser and Sellers (the "Arbitrator") with respect to disputes involving sums less than or equal to \$1,000,000, shall be paid to the party

entitled to receipt thereof within two (2) Business Days of the Bankruptcy Court's Final Order or the Arbitrator's final determination.

- (c) Pursuant to Bankruptcy Code Section 364(c)(1), the obligation of Sellers to pay the Adjustments shall receive superpriority administrative claim status of Sellers. Pursuant to Bankruptcy Code Section 364(c)(1), the administrative claims in respect of the Adjustments shall have priority over any and all administrative expenses of the kinds specified in Bankruptcy Code Sections 503(b), 506(c), 507(a) or 507(b), except for any superpriority administrative claim granted for a loan under Bankruptcy Code Section 364(c) from WLR Recovery Fund II, LP.

Section 2.8. Selection of Customer Contracts for Assignment.

- (a) Not more than seven (7) Business Days after the date of this Agreement, Sellers shall deliver to Purchaser a schedule (the "Customer Contract Schedule") setting forth a list of all of Sellers' Contracts to the extent not already set forth on Schedules 1.1 and 1.2 with customers relating to the Relevant Business as of the date of this Agreement (the "Customer Contracts"), the legal name of the customer, the relevant Seller and the date of the Contract, and a list of any outstanding service credits with respect to such customer, and in the event no written Contract is in the possession of Sellers, Sellers shall specify their understanding of the basis for such Contract. Sellers shall promptly deliver or make available a copy of all Customer Contracts to Purchaser. Not more than fifteen (15) Business Days after the date of this Agreement, Sellers shall deliver to Purchaser a schedule setting forth a list of all purchase orders and service orders relating to or arising from all Customer Contracts (including those set forth on Schedules 1.1 and 1.2) and a copy of all such purchase orders and service orders.
- (b) With respect to each Customer Contract identified in the Customer Contract Schedule, Purchaser may, by written notice to Touch America, delivered no later than the later of (i) five (5) Business Days prior to the Closing Date, and (ii) twenty (20) Business Days subsequent to the date that such Customer Contract is included, added or deemed added to the Customer Contract Schedule and a copy of the Customer Contract is delivered or made available to Purchaser (such later date being referred to as the "Customer Contract Election Date"), instruct Sellers whether or not to assume and assign to Purchaser such Customer Contract. After each Customer Contract Election Date, each Customer Contract that Purchaser has timely instructed Sellers not to assume is referred to as an "Excluded Customer Contract"; and each Customer Contract other than the Excluded Customer Contract is referred to as an "Assumed Customer Contract".

- (c) On the Customer Contract Election Date (or with respect to those Customer Contracts which have a Customer Contract Election Date prior to the Closing Date, on the Closing Date), Sellers shall within five (5) Business Days thereof, subject to Purchaser providing adequate assurance of performance to the relevant counterparties to the extent required by the Bankruptcy Court, (i) cure any and all defaults existing under each Assumed Customer Contract to the extent required for Sellers to assume such Assumed Customer Contract in the Bankruptcy Cases, (ii) pay, or to the extent permitted by the Sale Order, segregate funds sufficient to pay, any and all Cure Amounts due with respect to such Assumed Customer Contract, (iii) assume such Assumed Customer Contract in the Bankruptcy Cases, and (iv) assign such Assumed Customer Contract to Purchaser pursuant to an Order of the Bankruptcy Court (which may be the Sale Order, but which in all events must be a Final Order). Effective upon and concurrently with such assignment, Purchaser shall assume each Assumed Customer Contract assigned to it pursuant to this Section 2.8.
- (d) Sellers shall promptly notify Purchaser in writing of any new Customer Contract entered into after the date of this Agreement and the Customer Contract Schedule shall be deemed thereby amended without any further action required by any party hereto. No later than the later of (i) five (5) Business Days prior to the Closing Date, or (ii) five (5) Business Days subsequent to the date that a copy of such Customer Contract is delivered or made available to Purchaser, Purchaser shall notify Sellers in writing whether they must assume such Customer Contract. With respect to such new Customer Contract that Purchaser expressly requires Sellers to assume, Sellers shall assume and assign such Customer Contract to Purchaser.

Section 2.9. Selection of Other Contracts and Leases for Assignment.

- (a) At any time and from time to time on or prior to the Election Date, Purchaser may, in the exercise of its sole and absolute discretion by written notice to Touch America on or before the Election Date, elect to have Sellers assume and assign to it one or more Undesignated Agreements. Sellers shall (x) within two (2) Business Days of any such notice, provide written notice to the counterparties to the Undesignated Agreements specified in Purchaser's notice, and (y) take such action, in each case as is necessary pursuant to the procedures set forth in the Sale Order to assume such Undesignated Agreements.
- (b) On the date an assumption and assignment of any Undesignated Agreement pursuant to Section 2.9(a) is scheduled to become effective pursuant to the terms of the Sale Order (provided that if such date is prior to the Closing Date, then on the Closing Date), Sellers shall, subject to Purchaser providing adequate assurance of performance to the relevant counterparties to the extent required by the Bankruptcy Court, (i) cure any and all defaults

existing under each such Assumed Contract or Assumed Lease to the extent required for Sellers to assume such Assumed Contract or Assumed Lease in the Bankruptcy Cases, (ii) subject to Section 2.14, pay, or, to the extent permitted by the Sale Order, segregate funds sufficient to pay, any and all Cure Amounts due with respect to such Assumed Contract or Assumed Lease, (iii) assume such Assumed Contract or Assumed Lease in the Bankruptcy Cases, and (iv) assign such Assumed Contract or Assumed Lease to Purchaser pursuant to an Order of the Bankruptcy Court (which may be the Sale Order, but which in all events must be a Final Order).

- (c) Sellers shall promptly notify Purchaser in writing of any new Contract or Lease entered into after the date of this Agreement. No later than the later of (i) five (5) Business Days prior to the Closing Date, or (ii) five (5) Business Days subsequent to the date that a copy of such Contract or Lease is delivered or made available to Purchaser, Purchaser shall notify Sellers in writing whether they must assume such Contract or Lease. With respect to such new Contract or Leases that Purchaser expressly requires Sellers to assume, Sellers shall assume and assign such Contract or Leases to Purchaser.

Section 2.10. Assumption of Assumed Contracts and Assumed Leases on the Closing Date. With respect to each Assumed Contract listed on Schedule 1.1 and each Assumed Lease listed on Schedule 1.2, on the Closing Date, unless Purchaser designates such Assumed Contract or Assumed Lease under Section 2.11 as an Excluded Agreement, Sellers shall, subject to Purchaser providing adequate assurance of future performance to the relevant counterparties to the extent required by the Bankruptcy Court, (i) cure any and all defaults existing under each such Assumed Contract or Assumed Lease to the extent required for Sellers to assume such Assumed Contract or Assumed Lease in the Bankruptcy Cases, (ii) subject to Section 2.14, pay, or, to the extent permitted by the Sale Order, segregate funds sufficient to pay, any and all Cure Amounts, if any, due with respect to such Assumed Contract or Assumed Lease, (iii) assume such Assumed Contract or Assumed Lease in the Bankruptcy Cases, and (iv) assign such Assumed Contract or Assumed Lease to Purchaser pursuant to an Order of the Bankruptcy Court (which may be the Sale Order, but which in all events must be a Final Order). Effective upon and concurrently with such assignments on the Closing Date, Purchaser shall assume each such Assumed Contract or Assumed Lease so assigned to it.

Section 2.11. Certain Matters Relating to Sellers' Ability to Reject Contracts and Leases in the Bankruptcy Cases.

- (a) At any time at least five (5) Business Days prior to the Closing Date, Purchaser may, by written notice to Touch America designate any Assumed Contract listed on Schedule 1.1, Assumed Lease listed on Schedule 1.2, or Undesignated Agreement as an Excluded Agreement; and upon such notice, such Undesignated Agreement shall automatically be deemed to be an Excluded Agreement. At any time after fifteen (15) Business Days prior to the Closing Date and on or prior to the Election Date, Purchaser may, by

written notice to Touch America, elect to direct Sellers not to reject any Undesignated Agreement on or prior to any date certain so long as such date is no later than sixty (60) days following the Closing Date.

- (b) Sellers shall not reject in the Bankruptcy Cases: (x) except with respect to those Assumed Contracts and Assumed Leases that were designated by Purchaser as Excluded Agreements under Section 2.11(a), any Assumed Contract listed on Schedule 1.1 or Assumed Lease listed on Schedule 1.2, (y) any Customer Contract prior to the Customer Contract Election Date or any Assumed Customer Contract prior to its Assumption Date, or (z) any Undesignated Agreement, in the case of this clause (z) on or prior to:
- (i) in respect of Undesignated Agreements for which an election has been made pursuant to Section 2.9, the Assumption Date;
 - (ii) in respect of Undesignated Agreements for which an election has been made pursuant to Section 2.11(a), the date set forth in such election (as such date may be accelerated in accordance with Section 2.11(a)); and
 - (iii) in respect of Undesignated Agreements for which no election has been made pursuant to Section 2.9, the Election Date.
- (c) On the Election Date, Sellers shall reject in the Bankruptcy Cases all Contracts that Purchaser directs Sellers to reject that do not constitute Assumed Contracts, provided, however, that Sellers shall not be required to reject any such Contract if Sellers reasonably believe such Contract should not be rejected because it is of material value to Sellers.

Section 2.12. Allocation of Purchase Price.

- (a) As soon as reasonably practicable, but not later than one hundred twenty (120) days following the Closing, Purchaser shall prepare and deliver to Sellers a schedule which shall set forth the allocation of the Purchase Price among the Purchased Assets and the Assumed Liabilities (the "Purchaser's Allocation"). Sellers shall accept and agree to the Purchaser's Allocation unless such allocation is manifestly unreasonable, in which case Sellers shall deliver written notice to Purchaser within thirty (30) days after receipt of the Purchaser's Allocation.
- (b) If Purchaser and Sellers are unable to agree upon any of the matters set forth in Section 2.12(a), within thirty (30) days (or such later date as is mutually agreed upon by both parties), the matter or matters in dispute shall be

submitted to independent accountants of nationally recognized standing reasonably satisfactory to Purchaser and Sellers.

- (c) After the Closing Date, Sellers shall prepare, in consultation with the Purchaser and Purchaser's accountants, those statements or forms required by the Code and the regulations promulgated thereunder. Such statements or forms shall be prepared consistently with the allocation under this Section 2.12, as adjusted to reflect any adjustment pursuant to Section 2.6 and any payment pursuant to Section 2.5(c). Such statements or forms shall be filed by the parties with their respective federal income Tax Returns as required by the Code and the regulations promulgated thereunder and each party shall provide the other party with a copy of such statement or form as filed.

Section 2.13 Insurance Proceeds. If any of the Purchased Assets which otherwise would have been transferred to Purchaser pursuant to this Agreement is destroyed or damaged or taken in condemnation after the date hereof and prior to the Closing, Sellers shall promptly give notice of the same to Purchaser, and shall cause all necessary repairs or restoration to such properties to be made promptly to the full extent of all available insurance proceeds. If any such insurance proceeds or condemnation award are received by such Seller after the Closing, such Seller shall forthwith pay to Purchaser the insurance proceeds or condemnation award so received less, in the case of insurance proceeds, the amount actually expended by Sellers to perform any repair or restoration in connection with any such destruction, damage or taking prior to the Closing Date. As and to the extent that there is available insurance under policies maintained by Sellers, their predecessors and successors, in respect of any Assumed Liability, except for any such insurance proceeds with respect to which the insured is directly or indirectly self-insured or has agreed to indemnify the insurer, Sellers shall cause such insurance to be applied toward the payment of such Assumed Liability. For the avoidance of doubt, the provisions of this Section 2.13 shall not affect the right of Purchaser not to consummate the transactions contemplated by this Agreement if the conditions to its obligations hereunder contained in this Agreement have not been fulfilled.

Section 2.14 Cure Amounts. Notwithstanding Sections 2.8, 2.9 and 2.10, in no event shall Sellers be required to pay Cure Amounts (a) for those Contracts and Leases listed on Schedule 1.6 as of the date hereof or (b) in the aggregate in excess of \$8,000,000 (the "Maximum Cure Amount"); provided, however, that the foregoing Maximum Cure Amount limitation shall not apply to, be included in the calculation of or limit the Sellers obligations to pay Cure Amounts with respect to any new Contracts entered into after the date hereof as described in Section 2.9(c) or to Assumed Contracts listed on Schedule 1.1 or Assumed Leases listed in Schedule 1.2 as of the date of this Agreement; further provided, however, at Purchaser's election, Sellers shall pay any Cure Amounts in excess of the Maximum Cure Amount to the extent Purchaser provides to Sellers funds to pay such Cure Amounts.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller jointly and severally represents and warrants to Purchaser as follows; provided, however, that the representations contained in sections 3.18, 3.19 and 3.21, to the extent applicable to Entech, are made only with respect to the Relevant Business and the Purchased Assets owned or held for use by Entech, if any, and that such representations shall not apply to any other businesses, assets, liabilities or obligations of Entech:

Section 3.1. Authority of Seller. Each Seller is a corporation or limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Each Seller is duly qualified to do business and is in good standing in each of the jurisdictions set forth on Schedule 3.1 opposite such Seller's name, which are all of the jurisdictions in which the ownership of the Purchased Assets or the conduct of the Relevant Business requires such qualification. Each Seller has the corporate power or limited liability company power, as the case may be, and authority to execute, deliver and, subject to the entry of the Sale Order except for its obligations under Articles 5 and 13 and Sections 6.1, 6.4, 6.6, 6.9, 6.10, 6.13, 11.1 and 12.1 which shall not be subject to the entry of the Sale Order, perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party. The execution and delivery by each Seller of this Agreement and the Ancillary Agreements and, subject to the entry of the Sale Order except for its obligations under Articles 5 and 13 and Sections 6.1, 6.4, 6.6, 6.9, 6.10, 6.13, 11.1 and 12.1 which shall not be subject to the entry of the Sale Order, performance by each Seller of its obligations under this Agreement and the Ancillary Agreements to which it is a party and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action or limited liability company action on the part of such Seller, and this Agreement constitutes, and each of the Ancillary Agreements to which it is a party upon its execution will, subject to the entry of the Sale Order except for its obligations under Articles 5 and 13 and Sections 6.1, 6.4, 6.6, 6.9, 6.10, 6.13, 11.1 and 12.1 which shall not be subject to the entry of the Sale Order, constitute, the legal, valid and binding obligation of such Seller enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Legal Requirements which affect creditors' rights generally and by legal and equitable limitations on the enforceability of equitable remedies. Each Seller has the corporate power or limited liability company power, as the case may be, and authority to own its properties and to carry on the Business as currently conducted.

Section 3.2. No Conflict or Violation; Consents. After giving effect to the Sale Order, neither the execution and delivery of this Agreement and the Ancillary Agreements by Sellers, the consummation by Sellers of the transactions contemplated hereby or thereby, nor the fulfillment by Sellers of the terms and compliance with the provisions hereof or thereof, will (with or without notice or lapse of time):

- (a) contravene, conflict with, or result in a violation of (i) any provision of the certificate or articles of incorporation, by-laws, articles of organization or limited liability company agreement of any Seller, or (ii) any resolution

adopted by the board of directors, managers, members or the stockholders (as applicable) of any Seller;

- (b) contravene, conflict with, or result in a violation of, in any material respect, any Legal Requirement to which any Seller, the Relevant Business or any of the Purchased Assets or Assumed Liabilities is subject;
- (c) contravene, conflict with, or result in a violation of, in any material respect, any of the terms or requirements of any Governmental Agency or give to any Governmental Agency the right to revoke, withdraw, suspend, cancel, terminate, or modify, any Permit that is held by any Seller;
- (d) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Contract or Lease;
- (e) result in the imposition or creation of any Lien (except for a Permitted Lien) upon or with respect to any of the Purchased Assets;
- (f) result in Purchaser being subject to a Contract or Lease whereby Purchaser's breach or performance of any non-competition, exclusivity, employee non-solicitation, "most-favored-nation," reciprocal purchase provision or other provision materially restricting business conduct or operation is determined based on the acts or omissions of Purchaser's Affiliates (other than its officers or directors); or
- (g) require the consent, approval, or authorization of, waiver by, or registration or filing with, any Governmental Agency ("Governmental Approvals") with respect to Sellers except for the filing of the Sale Order and the Bidding Procedures Order with, and the approval thereof by, the Bankruptcy Court and except as otherwise expressly contemplated by this Agreement.

Section 3.3. Subsidiaries and Investments; Ownership. The Purchased Assets do not include the stock of, or any equity participation in, any Person. Sellers own all of the Purchased Assets and are a party to all of the Contracts and Leases. No Affiliate of any Seller (other than the Sellers) owns any interest in the Purchased Assets or is a party, successor or beneficiary to any Contract or Lease. Each entity executing this Agreement as a Seller (other than Touch America) is a wholly-owned direct or indirect subsidiary of Touch America

Section 3.4. Certificate and Organizational Documents. True, correct and complete copies of the certificate of organization, articles of incorporation, operating agreement, by-laws and other applicable organizational documents of each Seller were provided to Purchaser prior to the date of this Agreement.

Section 3.5. SEC Reports; Financial Statements and Information.

- (a) Listed on Schedule 3.5(a) are all Reports of Touch America on Form 10-K, Form 10-Q and Form 8-K (including all exhibits thereto) that have been filed with the U.S. Securities and Exchange Commission (the "Commission") since March 31, 2002, and has heretofore made such Reports available to Purchaser in the form filed with the Commission (collectively, the "SEC Reports"). The SEC Reports (x) at the time filed complied as to form in all material respects with the requirements of the Exchange Act, and (y) did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. None of the subsidiaries of Touch America is required to file any statements or reports with the Commission pursuant to Sections 13(a) or 15(d) of the Exchange Act.
- (b) Except as disclosed in Schedule 3.5(b), the audited consolidated balance sheet of Touch America at December 31, 2001 and 2000 and unaudited consolidated balance sheet of Touch America at December 31, 2002, and related consolidated statements of income, retained earnings and cash flow for the periods then ended and the notes thereto included in the applicable SEC Report (collectively and together with the items and information described in Sections 2.5(c) and (d), the "Financial Statements"), (i) were, except as otherwise noted therein, prepared in accordance with GAAP Consistency, and (ii) present fairly, in all material respects, the financial condition, the results of operations and the retained earnings and cash flow of Touch America as of the dates and for the periods indicated thereon.
- (c) The unaudited consolidated balance sheet of Touch America as of the Interim Balance Sheet Date (the "Interim Balance Sheet"), and the related consolidated statements of income and cash flow for the period then ended included in the applicable SEC Report, (i) were, except as otherwise noted therein, prepared in accordance with GAAP Consistency, and (ii) present fairly, in all material respects, the financial condition, results of operations and cash flows of the Touch America as of the dates and for the periods indicated thereon, subject to normal year-end adjustments.
- (d) The supplemental information of Touch America described on Schedule 3.5(d): (i) was prepared in good faith in the Ordinary Course of Business for the internal use of Sellers or in connection with this proposed transaction for the use of Purchaser, and (ii) presented fairly in all material respects the information purported to be presented therein as of the respective dates thereof.

Section 3.6. Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by Sellers without the intervention of any other person acting on its behalf in such manner as to give rise to any valid claim by any such person against Purchaser or its Affiliates for a finder's fee, brokerage commission or other similar payment based on an arrangement with Sellers

Section 3.7. Inventory. The inventories, including spare parts, replacement and component parts, of Sellers relating to the Relevant Network (the "Inventory"), are, taken as a whole, reasonably sufficient in quantity and suitable for the maintenance and operation of the Relevant Network in the Ordinary Course of Business. Since December 31, 2002, Sellers have not sold Inventory or other Personal Property other than in the Ordinary Course of Business.

Section 3.8. Real Property.

- (a) The Building constitutes the only real property owned by any Seller as of the date hereof and used in connection with the Business (together with all building improvements therein, the "Owned Real Property").
- (b) Schedule 3.8(b) contains a list of all collocation licenses, leases and subleases, including names of the parties thereto and the location of the applicable premises, with respect to all real property licensed, leased, subleased or used by Sellers as of the date hereof and used in connection with the Relevant Business, and lists all material licenses, occupancy agreements, rights of way, easement or any similar agreement necessary for the operations of the Relevant Business as presently conducted (such leases, subleases and other agreements, together with all amendments thereto, collectively, the "Leases", and such real property the "Leased Property"). Each Lease is valid, binding and enforceable against Sellers and, to Sellers' Knowledge, the other parties thereto in accordance with its terms, and in full force and effect, subject in the case of enforceability against the other parties thereto, to applicable bankruptcy, reorganization, insolvency, moratorium or similar Legal Requirements which affect creditors' rights generally and by legal and equitable limitations on the enforceability of equitable remedies. Sellers have performed all material obligations required to be performed by them under each of the Leases with Major Customers or Major Suppliers, other than monetary defaults that would not reasonably be expected to result in a termination of the Lease prior to the commencement of the Bankruptcy Cases and that would be cured by Sellers by payment of the Cure Amount. Neither Sellers nor, to Sellers' Knowledge, any other party thereto is in material default under any Lease (and no event has occurred which, with due notice or lapse of time or both, would constitute such a lapse or default by Sellers or, to Sellers' Knowledge, any other party thereto) other than in the case of Sellers defaults that would not reasonably be expected to result in a termination of the Lease prior to the commencement of the Bankruptcy Cases and that would be cured by Sellers by payment of the Cure Amount. No material controversy, claim, dispute or

disagreement exists between the parties to any of the Leases. Sellers have previously made available to Purchaser a copy of each Lease or other written evidence of the obligations, listed on Schedule 3.8(b). Since the Interim Balance Sheet Date, no option has been exercised by Sellers or, to Sellers' Knowledge, any other party under any of the Leases, except options whose exercise has been evidenced by a written document, a true, complete and accurate copy of which has been or, with respect to any such option exercised after the date hereof, will prior to the Closing be, made available to Purchaser with the corresponding Lease.

- (c) Sellers have not received any written notice of: (i) any violation of any material applicable building, zoning, land use or other similar Legal Requirement (including the Americans With Disabilities Act) in respect of Owned Real Property or Leased Property, which has not been heretofore remedied, which violations, individually or in combination with any others, would materially and adversely affect the ability of Sellers to use the affected parcel of material Owned Real Property or material Leased Property in the manner and scope in which it is now being used or operated by Sellers; (ii) any operations on or uses of any material Owned Real Property and material Leased Property which constitute material non-conforming uses under any applicable building, zoning, land use or other Legal Requirement; and (iii) other than published notice not actually received, any pending or contemplated rezoning proceeding materially affecting any material Owned Real Property or any material Leased Property.
- (d) Sellers have no Knowledge of and have not received any written notice that there is existing, pending or threatened: (i) condemnation of any part of Owned Real Property or Leased Property by any Governmental Agency; (ii) special assessments against any part of Owned Real Property or Leased Property; or (iii) litigation against any Seller for breach of any restrictive covenant affecting any part of Owned Real Property or Leased Property.
- (e) The covenants, easements, rights-of-way and other Liens affecting any any Leased Property do not with respect to each such Leased Property materially impair the ability to use any such Leased Property in the operation of the Relevant Business as presently conducted. The Purchased Assets include all utilities and services and rights of access to public roads, streets or the like or valid easements over private streets, roads or other private property for such ingress to and egress from Leased Property (and to Sellers' Knowledge, Leased Property), except as would not materially impair the ability to use any such Leased Property in the operation of the Relevant Business as presently conducted

- (f) No Seller is a "foreign person" within the meaning of Section 1445 of the Code or is subject to withholding under the Foreign Investment and Real Property Tax Act of 1980.
- (g) To the extent required by any Legal Requirement, Sellers have paid in full all material ad valorem property Taxes and other material assessments levied on the Owned Real Property and the Leased Property (if required under the Lease) that Sellers are obligated to pay and that have heretofore become due and payable, except in the case of the representation being made as of the date hereof as is being contested in good faith by appropriate proceedings and for which a reserve in accordance with GAAP Consistency has been set forth on the Business's books. Sellers have no Knowledge of any tax abatements or exemptions specifically affecting the Owned Real Property or any proposed increase in the assessed valuation of the Owned Real Property or of any proposed public improvement assessments.

Section 3.9. Personal Property.

- (a) As of the Interim Balance Sheet Date, Sellers owned outright and had valid title to all Personal Property owned by any Seller with respect to the Relevant Business.
- (b) No Seller is a party to a lease or license with respect to Personal Property as of the date hereof under which the annual rent and other charges are, in the aggregate, \$25,000 or more.
- (c) Since December 31, 2002, the Personal Property has been maintained in accordance with Sellers' historical practices. The Personal Property, taken as a whole, is reasonably suitable for the conduct of the Relevant Business as currently conducted.

Section 3.10 Compliance with Legal Requirements: Permits.

- (a) Sellers are in compliance in all material respects with all Legal Requirements applicable to the Relevant Business or any of the Purchased Assets. Since December 31, 2002, Sellers have not received any written (or, to their Knowledge, oral) notice or other communication from any Governmental Agency regarding any actual, alleged, possible, or potential violation of, or failure to comply, in any material respect, with, any Legal Requirement.
- (b) Schedule 3.10(b) sets forth a list of each Permit held by Sellers as of the date of this Agreement, including the expiration date of such Permits; provided, however, that Purchaser acknowledges that Sellers shall have the right to deliver a revised and updated Schedule 3.10(b) on or before the tenth (10th) Business Day following the date hereof and that any

discrepancies or deletions from, or additions to, the Schedule 3.10(b) delivered as of the date hereof shall not constitute a breach of this Agreement. The Permits listed on Schedule 3.10(b) constitute all of the Permits that are necessary for the conduct of the Relevant Business or the ownership or use of the Purchased Assets in connection therewith as currently conducted, owned and used by Sellers. All such Permits are in full force and effect and no proceeding is pending or, to the Knowledge of any Seller, threatened, to revoke or limit any such Permit.

- (i) Sellers are, and at all times since December 31, 2001, have been, in compliance in all material respects with all of the terms and requirements of each Permit held by Sellers necessary for the conduct of the Relevant Business or the ownership or use of the Purchased Assets in connection therewith, as currently conducted, owned and used by Sellers;
- (ii) Since December 31, 2001, Sellers have not received any written (or, to their Knowledge, oral) notice or other communication from any Governmental Agency regarding (A) any actual, alleged, possible, or potential violation of or failure to comply with, in any material respect, any term or requirement of any Permit held by Sellers and necessary for the conduct of the Relevant Business or the ownership or use of the Purchased Assets in connection therewith, as currently conducted, owned and used by Sellers, or (B) any actual, proposed, possible, or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to any Permit held by Sellers and necessary for the conduct of the Relevant Business or the ownership or use of the Purchased Assets in connection therewith, as currently conducted, owned and used by Sellers; and
- (iii) Since the Interim Balance Sheet Date, all applications required to have been filed for the renewal of the Permits held by Sellers and necessary for the conduct of the Relevant Business or the ownership or use of the Purchased Assets in connection therewith, as currently conducted, owned and used by Sellers have been duly filed on a timely basis with the appropriate Governmental Agencies, and all other filings required to have been made by Sellers with respect to such Permits have been duly made on a timely basis with the appropriate Governmental Agencies.

Section 3.11. Affiliate Agreements. There are no written Contracts or Leases or material oral Contracts or Leases, between any Seller, on the one hand, and any Affiliate or

Related Person of any Affiliate of any Seller, on the other hand, in connection with the Relevant Business or the Purchased Assets. There are no amounts, notes or accounts payable or receivable between any Seller, on the one hand, and any Affiliate or Related Person of any Affiliate of any Seller, on the other hand, whatsoever.

Section 3.12. Contracts.

- (a) Schedule 3.12(a) hereto lists all written Contracts (including Excluded Agreements, but excluding Customer Contracts and agreements to purchase services under tariff) and to the Knowledge of Sellers describes all oral Contracts (including Excluded Agreements, but excluding Customer Contracts and agreements to purchase services under tariff) in effect as of the date of this Agreement which provide for payments or the exchange of value (in the aggregate) of \$50,000 or more.
- (b) Except for agreements to purchase services under tariff, as of the date hereof the Contracts do not include any Contracts described in the following clauses:
- (i) mortgage, indenture, note or other instrument for or relating to Indebtedness other than capitalized leases;
 - (ii) guaranty of any obligation for borrowings or performance, or guaranty or warranty of products or services, excluding endorsements or guaranties of instruments made in the Ordinary Course of Business and statutory warranties;
 - (iii) Contract under which there remains any Liability of any Seller pursuant to the terms thereof for the sale or lease of any of Sellers' assets other than in the Ordinary Course of Business;
 - (iv) Contract under which there remains any Liability of any Seller pursuant to the terms thereof for the purchase or sale of any real estate;
 - (v) Contract for the future purchase by Sellers of services or Personal Property with an outstanding balance or remaining commitment in excess of \$50,000;
 - (vi) Contract under which there remains any Liability of any Seller pursuant to the terms thereof pursuant to which a Seller is obligated to make payments, contingent or otherwise, on account of or arising out of prior acquisitions or sales of businesses, assets, or stock of other companies;

- (vii) distribution, dealership, representative, broker, sales agency, advertising or consulting Contract excepting any such contract that is terminable at will, or by giving notice of thirty (30) days or less, without Liability;
 - (viii) agreement imposing non-competition, exclusive dealing, "most-favored-nation", "most-favored-customer", preferential pricing or employee non-solicitation obligations on any Seller;
 - (ix) agreement providing for payments to any Person based on sales, purchases, or profits, other than (x) direct payments for goods or services and (y) payments to salesmen in the Ordinary Course of Business;
 - (x) Contract relating to cleanup, abatement or other actions in connection with environmental liabilities; or
 - (xi) other material Contract not required to be listed above which was entered into outside of the Ordinary Course of Business other than any Contract relating to retention of professionals in connection with the Bankruptcy Cases.
- (c) Each Contract is valid, binding and enforceable against Sellers and, to Sellers' Knowledge, the other parties thereto in accordance with its terms, and in full force and effect, subject in the case of enforceability against the other parties thereto to applicable bankruptcy, reorganization, insolvency, moratorium or similar Legal Requirements which affect creditors' rights generally and by legal and equitable limitations on the enforceability of equitable remedies. Sellers have performed all material obligations required to be performed by them under each Contract with Major Customers and Major Suppliers, other than monetary defaults that would not reasonably be expected to result in a termination of the Contract prior to the commencement of the Bankruptcy Cases and that would be cured by Sellers by payment of the Cure Amount. Neither Sellers nor, to Sellers' Knowledge, any other party thereto is in material default under any Contract (and no event has occurred which, with due notice or lapse of time or both, would constitute such a lapse or default by Sellers, or to Sellers' Knowledge, any other party thereto), other than in the case of Sellers defaults that would not reasonably be expected to result in a termination of the Contract prior to the commencement of the Bankruptcy Cases and that would be cured by Sellers by payment of the Cure Amount. Sellers have delivered to Purchaser a copy of each Contract or other written evidence of the obligations, and all amendments thereto, listed on Schedules 3.12(a).

Section 3.13. Intellectual Property.

- (a) Sellers own or have the valid right to use all material Intellectual Property. To the Knowledge of any Seller, there are no infringements of any Intellectual Property by any third party. To Sellers' Knowledge, the conduct of the Business as currently conducted does not infringe any proprietary right of a third party. There is no claim, suit, action or proceeding pending or, to the Knowledge of any Seller, threatened against any Seller: (i) alleging any such material conflict or infringement with any third party's proprietary rights; or (ii) challenging any Seller's ownership or use, or the validity or enforceability of any material Intellectual Property. The consummation of the transactions contemplated by this Agreement will not materially limit the use or ownership of any, or any right to, Intellectual Property.
- (b) Schedule 3.13(b) sets forth a complete list of registrations/patents or applications therefor pertaining to the Intellectual Property, as of the date hereof and the owner of record, date of application or issuance and relevant jurisdiction as to each. All Intellectual Property listed therein is owned by Sellers, free and clear of all Liens, except for Permitted Liens and Liens that will be extinguished by the Sale Order. All Intellectual Property, listed, or required to be listed, on Schedule 3.13(b) is valid, subsisting, unexpired and enforceable and the registrations thereof are in proper form and all renewal fees and other maintenance fees that have fallen due have been paid. To Seller's Knowledge, as of the date hereof, no listed application or registration/patent for Intellectual Property, is the subject of any legal or governmental proceeding before any Governmental Agency in any jurisdiction, including any office action or other form of preliminary or final refusal of registration.
- (c) Schedule 3.13(c) sets forth a complete list as of the date hereof of (i) all material written (and to the Knowledge of Sellers, oral) licenses, sublicenses, cross-licenses and other agreements in which Sellers, or to the Knowledge of Sellers any sublicensee of any Seller, has granted to any person the right to use the Intellectual Property; and (ii) other written (and to the Knowledge of Sellers, oral) forbearances to sue, and settlement agreements to which any Seller is a party relating to the Intellectual Property or the intellectual property of any third party relating to the Business. No Seller is under any obligation to pay royalties or other payments in connection with any license, sublicense or other agreement relating to the Intellectual Property, in each case other than (x) such licenses, sublicenses and other agreements providing for royalties or other payments of less than \$1,000 per annum, and (y) such licenses, sublicenses and other agreements relating to (A) "off-the-shelf" software, or (B) software contained within equipment owned or leased by Sellers pursuant to a Contract listed on Schedule 3.12(a).

- (d) No former or present employee, officer or director of any Seller holds any right, title or interest, directly or indirectly, in whole or in part, in or to any material Intellectual Property.
- (e) None of the material designs, plans, trade secrets, inventions, processes, procedures, research records, manufacturing know-how and manufacturing formulae, wherever located, the value to the Relevant Business of which is contingent upon maintenance of the confidentiality thereof, has been disclosed by any Seller to any Person other than employees, representatives and agents of Sellers except as required pursuant to the filing of a patent application by any Seller or pursuant to customary confidentiality agreements.

Section 3.14. Software.

- (a) All Software as of the date hereof, excluding "off-the-shelf" software, application program interfaces, work group developed tools, shareware and individually developed desktop tools (including Excel spreadsheets), is set forth and described on Schedule 3.14(a) hereto. To the extent any material Software has been designed or developed by any Seller or by any employee of Seller, or by consultants on any Seller's behalf, such Software is original and is protected by the copyright laws of the United States, and such Seller has complete rights to and sole ownership of such Software. To the Knowledge of any Seller, no part of any such Software or the use thereof violates or infringes upon the rights of any other person or entity, including, copyrights, patents, trade secrets and rights of privacy.
- (b) The Software is free from any software defect or programming or documentation error that (i) would be material, or (ii) is not mitigated by alternate working methods or software patches.
- (c) No Seller has altered the data, or any Software or supporting software which may in turn damage the integrity of the data, stored in electronic, optical or magnetic form. Sellers have no Knowledge of the existence of any material bugs or viruses with respect to the Software.

Section 3.15. Labor Relations. No Seller is a party to any collective bargaining agreement covering Business Employees. There are no unfair labor practice proceedings pending or, to Sellers' Knowledge, threatened in writing between any Seller and any of its current or former Business Employees or any labor or other collective bargaining unit representing any current or former Business Employee of such Seller that would reasonably be expected to result in a labor strike, general slow-down or general work stoppage.

Section 3.16. ERISA There are no Multiemployer Plans or Union Welfare Benefit Plans to which Sellers or any other member of the Control Group is, or has been, required to make a contribution or other payment.

Section 3.17. Insurance.

(a) Schedule 3.17(a) sets forth a list of all insurance policies and all material fidelity bonds or other insurance service contracts (the "Insurance Policies") providing coverage for the properties or operations of the Relevant Business as of the date of this Agreement, the type and amount of coverage, and the expiration dates of the Insurance Policies, whether or not the Insurance Policies will be included in the Purchased Assets. All Insurance Policies of any kind or nature owned by or issued to any Seller, including, policies for fire, life, theft, product liability, public liability, property damage, other casualty, workers' compensation, employee health and welfare, title, property and liability, with respect to the Relevant Business and/or the Purchased Assets are in full force and effect and are of a nature and provide such coverage as is sufficient and as is reasonably appropriate or is customarily carried by companies engaged in business similar to the Relevant Business. As of the date of this Agreement, (i) there is no material claim by any Seller pending under any of the Insurance Policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies, (ii) all premiums payable under all such policies have been paid on or prior to their due date, and (iii) Sellers have otherwise complied in all material respects with the terms and conditions of all the Insurance Policies. As of the date of this Agreement, no Seller has received notice from any insurance carrier: (i) threatening a suspension, revocation, modification or cancellation of any material insurance policy or a material increase in any premium in connection therewith, or (ii) informing such Seller that any material coverage listed on Schedule 3.17 will or may not be available in the future on substantially the same terms as now in effect.

(b) Schedule 3.17(b) sets forth a list of all bonds, letters of credit, deposits and similar type surety agreements of Sellers relating to the Relevant Business as of the date of this Agreement, the name of the surety, issuer or depository, the relevant Seller and the Governmental Agency or other Person requiring the issuance of the bond, letter of credit, deposit or similar type surety agreement. Sellers shall promptly deliver or make available to Purchaser a copy of all bonds, letters of credit, deposit agreements and similar surety agreements listed on Schedule 3.17(b).

Section 3.18. Litigation. Including with respect to Excluded Matters:

(a) Except as set forth on Schedule 3.18, as of the date hereof, there are no material actions, suits, billing disputes, proceedings, labor disputes or investigations (collectively, "Proceedings") pending or to Sellers' Knowledge threatened in writing by or against any Seller, any of its Affiliates, or, to Sellers' Knowledge, any of their respective officers,

directors, or employees in their capacity as such involving, affecting or relating to the Relevant Business, any Purchased Asset, Assumed Liability, Contract or Lease or the transactions contemplated by this Agreement Schedule 3.18 sets forth a list and a summary description of all such Proceedings.

- (b) Except for the Bankruptcy Cases and customary motions filed in connection with the administration thereof, there will be no Proceedings pending or to Sellers' Knowledge threatened against any Seller, any of its Affiliates or, to Sellers' Knowledge, any of their respective officers, directors, or employees in their capacity as such, that would reasonably be expected to materially adversely affect: (i) the assets, liabilities, results of operations, properties or operational or financial condition of the Relevant Business following the Closing, or (ii) the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.
- (c) Neither Sellers, the Relevant Business nor any of the Purchased Assets are subject to any Order (other than the Sale Order) that materially adversely affects or would reasonably be expected to materially adversely affect: (i) the assets, liabilities, results of operations, properties or operational or financial condition of the Relevant Business, or (ii) the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 3.19. Environmental Matters.

- (a) Sellers are in compliance in all material respects with all Environmental Laws in connection with the ownership, use, maintenance and operation of the Owned Real Property and Leased Property and otherwise in connection with the conduct of the Relevant Business;
- (b) Sellers have no Liability, whether contingent or otherwise, under any Environmental Law with respect to the Relevant Business or the Purchased Assets;
- (c) Since December 31, 2002, no request for information, notice, Governmental Agency inquiry, demand letter, notice of violation or alleged violation of, non-compliance or alleged non-compliance with or any Liability under, any Environmental Law to which any Purchased Asset or the Relevant Business is subject including its operations, has been received by or, to Seller's Knowledge, threatened against any Seller;
- (d) There are no Orders outstanding, or any administrative, civil or criminal actions, suits, proceedings or investigations pending or, to Sellers' Knowledge, threatened, against any Seller with respect to any Purchased Asset, Assumed Liability or the Relevant Business relating to compliance with or Liability under any Environmental Law;

- (e) Sellers have obtained or applied for all Permits, required under any Environmental Law necessary for the conduct of the Relevant Business or the ownership or present use of the Owned Real Property or Leased Property, improvements or equipment located thereon;
- (f) Sellers have not caused or contributed to any Release, nor is there a threat of a Release, of any Hazardous Material on or from the Owned Real Property, Leased Property or any other real property used in connection with the Relevant Business in violation of any Environmental Law or that would reasonably be expected to result in Liability to Sellers under any Environmental Law, nor have Sellers used, generated, stored or otherwise allowed to be present on the Owned Real Property or Leased Real Property, any Hazardous Material in violation of any Environmental Law or that would reasonably be expected to result in Liability to Sellers under any Environmental Law;
- (g) No Seller is required to give notice of or record or deliver to any Governmental Agency an environmental disclosure document or statement by virtue of the transactions set forth herein and contemplated hereby, or as a condition to the recording of any mortgage or the effectiveness of any of the transactions contemplated hereby;
- (h) None of the Owned Real Property or Leased Property (and any buildings, structures, fixtures or materials on such real property): (i) contains or includes any asbestos, polychlorinated biphenyls, or any underground storage tanks, piping, or sumps (or other underground structures which contain Hazardous Material), (ii) is included or proposed for inclusion on the National Priorities List or any similar list maintained under any Environmental Law, (iii) constitutes a habitat for any species designated as threatened or endangered pursuant to the Endangered Species Act, or (iv) contains any wetlands;
- (i) Sellers have not disposed of, transported, or arranged for the disposal or transportation of any Hazardous Material to any offsite location that is or has been the subject of any inquiry or investigation by any Governmental Agency relating to alleged non-compliance with or liability under Environmental Law; and
- (j) Sellers have provided Purchaser with (x) all material internal reports prepared by or on behalf of Sellers concerning the environmental history of the Owned Real Property and Leased Property during the two years preceding the date hereof, and (y) any and all Phase I or Phase II Environmental Assessments relating to the Owned Real Property and Leased Property in the Sellers' possession or control.

Section 3.20. Tax Matters.

- (a) Tax Liens. As of the date of this Agreement, there is no Lien (other than Permitted Liens or a Lien that will be extinguished by the Sale Order) affecting any of the Purchased Assets that arose in connection with any failure or alleged failure to pay any Tax.
- (b) Tax Exempt Property. None of the Purchased Assets secures any Indebtedness, the interest on which is tax-exempt under Section 103(a) of the Code. None of the Purchased Assets are "tax-exempt use property" within the meaning of Section 168(h) of the Code.

Section 3.21. Interim Operations. From the Interim Balance Sheet Date (or in the case of Inventory or other Personal Property, from December 31, 2002) through the date hereof, except for the failure by Sellers to pay amounts due under Contracts and Leases that would be cured by the payment of the Cure Amount, Sellers have not taken any action that would have constituted a material violation of Section 5.1 of this Agreement if such Section 5.1 had been in effect from the Interim Balance Sheet Date (or in the case of Inventory or other Personal Property, from December 31, 2002).

Section 3.22. Customers and Suppliers. Schedule 3.22(a) lists the sixty-five (65) largest customers and the sixty (60) largest suppliers (measured by dollar volume for the twelve (12) calendar months ended March 31, 2003) of the Relevant Business ("Major Customers" and "Major Suppliers," respectively) and the revenue derived from each Major Customer for each month in such twelve-month period and the total payments made to each Major Supplier in such 12-month period. Except as described on Schedule 3.22(b), as of the date of this Agreement, (i) no Seller is engaged in a material dispute with any Major Customer or Major Supplier, (ii) there has been no material reduction in business volume with any Major Customer or Major Supplier with respect to the Relevant Business since December 31, 2002, through the date hereof, and (iii) since December 31, 2002, through the date hereof, no Major Customer or Major Supplier has proposed to Sellers in writing any material modification or change in the business relationship with any Seller. Except as set forth on Schedule 3.22(c), Sellers have no Knowledge of any party to a Contract that (x) has filed or intends to make a general assignment for the benefit of its creditors or a voluntary petition for relief pursuant to the Bankruptcy Code or any petition or answer seeking, consenting to, or acquiescing in reorganization, arraignment, adjustment, composition, liquidation, dissolution or similar relief, or (y) is the subject of an involuntary petition in bankruptcy or other insolvency protection.

Section 3.23. Certain Payments. Since December 31, 2002, neither Sellers nor any of their directors members, managers, officers, or employees, or to Sellers' Knowledge any other Person acting for or on behalf of any Seller, has made (a) any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services in violation of any Legal Requirement or (b) established or maintained any fund or asset for any purpose described in clause (a) above that has not been recorded in the books and records of the Business.

Section 3.24. Compliance With Legal Requirements. No Seller or any of its Affiliates is in violation of or in default under any Legal Requirements applicable to the Relevant Business or the Purchased Assets the effect of which, individually or in the aggregate with other such violations and defaults, would reasonably be expected to have a Material Adverse Effect on the condition of the Relevant Business taken as a whole. Each Seller that is a debtor in the Bankruptcy Cases has complied in all material respects with all applicable Legal Requirements applicable to such Bankruptcy Cases.

Section 3.25. Schedule Updates. The Schedule Updates as of the Closing Date will set forth all of the information required to be set forth therein were the corresponding representations and warranties made as of the Closing Date, notwithstanding the fact that such representations and warranties expressly speak as of the date of this Agreement or as of a different date.

Section 3.26 No Foreign Contracts or Assets. No Customer Contract involves facilitates, assets, or services located outside or with origination or termination points outside of the United States of America and all of the Purchased Assets are situated in the United States of America.

Section 3.27 Relevant Network Operations. The Purchased Assets constitute all of the Assets necessary to operate the Relevant Business in the Ordinary Course of Business and to deliver the relevant services as required by the Assumed Customer Contracts

Section 3.28 Qwest Litigation. Set forth on Schedule 3.28 are all Proceedings involving any Seller and Qwest Communications Corporation or any of its Affiliates (the "Qwest Proceedings") and a summary description, prepared by Seller's outside counsel, of the current status of such Qwest Proceedings.

Section 3.29 Swap Transactions. Except as set forth on Schedule 3.29, none of the Sellers, individually, jointly or collectively, has entered into any Contract or series of or connected Contracts in relation to the Relevant Business or Purchased Assets, pursuant to which services, assets, or other valuable considerations are or were exchanged or provided to another Person, in whole or in substantial part, in consideration of value other than cash in excess of \$50,000.

Section 3.30 No Undisclosed Liabilities. No Seller has any Liabilities of any nature arising out of or relating to the Relevant Business or Purchased Assets, except (i) to the extent disclosed or reserved against in the Financial Statements, (ii) for Liabilities not required by GAAP to be accrued, disclosed or reserved against in the Financial Statements (other than Liabilities that are known to Sellers, reasonably estimable, material to the Relevant Business or Purchased Assets, and not required by GAAP to be accrued, disclosed or reserved against solely because they are judged not to be probable or reasonably possible to occur), and (iii) for Liabilities that (x) were incurred after the date of such Financial Statements in the Ordinary Course of Business consistent with past practice and (y) individually and in the aggregate have not had and would not reasonably be expected to have a Material Adverse Effect on the condition of the Relevant Business.

Section 3.31 Bankruptcy Cases. As of the mutual execution of this Agreement, Sellers have not commenced the Bankruptcy Cases.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Subject to obtaining Lender Approval with respect to Sections 4.1, 4.2, and 4.6, Purchaser represents and warrants to Sellers as follows:

Section 4.1. Authority of Purchaser. Purchaser is a corporation organized, validly existing, and in good standing under the laws of the jurisdiction of its organization. Purchaser has the corporate power and authority to execute, deliver and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is a party, the performance by Purchaser of its obligations under this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Purchaser, and this Agreement constitutes, and each of the Ancillary Agreements to which it is a party upon its execution will constitute (in each instance, assuming such agreements constitute valid and binding obligations of the other parties thereto), the legal, valid and binding obligation of Purchaser enforceable in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium, or similar Legal Requirements from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of equitable remedies. Purchaser has the corporate power and authority to own its properties and to carry on its business presently being conducted by it.

Section 4.2. No Conflict or Violation. To the knowledge of Purchaser, neither the execution and delivery of this Agreement and the Ancillary Agreements by Purchaser, the consummation of the transactions contemplated hereby or thereby by Purchaser, nor the fulfillment of the terms and compliance with the provisions hereof or thereof by Purchaser will (with or without notice or lapse of time):

- (a) contravene, conflict with, or result in a violation of (i) any provision of the certificate of organization, articles of incorporation, by-laws, articles of organization or limited liability company agreement of Purchaser, as applicable, (ii) any resolution adopted by the board of directors, managers, members or the stockholders (as the case may be) of Purchaser or (iii) any agreement the contravention of, conflict with or violation of which would materially impair Purchaser's ability to consummate the transactions contemplated hereby;
- (b) contravene, conflict with, or result in a violation of, in any material respect, any of the terms or requirements of any Governmental Agency, or give to any Governmental Agency the right to challenge any of the transactions

contemplated hereby or thereby or to exercise any remedy or obtain any relief under any Legal Requirement to which Purchaser is subject; or

- (c) require the consent, approval, or authorization of, waiver by, or registration or filing with, any Governmental Agency with respect to Purchaser except for approval of the Sale Order and the Bidding Procedures Order by the Bankruptcy Court and except as otherwise expressly contemplated by this Agreement.

Section 4.3. Litigation. There are no actions, causes of action, claims, suits, proceedings, orders, writs, injunctions or decrees pending or, to the knowledge of Purchaser, threatened against Purchaser at law, in equity, or admiralty, or before or by any Governmental Agency, which seeks to restrain or enjoin the consummation of (or would materially impair Purchaser's ability to consummate) the transactions contemplated hereby.

Section 4.4. Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by Purchaser without the intervention of any other person acting on its behalf in such manner as to give rise to any valid claim by any such person against Sellers or their Affiliates for a finder's fee, brokerage commission or other similar payment based on an arrangement with Purchaser.

Section 4.5. Organizational Documents. True and correct copies of the certificate of organization, articles of incorporation, operating agreement or by-laws of Purchaser (as applicable) have previously been made available to the Sellers.

Section 4.6. Financing. Purchaser has sufficient cash and/or available credit facilities (and has provided Sellers with evidence thereof) to pay the Purchase Price and to make all other necessary payments of fees and expenses in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

ARTICLE V CERTAIN COVENANTS OF SELLERS

Sellers covenant with Purchaser that from and after the date hereof through the Closing Date:

Section 5.1. Conduct of Business. With respect to the Relevant Business:

- (a) Operate in the Ordinary Course. Sellers shall operate the Relevant Business only in the Ordinary Course of Business (other than the commencement and pendency of the Bankruptcy Cases and motions in the Bankruptcy Cases not inconsistent with the other provisions of this Section 5.1).
- (b) Actions with Respect to Certain Agreements. With respect to Contracts and Leases relating to the Relevant Business (excluding any relating solely to Excluded Contracts) with (I) Major Customers and Major Suppliers

(excluding agreements for services under tariffs with Major Suppliers for an amount not in excess of \$50,000 during their stated term) and (II) other Contracts and Leases which, in the case of this clause (II), require the annual payment or exchange of value of \$25,000 or more (collectively, the "Relevant Agreements"):

- (i) Sellers shall not amend or modify, or waive any material term of, any Relevant Agreement, except for settlements of disputes with the counterparty of such Relevant Agreement in the Ordinary Course of Business that are not reasonably expected to alter to the detriment of Purchaser the post-Assumption Date obligations of the parties under the Relevant Agreement were it to become an Assumed Contract or an Assumed Lease as of the Closing Date.
- (ii) With respect to each Relevant Agreement that (x) expires upon the conclusion of its stated term prior to the Closing Date, (y) contains a renewal option that will expire prior to the Closing Date if not exercised, or (z) contains a right of Sellers which if timely exercised will prevent automatic renewal and which right will expire prior to the Closing Date:

A. Sellers shall give Purchaser reasonable advance written notice of such expiration, but in any event, shall give such notice not less than fifteen (15) Business Days prior to such expiration date (or, if applicable, any earlier required notice date with respect to such expiration date) (the "Renewal Expiration Date") which notice shall specify:

- (1) the Relevant Agreement;
- (2) the Renewal Expiration Date; and
- (3) whether Sellers intend to extend or renew such Relevant Agreement or allow or cause such Relevant Agreement to terminate or lapse.

B. With respect to each Relevant Agreement for which Sellers have indicated in the notice delivered pursuant to paragraph A above that their intention is to extend or renew such Relevant Agreement, unless Purchaser shall, not less than five (5) Business Days prior to the Renewal Expiration Date have provided Sellers with a written request to allow, or cause, such Relevant Agreement to expire (a "Lapse Request"), then Sellers shall:

- (1) In the case of Relevant Agreements described in Section 5.1(b)(ii)(x), use Best Efforts to renew such Relevant Agreement.
 - (2) In the case of Relevant Agreements described in Section 5.1(b)(ii)(y), exercise such renewal option
 - (3) In the case of Relevant Agreements described in Section 5.1(b)(ii)(z), allow such Relevant Agreement to automatically renew.
- C. In the event Purchaser delivers a Lapse Request, such Lapse Request shall not restrict the ability of Sellers to extend or renew the Relevant Agreement.
- D. With respect to each Relevant Agreement for which Sellers have indicated in the notice delivered pursuant to paragraph A above that their intention is to allow or cause such Relevant Agreement to terminate or lapse, Purchaser may provide Sellers with a written direction not less than five (5) Business Days prior to the Renewal Expiration Date to extend such Relevant Agreement (a "Renewal Request"). Upon timely receipt of a Renewal Request, Sellers shall (1) in the case of Relevant Agreements described in Section 5.1(b)(ii)(x), use Best Efforts to renew such Relevant Agreement, (2) in the case of Relevant Agreements described in Section 5.1(b)(ii)(y), exercise such renewal option, and (3) in the case of Relevant Agreements described in Section 5.1(b)(ii)(z), take no action to prevent such automatic renewal. To the extent a Renewal Request is not timely received, Sellers shall allow or cause such Relevant Agreement to terminate or lapse.
- (iii) Sellers shall not allow or suffer to terminate any Relevant Agreement other than upon expiration of its stated term and shall use Best Efforts to extend any profitable Relevant Agreements.
 - (iv) Upon request by Purchaser, Sellers shall use Best Efforts to provide Purchaser copies of any Relevant Agreement within ten (10) Business Days of such request.
- (c) Additional Affirmative Covenants: Sellers shall

- (i) operate the Relevant Network in compliance with best industry standards and in a manner that meets or exceeds any performance levels, specifications or standards offered to customers or provided in any Customer Contracts;
- (ii) continue to maintain, in all material respects, their properties in accordance with present practices in a condition, taken as a whole, reasonably suitable for their current use;
- (iii) coordinate in good faith with Purchaser to identify and cause any mutually agreeable cost savings with respect to the Relevant Network, including the preparation of any network grooming plans and development of transition plans with respect to the segregation of certain network elements, facilities and assets between the Relevant Business and the Retained Business
- (iv) make any and all filings required under applicable Legal Requirements and file all applications required for the renewal of the Permits held by Sellers and necessary for the conduct of the Relevant Business or the ownership or use of the Purchased Assets in connection therewith, as currently conducted, owned and used by Sellers in a timely fashion;
- (v) use Best Efforts in the Ordinary Course of Business to (x) keep available generally the services of the present officers and key Business Employees, and (y) except as permitted by 5.1(b)(ii), preserve generally the present relationships with customers and significant vendors having material business dealings with the Relevant Business;
- (vi) perform their obligations under:
 - A. Contracts and Leases with Major Customers and Major Suppliers, except (i) for defaults in the payment of amounts due that would be cured by the payment of a Cure Amount and (ii) with respect to Excluded Contracts; and
 - B. each of the other Contracts and Leases (other than Excluded Contracts) except for defaults either (x) in the payment of amounts due that would be cured by the payment of a Cure Amount, or (y) that would not prevent

the assumption by Sellers of the Contract or Lease and the assignment of such Contract or Lease to Purchaser pursuant to the Sale Order.

- (vii) use Best Efforts to keep in full force and effect insurance comparable in amount and scope to coverage maintained by it (or on behalf of it) on the date hereof;
- (viii) renew and keep in full force and effect all Intellectual Property and Software;
- (ix) on or before five (5) Business Days after the date hereof, deliver to Purchaser a schedule identifying (A) all of Sellers' outstanding purchase orders with vendors as of the date of this Agreement with a gross value in excess of \$25,000, (B) the amount of the uninvoiced balance with respect to each such purchase order; and (C) which of such purchase orders have remaining commitments in excess of \$15,000; and
- (x) deliver to Purchaser a detailed list of all Purchased Assets (including part numbers, serial numbers and circuit numbers, as applicable, and locations thereof), which list shall be as complete as reasonably possible, and shall use Best Efforts to deliver such schedule at least ten (10) days prior to the Closing Date, but in no event later than ten (10) days prior to the Closing Date.

(d) Additional Negative Covenants: Sellers shall not:

- (i) following the commencement of the Bankruptcy Cases, take any action with respect to any customer, supplier, or vendor of the Relevant Business (other than Qwest (a) with respect to matters that are unrelated to any Assumed Contracts or Assumed Leases, or (b) with respect to the Contracts listed on Schedule 1.8) that would require an Order of the Bankruptcy Court under the Bankruptcy Code other than any amendment, modification, waiver, extension, renewal, termination or lapse of a Relevant Agreement expressly permitted by Section 5.1(b) or prepayment of expenses not prohibited by Section 5.1(d)(ii);
- (ii) prepay any expenses, except (A) prepayments of up to 30 days of expenses as is necessary for Sellers to remain in compliance with the other covenants contained in this

Section 5.1, or (B) prepayments for equipment required for the provisioning of customer orders.

- (iii) enter into a new service order under an existing Contract with a vendor or supplier for an amount relating to the period after the Closing Date in excess of \$50,000 during the stated term or \$25,000 in any given 12-month period;
- (iv) enter into a new Contract (including, for purposes of this Section 5.1(d)(iv), any renewal of Customers Contracts) or Lease of the type described in A, B, or C below:
 - A. a Contract or Lease with any Major Customer or Major Supplier (excluding agreements for services under tariffs for an amount relating to the period after the Closing Date not in excess of \$25,000);
 - B. a Contract or Lease on terms which, taken as a whole, are both materially (x) inconsistent with Sellers' existing practices as of December 31, 2002 for customers and suppliers who are similarly situated, and (y) less favorable to Sellers than the prevailing market terms for similar arms length contracts entered into as of that date; or
 - C. a Contract or Lease which meets all of the following criteria: (x) has a first year order value in excess of \$100,000, in the case of Customer Contracts, and \$50,000, in the case of other Contracts or Leases, (y) is entered into following the commencement of the Bankruptcy Cases and not fully performed prior to the Closing Date, and (z) by its terms is not capable of being assigned to Purchaser by Sellers without the consent of the counterparty thereto;
- (v) make any sale, assignment, transfer, abandonment, or other conveyance of any of their assets primarily related to the Relevant Business or any part thereof, except (i) transactions pursuant to existing Contracts set forth on Schedule 3.12(a) and (ii) providing goods and services in the Ordinary Course of Business;
- (vi) settle, release or forgive any material claim or litigation or waive any material right, (x) if such actions are reasonably expected to alter to the detriment of Purchaser the post-Assumption Date obligations of the parties under the Contract or Lease were it to become an Assumed Contract

or an Assumed Lease as of the Closing Date or (y) which would result in a Material Adverse Effect;

- (vii) enter into any transaction (other than pursuant to Contracts in effect on the date hereof) of any nature with, any director, executive officer or Business Employee;
 - (viii) acquire, lease or agree to acquire or lease any "indefeasible right of use", long-term lease or other similar obligation for any telecommunications facility or service; and
 - (ix) incur, or suffer to exist, any Lien on the assets of the Relevant Business other than Permitted Liens and Liens that will be transferred to the proceeds of such assets pursuant to the Sale Order.
- (e) Purchaser shall be deemed to have approved any request for waiver of this Section 5.1 as it relates to a specific set of facts and circumstances five (5) Business Days after either (a) a specific e-mail request (referencing this Agreement and this Section 5.1(e) in the subject line) is sent to it at Rick.Coma@360.net, with copies, which shall not constitute notice, to Chris.Mueller@360.net and Lin.Gentemann@360.net, or (b) a specific notice is given pursuant to Section 13.1, unless prior to such fifth (5th) Business Day, Purchaser shall have sent a objection to such request by e-mail to jerry@tamerica.com, with a copy to mike.zimmerman@tamerica.com.
- (f) No action taken by any Seller in accordance with the express terms of any Lapse Request or a Relevant Agreements Consent (other than a Renewal Request or a denial of a request for a waiver or consent) shall constitute a breach of any representation, warranty or other covenant that would arise out of undertaking the action specifically requested or directed.
- (g) From the date of commencement of the Bankruptcy Cases to the earlier of the Closing Date or the termination of this Agreement, Purchaser shall have no right to equitable or monetary remedies with respect to this Section 5.1; provided, however, that this sentence shall not restrict Purchaser from asserting closing conditions in accordance with Section 7.2, or terminating this Agreement in accordance with Section 12.1.

Section 5.2. Information and Access.

- (a) Sellers shall permit representatives of Purchaser to have reasonable access during normal business hours, and in a manner so as not to interfere with the normal operations of Sellers, to the Building, all premises, facilities, Leased Property and other properties, personnel, accountants, books, records,

Contracts and documents of or pertaining to the Business and copies of any such documents. If requested by Purchaser, Sellers shall also permit Purchaser (and assist Purchaser as necessary) to perform, at Purchaser's sole cost and expense, Phase I environmental site assessments. Purchaser and each of its representatives will treat and hold as confidential all information obtained by or provided to them in connection with the transactions contemplated by this Agreement in accordance with the terms and provisions of the Confidentiality Agreement, which Confidentiality Agreement remains in full force and effect. No investigation by or other information received by Purchaser shall operate as a waiver or otherwise affect any representation, warranty, covenant or agreement given or made by Sellers hereunder.

- (b) Sellers shall use Best Efforts to obtain any additional information, documents or records from Third Parties reasonably requested by Purchaser in relation to any customer, supplier or vendor Contract that is not in the possession of Sellers, including any copies of or information with respect to any Contracts pursuant to which services are being provided or purchased by Sellers. Sellers shall also cooperate with and use Best Efforts to assist Purchaser in contacting any such Third Parties to confirm material provisions or the continued existence of any Contract. Sellers shall use Best Efforts to obtain from Qwest a complete and accurate list of all "dedicated access or web hosting contracts" and "In-Region Users" as described in Sections 2(f) of the respective Contracts listed on Schedule 1.8, including filing appropriate pleadings in the Bankruptcy Court to compel any Third Party to turnover the foregoing. Purchaser acknowledges that Exhibit B to that certain First Amended and Restated Global Service Provider Agreement, dated March 21, 2001 by and between Touch America, Inc. and an Affiliate of Qwest required Qwest to provide certain of the foregoing customer information to Touch America, and that despite repeated requests by Sellers, Qwest has not provided Sellers the required information.
- (c) Not more than fifteen (15) Business Days after the date of this Agreement, Sellers shall deliver to Purchaser a schedule setting forth a list of all services, facilities and assets licensed, leased, sold, granted by "indefeasible right of use," or otherwise provided by Sellers to Third Parties relating to the Relevant Business as of the date of this Agreement (the "Services Provided Schedule"), which Services Provided Schedule shall detail the specific item(s) provided, the recipient thereof, the Contract (if any), the relevant route(s), the revenue and the expiration of the Contract term (if any), or, if on a month-to-month (or similar), specification of the same.
- (d) Not more than fifteen (15) Business Days after the date of this Agreement, Sellers shall deliver to Purchaser a schedule setting forth a list of all services, facilities and assets licensed, leased, purchased, obtained by "indefeasible right-of-use," or otherwise received by Sellers from Third

Parties relating to the Relevant Business as of the date of this Agreement (the "Services Received Schedule"), which Services Received Schedule shall detail the specific item(s) received, the provider thereof, the Contract (if any), the relevant route(s), the associated revenue, and the expiration of the Contract term (if any), or, if on a month-to-month (or similar), specification of the same.

Section 5.3. Confidentiality Agreements. At the Closing, Sellers shall, to the maximum extent assignable pursuant to Section 363 and/or Section 365 of the Bankruptcy Code, assign to Purchaser the benefits of all confidentiality agreements entered into, relating to the possible sale of the Business or any material portion of the assets thereof.

Section 5.4. Notices of Certain Events. Sellers shall promptly notify Purchaser of:

- (a) any written notice from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;
- (b) any written notice from any Governmental Agency in connection with the transactions contemplated by this Agreement;
- (c) any Proceedings commenced or, to Sellers' Knowledge, threatened in writing against Sellers that if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.18(a); and
- (d) the breach by any Seller of any representation, warranty, covenant or agreement contained in this Agreement or the occurrence of any event that in any such case would reasonably be expected to result in the failure of any of the conditions set forth in Section 7.2.

Section 5.5. Schedule Updates.

- (a) Not less than three (3) Business Days prior to the Closing Date, Sellers shall deliver to the Purchaser updates of Schedules to this Agreement, which shall set forth the additional information that would be required were Sellers required to make the representations and warranties in the corresponding Sections of this Agreement as of the Closing Date notwithstanding the fact that such representations and warranties expressly speak as of the date of this Agreement or as of a different date as well as an update of the Customer Contract Schedule as of such date (collectively, the "Schedule Updates").
- (b) The Schedule Updates shall not affect the determination as to whether any representation or warranty contained in this Agreement was breached as of the date of this Agreement or as of the Closing Date.

Section 5.6. Purchaser Schedule Updates. At any time, and from time to time, prior to the Closing, Purchaser may deliver a written notice to Sellers indicating which if any of the Leases or Contracts listed in the Schedule Updates or the information delivered pursuant to Section 5.1(c)(viii) or (ix) shall be added to Schedule 1.6, whereupon such Schedule shall be deemed amended without any further action required by the parties to this Agreement. Any Contract or Lease listed in the Schedule Updates or the information delivered pursuant to Section 5.1(c)(viii) or (ix) that was not previously listed on the Schedules and that is not the subject of a notice pursuant to the first sentence of this Section shall be deemed to be an Undesignated Agreement.

Section 5.7. Title Insurance. Should Purchaser at its own cost and expense choose to obtain title insurance with respect to the Owned Real Property, Sellers shall use Best Efforts to cooperate with Purchaser with respect to obtaining such title insurance.

ARTICLE VI CERTAIN COVENANTS AND AGREEMENTS

Section 6.1. Bankruptcy Matters; Bidding Process.

- (a) Promptly, but in no event later than one (1) Business Day after the date that the Bankruptcy Cases is commenced, Sellers shall file with the Bankruptcy Court a motion (the "Sale Motion"), notices and proposed orders, each in form and substance satisfactory to Purchaser seeking the Bankruptcy Court's issuance of:
- (i) an Order in substantially the form of Exhibit D hereto (the "Bidding Procedures Order"); and
 - (ii) an Order in substantially the form of Exhibit E hereto (the "Sale Order").
- (b) Sellers shall serve a copy of the Sale Motion on all taxing authorities that have jurisdiction over the Business, all Governmental Agencies having jurisdiction over the Business with respect to Environmental Laws, and on the attorneys general of all states in which the Purchased Assets are located. Sellers shall serve a notice of the Sale Motion on all parties that are required to be served pursuant to any applicable Legal Requirement, including parties to Contracts and Leases, to the extent reasonably practicable and at a minimum to the parties to Assumed Contracts and Leases identified on Schedules 1.1 and 1.2.
- (c) Pursuant to Bankruptcy Code Section 364(c)(1), the Break-Up Fee shall receive superpriority administrative claim status. Pursuant to Bankruptcy Code Section 364(c)(1), the administrative claims in respect of the Break-Up Fee shall have priority over any and all administrative expenses of the

kinds specified in Bankruptcy Code Sections 503(b), 506(c), 507(a) or 507(b) (the "Purchaser Protection Superpriority Claims"), except for any superpriority administrative claim granted for a loan under Bankruptcy Code Section 364(c) from WLR Recovery Fund II, LP.

- (d) The rights of Purchaser to the Break-Up Fee and the Purchaser Protection Superpriority Claims shall all survive rejection or breach of this Agreement by Sellers, and shall be unaffected thereby.
- (e) Sellers shall use their Best Efforts to provide Purchaser with copies of all motions, applications and supporting papers prepared by or on behalf of the Sellers (including forms of orders and notices to interested parties) directly relating to the Purchased Assets or this Agreement at least two (2) Business Days, unless the exigencies of time prevent the period from being that long, prior to the filing thereof in the Bankruptcy Cases so as to allow Purchasers to provide reasonable comments for incorporation into same; except that the Sale Motion (including forms of orders and notices to interested parties) shall be provided to Purchasers at least three (3) Business Days prior to its filing. The Sellers shall also give to the Purchaser written notice and a copy of all motions, applications and pleadings filed in the Bankruptcy Cases with the Bankruptcy Court from and after the date hereof, at the time such documents are served on parties in interest in accordance with the Federal Rules of Bankruptcy Procedure.

Section 6.2. Transfer Taxes. To the extent any sales, recording, transfer, use or other similar Taxes or fees (other than gains and income Taxes) imposed as a result of the sale of the Relevant Business to Purchaser pursuant to this Agreement are not exempted by the Sale Order, they shall be borne by Sellers. Touch America and Purchaser shall accurately prepare and timely file all Tax Returns with respect to any such sales, transfer, use or other similar Taxes.

Section 6.3. Property Taxes. Matters relating to real and personal property Taxes and other ad valorem Taxes and assessments on Purchased Assets ("Property Taxes") shall be determined as provided in this Section 6.3.

(a) Straddle Period Property Taxes.

- (i) With respect to each jurisdiction in which a Governmental Agency imposes Property Taxes, the Property Taxes arising subsequent to the Assessment Date immediately preceding or occurring on the Closing Date (the "Straddle Period Property Taxes") shall be allocated between Purchaser and Sellers based on the number of days in the period between the Assessment Date immediately preceding the Closing Date (the "Last Assessment Date") and the Assessment Date immediately following the Closing Date (the "Next Assessment Date"). The pro rata portion of the Straddle

Period Property Taxes attributable to the period from the Last Assessment Date to the Closing Date shall be allocated to Sellers ("Sellers' Property Tax Portion"). The pro rata portion of the Straddle Period Property Taxes attributable to the period from the Closing Date to the Next Assessment Date shall be allocated to Purchaser ("Purchaser's Property Tax Portion").

- (ii) The Straddle Period Property Taxes (A) paid by Sellers prior to the Closing Date or (B) assessed by a Governmental Agency to which Sellers fail to provide appropriate notice of the Bankruptcy Cases and the Sale Motion in accordance with Section 6 3(f) shall constitute Excluded Liabilities, and any Straddle Period Property Taxes other than those described in (A) and (B) shall constitute Assumed Liabilities.
 - (iii) The Base Price shall be increased by the amount, if any, by which the Straddle Period Property Taxes paid by Sellers before the Closing Date exceeds Sellers' Property Tax Portion. The Base Price shall be decreased by the amount, if any, by which Sellers' Property Tax Portion exceeds the Straddle Period Property Taxes paid by Sellers before the Closing Date.
- (b) Other Property Taxes. With respect to each jurisdiction in which a Governmental Agency imposes Property Taxes, the Property Taxes arising subsequent to any Assessment Date prior to the Last Assessment Date (the "Aged Property Taxes") shall constitute Excluded Liabilities.
- (c) Sellers shall have the right to commence, control, prosecute, settle and compromise any and all Proceedings relating to (i) Aged Property Taxes, and (ii) the valuation of the Purchased Assets for which the relevant Assessment Date is more than six months prior to the Closing Date and the resulting Straddle Period Property Taxes. Such right shall not derogate Purchaser's right to a pro rata share of any refund, abatement or similar reduction based on the Purchaser's Property Tax Portion. Purchaser shall take all action reasonably necessary for Sellers to exercise the rights provided to them pursuant to this clause (c).
- (d) Purchaser shall have the right to commence, control, prosecute, settle and compromise any and all Proceedings relating to the valuation of the Purchased Assets for which the relevant Assessment Date is six months or less prior to the Closing Date and the resulting Straddle Period Property Taxes. Such rights shall not derogate Sellers' right to a pro rata share of any refund, abatement or similar reduction based on Sellers' Property Tax

Portion. Sellers shall take all action reasonably necessary for Purchaser to exercise the rights provided to it pursuant to this clause (d), including, to the extent required to file Tax Returns appointing Purchaser as Sellers' agent, and executing powers of attorney. Sellers shall have the right to participate, at their own expense, in any Proceeding described in this clause (d).

- (e) In connection with any Proceeding pursuant to this Section 6.3, the parties shall reasonably assist each other and cooperate with each other in the conduct of such Proceeding, including by making their personnel and books and records reasonably available to the other parties hereto.
- (f) Sellers shall (i) provide appropriate notice of the Bankruptcy Cases, the Sale Motion and related matters to all Governmental Agencies that may seek to collect Property Taxes or impose on Sellers, Purchaser or any Purchased Asset penalties for any Property Taxes, and (ii) use Best Efforts to obtain certificates, releases or other appropriate documentation from such Governmental Agencies to the extent such Governmental Agencies provide such certificates, releases or documentation in the ordinary course, providing that such Property Taxes have been paid or are not owed.

Section 6.4. Certain Provisions Relating to Consents, Cooperation and Adequate Assurance.

- (a) Subject to the limitations of Section 5.1, Sellers shall use Best Efforts prior to and after the Closing Date to obtain all Governmental Approvals that are required in connection with the transactions contemplated by this Agreement; provided, however, that Sellers shall not be obligated to offer or to pay any consideration or grant any financial accommodation in connection therewith.
- (b) Purchaser shall prior to and after the Closing Date cooperate as reasonably necessary or desirable to secure such Governmental Approvals and to provide adequate assurance of performance to counterparties to Assumed Contracts and Assumed Leases, including, providing to such Third Party information, including financial information, regarding Purchaser's intended use of the Purchased Assets. Upon the written request of Sellers, Purchaser shall use Best Efforts to cooperate with Sellers with respect to the matters referred to in clauses (c), (d) and (e) of Section 6.6.

Section 6.5. [Intentionally omitted.]

Section 6.6. Best Efforts. Upon the terms and subject to the conditions of this Agreement, each of the parties hereto shall use its Best Efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Legal Requirements to consummate and make effective in the most expeditious manner practicable the transactions contemplated hereby. Without limiting the foregoing,

Purchaser shall use Best Efforts to satisfy the condition contained in Section 7.2(j). Also, without limiting the foregoing, Sellers shall not voluntarily dismiss the Bankruptcy Cases once filed and shall use their Best Efforts to:

- (a) commence the Bankruptcy Cases and file the Sale Motion within one (1) Business Day of the date of this Agreement;
- (b) obtain the Bidding Procedures Order within fifteen (15) days following the commencement of the Bankruptcy Cases;
- (c) obtain the Sale Order within forty five (45) days following the commencement of the Bankruptcy Cases and use Best Efforts to cause it to become a Final Order within fourteen (14) days thereafter; and
- (d) prevent the dismissal of the Bankruptcy Cases or the conversion of the Bankruptcy Cases to a case under Chapter 7 of the Bankruptcy Code.

Section 6.7. Takeover Proposals; Confidential Information.

- (a) After the date of this Agreement, Sellers agree that they will not, and that they will cause their officers, agents, representative and other Persons acting on their behalf not to, except in accordance with the Bidding Procedures Order, seek or solicit offers for any transaction that would render impossible the transactions between the Sellers and Purchaser contemplated hereby on the terms contained herein.
- (b) Sellers shall promptly notify Purchaser orally and in writing of any request for information, proposal, discussion, negotiation or inquiry received, continued or otherwise renewed after the date of this Agreement in connection with any Takeover Proposal and Sellers shall promptly (but in any event within one (1) Business Day) communicate to Purchaser the material terms and conditions of any such proposal, discussion, negotiation or inquiry which it may receive (and will promptly provide to Purchaser copies of any written materials received by Sellers in connection with such proposal, discussion, negotiation or inquiry) and the identity of the person making such proposal or inquiry or engaging in such discussions or negotiation.
- (c) Sellers shall not furnish information concerning their business, properties or assets to any Third Party, except pursuant to a confidentiality agreement with terms and conditions no less restrictive than those contained in the Confidentiality Agreement. Sellers shall not release any Third Party from, or waive any provision of, any such confidentiality agreement or any similar confidentiality or standstill agreement to which any Seller is a party. Sellers shall promptly provide to Purchaser any non-public information concerning the Sellers provided to any other Person which was not previously provided

to Purchaser. To the extent that this Section 6.7(c) conflicts with the Bidding Procedures Order, the Bidding Procedures Order shall govern.

- (d) Sellers shall keep Purchaser informed of the status and material details (including amendments or proposed amendments) of any Takeover Proposal. Sellers shall promptly (and in any event within one (1) Business Day) notify Purchaser in writing at such time as any Takeover Proposal has been determined to be a Qualified Bid.
- (e) The parties hereto shall not, and shall procure that their Affiliates shall not, disclose to any Third Party any information (whether written, visual or oral) relating to the terms and conditions of this Agreement or the other agreements contemplated hereby, including any information set forth in the Schedules hereto; provided, however, that such disclosure is permitted to the extent that such information: (i) has been made public with the consent of the other party; (ii) is required to be disclosed to comply with applicable Law or the Bidding Procedures Order; or (iii) for Purchaser to obtain Lender Approval.

Section 6.8. Obligations of Sellers; Joint and Several Liability. Each Seller shall be jointly and severally liable for all obligations of the other Sellers hereunder and under the Ancillary Agreements.

Section 6.9. FCC Applications and State PUCs Applications.

- (a) Purchaser and Sellers shall generally cooperate with each other, and take such actions in good faith as are reasonable and appropriate to timely effect, the preparation of all appropriate applications for FCC approval, and such other documents as may be required, with respect to the sale, transfer, and assignment to Purchaser of the Purchased Assets and FCC Permits set forth on Schedule 6.9(a), as applicable and as determined by Purchaser, and with respect to certain pro forma transfer of control applications relating to Sellers' common carrier microwave and LMDS licenses required upon filing of the Bankruptcy Cases (collectively, the "FCC Applications"). As promptly as practicable, and in any event within five (5) Business Days after the date of this Agreement, Sellers shall file, or cause to be filed, the FCC Applications.
- (b) Purchaser and Sellers shall generally cooperate with each other, and take such actions in good faith as are reasonable and appropriate to timely effect, the preparation of all appropriate applications for approval by State PUCs, and such other notices, registrations, or documents as may be required, with respect to the sale, transfer and assignment to Purchaser of the Purchased Assets and all of Sellers' State PUC Permits, which Permits shall be identified by Sellers to Purchaser within three (3) Business Days of this Agreement, as applicable and as determined by Purchaser (collectively, the

"State PUC Applications"). As promptly as practicable, and in any event within ten (10) Business Days after the date of this Agreement, Sellers and Purchaser shall file, or cause to be filed, the State PUC Applications.

- (c) Purchaser and Sellers shall comply with all requirements of the FCC and State PUCs regarding the transfer of Sellers' customers to Purchaser pursuant to the assignment of the Customer Contracts under this Agreement. Purchaser and Sellers shall cooperate with each other, and take such actions in good faith as are reasonable and appropriate, to timely effect the preparation and sending of all notices to such customers as may be required by the regulations of the FCC and the State PUCs.
- (d) Purchaser and Sellers shall use Best Efforts to prosecute the FCC Applications and the State PUC Applications with due diligence before the FCC and the State PUCs and in connection therewith shall take such action or actions as may be necessary or reasonably required in connection with the FCC Applications and the State PUC Applications, including furnishing to the FCC and the State PUCs any documents, materials or other information requested by the FCC and the State PUCs in order to obtain such approvals, or waivers, as necessary, as expeditiously as practicable. As promptly as practicable, and in any event within five (5) Business Days after the date of this Agreement, Sellers shall designate a representative who shall have the responsibility of coordinating with Purchaser the prosecution of the FCC Applications and the State PUC Applications.
- (e) The parties acknowledge that Sellers and/or Purchaser is required to obtain certain regulatory consents, approvals or waivers from the FCC and various State PUCs in order to consummate Purchaser's acquisition of certain of the Purchased Assets or transfer of the FCC and State PUC Permits, as applicable. Sellers and Purchaser acknowledge that pursuant to Sections 6.9(a) and 6.9(b) they will make all necessary applications and filings with the FCC and various State PUCs in order to obtain the consents, approvals or waivers necessary to acquire, run and operate the Purchased Assets or transfer of the FCC and State PUC Permits, as applicable. Notwithstanding the foregoing, if, on the Closing Date, the parties shall not have obtained all of the required FCC and State PUC approvals, Purchaser may elect that the Closing shall proceed in accordance with the terms of this Agreement, provided that the Sellers shall not sell, assign, transfer or convey to Purchaser such Purchased Assets which Purchaser would not be able to own or control due to failure to obtain the necessary FCC and State PUC approvals. In such event, on the Closing Date, the parties shall enter into a management agreement which shall govern the relationship between the parties with respect to such retained assets and the parties shall continue to cooperate, using commercially reasonable efforts, to expeditiously obtain any and all outstanding State PUC or FCC approvals. As soon as such

approvals are obtained, Sellers would transfer to Purchaser such retained assets.

Section 6.10 Sales/Use Taxes. Sellers shall (i) provide appropriate notice of the Bankruptcy Cases, the Sale Motion and related matters to all appropriate Governmental Agencies that may seek to collect sales and/or use Taxes or impose on Sellers, Purchaser or any Purchased Asset penalties for unpaid sales and/or use Taxes with respect to any Purchased Asset and relating to a time period prior to the Closing and (ii) use Best Efforts to obtain certificates, releases or other appropriate documentation from such taxing authorities providing that such Taxes have been paid or are not owed. Sellers shall deposit funds in escrow in an amount necessary to pay to such taxing authority any sales and/or use Taxes asserted by such taxing authority with respect to any Purchased Asset and relating to a time period prior to the Closing.

Section 6.11 Other Filings. Sellers and Purchaser shall cooperate, in determining whether, any action by or in respect of, or filing with, any Governmental Agency in connection with the consummation of the transactions contemplated by this Agreement is required and in taking such commercially reasonable actions or making any such filings, furnishing information required in connection therewith. As promptly as practicable, following the execution and delivery of this Agreement by the parties, Sellers and Purchaser shall prepare and file any other application, report, or other filing required to be submitted to any other Governmental Agency in connection with the transactions contemplated hereby, the filing fees of which shall be borne by the party required to make such filing.

Section 6.12 Settlement and Compromise of Claims. Sellers shall not settle any claim in the Bankruptcy Cases which would have a Material Adverse Effect without Purchaser's prior written consent, which consent shall not be unreasonably withheld.

Section 6.13 Signing and Commitment Fee. Prior to the mutual execution of this Agreement, Sellers shall deliver to Purchaser's counsel to hold in trust until the mutual execution of this Agreement the amount set forth in Schedule 6.13 in immediately available funds (the "Signing and Commitment Fee"). Upon the mutual execution of this Agreement, the Signing and Commitment Fee shall be nonrefundable and irrevocable and shall be payable to Purchaser in consideration of Purchaser's execution of this Agreement and as partial reimbursement of all of the time, costs and expenses incurred and expended by Purchaser (including professional fees and expenses) in connection with the Purchaser's due diligence investigation of Sellers, development of business models and plans for the Purchased Assets, and the negotiation and execution of this Agreement and the transactions contemplated hereby. Purchaser's counsel is hereby authorized and directed by Sellers to deliver the Signing and Commitment Fee to Purchaser upon receipt of a fully executed facsimile copy of this Agreement (in counterparts). In the event Purchaser's counsel has not received a fully executed copy of this Agreement within two (2) Business Days after its receipt of the Signing and Commitment Fee from Sellers, Purchaser's counsel is hereby directed by the parties hereto to deliver the Signing and Commitment Fee to Sellers.

Section 6.14 Hennessy Building POP Lease. Purchaser and an Affiliate Seller shall enter into a lease on terms and conditions consistent with the most relevant of the Assumed

Leases for Purchaser's use and occupation of adequate point-of-presence space at the Building for a term of no less than twelve (12) months (the "Hennessy Building POP Lease") in form mutually agreeable to the parties, with rent in the amount of \$500 per month.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1. Conditions to Sellers' Obligations. The obligation of Sellers to consummate the transactions contemplated by this Agreement is subject to the satisfaction (unless waived in writing by Touch America) of each of the following conditions on or prior to the Closing Date:

- (a) Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement shall be true and correct, without giving effect to any qualification as to materiality (or any variation of such term) contained in any particular representation or warranty, on and as of the date of this Agreement and on and as of the Closing Date, as though such representations and warranties were made on and as of the Closing Date (it being understood, however, that for purposes of this sentence the accuracy of any representation or warranty that expressly speaks as of the date of this Agreement or another date prior to this Agreement shall be determined on the Closing Date solely as of the date of this Agreement or such other date and not as of the Closing Date), except to the extent that any such breach together with all other such breaches does not materially impair Purchaser's ability to perform its obligations hereunder. Purchaser shall have delivered to Touch America a certificate of one of its senior executive officers, dated the Closing Date, to the foregoing effect.
- (b) Compliance with Agreement. Purchaser shall have performed and complied in all material respects with all covenants and obligations to be performed or complied with by it on or prior to the Closing Date. Purchaser shall have delivered to Touch America a certificate of one of its senior executive officers, dated the Closing Date, to the foregoing effect.
- (c) Bankruptcy Court Approval; No Injunction. The Sale Order shall have been entered by the Bankruptcy Court and become a Final Order As of the Closing Date, there shall not be in effect any order, decree, judgment or injunction issued by any Governmental Agency of competent jurisdiction which enjoins, restrains or prohibits consummation of the transactions contemplated by this Agreement.
- (d) Corporate Documents. Sellers shall have received from Purchaser certified copies of the resolutions duly adopted by the board of directors, members or managers (as the case may be) of Purchaser approving the execution and delivery of this Agreement and the consummation of the transactions

contemplated hereby, and such resolutions shall be in full force and effect as of the Closing Date.

- (e) Ancillary Agreements. Purchaser shall have executed and delivered the Ancillary Agreements to which it is a party.
- (f) Consents; Approvals. All consents and approvals of, or waivers by, and actions of, filings with and notices to any Governmental Agency or regulatory authority necessary to permit Purchaser and Sellers to perform their obligations under this Agreement and any Ancillary Agreements and to consummate the transactions contemplated hereby and thereby shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Agency or regulatory authority necessary for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, including Governmental Approvals and under any antitrust or competition law of any foreign jurisdiction applicable to the transactions contemplated by this Agreement, shall have occurred.

Section 7.2. Conditions to Purchaser's Obligations. The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction (unless waived in writing by Purchaser) of each of the following conditions on or prior to the Closing Date:

- (a) Representations and Warranties. The representations and warranties of Sellers contained in this Agreement shall be true and correct, without giving effect to (x) any qualification as to materiality or Material Adverse Effect (or any variation of such terms) contained in any particular representation or warranty clause, on the date hereof and on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (it being understood, however, that for purposes of this sentence the accuracy of any representation or warranty that expressly speaks as of the date of this Agreement or another date prior to this Agreement shall be determined solely as of the date of this Agreement or such other date and not as of the Closing Date). Each Seller shall have delivered to Purchaser a certificate of one of its senior executive officers, dated the Closing Date, to the foregoing effect.
- (b) Compliance with Agreement. Sellers shall have performed and complied in all respects with all covenants and obligations to be performed or complied with by them on or prior to the Closing Date. Each Seller shall have delivered to Purchaser a certificate of one of its senior executive officers, dated the Closing Date, to the foregoing effect.
- (c) Bankruptcy Court Approval; No Injunction. The Sale Order shall have been entered by the Bankruptcy Court and become a Final Order. As of the

Closing Date, there shall not be in effect any order, decree, judgment or injunction issued by any Governmental Agency of competent jurisdiction which enjoins, restrains or prohibits consummation of the transactions contemplated by this Agreement.

- (d) Corporate Documents. Purchaser shall have received from Sellers certified copies of the resolutions duly adopted by the board of directors, members or managers (as the case may be) of each Seller approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and such resolutions shall be in full force and effect as of the Closing Date.
- (e) Ancillary Agreements. Each of the Sellers shall have executed and delivered the Ancillary Agreements to which it is a party.
- (f) Consents; Approvals. All consents and approvals of, or waivers by, and actions of, filings with and notices to any Governmental Agency or regulatory authority necessary to permit Purchaser and Sellers to perform their obligations under this Agreement and any Ancillary Agreements and to consummate the transactions contemplated hereby and thereby shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Agency or regulatory authority necessary for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, including Governmental Approvals and under any antitrust or competition law of any foreign jurisdiction applicable to the transactions contemplated by this Agreement, shall have occurred, in each case without limitation, condition, or restriction that would materially adversely affect the ability of Purchaser to own, control, or operate the Relevant Business and the Purchased Assets as owned, controlled, and operated by Sellers prior to the Closing or that would require Purchaser or any of its Affiliates to dispose of or hold separate any business, product lines, or assets
- (g) Certain Key Contracts. The Contracts listed on Schedule 7.2(g)(i) and those Contracts relating to the customer accounts listed on Schedule 7.2(g)(ii) shall: (A) be in full force and effect, (B) have no default thereunder by any Seller that is continuing at Closing, and (C) concurrently with the Closing be assumed by Sellers and assigned to Purchaser pursuant to an order of the Bankruptcy Court; provided, however, that, to the extent that one or more Contracts listed on Schedule 7.2(g)(ii) fail to satisfy clauses (i), (ii) and (iii) above immediately prior to Closing (each a "Failed Contract"), the condition in this Section 7.2(g), shall be deemed satisfied if the aggregate monthly revenue of all such Failed Contracts does not exceed \$220,000. Notwithstanding the foregoing, Sellers shall have the right to replace any Contract relating to the customer accounts listed on Schedule 7.2(g)(ii)

which is a Failed Contract with one or more Contracts with customers of the Relevant Business, whether such Contracts are designated as Assumed Contracts on Schedule 1.1 or not, provided such Contracts (A) generate Positive Gross Margin, (B) are in full force and effect, (C) have no default thereunder by any Seller that is continuing at Closing, and (D) concurrently with the Closing be assumed by Sellers and assigned to Purchaser pursuant to an order of the Bankruptcy Court; in which case, such Contract shall be an Assumed Contract.

(h) [Intentionally Omitted.]

(i) Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect.

(j) Lender Approval. Receipt of consent to this Agreement and the transactions and actions contemplated hereby from JPMorgan Chase Bank, as Administrative Agent and Collateral Agent on behalf of the financial institutions from time to time parties to that certain Amended and Restated Credit Agreement dated as of November 12, 2002 among 360networks Corporation, 360networks holdings (USA) inc., and the financial institutions from time to time parties thereto ("Lender Approval").

ARTICLE VIII POST-CLOSING AGREEMENTS

Section 8.1. Coordination of Relevant Network Activities. To the extent reasonably practicable from and after the Closing, Purchaser and Seller shall coordinate operation of the Relevant Business and the Retained Business, as applicable, to mitigate any impact the transfer of the Purchased Assets as contemplated by this Agreement may have on the operation and functionality of the Retained Business. The Transition Services Agreement shall provide Purchaser with the right to use and occupy, to the extent reasonably practicable, the Building (including the network operations center located at said Building and a reasonable amount of office space) and certain of the Leases that are not Assumed Leases at no charge for sixty (60) days after the Closing Date and thereafter for such reasonable fee as agreed by the parties.

Section 8.2. Mail. Sellers agree that, after the Closing, Purchaser and Purchaser's Affiliates shall have the right and authority to open all mail received by or addressed to the Relevant Business, even if addressed to Sellers, for processing or prompt forwarding to Sellers to the extent related to Excluded Matters.

Section 8.3. Sums Received in Respect of Relevant Business. Within ten (10) Business Days of Purchaser's request, Sellers shall provide Purchaser a full and complete accounting of any and all sums or other value received from Third Parties in respect of or on account of the Purchased Assets or Relevant Business after the Closing Date. Sellers shall pay or cause to be paid over to Purchaser, promptly after the receipt thereof after the Closing Date, all sums or other value received in respect or on account of the Purchased Assets or Relevant Business, other than

the consideration received by Sellers as set forth in Article II hereof and other amounts paid to Sellers by Purchaser pursuant to this Agreement or the Ancillary Agreements. Purchaser shall pay or cause to be paid to Sellers, promptly after the receipt thereof after the Closing Date, all sums or other value received in respect or on account of the Excluded Assets.

Section 8.4. Further Assurances. In addition to the provisions of this Agreement, at any time and from time to time after the Closing, Sellers and Purchaser at the other party's reasonable request and without further consideration except as contemplated by the Transition Services Agreement, shall execute and deliver such further documents, and perform such further acts, as may be necessary in order to implement more effectively the transfer and conveyance of the Purchased Assets to Purchaser and the assumption of the Assumed Liabilities by the Purchaser on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the transactions herein provided.

Section 8.5. Intellectual Property. After the Closing, except as provided in the Transition Services Agreement, Sellers shall not use, seek to register, register or authorize others to use, seek to register or register the Intellectual Property anywhere in the world and will not challenge Purchaser's right to use, seek to register or register the Intellectual Property anywhere in the world.

ARTICLE IX THE CLOSING

Section 9.1. The Closing. The Closing of the transactions contemplated hereby (the "Closing") shall be held within one (1) Business Day after each of the conditions precedent set forth in Article VII (except those conditions which by their nature cannot be satisfied or waived until the Closing and subject to satisfaction of such conditions at the Closing) have been satisfied or waived, or at such other time as Touch America and Purchaser shall agree in writing (the "Closing Date"). The Closing shall be held at Purchaser's headquarters in Seattle, WA or at such other place as Touch America and Purchaser shall agree. At the Closing, all of the transactions provided for in Article II hereof shall be consummated on a substantially concurrent basis.

Section 9.2. Deliveries by Sellers at the Closing. At the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following items:

- (a) the duly executed officer's certificates referred to in Sections 7.2(a) and 7.2(b);
- (b) the corporate documents required by Section 7.2(d);
- (c) the Ancillary Agreements and such other executed assignments and instruments of conveyance and transfer, each dated the Closing Date, as are reasonably necessary to transfer to Purchaser all of Sellers' right, title and interest in, to and under the Purchased Assets purchased at the Closing, including duly executed assignments for all Intellectual Property

constituting Purchased Assets in customary form reasonably acceptable to Purchaser (the "Intellectual Property Assignment Agreement");

- (d) a duly executed officer's certificates in form reasonably satisfactory to Purchaser confirming satisfaction of the condition to Closing set forth in Section 7.2(g);
- (e) a certificate that no Seller is a foreign person within the meaning of Section 1445 of the Code, which certificate shall set forth all information required by, and otherwise be executed in accordance with, Treasury Regulation Section 1.1445-2(b);
- (f) all other previously undelivered documents that Sellers are required to deliver to Purchaser pursuant to this Agreement or the Ancillary Agreements;
- (g) such other instruments and documents as are reasonably necessary in connection with the transactions contemplated by this Agreement; and
- (h) physical possession and control of the Purchased Assets, including copies of the Amended Contracts and Assumed Leased; provided, however, that any Relevant Equipment installed at or located on or in any site relating to any fiber optic and radio frequency communications network other than the Relevant Fiber and Microwave Network shall be removed by Purchaser at its own expense within 90 days of the Closing and any such equipment not removed in such 90 day period shall be deemed Excluded Assets.

Section 9.3. Deliveries by Purchaser at the Closing. At the Closing, Purchaser shall deliver, or cause to be delivered, to Sellers, the following items:

- (a) the duly executed officer's certificates referred to in Sections 7.1(a) and 7.1(b);
- (b) the corporate documents required by Section 7.1(d);
- (c) the Ancillary Agreements and such other executed assumptions, each dated the Closing Date, as are reasonably necessary to transfer to Purchaser and have Purchaser assume the Assumed Liabilities being assumed by Purchaser at the Closing;
- (d) such other instruments and documents as are reasonably necessary in connection with the transactions contemplated by this Agreement; and
- (e) the amount in immediately available funds to be paid to Sellers pursuant to Section 2.5.

ARTICLE X INDEMNIFICATION

Section 10.1. Survival. All of the representations and warranties of Sellers contained in this Agreement or in any certificate delivered by Sellers pursuant to this Agreement and the covenants of Sellers contained in this Agreement and all of the representations and warranties of Purchaser contained in this Agreement shall survive the Closing until the date that is 365 days after the Closing Date. Notwithstanding the foregoing, any notice given in accordance with Section 13.1 of this Agreement claiming an alleged breach of any representation, warranty or covenant hereunder shall without further action extend the survival period for the representation, warranty or covenant alleged to have been breached as applied to the circumstances set forth in such notice until immediately after the final resolution of the matter. All covenants and agreements of Sellers and of Purchaser contained in this Agreement shall survive the Closing.

Section 10.2. Indemnification Provisions for Benefit of Purchaser.

- (a) Subject to Section 10.5, in the event any Seller breaches any of its representations, warranties or covenants contained in this Agreement or Ancillary Agreements or in any certificate delivered by any Seller pursuant to this Agreement or Ancillary Agreements and provided that, as to any claim for breach of representation or warranty or covenants, Purchaser makes a written claim for indemnification against Sellers within the applicable survival period, then Sellers shall jointly and severally indemnify, defend and hold harmless Purchaser and its Affiliates from and against all Damages Purchaser and its Affiliates suffer resulting from or arising out of, relating to or caused by such event; provided, however, that: (i) Sellers shall not have any obligation to indemnify Purchaser for the first \$250,000 of Damages (the "Deductible") resulting from any breaches by any Seller of its representations, warranties or covenants contained in this Agreement or Ancillary Agreements or in any certificate delivered by any Seller pursuant to this Agreement, and no such indemnity shall be payable until Purchaser has suffered aggregate Damages, by reason of all such breaches in excess of \$500,000 (the "Basket"), and (ii) Sellers shall not have any obligation to indemnify Purchaser from and against any Damages resulting from any breaches by any Seller of its representations, warranties or covenants contained in this Agreement or Ancillary Agreements or in any certificate delivered by any Seller pursuant to this Agreement in excess of the Escrow Amount (the "Cap").
- (b) Sellers shall indemnify, defend and hold harmless Purchaser and its Affiliates from and against any and all Damages resulting from or arising out of (i) any Excluded Liability or any claim by a Third Party for payment of an Excluded Liability, or (ii) the breach of any covenant contained in Section 8.3 without giving effect to the Deductible, Basket or Cap.

- (c) The Indemnification provided for in this Section 10.2 shall not be limited by any investigation at any time made by or on behalf of Purchaser or any knowledge or information that Purchaser may have.

Section 10.3. Indemnification Provisions for Benefit of Sellers.

- (a) Subject to Section 10.5, in the event Purchaser breaches any of its representations, warranties or covenants contained in this Agreement or any Ancillary Agreement or in any certificate delivered by Purchaser pursuant to this Agreement or any Ancillary Agreement and provided that, as to any claim for breach of representation or warranty, Sellers make a written claim for indemnification against Purchaser within the applicable survival period, then Purchaser shall indemnify, defend and hold harmless Sellers and their Affiliates from all Damages Sellers suffer resulting from or arising out of, relating to or caused by such event; provided, however, that: (i) Purchaser shall not have any obligation to indemnify Sellers for the first \$250,000 of Damages resulting from any breaches by Purchaser of its representations, warranties or covenants contained in this Agreement or Ancillary Agreements or in any certificate delivered by Purchaser pursuant to this Agreement, and no such indemnity shall be payable until Sellers have suffered aggregate Damages, by reason of all such breaches in excess of \$500,000, and (ii) Purchaser shall not have any obligation to indemnify Sellers from and against any Damages resulting from any breaches by Purchaser of its representations, warranties or covenants contained in this Agreement or Ancillary Agreements or in any certificate delivered by Purchaser pursuant to this Agreement in excess of the Cap.
- (b) Without limiting the generality or effect of the foregoing, Purchaser shall indemnify, defend and hold harmless Sellers and their Affiliates from and against any and all Damages resulting from or arising out of any Assumed Liability or any claim by a Third Party for payment of an Assumed Liability, without giving effect to the Deductible, Basket or Cap.

Section 10.4. Matters Involving Third Parties. Subject to Section 6.3(c), (d) and (e):

- (a) If any third party notifies any party hereto (the "Indemnified Party") with respect to any matter which may give rise to a claim for indemnification against the other party hereto (the "Indemnifying Party") under this Article X, then the Indemnified Party shall use Best Efforts to notify the Indemnifying Party thereof promptly and in any event within ten (10) days after receiving any written notice from a third party; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless, and then solely to the extent that, the Indemnifying Party is actually prejudiced thereby.

- (b) Once the Indemnified Party has given notice of the matter to the Indemnifying Party, the Indemnified Party may, subject to the Indemnifying Party's rights to assume the defense of such matter pursuant to paragraph (c) below, defend against the matter in any manner it deems appropriate. The Indemnified Party shall keep the Indemnifying Party informed as to the status of such actions.
- (c) The Indemnifying Party may at any point in time choose to assume the defense of all of such matter if:
- (i) the Indemnifying Party provides evidence reasonably satisfactory to the Indemnified Party of its ability to provide the indemnification required pursuant to this Article X, which shall be deemed satisfied if the amount of the Escrowed Funds, less the amount of pending claims against the Escrowed Funds, is greater than the amount at issue;
 - (ii) in the case where Purchaser is the Indemnified Party, the Purchaser does not notify the Indemnifying Party following a request by the Indemnifying Party to assume the defense of the matter that in Purchaser's reasonable judgment the Damages to which Purchaser is exposed exceed the Cap; and
 - (iii) there are no legal defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party.
- (d) Upon assumption of the defense by the Indemnifying Party:
- (i) the Indemnifying Party shall defend the Indemnified Party against the matter with counsel of its choice reasonably satisfactory to the Indemnified Party,
 - (ii) the Indemnified Party may retain separate counsel at its sole cost and expense (except that the Indemnifying Party shall be responsible for the fees and expenses of one separate co-counsel for all Indemnified Parties to the extent the Indemnified Party is advised, in writing by its outside counsel, that either (x) the counsel the Indemnifying Party has selected has a conflict of interest, or (y) there are legal defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party),

- (iii) the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs of defense or investigation for the period prior to the assumption of the defense, and
 - (iv) the Indemnified Party shall make available to the Indemnifying Party and its attorneys and accountants all books and records of the Indemnified Party relating to such proceedings or litigation and the parties agree to render to each other such assistance as they may reasonably require of each other in order to ensure the proper and adequate defense of any such action or proceeding.
- (e) Assumption of the defense of any matter by the Indemnifying Party shall without further action constitute an irrevocable waiver by the Indemnifying Party of its right to claim at a later date that such third party action for which the defense was assumed is not a proper matter for indemnification pursuant to this Article X.
- (f) The Indemnified Party shall not consent to the entry of a judgment or enter into any settlement with respect to any matter which may give rise to a claim for indemnification without the written consent of the Indemnifying Party, which consent may not be unreasonably withheld or delayed; provided, however, that if the Indemnifying Party has failed to provide indemnification required to be provided pursuant to this Article X for twenty (20) days after a request therefor, then the Indemnified Party may take any such action without the consent of the Indemnifying Party.
- (g) The Indemnifying Party shall not consent to the entry of a judgment with respect to any matter which may give rise to a claim for indemnification or enter into any settlement which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto, without the written consent of the Indemnified Party (not to be unreasonably withheld or delayed).

Section 10.5. Certain Additional Provisions Relating to Indemnification.

- (a) The indemnification provisions set forth in this Article X shall only apply after the Closing Date, and after the Closing Date shall constitute the sole and exclusive recourse and remedy available to the parties hereto with respect to monetary damages for the breach of any representation, warranty, covenant or agreement contained in this Agreement or in any Ancillary Agreement or in any certificate delivered pursuant to this Agreement except for fraud.
- (b) Notwithstanding anything in this Agreement to the contrary, Purchaser's sole recourse for claims for breach of any representation or warranty of

Sellers contained in Article III of this Agreement or covenant contained in Section 5.1 shall be to the Escrowed Funds, except in the case of fraud.

- (c) Notwithstanding anything in this Agreement to the contrary, for purposes of this Article X, in determining the existence of a breach of any representation, warranty, covenant or agreement and the amount of Damages, no effect shall be given to any qualification as to materiality or Material Adverse Effect.
- (d) No indemnification shall be available to Purchaser for breach of any representation, warranty, covenant or agreement by Sellers to the extent such breach results in an Adjustment to the Purchase Price.
- (e) Pursuant to Bankruptcy Code Section 364(c)(1), the indemnification obligations of Sellers pursuant to this Article X shall receive superpriority administrative claim status. Pursuant to Bankruptcy Code Section 364(c)(1), the administrative claims in respect of the indemnification obligations of Sellers pursuant to this Article X shall have priority over any and all administrative expenses of the kinds specified in Bankruptcy Code Sections 503(b), 506(c), 507(a) or 507(b), except for any superpriority administrative claim granted for a loan under Bankruptcy Code Section 364(c) from WLR Recovery Fund II, LP.
- (f) All payments by an Indemnifying Party under Article X shall be treated as an adjustment to the Purchase Price for all foreign, federal, state and local income Tax purposes.

ARTICLE XI EMPLOYEES AND EMPLOYEE BENEFIT PLANS

Section 11.1. Employment.

- (a) Schedule of Employees. Touch America shall deliver to Purchaser not later than fifteen (15) days after the date of this Agreement: (i) a complete and accurate schedule (the "Business Employee Schedule") setting forth, as of such date, (x) the name and position of each Business Employee, (y) the annual base salary or hourly rate, as applicable, for each Business Employee, and (z) the date each Business Employee commenced employment with Sellers or any of its predecessors or any Seller or any of their predecessors, and (ii) copies of any employment agreements, retention agreements, stay bonus agreements, severance agreements and plans, and any similar policies, plans or agreements with respect to such Business Employees.
- (b) Offer to Hire. No later than the later of (x) twenty (20) days after the entry of the Sale Order becomes a Final Order, or (y) sixty (60) days after receipt

by Purchaser of the Business Employee Schedule, Purchaser shall (i) pursuant to a written offer letter (an "Offer Letter") offer to hire, effective as of the Closing Date, such of the Business Employees set forth on the Business Employee Schedule as it may choose and (ii) deliver to Touch America a complete and accurate schedule (the "Business Employee Offeree Schedule") setting forth the name of each Business Employee who Purchaser has offered to hire (each such Business Employee, a "Business Employee Offeree"). Those Business Employee Offerees who accept Purchaser's offer of employment are referred to as the "Transferred Employees." Other than with respect to its obligations to be performed prior to the Closing Date under Section 11.1(b), Purchaser shall have no liability or obligation whatsoever with respect to (i) any Business Employee Offeree until such time as such Business Employee Offeree accepts Purchaser's offer of employment and commences employment with Purchaser or an Affiliate of Purchaser or (ii) any current or former employee of Seller, or any Business Employee, including any Business Employee Offeree, who is not a Transferred Employee.

- (c) Terms of Employment. Purchaser shall not assume any Employee Benefit Plan or any other plan, program or arrangement, and the terms of a Transferred Employee's employment with the Purchaser (or an Affiliate) after the Closing shall be upon such terms and conditions as Purchaser, in its sole discretion, shall determine. Upon request of Purchaser, Sellers shall provide Purchaser access to and provide data (including computer data) regarding employment information concerning the Business Employees and, subject to applicable Legal Requirements, such other personnel records as Purchaser may reasonably request.

Section 11.2. WARN Act Compliance. In the event that Sellers and their Affiliates fail to comply in all material respects with the requirements of the WARN Act (including reliance on provisions of the WARN Act that serve to reduce the notification period), Sellers shall indemnify and hold Purchaser and its Affiliates harmless from and against any and all Liabilities that Purchaser and its Affiliates may incur by reason of any noncompliance by Sellers with the WARN Act. Prior to the Closing Date, Touch America shall notify Purchaser in writing of every employment termination from Sellers' single sites of employment at which the Business is conducted, including, terminations that may under the WARN Act be a basis for imposing WARN Act liability against Sellers.

Section 11.3. Plan Liabilities. Purchaser shall not assume any Liability for any Employee Benefit Plan maintained, sponsored by or contributed to by any Sellers or their Affiliates covering current or former Business Employees. Sellers or their Affiliates shall be responsible for providing continuation coverage under its Employee Welfare Benefit Plans for the Employees of Sellers and any other employees or former employees of Sellers, as required by Section 4980B of the Code and Part 6 of Title I of ERISA and the regulations thereunder (together "COBRA"), or any relevant benefit continuation requirements under applicable Legal Requirements; provided that if at any time following the Closing Date, Sellers and each other

entity (other than Purchaser and its Affiliates) which together with any Seller would be considered an "employer" for purposes of COBRA, cease altogether to provide a "group health plan" (as defined in COBRA), Purchaser shall, commencing on the date of such cessation, provide group health plan continuation coverage pursuant to COBRA under the corresponding group health plan of Purchaser (or an Affiliate) to employees of Sellers and their subsidiaries and former employees of Sellers and their subsidiaries and their "qualified beneficiaries" (as defined in COBRA), whether or not such coverage is required under COBRA. The duration of the coverage provided by Purchaser to such employees of Sellers and their subsidiaries, former employees of Sellers and their subsidiaries and their qualified beneficiaries shall be the period described under Treasury Regulation Section 54.4980B-7. Sellers shall use Best Efforts to give Purchaser sufficient prior written notice of the termination of any Employee Benefit Plan under which employees or former employees of Sellers and their subsidiaries receive medical plan continuation coverage or the occurrence of any other qualifying event that shall result in any qualified beneficiary of any Seller or any subsidiary of any Seller having the right to elect COBRA to permit Purchaser to deliver to any such qualified beneficiary appropriate election materials necessary to commence receipt of COBRA continuation coverage immediately upon the occurrence of such event. Except with respect to the obligations of Purchaser described in this Article XI, Sellers shall be solely responsible for, and Sellers shall indemnify Purchaser against, any and all Liabilities of Sellers which have arisen or may arise in connection with the Employee Benefit Plans, any and all Liabilities of Sellers that have arisen or may arise in any way from the employment by Sellers of, or the compensation or benefits provided by Sellers to, any Business Employee, former Business Employee or other present or former employee of Sellers, or the termination thereof, including, any Liability arising out of or relating to any act or omission by Sellers, any violation of or non-compliance with or obligation arising under any applicable Legal Requirement respecting employment and the termination thereof based on any act or omission by Sellers, compensation or benefits, and any and all Liabilities for severance pay, accrued vacation pay, sick pay and other benefits relating to any period of employment with Sellers, whether arising as a matter of contract, Legal Requirements or otherwise.

Section 11.4. No Employee Rights. Notwithstanding anything herein to the contrary, no provision of this Article XI will create any third party beneficiary or other rights in any Business Employee, former Business Employee, or other present or former employee including any dependent, survivor or beneficiary thereof, of Sellers in respect of employment (or resumed employment) with Purchaser and no provision of Article XI shall create any such rights in any such persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement which may be established or made available by Purchaser to the Transferred Employees.

ARTICLE XII TERMINATION

Section 12.1. Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement and the transactions contemplated hereby may be terminated in any of the following ways at any time before the Closing and in no other manner:

- (a) By mutual written consent of Purchaser and Touch America.

- (b) By Purchaser upon five (5) Business Days notice if, at or before the Closing Date, (i) satisfaction of any condition set forth in Section 7.2 is or becomes reasonably impossible (other than through the breach by Purchaser of any of its representations or warranties or the failure of Purchaser to perform any of its obligations pursuant to this Agreement) and Purchaser shall not have waived such condition in writing at or before the Closing Date, or (ii) at or before the Closing Date, Sellers are in material breach of this Agreement and Sellers shall not have cured such material breach within such five (5) Business Day notice period.
- (c) By Sellers upon five (5) Business Days notice if, at or before the Closing Date, (i) satisfaction of any condition set forth in Section 7.1 is or becomes reasonably impossible (other than through the breach by Sellers of any of their representations or warranties or the failure of Sellers to perform any of their obligations pursuant to this Agreement) and Sellers shall not have waived such condition in writing at or before the Closing Date, or (ii) at or before the Closing Date, Purchaser is in material breach of this Agreement and Purchaser shall not have cured such material breach within such five (5) Business Day notice period.
- (d) By Purchaser, immediately if any of the following shall have occurred:
 - (i) any Seller (A) agrees in writing, (B) publicly announces its intention, or (C) is authorized by its board of directors or members either (x) to proceed with an Alternative Transaction other than in accordance with the Bidding Procedures, irrespective of whether or not such Alternative Transaction is approved by the Bankruptcy Court and/or consummated, or (y) not to sell, transfer, lease or otherwise dispose of, directly or indirectly, including through an assets sale, stock sale, merger, reorganization or other similar transaction, all or a material portion of the Purchased Assets to Purchaser or a Third Party whether as a result of the proposal of a stand alone plan of reorganization or otherwise;
 - (ii) the Bankruptcy Court approves an Alternative Transaction, or an Alternative Transaction is consummated;
 - (iii) prior to the Closing, other than in accordance with the Bidding Procedures, any Seller files a motion with the Bankruptcy Court to approve a sale to a Third Party of all or any material portion of the Purchased Assets which under this Agreement are intended to be conveyed to Purchaser;

- (iv) prior to Closing, any Seller files with the Bankruptcy Court a plan of reorganization the form and content of which has not been approved by Purchaser;
 - (v) the voluntary dismissal or conversion, prior to the Closing, of the Bankruptcy Cases to a case under Chapter 7 of the Bankruptcy Code; or
 - (vi) either (x) the Sale Order is not entered by the sixty fifth (65th) day after the commencement of the Bankruptcy Cases, (y) the Sale Order is not a Final Order within fourteen (14) days thereafter or (z) the Bankruptcy Court shall have denied the Sale Motion.
- (e) By Purchaser, immediately if any of the following shall have occurred:
- (i) Prior to the Closing Date, the Bankruptcy Cases are dismissed;
 - (ii) Sellers fail to commence the Bankruptcy Cases or file the Sale Motion within one (1) Business Day of the date of this Agreement; or
 - (iii) Sellers fail to obtain the Bidding Procedures Order within twenty one (21) days following the commencement of the Bankruptcy Cases; or
 - (iv) Sellers fail to pay any Cure Amounts in excess of the Maximum Cure Amount and Purchaser shall elect not to fund such amounts pursuant to Section 2.14 hereof.
- (f) By Sellers if the Bankruptcy Court approves an Alternative Transaction.
- (g) [Intentionally Omitted.]
- (h) Automatically and by no further act or action of either party, if either (i) the Sale Order is not entered by the seventy-fifth (75th) day after the commencement of the Bankruptcy Cases, or (ii) the Sale Order is not a Final Order within fourteen (14) days thereafter.
- (i) Automatically and by no further act or action of either party, if the Closing shall not have occurred on or before December 17, 2003.

Section 12.2. Effect of Termination; Breakup Fee.

- (a) In the event this Agreement is terminated pursuant to Section 12.1, all further obligations of the parties hereunder shall terminate except for Section 12.2, provided, however, that nothing in this Section 12.2 shall relieve any party hereto of any liability for the willful breach of any of the covenants or of any of the representations or warranties contained in this Agreement prior to such termination.
- (b) [Intentionally omitted.]
- (c) Upon the termination of this Agreement by either party at a time when Purchaser has the right to terminate this Agreement pursuant to Sections 12.1(b)(ii) or Sections 12.1(d)(i)-(v), Sellers shall concurrently with such termination pay Purchaser an amount in cash equal to \$1,000,000 (the "Breakup Fee") by wire transfer of immediately available funds to an account designated in writing by Purchaser. In no event shall more than one Breakup Fee be payable.
- (d) Purchaser and Sellers hereby agree that the Breakup Fee: (i) is not a penalty, but rather, is a reasonable estimate of the damages to be suffered by Purchaser in the event the transactions contemplated by this Agreement are not consummated under the circumstances set forth herein, (ii) is a necessary inducement for Purchaser to propose the transactions contemplated by this Agreement and (iii) shall be the sole remedy of Purchaser for breach of this Agreement if this Agreement is terminated under circumstances where the Breakup Fee is payable.

ARTICLE XIII MISCELLANEOUS PROVISIONS

Section 13.1. Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when delivered personally or by facsimile to the recipient, (b) one (1) Business Day after the date when sent to the recipient by reputable express courier service (charges prepaid), or (c) seven (7) Business Days after the date when mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Notice by Purchaser to Touch America shall be deemed to be notice to all Sellers. Such notices, demands and other communications shall be sent to Sellers and to Purchaser at the addresses indicated below:

If to any Seller: Touch America Holdings, Inc.
130 N. Main
Butte, MT 59701
Telephone: (406) 497-5422
Fax: (406) 497-5240
Attn: Jerrold P. Pederson, VP and CFO

With a copy to: Milbank, Tweed, Hadley & McCloy LLP

1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000
Fax: (212) 530-5219
Attn: John T. O'Connor, Esq.

If to Purchaser: 360networks Corporation
2401 Fourth Avenue
Suite 1100
Seattle, WA 98121
Telephone: (206) 239-4360
Fax: (206) 239-4365
Attn: Greg Maffei, CEO

With copies to: 360networks Corporation
2401 Fourth Avenue
Suite 1100
Seattle, WA 98121
Telephone: (206) 239-4360
Fax: (206) 239-4365
Attn: Lin Gentemann, Esq., General Counsel

Fraser Stryker Meusey Olson Boyer & Bloch, P.C.
409 South 17th Street, Suite 500
Omaha, NE 68102
Telephone: (402) 341-6000
Fax: (402) 341-8290
Attn: Patrick J. Duffy, Esq.

or to such other address as either party hereto may, from time to time, designate in writing delivered pursuant to the terms of this Section.

Section 13.2. Amendments. The terms, provisions and conditions of this Agreement may not be changed, modified or amended in any manner except by an instrument in writing duly executed by all of the parties hereto.

Section 13.3. Assignment and Parties in Interest.

- (a) Neither this Agreement nor any of the rights, duties, or obligations of any party hereunder may be assigned or delegated (by operation of law or otherwise) by either party hereto except with the prior written consent of the other party hereto; provided, however, that (i) prior to, at or after the Closing, Purchaser may in its sole discretion assign all or any part of its rights hereunder to any Affiliate of Purchaser, provided that such assignment is subject to the restrictions of the Bankruptcy Code and no such assignment shall relieve Purchaser of its obligations hereunder, and (ii) after

the Closing, Purchaser may assign all of its rights hereunder or to any other Person which acquires all or substantially all of the assets of, or equity interest in, the Relevant Business.

- (b) This Agreement shall not confer any rights or remedies upon any person or entity other than the parties hereto and their respective permitted successors and assigns.

Section 13.4. Announcements. All press releases, notices to customers and suppliers and similar public announcements prior to or within five days after the Closing Date with respect to this Agreement and the transactions contemplated by this Agreement shall be approved by Purchaser prior to the issuance thereof; provided that either party may make any public disclosure it believes in good faith is required by law, regulation or rule of any stock exchange on which its securities are traded (in which case the disclosing party shall use Best Efforts to advise the other party prior to making such disclosure and to provide the other party a reasonable opportunity to review the proposed disclosure).

Section 13.5. Expenses. Except as otherwise expressly set forth in this Agreement, each party to this Agreement shall bear all of its legal, accounting, investment banking, and other expenses incurred by it or on its behalf in connection with the transactions contemplated by this Agreement, whether or not such transactions are consummated.

Section 13.6. Entire Agreement. This Agreement (including the Ancillary Agreements and the Exhibits and Schedules attached hereto and thereto) constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, supersedes and is in full substitution for any and all prior agreements and understandings among them relating to such subject matter and no party shall be liable or bound to the other party hereto in any manner with respect to such subject matter by any warranties, representations, indemnities, covenants, or agreements except as specifically set forth herein. The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement.

Section 13.7. Counterparts. For the convenience of the parties, any number of counterparts of this Agreement may be executed by any one or more parties hereto, and each such executed counterpart shall be, and shall be deemed to be, an original, but all of which shall constitute, and shall be deemed to constitute, in the aggregate but one and the same instrument.

Section 13.8. Governing Law; Venue.

- (a) This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed therein and the Bankruptcy Code, to the extent applicable.
- (b) After closing of the Bankruptcy Cases, any proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against any of the parties in the courts of the State of New

York, or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of New York, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

- (c) During the pendency of the Bankruptcy Cases any Proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against any of the parties in the Bankruptcy Court, and each of the parties consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.
- (d) Process in any Proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

Section 13.9. Specific Performance. Without limiting or waiving in any respect any rights or remedies of Purchaser under this Agreement now or hereinafter existing at law or in equity or by statute, each of the parties hereto shall be entitled to seek specific performance of the obligations to be performed by the other in accordance with the provisions of this Agreement.

Section 13.10. Ancillary Agreements. To the extent the provisions of any Ancillary Agreement conflict with the provisions of this Agreement, the provisions of this Agreement shall control.

Section 13.11. Touch America Acting on Behalf of Sellers. For all purposes hereunder (including performance of obligations), except where the context expressly requires otherwise, Touch America may act on behalf of, and Purchaser shall accept performance by, and may tender performance to, Touch America on behalf of, any and all Sellers and all Sellers hereby authorize Touch America to act on its behalf except where the context requires otherwise. Unless otherwise directed by Sellers in writing to Purchaser, the payment of money by Purchaser to Touch America shall be deemed a payment of money by Purchaser to Sellers as their interests may appear.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Sellers and Purchaser have executed and delivered this Agreement as of the day and year first written above.

SELLERS

TOUCH AMERICA HOLDINGS, INC.

By: Robert P. Gannon
Name: Robert P. Gannon
Title: Chairman and CEO

TOUCH AMERICA, INC.

By: Robert P. Gannon
Name: Robert P. Gannon
Title: Chairman and CEO

SIERRA TOUCH AMERICA, LLC

By: Robert P. Gannon
Name: Robert P. Gannon
Title: Authorized Signatory

AMERICAN FIBER TOUCH LLC

By: Robert P. Gannon
Name: Robert P. Gannon
Title: Authorized Signatory

TOUCH AMERICA PURCHASING COMPANY, LLC

By: Robert P. Gannon
Name: Robert P. Gannon
Title: Authorized Signatory

TOUCH AMERICA INTANGIBLE HOLDING COMPANY, LLC

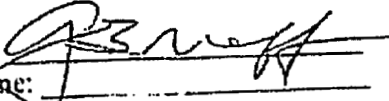
By: Robert P. Gannon
Name: Robert P. Gannon
Title: Authorized Signatory

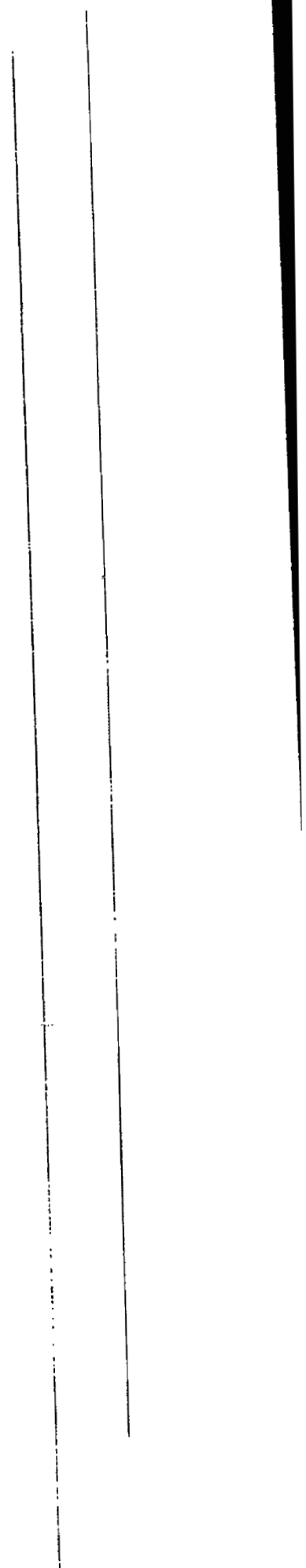
ENTECH, LLC

By: Robert P. Gannon
Name: Robert P. Gannon
Title: Authorized Signatory

PURCHASER

360NETWORKS CORPORATION

By: 
Name: _____
Title: _____



ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT, dated as of _____, 2003, is entered into by and among Touch America Holdings, Inc., a Delaware corporation (including any successor, "Touch America"), and the subsidiaries of Touch America listed on the signature pages hereto, (including their respective successors, each a "Seller" and together with Touch America, the "Sellers"); 360networks Corporation (including its successors and permitted assigns, "Purchaser"), a corporation continued federally under the laws of Canada.

WHEREAS, Purchaser and Sellers have entered into a certain Asset Purchase Agreement, dated as of June ____, 2003 (the "Asset Purchase Agreement"; capitalized terms not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement), pursuant to which Sellers have agreed to sell, transfer, convey, assign and deliver to Purchaser and Purchaser has agreed to purchase from Sellers certain of the assets of Sellers used in, of, or related to the Relevant Business, and Purchaser has agreed, in partial consideration therefor, to assume certain obligations in connection therewith pursuant to Article II of the Asset Purchase Agreement, by executing this Assumption Agreement; and

WHEREAS, pursuant to Section 2.2 of the Asset Purchase Agreement, Purchaser is required to execute and deliver to Sellers this Assumption Agreement whereby Purchaser assumes such obligations.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Purchaser hereby undertakes and agrees from and after the date hereof, subject to the limitations contained herein and in the Asset Purchase Agreement, to assume and to pay, perform and discharge when due the Assumed Liabilities specified to be assumed by Purchaser under the Asset Purchase Agreement.

Nothing contained herein shall require Purchaser to pay or discharge any debts or obligations expressly assumed hereby so long as Purchaser shall in good faith contest or cause to be contested the amount or validity thereof. Purchaser shall not assume the Excluded Liabilities, which shall remain the sole obligation of Sellers, their successors and assigns. No Person other than Sellers, their successors and assigns shall have any rights under this Assumption Agreement or the provisions contained herein.

This Assumption Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Assumption Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to a contract executed and performed in such State without giving effect to the conflicts of laws principles thereof, except that if it is necessary in any other jurisdiction to have the law of such other jurisdiction govern this Assumption Agreement in order for this Assumption Agreement to be effective in any respect, then the laws of such other jurisdiction shall govern this Assumption Agreement to such extent.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to execute this Assumption Agreement on the day and year first above written.

SELLERS

TOUCH AMERICA HOLDINGS, INC.

By: [Exhibit only: not for execution]

Name: _____

Title: _____

TOUCH AMERICA, INC.

By: [Exhibit only: not for execution]

Name: _____

Title: _____

SIERRA TOUCH AMERICA, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

TOUCH AMERICA PURCHASING COMPANY, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

TOUCH AMERICA INTANGIBLE HOLDING COMPANY, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

AMERICAN FIBER TOUCH LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

ENTECH, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

PURCHASER

360NETWORKS CORPORATION

By: [Exhibit only: not for execution]

Name: _____

Title: _____

GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE, dated as of _____, 2003, is entered into by and among Touch America Holdings, Inc., a Delaware corporation (including any successor, "Touch America"), and the subsidiaries of Touch America listed on the signature pages hereto, (including their respective successors, each a "Seller" and together with Touch America, the "Sellers"); 360networks Corporation (including its successors and permitted assigns, "Purchaser"), a corporation continued federally under the laws of Canada.

WHEREAS, Purchaser and Sellers have entered into a certain Asset Purchase Agreement, dated as of June __, 2003 (the "Asset Purchase Agreement"; capitalized terms not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement), pursuant to which Sellers have agreed to sell, transfer, convey, assign and deliver to Purchaser and Purchaser has agreed to purchase from Sellers certain assets used or held for use by Sellers in connection with the conduct of the Relevant Business, and Purchaser has agreed, in partial consideration therefor, to assume certain obligations in connection therewith by executing an Assumption Agreement of even date herewith; and

WHEREAS, Sellers desire to transfer and assign to Purchaser the assets described below pursuant to Article II of the Asset Purchase Agreement, and Purchaser desires to accept the sale, transfer, conveyance, assignment and delivery thereof;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Sellers hereby irrevocably sell, transfer, convey, assign and deliver to Purchaser all of Sellers' right, title and interest in, to and under all of the Purchased Assets as described in the Asset Purchase Agreement (the "Assigned Assets") TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever. Without limiting the foregoing, the Assigned Assets shall include any and all Purchased Assets consisting of rights under any Assumed Contract or Assumed Lease assumed by a Seller after its Closing Date as provided in the Asset Purchase Agreement.

Purchaser hereby accepts the sale, transfer, conveyance, assignment and delivery of the Assigned Assets.

At any time or from time to time after the date hereof, at Purchaser's request and without further consideration, Sellers shall execute and deliver to Purchaser such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as Purchaser may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to Purchaser, and to confirm Purchaser's title and interest to, all of the Assigned Assets, and, to the full extent permitted by applicable law, to put Purchaser in actual possession and operating control of the Assigned Assets and to assist Purchaser in exercising all rights with respect thereto.

Sellers hereby constitute and appoint Purchaser the true and lawful attorney of Sellers, with full power of substitution, in the name of each of Sellers or Purchaser, but on behalf of and

for the benefit of Purchaser: (i) to demand and receive from time to time any and all of the Assigned Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (ii) to institute, prosecute, compromise and settle any and all Proceedings that Purchaser may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Assigned Assets; (iii) to defend or compromise any or all Proceedings in respect of any of the Assigned Assets; and (iv) to do all such acts and things in relation to the matters set forth in the preceding clauses (i) through (iii) as Purchaser shall deem desirable. Sellers hereby acknowledge that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. Purchaser shall indemnify and hold harmless Sellers and their officers, directors, employees, agents and Affiliates from any and all damages caused by or arising out of any breach of applicable law by Purchaser in its exercise of the aforesaid powers.

This General Assignment and Bill of Sale may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

This General Assignment and Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York applicable to a contract executed and performed in such State without giving effect to the conflicts of laws principles thereof, except that if it is necessary in any other jurisdiction to have the law of such other jurisdiction govern this General Assignment and Bill of Sale in order for this General Assignment and Bill of Sale to be effective in any respect, then the laws of such other jurisdiction shall govern this General Assignment and Bill of Sale to such extent.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to execute this General Assignment and Bill of Sale on the day and year first above written.

SELLERS

TOUCH AMERICA HOLDINGS, INC.

By: [Exhibit only: not for execution]
Name: _____
Title: _____

TOUCH AMERICA, INC.

By: [Exhibit only: not for execution]
Name: _____
Title: _____

SIERRA TOUCH AMERICA, LLC

By: [Exhibit only: not for execution]
Name: _____
Title: _____

TOUCH AMERICA PURCHASING COMPANY, LLC

By: [Exhibit only: not for execution]
Name: _____
Title: _____

TOUCH AMERICA INTANGIBLE HOLDING COMPANY, LLC

By: [Exhibit only: not for execution]
Name: _____
Title: _____

AMERICAN FIBER TOUCH LLC

By: [Exhibit only: not for execution]
Name: _____
Title: _____

ENTECH, LLC

By: [Exhibit only: not for execution]
Name: _____
Title: _____

PURCHASER

360NETWORKS CORPORATION

By: [Exhibit only: not for execution]

Name: _____

Title: _____

ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Escrow Agreement"), dated as of _____ 2003, is entered into by and among Touch America Holdings, Inc., a Delaware corporation (including any successor, "Touch America"), and the subsidiaries of Touch America listed on the signature pages hereto, (including their respective successors, each a "Seller" and together with Touch America, the "Sellers"); 360networks Corporation (including its successors and permitted assigns, "Purchaser"), a corporation continued federally under the laws of Canada; and, _____ a [national banking association], organized under the laws of _____ (the "Escrow Agent") and by which such parties, for good and valuable consideration (the mutuality, adequacy and sufficiency of which are hereby acknowledged), hereby agree as follows:

WHEREAS, Sellers and Purchaser are parties to a certain Asset Purchase Agreement dated as of June __, 2003, (the "Asset Purchase Agreement") relating to Purchaser's acquisition of certain assets and liabilities of Sellers constituting the Relevant Business (capitalized terms not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement); and

WHEREAS, the Asset Purchase Agreement requires as a condition to the sale of the Relevant Business that Purchaser, Sellers and the Escrow Agent enter into this Escrow Agreement and that Purchaser deposit a portion of the Purchase Price with the Escrow Agent in order to provide a fund for any amounts that may be due to Purchaser pursuant to Article X of the Asset Purchase Agreement.

NOW, THEREFORE, Purchaser, Sellers and the Escrow Agent hereby agree as follows:

Section 1. Appointment of the Escrow Agent; Deposit of Escrow Amount. Sellers and Purchaser hereby constitute and appoint the Escrow Agent as, and the Escrow Agent hereby agrees to assume and perform the duties of, the escrow agent under and pursuant to this Escrow Agreement. The Escrow Agent acknowledges receipt of an executed copy of the Asset Purchase Agreement and of the amount of _____ Dollars (\$ _____) (i) (such amount, (x) less distributions therefrom, (y) plus any additions thereto, and (z) including all earnings or interest thereon, being referred to herein as the "Escrow Fund") from Purchaser as provided in the Asset Purchase Agreement.

Section 2. The Escrow Fund. The Escrow Fund shall be held by the Escrow Agent as a trust fund in a separate account maintained for that purpose, on the terms and subject to the conditions of this Escrow Agreement. The Escrow Fund shall not be subject to lien or attachment by any creditor of any party hereto and shall be used solely for the purpose set forth in this Escrow Agreement. Amounts held in the Escrow Fund shall not be available to, and shall not be used by, the Escrow Agent to set off any obligations of Sellers owing to the Escrow Agent in any capacity.

Section 3. Investment of the Escrow Fund; Taxes.

- (a) Except as Purchaser and Sellers may from time to time jointly instruct Escrow Agent in writing, the Escrow Fund shall be invested from time to time, to the extent possible, in United States Treasury bills having a remaining maturity of ninety (90) days or less and repurchase obligations secured by such United States Treasury bills, with any remainder being deposited and maintained in a money market deposit account with Escrow Agent until disbursement of the entire Escrow Fund. Escrow Agent is authorized to liquidate in accordance with its customary procedures any portion of the Escrow Fund consisting of investments to provide for payments required to be made under this Agreement.
- (b) The Escrow Agent shall receive and collect any and all interest, income and other earnings of a similar nature arising with respect to the Escrow Fund, and shall deposit such interest, income and other earnings in the Escrow Fund and the amount of the Escrow Fund shall be increased accordingly.
- (c) All taxes in respect of earnings on the Escrow Fund shall be the obligation of and shall be paid when due by the party receiving such amounts. Purchaser and Sellers shall each indemnify and hold the Escrow Agent harmless from and against all such taxes.

Section 4. Distributions of The Escrow Fund.

- (a) From time to time on or before _____, 200__, Purchaser may give notice (a "Notice") to Sellers and Escrow Agent specifying in reasonable detail the nature and dollar amount of any claim (a "Claim") it may have under Article X of the Asset Purchase Agreement; Purchaser may make more than one claim with respect to any underlying state of facts. If Sellers give notice to Purchaser and Escrow Agent disputing any Claim (a "Counter Notice") within ten (10) days following receipt by Sellers of the Notice regarding such Claim, such Claim shall be resolved as provided in Section 4(b). If no Counter Notice is received by Escrow Agent within such ten (10) day period, then the dollar amount of damages claimed by Purchaser as set forth in its Notice shall be deemed established for purposes of this Escrow Agreement and the Asset Purchase Agreement and, on the next Business Day following the end of such ten (20) day period, Escrow Agent shall pay to Purchaser the dollar amount claimed in the Notice from (and only to the extent of) the Escrow Fund. Escrow Agent shall not inquire into or consider whether a Claim complies with the requirements of the Asset Purchase Agreement.
- (b) If a Counter Notice is given with respect to a Claim, Escrow Agent shall make payment with respect thereto only in accordance with (i) joint written

instructions of Purchaser and Sellers or (ii) a final, nonappealable order of a court of competent jurisdiction. Any court order shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to Escrow Agent to the effect that the order is final and nonappealable. Escrow Agent shall act on such court order and legal opinion without further question.

Section 5. Termination of Escrow Agreement. On the first anniversary of the Closing Date, Escrow Agent shall pay and distribute the then amount of the Escrow Fund to Sellers, unless any Claims are then pending, in which case an amount equal to the aggregate dollar amount of such Claims (as shown in the Notices of such Claims) shall be retained by Escrow Agent in the Escrow Fund (and the balance paid to Sellers) until it receives joint written instructions of Purchaser and Seller or a final, nonappealable order of a court of competent jurisdiction as contemplated by Section 4(b).

Section 6. Duties and Obligations of the Escrow Agent. The duties and obligations of the Escrow Agent shall be limited to and determined solely by the provisions of this Escrow Agreement and the certificates delivered in accordance herewith, and the Escrow Agent is not charged with knowledge of or any duties or responsibilities in respect of any other agreement or document. In furtherance and not in limitation of the foregoing:

- (a) the Escrow Agent shall not be liable for any loss of interest sustained as a result of investments made hereunder in accordance with the terms hereof, including any liquidation of any investment of the Escrow Fund prior to its maturity effected in order to make a payment required by the terms of this Escrow Agreement;
- (b) the Escrow Agent shall be fully protected in relying in good faith upon any written certification, notice, direction, request, waiver, consent, receipt or other document that the Escrow Agent reasonably believes to be genuine and duly authorized, executed and delivered;
- (c) the Escrow Agent shall not be liable for any error of judgment, or for any act done or omitted by it, or for any mistake in fact or law, or for anything that it may do or refrain from doing in connection herewith; provided, however, that notwithstanding any other provision in this Escrow Agreement, the Escrow Agent shall be liable for its willful misconduct or gross negligence or breach of this Escrow Agreement;
- (d) the Escrow Agent may seek the advice of legal counsel selected with reasonable care in the event of any dispute or question as to the construction of any of the provisions of this Escrow Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the opinion of such counsel;

- (e) in the event that the Escrow Agent shall in any instance, after seeking the advice of legal counsel pursuant to the immediately preceding clause, in good faith be uncertain as to its duties or rights hereunder, it shall be entitled to refrain from taking any action in that instance and its sole obligation, in addition to those of its duties hereunder as to which there is no such uncertainty, shall be to keep safely all property held in the Escrow Fund until it shall be directed otherwise in writing by each of the parties hereto or by a final, nonappealable order of a court of competent jurisdiction; provided, however, that in the event that the Escrow Agent has not received such written direction or court order within one hundred eighty (180) calendar days after requesting the same, it shall have the right to interplead Purchaser and Sellers in any court of competent jurisdiction and request that such court determine its rights and duties hereunder; and
- (f) the Escrow Agent may execute any of its powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through agents or attorneys selected with reasonable care, and the Escrow Agent shall not be responsible for and shall not be under a duty to examine into or pass upon the validity, binding effect, execution or sufficiency of this Escrow Agreement or of any agreement amendatory or supplemental hereto.

Section 7. Cooperation. Purchaser on the one hand and Sellers on the other hand shall provide to the Escrow Agent all instruments and documents within their respective powers to provide that are reasonably necessary for the Escrow Agent to perform its duties and responsibilities hereunder.

Section 8. Fees and Expenses; Indemnity. The fees of the Escrow Agent for its services hereunder as and when billed by the Escrow Agent shall be paid by the Purchaser, and Purchaser shall reimburse and indemnify the Escrow Agent for, and hold it harmless against any loss, damages, cost or expense, including but not limited to reasonable attorneys' fees, reasonably incurred by the Escrow Agent in connection with the Escrow Agent's performance of its duties and obligations under this Escrow Agreement, as well as the reasonable costs and expenses of defending against any claim or liability relating to this Escrow Agreement; provided that notwithstanding the foregoing, Purchaser shall not be required to indemnify the Escrow Agent for any such loss, liability, cost or expense arising as a result of the Escrow Agent's willful misconduct or gross negligence or breach of this Escrow Agreement.

Section 9. Resignation and Removal of the Escrow Agent.

- (a) The Escrow Agent may resign as such thirty (30) calendar days following the giving of written notice thereof to Sellers and Purchaser. In addition, the Escrow Agent may be removed and replaced on a date designated in a written instrument signed by Sellers and Purchaser and delivered to the Escrow Agent. Notwithstanding the foregoing, no such resignation or removal shall be effective until a successor escrow agent has acknowledged its appointment as such as provided in paragraph (c) below. In either event, upon the effective

date of such resignation or removal, the Escrow Agent shall deliver the property comprising the Escrow Fund to such successor escrow agent, together with such records maintained by the Escrow Agent in connection with its duties hereunder and other information with respect to the Escrow Fund as such successor may reasonably request.

(b) If a successor escrow agent shall not have acknowledged its appointment as such as provided in paragraph (c) below, in the case of a resignation, prior to the expiration of thirty (30) calendar days following the date of a notice of resignation or, in the case of a removal, on the date designated for the Escrow Agent's removal, as the case may be, because Sellers and Purchaser are unable to agree on a successor escrow agent, or for any other reason, the Escrow Agent may select a successor escrow agent and any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement, provided that any such successor selected by the Escrow Agent shall be a Permitted Bank referred to in Section 3(a)(iv)(B).

(c) Upon written acknowledgment by a successor escrow agent appointed in accordance with the foregoing provisions of this Section 9 of its agreement to serve as escrow agent hereunder and the receipt of the property then comprising the Escrow Fund, the Escrow Agent shall be fully released and relieved of all duties, responsibilities and obligations under this Escrow Agreement, subject to the proviso contained in Section 6(iii), and such successor escrow agent shall for all purposes hereof be the Escrow Agent.

Section 10. Notices. Each notice, communication and delivery under this Escrow Agreement: (a) will be made in writing signed by the party giving it; (b) will specify the Section pursuant to which given; (c) shall be addressed to the parties at the following addresses, and (d) shall be deemed delivered on the date of personal delivery or on the third Business Day after being mailed by certified mail, or on the next business day after delivery to a commercial delivery service (such as Federal Express) as the case may be:

If to any Seller: Touch America Holdings, Inc.
 130 No. Main
 Butte, Montana 59701
 Telephone: (406) 497-5422
 Fax: (406) 497-5240
 Attn: Jerrold P. Pederson, Vice President and CFO

With a copy to: Milbank, Tweed, Hadley & McCloy LLP
 1 Chase Manhattan Plaza
 New York, NY 10005
 Telephone: (212) 530-5000
 Fax: (212) 530-5219
 Attn: John T. O'Connor, Esq

If to Purchaser: 360networks Corporation
2401 Fourth Avenue
Suite 1100
Seattle, WA 98121
Telephone: (206) 239-4360
Fax: (206) 239-4365
Attn: Chris Mueller, SVP Corporate Development

With copies to: 360networks Corporation
2401 Fourth Avenue
Suite 1100
Seattle, WA 98121
Telephone: (206) 239-4360
Fax: (206) 239-4365
Attn: Lin Gentemann, Esq.

Fraser Stryker Meusey Olson Boyer & Bloch, P.C.
409 South 17th Street, Suite 500
Omaha, NE 68102
Telephone: (402) 341-6000
Fax: (402) 341-8290
Attn: Patrick J. Duffy, Esq.

If to Escrow Agent: _____

Attn: _____

Such notice will be given to such other representative or at such other address as may be designated in a notice given pursuant to the foregoing. If notice is given pursuant to this Section of a permitted successor or assign, then notice will be given as set forth above to such permitted successor or assign.

Section 11. Amendments, etc. This Escrow Agreement may be amended or modified, and any of the terms hereof may be waived, only by a written instrument duly executed by or on behalf of Purchaser and Sellers and, with respect to any amendment that would adversely affect the Escrow Agent, the Escrow Agent. No waiver by any party of any term or condition contained of this Escrow Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Escrow Agreement on any future occasion.

Section 12. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to a contract executed and performed in such State, without giving effect to the conflicts of laws principles thereof.

Section 13. Miscellaneous. This Escrow Agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. Whenever "Seller" or "Sellers" is used in this Escrow Agreement with reference to a period after the Closing, the term means those Sellers that are then in existence and the successor or successors to Sellers. The headings used in this Escrow Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof. This Escrow Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Sellers, Purchaser and Escrow Agent have executed and delivered this Escrow Agreement as of the day and year first written above.

SELLERS

TOUCH AMERICA HOLDINGS, INC.

By: [Exhibit only: not for execution]

Name: _____

Title: _____

TOUCH AMERICA, INC.

By: [Exhibit only: not for execution]

Name: _____

Title: _____

SIERRA TOUCH AMERICA, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

TOUCH AMERICA PURCHASING COMPANY, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

TOUCH AMERICA INTANGIBLE HOLDING COMPANY, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

AMERICAN FIBER TOUCH LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

ENTECH, LLC

By: [Exhibit only: not for execution]

Name: _____

Title: _____

PURCHASER

360NETWORKS CORPORATION

By: [Exhibit only: not for execution]

Name: _____

Title: _____

ESCROW AGENT

[ESCROW AGENT]

By: [Exhibit only: not for execution]

Name: _____

Title: _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re)	Chapter 11 Cases
)	
Touch America, Inc., <u>et al.</u> ,)	Case No. 03-____ ()
)	
Debtors.)	Jointly Administered

ORDER UNDER 11 U.S.C. §§ 105(a) AND 363 AND FED. R. BANKR. P. 2002 AND 6004: (I) APPROVING (A) NOTICE AND BIDDING PROCEDURES AND (B) BID PROTECTIONS, INCLUDING, BREAK-UP FEE, OVERBID PROTECTIONS, AND NO-SOLICITATION PROVISIONS IN CONNECTION WITH THE PROPOSED SALE OF CERTAIN OF THE DEBTORS' ASSETS; AND (II) SCHEDULING HEARING AND SETTING BIDDING AND OBJECTION DEADLINES IN CONNECTION WITH SUCH SALE

Upon the motion, dated June __, 2003 (the "Motion"), of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for, among other things, entry of:

(a) an order (the "Procedures Order") pursuant to 11 U.S.C. §§ 105(a) and 363 and Fed. R. Bankr. P. 2002 and 6004, among other things, (i) approving certain bid protections, including a break-up fee (the "Breakup Fee") and certain auction procedures and overbid requirements (collectively with the Breakup Fee, the "Bidding Procedures") with respect to the proposed sale (the "Sale") of certain of the assets of the Debtors to 360networks Corporation.(including its successors and permitted assigns, the "Purchaser") pursuant to that certain Asset Purchase Agreement (as amended from time to time, the "Purchase Agreement")¹ by and among the Purchaser and those of the Debtors party to the Purchase Agreement (collectively, the "Sellers"), dated as of June __, 2003, and certain Ancillary Agreements, substantially in the forms attached

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Purchase Agreement, as the case may be. To the extent that any terms of this Order and those of the Purchase Agreement are inconsistent, this Order shall control.

as exhibits to the Purchase Agreement (collectively, the "Sellers") to the Purchaser; or (b) another successful bidder (the "Successful Bidder"), (ii) scheduling a date for the hearing to approve the Sale (the "Sale Hearing"), (iii) setting auction procedures, bidding and objection deadlines in connection with the Sale, and (iv) approving the form and manner of notice thereof, and (b) an order approving the Sale; and a hearing having been held on _____, 2003 (the "Bidding Procedures Hearing"); and the Court having reviewed and considered: (a) the Motion; (b) the objections thereto, if any; and (c) the arguments of counsel made, and the evidence proffered or adduced, at the Bidding Procedures Hearing; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N), and (O). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the relief sought in the Motion with respect to the proposed Bidding Procedures, Breakup Fee, notice procedures and other related matters (as set forth herein) has been given and no other or further notice is required. A reasonable opportunity to object to or be heard regarding such relief has been, and with respect to the further notice required hereby, will be, afforded to all interested persons and entities including the following: (i) the Office of the United States Trustee; (ii) counsel to the Purchaser; (iii) counsel to any statutory committees appointed in these cases (collectively, the "Committee") or, if no

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed R. Bankr. P. 7052.

such committee has yet been appointed, then to each of the thirty largest creditors of the Debtors (on a consolidated basis); and (iv) counsel to [the administrative agent for the Debtors' postpetition lenders (the "DIP Lenders") under the [NAME OF POSTPETITION CREDIT AGREEMENT]; (v) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (vi) all entities known to have asserted any Lien in or upon any of the Purchased Assets; (vii) all federal, state and local taxing or regulatory authorities or recording offices that have (A) jurisdiction over the Relevant Business or any aspect thereof or (B) a reasonably known interest in the relief requested in the Motion; (viii) all governmental agencies having jurisdiction over the Relevant Business with respect to environmental laws; (ix) parties to governmental approvals or permits applicable to the Relevant Business; (x) the United States Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (xi) the Federal Communications Commission and applicable state public utility commissions; (xii) the Securities and Exchange Commission; and (xiii) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of the Motion (collectively, the "Initial Notice Parties"). No other or further notice of the request for the relief granted herein need be given.

C. The Debtors' proposed notice of the Sale, including, without limitation, the sale of the Purchased Assets and the assumption and assignment of the Assumed Agreements to be assumed at the Closing (collectively, the "Initial Assumed Agreements") attached hereto as Exhibit A is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Sale and Bidding Procedures.

D. The Bidding Procedures, substantially in the form annexed hereto as Exhibit B, are fair, reasonable and appropriate and are designed to maximize the recovery on the Purchased Assets, including the Assumed Agreements.

E. The Debtors have demonstrated a compelling and sound business justification, under the circumstances, for authorizing the payment of the Breakup Fee to the Purchaser in accordance with the procedures set forth in the Motion.

F. It appears that the Breakup Fee was negotiated by the parties to the Purchase Agreement in good faith and at arm's-length and is fair and reasonable.

G. The Debtors' payment to the Purchaser of the Breakup Fee under the conditions set forth in the Purchase Agreement is: (a) an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code; (b) of substantial benefit to the Debtors' estates; (c) reasonable and appropriate, given, among other things, (i) the size and nature of the proposed Sale the substantial efforts that have been and will be expended by the Purchaser, and the benefits the Purchaser has provided to the Debtors' estates and creditors and all parties in interest herein by helping to maximize the value of the Purchased Assets, (d) not a penalty, but rather, a reasonable estimate of the damages to be suffered by Purchaser in the event the transactions contemplated by the Purchase Agreement are not consummated, and (e) necessary to ensure that the Purchaser will continue to pursue its proposed acquisition of the Purchased Assets. It appears that the Purchase Agreement was the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder who was prepared to pay the highest or otherwise best consideration for the Purchased Assets (including the Assumed Agreements), while also assuming or otherwise satisfying certain Assumed Liabilities, in order to maximize the value of the Debtors' estates.

The payment of the Breakup Fee should be approved because, among other things: (i) no other party to date has been willing to enter into a definitive agreement for the purchase of the Purchased Assets and the assumption of the Assumed Liabilities on terms acceptable to the Debtors; (ii) the protection afforded to the Purchaser by the Breakup Fee was a material inducement for, and an express condition of, the Purchaser's willingness to enter into the Purchase Agreement; and (iii) the Purchaser is unwilling to commit to hold open its offer to purchase the Purchased Assets and consummate the other transactions under the terms of the Purchase Agreement unless it is assured of the payment of the Breakup Fee.

H. The entry of this Order is in the best interests of the Debtors and their estates, creditors and all other parties in interest herein; and it is therefore hereby

ORDERED, ADJUDGED AND DECREED THAT:

Overruling of Objections

1. Any objections to the entry of this Procedures Order or the relief granted herein and in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits with prejudice.

Notice of Auction and Sale

2. The notice (the "Notice of Auction and Sale Hearing") of, among other things: (i) the Auction, (ii) the Sale; (iii) the assignment and assumption of the Initial Assumed Agreements; and (iv) the Bidding Procedures, substantially in the form attached hereto as Exhibit A, is approved in all respects.

3. As soon as practicable after the entry of this Procedures Order (and in any event, no later than _____, 2003), the Debtors shall cause the Notice of Auction and Sale Hearing to be: (i) published in the national editions of either The Wall Street Journal or The New York Times; and (ii) served, pursuant to Bankruptcy Rule 2002(l), on (a) the Initial Notice

Parties, (b) counsel to any statutory committee(s) appointed in these cases (collectively, the "Committee"), (iii) all non-Debtor parties to the Initial Assumed Agreements; and (iv) all other parties that filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of such service.

4. The service of the Notice of Auction and Sale Hearing (including the publication notice) in compliance with this Order shall be deemed to be good, sufficient and proper notice of the relief sought in the Motion with respect to the Auction, the Sale Hearing, the Sale, and other related matters including to those parties-in-interest unknown to the Debtors, and any requirements for other notice are waived and dispensed with pursuant to Bankruptcy Rules 2002, 6004, 6006 and 9007 and sections 102 and 105 of the Bankruptcy Code, and no other or further notice of the Bidding Procedures, the Sale, or the assumption and assignment of the Initial Assumed Agreements is required.

Notice of Proposed Assignment and Cure Amounts

5. The notice (the "Initial Assumption Notice") of, among other things: (i) the Debtors' intention to assume and assign to the Purchaser, as of the Closing Date, the Initial Assumed Agreements; and (ii) the amounts (each, a "Cure Amount"), if any, required to be paid to cure any monetary defaults related to each such Initial Assumed Agreement, substantially in the form annexed hereto as Exhibit C, is approved in all respects.

6. No later than _____, 2003, the Debtors shall serve the Initial Assumption Notice on all non-Debtor parties to the Initial Assumed Agreements (collectively, the "Initial Assumption Notice Parties").

7. Each Initial Assumption Notice Party shall have until 4:00 p.m. (Eastern Daylight Savings Time) on _____, 2003 (the "Assignment Objection Deadline") to file with the Court and serve upon the Debtors' and the Purchaser's respective counsel any objection to

either (i) the assumption and assignment of its respective agreement or (ii) the Cure Amount with respect thereto, and must state in its objection (each, an "Assignment Objection") with specificity (y) the reason for its objection to such assumption and assignment, or (z) what Cure Amount it asserts is required (with appropriate documentation in support thereof). If no Assignment Objection is timely received from any such non-Debtor party: (a) the applicable Initial Assumed Agreement may be assigned to the Purchaser (or the Successful Bidder, as the case may be) on the Closing Date; (b) the applicable Cure Amount shall be fixed at the amount set forth in the Initial Assumption Notice, notwithstanding anything to the contrary in any Initial Assumed Agreement or any other document; and (c) the Initial Assumption Notice Party shall be (i) deemed to have waived and released any right to assert an objection to the proposed assignment of the Initial Assumed Agreement or the Cure Amount with respect thereto, and to have otherwise consented to the assumption and assignment of the applicable Initial Assumed Agreement, and (ii) upon the payment of the applicable Cure Amount, if any, forever barred, permanently enjoined and estopped from asserting or claiming any other or further claims against the Debtors, their estates, the Purchaser (or the Successful Bidder, as the case may be), their respective successors and assigns, the Purchased Assets, or the property or assets of any or all such parties, with respect to such Initial Assumed Agreement or on grounds that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such Initial Assumed Agreement, except with respect to claims or defaults occurring wholly after the Closing Date.

8. If one or more Assignment Objections are received that have not been resolved prior to the Sale Hearing, hearings with respect to any such objections may be held: (a) at the Sale Hearing; or (b) at such other date as the Court may designate. However, if a disputed

Cure Amount is not resolved by the time of the Sale Hearing, the relevant Initial Assumed Agreement may be assumed and assigned to the Purchaser, provided that the Cure Amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be deposited with and held in a segregated account by the Sellers or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

9. A properly filed Assignment Objection shall reserve such objecting party's rights against the Debtors (but not against any purchaser of the Purchased Assets) with respect to the relevant Cure Amount obligation, but shall not constitute an objection to the remaining relief requested in the Motion.

10. The Debtors and the Purchaser (or the Successful Bidder, as the case may be) are hereby authorized to settle, compromise or otherwise resolve any disputed Cure Amounts with the relevant non-Debtor party to any Initial Assumed Agreement without further Bankruptcy Court approval or notice to any party.

Notice Regarding Undesignated Agreements

11. The notice, annexed hereto as Exhibit D, with regard to the procedures for post-closing assumption of certain agreements (the "Other Assumed Agreements") and assignment thereof to Purchaser (the "Other Assumed Agreements Notice"), is hereby approved.

12. No later than _____, 2003, the Debtors shall serve the Other Assumed Agreements Notice on all non-Debtor parties to each Other Assumed Agreement. Assumption and assignment of each of the Other Assumed Agreements shall be effected pursuant to a separate Order of this Court, upon proper notice and hearing.

Purchaser Protections

13. The Debtors are authorized and directed to pay the Breakup Fee to Purchaser, in the manner required under and pursuant to the Purchase Agreement, without further order of the Court.

14. Pursuant to section 364(c)(1) of the Bankruptcy Code, the Purchaser's claim in respect of the Breakup Fee shall have priority over any and all administrative expenses of the kinds specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code, whether such claims arise in proceedings under Chapter 11 or Chapter 7 of the Bankruptcy Code (the "Purchaser Protection Superpriority Claim").

15. The rights of the Purchaser to the Breakup Fee and the Purchaser Protection Superpriority Claim shall all survive rejection or breach of the Purchase Agreement by the Sellers, and shall be unaffected thereby.

16. The Breakup Fee shall be the sole remedy of Purchaser for breach of the Purchase Agreement if the Purchase Agreement is terminated under circumstances where the Breakup Fee is payable.

Bidding Procedures

17. The Bidding Procedures attached hereto as Exhibit B (and incorporated herein in their entirety) are approved in all respects and shall apply with respect to, and shall govern all proceedings related to: (i) the Purchase Agreement; (ii) the Auction, (iii) the Sale, and (iv) the assumption and assignment of the Assumed Agreements.

18. Any person wishing to submit a higher or better offer for the Purchased Assets must do so strictly in accordance with the terms of the Bidding Procedures.

19. The Purchaser is deemed to be a Qualified Bidder (as defined in the Bidding Procedures) for all purposes.

The Auction

20. The Auction, if required, will commence at [] a.m. (Eastern Daylight Savings Time) on _____, 2003, at the offices of [], or at such later time or other place as agreed by the Purchaser and the Sellers, and which the Sellers shall notify all Qualified Bidders who have submitted Qualified Bids.

The Sale Hearing

21. A hearing (as defined above, the "Sale Hearing") to consider: (i) the Sale; (ii) the assumption and assignment of the Initial Assumed Agreements and certain other relief requested in the Motion; and (iii) the entry of the proposed Sale Order, shall be held on _____, 2003, at __:__.m. (Eastern Daylight Savings Time) before this Court.

22. Objections to the entry of the Sale Order, if any, must: (a) be in writing; (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of the United States Bankruptcy Court for the District of Delaware; (c) set forth the name of the objector and the nature and amount of any claim or interest held by and against the Debtors' estates or property; (d) state the legal and factual basis for the objection and the specific grounds therefor; (e) be filed with this Court; and (f) be served upon the Debtors' counsel so as to be actually received by no later than 4:00 p.m. (Eastern Daylight Savings Time) on _____, 2003 (the "Objection Deadline"). Only timely filed and served responses, objections or other pleadings will be considered by the Court at the Sale Hearing.

23. The failure of any person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, the Sale or the consummation and performance of the Purchase Agreement and the transactions contemplated thereby (including, without limitation, the assumption and assignment of the Initial Assumed Agreements).

24. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of said adjournment in Court or on the Court's calendar on the date scheduled for such hearing.

No Solicitation

25. Section [6.7(a)] of the Purchase Agreement is approved in its entirety. Pursuant thereto, among other things, Sellers shall not, nor shall they cause their officers, agents, representative and other persons acting on their behalf to, seek or solicit offers for any transaction that would render impossible the transactions between the Sellers and Purchaser contemplated by the Purchase Agreement, except in compliance with the Bidding Procedures and this Order.

Additional Provisions

26. The Debtors are authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established by this Procedures Order.

27. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

28. The automatic stay provisions of section 362 of the Bankruptcy Code shall not apply to Purchaser's rights to terminate the Purchase Agreement in accordance with the terms thereof.

29. Section [6.7(b)] of the Purchase Agreement is approved in its entirety. Sellers shall promptly notify Purchaser orally and in writing of any request for information, proposal, discussion, negotiation or inquiry received after the date of the Purchase Agreement in connection with any Takeover Proposal and Sellers shall promptly (but in any event within one (1) Business Day) communicate to Purchaser the material terms and conditions of any such

proposal, discussion, negotiation or inquiry which it may receive (and will promptly provide to Purchaser copies of any written materials received by Sellers in connection with such proposal, discussion, negotiation or inquiry) and the identity of the person making such proposal or inquiry or engaging in such discussions or negotiation.

30. Sections [6.7(c) and (d)] of the Purchase Agreement are approved in their entirety. Sellers shall not furnish information concerning their business, properties or assets to any Third Party, except pursuant to a confidentiality agreement with terms and conditions no less restrictive than those contained in the Confidentiality Agreement. Sellers shall not release any Third Party from, or waive any provision of, any such confidentiality agreement or any similar confidentiality or standstill agreement to which any Seller is a party. Sellers shall promptly provide to Purchaser any non-public information concerning the Sellers provided to any other Person which was not previously provided to Purchaser. Sellers shall keep Purchaser informed of the status and material details (including amendments or proposed amendments) of any such Takeover Proposal. Sellers shall promptly (and in any event within one business day) notify Purchaser in writing at such time as any Takeover Proposal has been determined to be a Qualified Bid.

31. This Procedures Order shall be binding upon, and inure to the benefit of the Purchaser and its affiliates, successors and assigns and the Debtors, and their estates, including any chapter 7 or 11 trustee or other fiduciary appointed for the estates of the Debtors, whether in these cases, subsequent bankruptcy cases or upon dismissal of any of these cases.

32. Service of the notices described herein on the parties entitled to receive such notices pursuant to this Procedures Order shall constitute proper, timely, adequate and

sufficient notice thereof and satisfies the requirements of sections 102, 105 and 363(b) and (f) of the Bankruptcy Code and Rules 2002, 6004, 9007 and 9008 of the Bankruptcy Rules

33. Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), this Procedures Order shall not be stayed for ten (10) days after the entry hereof and this Procedures Order shall be effective and enforceable immediately upon entry on this Court's docket.

34. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Procedures Order, including, but not limited to, (i) any matter, claim or dispute arising from or relating to the Breakup Fee, the Bidding Procedures and/or the implementation of this Procedures Order.

Dated: Wilmington, Delaware
_____, 2003

UNITED STATES BANKRUPTCY JUDGE

Touch America, Inc.**Bidding Procedures**

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the transactions contemplated by the Asset Purchase Agreement (as amended from time to time, the "Purchase Agreement")³ by and among 360networks Corporation (including its successors and permitted assigns, the "Proposed Purchaser") and those of the Debtors that are parties to the Purchase Agreement (collectively, the "Sellers"), dated as of June __, 2003, and certain Ancillary Agreements (including the Transition Services Agreement), substantially in the forms attached as exhibits to the Purchase Agreement (collectively, the "Sellers"), concerning the prospective sale (the "Sale") of certain of the Sellers' assets (as defined more specifically in the Purchase Agreement, the "Purchased Assets"). The Sellers have moved for, and will seek, entry of an order by the Bankruptcy Court authorizing and approving the Sale to a Qualified Bidder (as defined below) that the Sellers determine to have made the highest or otherwise best offer for the Purchased Assets.

The Bidding Process

The Sellers will: (i) receive offers from Qualified Bidders; (ii) determine whether any person is a Qualified Bidder; (iii) coordinate the efforts of Qualified Bidders in conducting their respective due diligence investigations regarding the Purchased Assets generally; and (iv) evaluate any offer made by a Qualified Bidder to purchase the Purchased Assets (collectively, the "Bidding Process"). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder, and neither the Sellers nor their representatives are obligated to furnish any information of any kind whatsoever relating to the Sellers or the Purchased Assets to any person who is not a Qualified Bidder. The Sellers have the right to adopt such other rules for the Bidding Process which, in their sole judgment, will better promote the goals of the Bidding Process and which are not inconsistent with any of the other provisions hereof or of any Bankruptcy Court order.

Determination of "Qualified Bidder" Status

In order to participate in the Bidding Process, each person (a "Potential Bidder"), other than the Proposed Purchaser, must deliver (unless previously delivered) to the Sellers:

1. An executed confidentiality agreement in form and substance satisfactory to the Sellers; and
2. Current audited financial statements of the Potential Bidder or, if the Potential Bidder is an entity formed for the purpose of acquiring the

³ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement.

Purchased Assets, current audited financial statements of the equity holder(s) of the Potential Bidder or such other form of financial disclosure acceptable to the Sellers and their advisors demonstrating such Potential Bidder's ability to adequately fund the newly-formed entity and close a proposed transaction.

A "Qualified Bidder" is a Potential Bidder: (x) that timely delivers the documents described in subparagraphs (i) and (ii) above; and (y) that the board of directors of Touch America, Inc., determines is financially able to consummate the purchase of the Purchased Assets. The Proposed Purchaser will be deemed a Qualified Bidder.

No later than two (2) business days after the Sellers receive from a Potential Bidder all of the materials required by subparagraphs (i) and (ii) above, they shall notify such Potential Bidder whether such potential bidder is a Qualified Bidder. At the same time that the Sellers notify the Potential Bidders that it is a Qualified Bidder, the Sellers shall deliver to such Qualified Bidder (unless previously delivered) [(i) a confidential memorandum containing information and financial data relating to the Purchased Assets, and (ii)] a copy of the Purchase Agreement.

Due Diligence for Qualified Bidders

To obtain due diligence access or additional information from the Sellers, a Qualified Bidder must first advise the Sellers in writing of its preliminary (non-binding) proposal regarding: (i) the purchase of the Purchased Assets; (ii) a purchase price range; (iii) the proposed structure and financing of the transaction (including the amount of equity to be committed and sources of financing); (iv) any additional conditions to closing that such Qualified Bidder may wish to impose; and (v) the nature and extent of additional due diligence such Qualified Bidder may wish to conduct. If, based on the preliminary proposal and such additional factors as the Sellers determine are relevant, the Sellers, in their business judgment, determine that the preliminary proposal is reasonably likely to result in a bona fide and serious higher or otherwise better offer for the Purchased Assets, the Sellers will afford the Qualified Bidder access to relevant due diligence information and materials. The Sellers will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. No conditions relating to the completion of additional due diligence will be permitted to exist after the Bid Deadline (as defined below). None of the Sellers, their affiliates or any of their respective representatives are obligated to furnish any information relating to the Purchased Assets to any person except to a Qualified Bidder who makes an acceptable preliminary proposal.

Bid Deadline

(a) Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attention: John O'Connor, Esq. And (b) [Evercore], not later than 12:00 noon (Eastern Daylight Savings Time) on _____, 2003 [Five business days prior to the Sale Hearing] (the "Bid Deadline"). If the Sellers extend the Bid Deadline, they shall promptly notify all Qualified Bidders of such extension.

Determination of "Qualified Bid" Status

A bid received from a Qualified Bidder will constitute a "Qualified Bid" only if it includes all of the Required Bid Documents listed below and meets all of the Bid Requirements set forth below. Notwithstanding the foregoing, the Purchase Agreement will be deemed a Qualified Bid for all purposes in connection with the Bidding Process, the Auction (as defined below) and the Sale.

Required Bid Documents. All bids must include the following documents (collectively, the "Required Bid Documents"):

1. A written offer stating that: (i) the Qualified Bidder offers to purchase all or substantially all of the Purchased Assets and assume all or substantially all of the Assumed Liabilities; (ii) the Qualified Bidder is prepared to enter into a legally binding purchase and sale agreement for the acquisition of the Business on terms and conditions no less favorable to Sellers than the Purchase Agreement (other than those relating to the Breakup Fee) within not more than one Business Day after entry by the Bankruptcy Court of the Sale Order; and (iii) the Qualified Bidder's offer is irrevocable until the end of the business day following the closing of the purchase of the Purchased Assets; and
2. A good faith deposit (the "Good Faith Deposit") in the form of a certified or bank check (or other form acceptable to the Sellers in their sole discretion) payable to the order of the Sellers (or such other party as the Sellers may designate) in an amount of \$1 million; provided, however, that the Proposed Purchaser shall not be required to make the Good Faith Deposit.

Bid Requirements. All bids must satisfy the following requirements (collectively, the "Bid Requirements"):

1. The bid must provide for an aggregate purchase price for the Purchased Assets of at least \$500,000 greater than the sum of: (x) the amount of the Breakup Fee; plus (y) the consideration to the Sellers arising out of the Purchase Agreement including the payment of the Purchase Price and the assumption of the Assumed Liabilities).
2. The bid must be, in the Sellers' business judgment, on substantially the same or better terms and conditions than those set forth in the Purchase Agreement.
3. The bid (other than the Proposed Purchaser's bid) is accompanied by satisfactory evidence of committed financing or other ability to perform the acquisition of the Purchased Assets.

4. The bid is not conditioned upon the Bankruptcy Court's approval of any bid protections, such as a breakup fee, termination fee, expense reimbursement or similar type of payment.
5. The bid acknowledges and represents that the bidder: (1) has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer; (2) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; and (3) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures.
6. The bid is received by the Bid Deadline.

Auction

If one or more Qualified Bid in addition to that of the Proposed Purchaser is received, the Sellers will conduct an auction (the "Auction") with respect to the Purchased Assets to determine the highest or otherwise best offer for the Purchased Assets (the "Successful Bid"). If no Qualified Bid (other than that of the Proposed Purchaser) is received by the Bid Deadline, the Proposed Purchaser's bid will be deemed the Successful Bid, and Sellers shall proceed with the transactions contemplated by the Purchase Agreement.

The Auction, if required, will commence at [] a.m. (Eastern Daylight Savings Time) on _____, 2003 [Not to be less than 3 business days prior to the Sale Hearing], at the offices of [] or at such later time or other place as agreed by the Proposed Purchaser and the Sellers, and of which the Sellers will notify all Qualified Bidders who have submitted Qualified Bids.

At least one (1) business day prior to the Auction, the Sellers will provide to the Proposed Purchaser and all other Qualified Bidders a copy of the highest or otherwise best Qualified Bid received and copies of all other Qualified Bids. In addition, the Sellers will inform the Proposed Purchaser and each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all Qualified Bidders that may participate in the Auction and copies of the bids of all such Qualified Bidders.

Only the Proposed Purchaser, Sellers, Qualified Bidders who have submitted Qualified Bids, their respective professionals, the United States Trustee, and representatives of any statutory committee appointed in these cases (collectively, the "Committee") will be entitled to attend, participate and be heard at the Auction, and only the Proposed Purchaser and Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.

During the Auction, bidding will begin at the purchase price stated in the highest or otherwise best Qualified Bid (taking into account the Breakup Fee), and will subsequently continue in minimum increments of at least \$250,000 higher than the previous Qualified Bid.

Subsequent Qualified Bids submitted by the Proposed Purchaser will be deemed to include a credit in an amount equal to the sum of the Breakup Fee and shall not require a deposit.

Bidding at the Auction will continue until such time as the highest or otherwise best Qualified Bid is determined. Upon conclusion of the Auction, the Sellers will: (i) review each Qualified Bid on the basis of financial and contractual terms and other factors relevant to the Sale process, including those factors affecting the speed and certainty of consummating the Sale; and (ii) identify the Successful Bid for the Purchased Assets (as defined above, the "Successful Bid").

Acceptance of Qualified Bids

At the Sale Hearing, the Sellers will seek entry of an order authorizing and approving the Sale: (i) if no Qualified Bid is received (other than that of the Proposed Purchaser), to the Proposed Purchaser pursuant to the terms and conditions set forth in the Purchase Agreement; or (ii) if another Qualified Bid is received by the Sellers, to the Proposed Purchaser or such other Qualified Bidder as the Sellers, in the exercise of their business judgment, determine to have made the Successful Bid (the "Successful Bidder"). The Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing.

The Sellers' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Sellers' acceptance of the bid, except with respect to the bid of the Proposed Purchaser as reflected in the Purchase Agreement (subject to higher or otherwise better Qualified Bids and subject to Bankruptcy Court approval). The Sellers will be deemed to have accepted any other bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

Following the Sale Hearing approving the Sale of the Purchased Assets to the Successful Bidder, if such Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of such Successful Bidder, the entity that had submitted the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, will be deemed to be the Successful Bid and the Sellers will be authorized, but not required, to consummate the Sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court.

Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders will be retained by the Sellers and all Qualified Bids will remain open until the end of the first business day following the closing of the Sale; provided, however, that in no event shall the Proposed Purchaser be required to make the Good Faith Deposit.

If a Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the Sellers will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit irrevocably will become property of the Sellers' estates.

Modifications

The Sellers may: (a) determine, in their sole discretion, which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid (other than that of the Proposed Purchaser) that, in the Sellers' sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures or the terms and conditions of the Purchase Agreement, or (iii) contrary to the best interests of the Sellers, their estates and their creditors. At or before the Sale Hearing, the Sellers may impose such other terms and conditions upon Qualified Bidders (other than the Proposed Purchaser) as they determine to be in the best interests of the Sellers' estates, their creditors and other parties in interest in these cases.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re)	Chapter 11 Cases
)	
Touch America, Inc., <u>et al.</u> ,)	Case No. 03-____ ()
)	
Debtors.)	Jointly Administered

ORDER UNDER 11 U.S.C. §§ 105(a), 362, 363, 364, 365 AND
1146(c) AND FED. R. BANKR. P. 2002, 6004 AND 6006
AUTHORIZING AND APPROVING: (I) ASSET PURCHASE
AGREEMENT [NAME OF BUYER]; (II) SALE OF CERTAIN OF
THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,
CLAIMS AND ENCUMBRANCES; (III) ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (IV) CERTAIN RELATED RELIEF

Upon the motion, dated _____, 2003 (the "Motion"), of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for, among other things, entry of:

(a) an order approving, among other things, (i) certain bid protections, including a break-up fee, auction procedures and overbid requirements (collectively, the "Bidding Procedures"), and (ii) the form and manner of notice with respect to such procedures and the hearing to consider entry of this Order; and (b) an order (the "Sale Order") under 11 U.S.C. §§ 105(a), 362, 363, 364, 365 and 1146(c) and Fed. R. Bankr. P. 2002, 6004 and 6006 (i) approving the Asset Purchase Agreement (as amended from time to time, the "Purchase Agreement")¹ by and among [NAME OF BUYER] (the "Purchaser") and those of the Debtors party to the Purchase Agreement (collectively, the "Sellers"), dated as of June __, 2003, a copy of which is attached hereto as Exhibit A), and certain Ancillary Agreements, substantially in the forms attached as exhibits to

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Agreement, as the case may be.

the Purchase Agreement, (ii) authorizing the Sellers to sell (the "Sale") to the Purchaser certain assets (as defined more specifically in the Purchase Agreement, the "Purchased Assets") free and clear of all free and clear of all Encumbrances (as defined herein), and exempt under 11 U.S.C. § 1146(c) from any stamp, transfer, sales, recording or similar tax, (iii) authorizing the assumption and assignment of the Assumed Agreements, and (iv) granting certain related relief; and this Court having entered an order on _____, 2003 (the "Bidding Procedures Order") approving, among other things, the Bidding Procedures with respect to, and notice of, the Sale; and the Auction having been conducted in accordance with the Bidding Procedures Order, and the Sellers having determined that the Purchaser has submitted the highest or otherwise best bid for the Purchased Assets; and a hearing having been held on _____, 2003 (the "Sale Hearing"); and adequate and sufficient notice of the Bidding Procedures, the Purchase Agreement and all transactions contemplated thereunder and in this Sale Order having been given to all parties in interest in these cases; and all such parties having been afforded an opportunity to be heard with respect to the Motion and all relief requested therein; and the Court having reviewed and considered: (i) the Motion; (ii) the objections thereto if any; and (iii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and after due deliberation thereon; and good and sufficient cause appearing therefor, it hereby is

FOUND AND DETERMINED THAT:²

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

A. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105(a), 362, 363, 364 365 and 1146(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code"), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

C. This Court entered the Bidding Procedures Order on _____, 2003, and the Bidding Procedures Order has become a final and non-appealable order.

D. As evidenced by the affidavits of service and publication filed with this Court and based on representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Sale and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Assumed Agreements, has been provided in accordance with Bankruptcy Code sections 102(1), 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006, and in compliance with the Bidding Procedures and the Purchase Agreement; (ii) such notice was good, sufficient and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Sale Hearing, the Sale or the transactions contemplated thereby (including, without limitation, the assumption and assignment of the Assumed Agreements), is or shall be required.

E. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee; (ii) counsel to the Purchaser; (iii) counsel to the Official Committee of Unsecured Creditors appointed in these cases (the "Committee"); (iv) [counsel to

the administrative agent for the Debtors' postpetition lenders under the [NAME OF POSTPETITION CREDIT AGREEMENT], dated as of [_____, 2003]; (v) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (vi) all entities known to have asserted any Lien in or upon any of the Purchased Assets; (vii) all federal, state and local taxing authorities that have jurisdiction over the Relevant Business; (viii) all regulatory authorities or recording offices that have a reasonably known interest in the relief requested in the Motion; (ix) all governmental agencies having jurisdiction over the Relevant Business with respect to environmental laws; (x) parties to governmental approvals or permits applicable to the Relevant Business; (xi) the United States Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (xii) the Federal Communications Commission and applicable state public utility commissions; (xiii) the Securities and Exchange Commission; (xiv) all non-Debtor parties to the Initial Assumed Agreements; and (xv) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of the Bidding Procedures Order.

F. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale Motion are deemed to have consented to the Sale on the terms contained herein pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who did object are adequately protected by having their Encumbrances, if any, attach to the cash proceeds of the Sale, subject to the terms hereof. Accordingly, the Sellers may sell the Purchased Assets free and clear of all Encumbrances because each entity benefiting from an Encumbrance with respect to any Purchased Assets to be transferred on the Closing Date: (i) has consented to the Sale (including the assumption and assignment of the Initial Assumed Agreements) or is deemed to have consented to the Sale; (ii) could be compelled in a legal or

equitable proceeding to accept money satisfaction of such Encumbrance; or (iii) the provisions of section 363(f) of the Bankruptcy Code otherwise have been satisfied.

G. Good and sufficient reasons for approval of the Purchase Agreement and the Sale have been articulated. The relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

H. The Debtors have demonstrated both: (i) good, sufficient and sound business purpose and justification; and (ii) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to Bankruptcy Code section 363(b), in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value of the Debtors' estates; the Sale will provide the means for the Debtors to maximize distributions to creditors and enable the successful confirmation of a chapter 11 plan; and absent consummation of the Sale, the Debtors may be forced to immediately discontinue their operations and liquidate.

I. Each Seller has full corporate power and authority to execute the Purchase Agreement, and all other documents contemplated thereby (including, without limitation, the Ancillary Agreements), and to consummate the transactions contemplated by the Purchase Agreement. The Purchase Agreement and all of the transactions contemplated thereby have been duly and validly authorized by all necessary corporate action of each of the Sellers. No consents or approvals, other than the consent and approval of this Court and those expressly provided for in the Purchase Agreement, are required for each of the Sellers to consummate the Sale.

J. The Purchase Agreement was negotiated, proposed and entered into by the Sellers and the Purchaser without collusion, in good faith and from arm's-length bargaining positions. The Purchaser is not an "insider" of any of the Debtors, as that term is defined in Bankruptcy

Code section 101. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under Bankruptcy Code section 363(n).

K. The Purchaser is a good faith purchaser under Bankruptcy Code section 363(m) and, as such, is entitled to all of the protections afforded thereby. The Purchaser will be acting in good faith within the meaning of Bankruptcy Code section 363(m) in closing the transactions contemplated by the Purchase Agreement and at all times after the entry of this Sale Order.

L. The consideration to be provided by the Purchaser pursuant to the Purchase Agreement: (i) is fair and reasonable; (ii) is the highest and best offer for the Purchased Assets; and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

M. The Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

N. The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement will be a legal, valid, and effective transfer of the Purchased Assets, and vests or will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of Liens (as such term is defined in the Bankruptcy Code) (other than the Permitted Liens), Claims (as such term is defined in the Bankruptcy Code), liabilities (other than the Assumed Liabilities), equity interests, mortgages, security interests, conditional sales or other title retention agreements, pledges, claims, judgments, demands, encumbrances (including, without limitation, Claims: (i) that purport to give to any party a right or option to effect any forfeiture,

modification or termination of the Sellers' or the Purchaser's interests in the Purchased Assets; or (ii) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (all of the foregoing, collectively, the "Encumbrances"), with all such Encumbrances to attach to the Sellers' interest in the proceeds of the Sale (the "Sale Proceeds").

O. Neither the Purchaser nor its affiliates, successors or assigns, as a result of any action taken in connection with the purchase of the Purchased Assets: (a) is a successor to the Debtors; (b) has, de facto or otherwise, merged with or into the Debtors; or (c) is a continuation or substantial continuation of the Debtors or any enterprise of the Debtors.

P. The Sale must be approved and consummated promptly in order to preserve the viability of the Debtors' businesses as a going concern, to maximize the value of the Debtors' estates and to position the Debtors to emerge from chapter 11. The Sale is a prerequisite to the Debtors' ability to confirm and consummate a plan of reorganization. The Sale is in contemplation of a chapter 11 plan and, accordingly, constitutes a transfer to which Bankruptcy Code section 1146(c) applies.

Q. The Debtors have demonstrated that assuming and assigning the Initial Assumed Agreements in connection with the Sale is an exercise of their sound business judgment, and that such assumption and assignment is in the best interests of the Debtors' estates.

R. The Purchaser is deemed to have provided adequate assurance of future performance with respect to each Initial Assumed Contract

S. As of the Closing Date, subject to the payment of the applicable Cure Amounts, each Initial Assumed Agreement will be in full force and effect and enforceable against the non-Debtor party thereto in accordance with its terms.

T. The Debtors have or will have, to the extent necessary, satisfied the requirements of Bankruptcy Code sections 365(b)(1) and 365(f) in connection with the assumption and assignment of the Initial Assumed Agreements, and shall, upon the payment of the Cure Amounts and the assignment thereof to the Purchaser on the Closing Date, be relieved from any liability for any breach thereof; and therefore it is

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED (other than with respect to matters already addressed by the Procedures Order).

2. Any objections to the entry of this Sale Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are denied and overruled on the merits with prejudice.

Approval of the Purchase Agreement

3. The Purchase Agreement and the Ancillary Agreements and all of the terms and conditions thereof, including, but not limited to, the sale of the Purchased Assets and assumption of the Assumed Liabilities, in exchange for the Purchase Price, as set forth in the Purchase Agreement, are hereby approved.

4. Pursuant to Bankruptcy Code section 365, the Debtors will be deemed to have assumed the Purchase Agreement as of the Closing Date.

5. Pursuant to Bankruptcy Code sections 363(b) and (f), the Debtors are authorized and (subject to the applicable closing conditions set forth in the Purchase Agreement) directed to

consummate the Sale, pursuant to and in accordance with the terms and conditions of the Purchase Agreement.

6. The Debtors are authorized and (subject to the applicable closing conditions set forth in the Purchase Agreement) directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, collectively with all additional instruments and documents (including, without limitation, the Ancillary Agreements) that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be requested by the Purchaser for the purpose of transferring the Purchased Assets to the Purchaser or as may be necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Purchase Agreement, the Ancillary Agreements, or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

Transfer of Purchased Assets

7. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Sale Order, pursuant to Bankruptcy Code sections 105(a) and 363(f), the Purchased Assets shall be transferred to the Purchaser and, as of the Closing Date or the applicable Assumption Date, as the case may be, shall be free and clear of all Encumbrances, with all such Encumbrances to attach to the Sale Proceeds, in the order of their priority, with the same validity, force and effect which they now have against the Purchased Assets, subject to any rights, claims and defenses the Debtors may possess with respect thereto.

8. Except as expressly permitted by the Purchase Agreement, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, holding Encumbrances on the Purchased Assets (whether based on Claims that are legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date or the transfer of the Purchased Assets to the Purchaser, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing against the Purchaser, its property, its successors and assigns, its affiliates or the Purchased Assets, such persons' or entities' Interests or Claims (with the exception of Permitted Liens and Assumed Liabilities). Following the Closing Date, no holder of an Encumbrance against the Debtors (other than holders of Permitted Liens or Assumed Liabilities) shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets on the basis of such Encumbrances, and all such Encumbrances, if any, shall be, and hereby are channeled, transferred and attached solely and exclusively to the Sale Proceeds.

9. The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement shall not result in: (i) the Purchaser having any liability or responsibility for any Claim against the Debtors or against an insider of the Debtors (other than for Permitted Liens or Assumed Liabilities); or (ii) the Purchaser having any liability or responsibility to the Debtors except pursuant to the Purchase Agreement, the Ancillary Agreements and this Sale Order.

10. The Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets other than as expressly

set forth in the Purchase Agreement. Without limiting the effect or scope of the foregoing, the transfer of the Purchased Assets from the Debtors to the Purchaser does not and will not subject the Purchaser or its employees, officers, directors, advisors, affiliates, successors or assigns or their respective properties (including the Purchased Assets) to any liability for Claims against the Debtors or the Purchased Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions. Neither the Purchaser nor its affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets to: (a) be a successor to the Debtors; (b) have, de facto or otherwise, merged with or into any of the Debtors; or (c) be a continuation or substantial continuation of the Debtors or any enterprise of any of the Debtors. Neither the Purchaser nor its affiliates, successors or assigns is acquiring or assuming any liability, warranty or other obligation of the Debtors, including, without limitation, any tax incurred but unpaid by the Debtors prior to the Closing Date, including, but not limited to, any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, fixed or audited, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, except as otherwise expressly provided in the Purchase Agreement.

11. The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid and effective transfer of the Purchased Assets, and shall vest the Purchaser with all right, title and interest of the Debtors in and to the Purchased Assets free and clear of all Encumbrances.

12. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased

Assets or a bill of sale transferring good and marketable title in the Purchased Assets to the Purchaser. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

13. This Order is and shall be effective as a determination that, all Liens (other than Permitted Liens) shall be, and are, without further action by any person or entity, released with respect to the Purchased Assets as of the Closing Date (or with respect to Assumed Contracts and Assumed Leases assumed after the Closing Date, as of the Assumption Date).

14. This Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, public utility commissions, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure, or approve the transfer of, any title or state of title in or to any of the Purchased Assets.

15. The transactions contemplated by the Purchase Agreement, and the execution, delivery and/or recordation of any and all documents or instruments necessary or desirable to consummate the transactions contemplated by the Purchase Agreement shall be, and hereby are, exempt from the imposition and payment of all recording fees and taxes, stamp taxes and/or sales, transfer or any other similar taxes, pursuant to section 1146(c) of the Bankruptcy Code.

Assumption and Assignment
of Assumed Agreements

16. The Debtors are authorized, in accordance with Bankruptcy Code sections 105(a), 363 and 365, to: (a) subject to the payment of the relevant Cure Amounts, assume and assign to the Purchaser, effective upon the Closing Dates, all of Sellers' right, title and interest in and to the Initial Assumed Agreements, , free and clear of all Encumbrances; and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer such right, title and interest to the Purchaser.

17. Subject to the payment of the applicable Cure Amounts, the Initial Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract or Assumed Lease (including provisions of the type described in sections 365(b)(2), (e)(1) and (f)(1) of the Bankruptcy Code) which prohibits, restricts or conditions such assignment or transfer. The non-Debtor party to each Initial Assumed Agreement shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Purchaser shall enjoy all of the rights and benefits under each such Initial Assumed Agreement as of the applicable Assumption Date without the necessity of obtaining such non-Debtor party's written consent to the assumption and assignment thereof.

18. Pursuant to section 365(k) of the Bankruptcy Code, as of the Closing Date, the Debtors and their estates shall be relieved from any liability for any breach of any Initial Assumed Agreement.

19. If the counter party to any Assumed Agreement has not objected to the cure amounts listed by the Debtors, upon payment of said cure amount by the Debtors, each counter party shall be forever barred, estopped, and permanently enjoined from asserting against the

Debtors or the Proposed Purchaser, or the property of either of them, any default existing as of the Closing Date and the payment of the cure amounts shall be in full satisfaction of (i) any and all defaults or offsets under the Assumed Agreements and (ii) any and all claims that may arise against the Debtor in connection with the Assumed Agreements. If the Debtors receive a Cure Amount Objection with respect to any Initial Assumed Agreement, they shall attempt to resolve such disputed Cure Amount with the party asserting the objection. If consensual resolution of the Cure Amount Objection cannot be reached, the Debtors will: (i) pay in full the undisputed portion of such Cure Amount on or before the Closing Date; and (ii) segregate the disputed portion of such Cure Amount (the "Segregated Amounts") pending the resolution of the Cure Amount Objection by this Court or by mutual agreement of the parties. On and after the Closing Date, an objector's only recourse for satisfaction of its Cure Amount shall be to the Segregated Amounts.

20. Subject to the terms hereof with respect to the Segregated Amounts, all defaults or other obligations of the Debtors under the Initial Assumed Agreements arising or accruing prior to the Closing Date have been cured or shall promptly be cured by the Debtors in accordance with the terms hereof such that the Purchaser shall have no liability or obligation with respect to any default or obligation under any Initial Assumed Agreement arising or accruing prior to the Closing Date. Each non-Debtor party to an Assumed Contract or Assumed Lease is forever barred, estopped and permanently enjoined from asserting against the Purchaser or its property or affiliates, or any thereof, any breach or default under any Initial Assumed Agreement, any claim of lack of consent relating to the assignment thereof, or any counterclaim, defense, setoff, right of recoupment or any other matter arising prior to the Closing Date for such Initial Assumed

Agreement or with regard to the assumption and assignment thereof pursuant to the Purchase Agreement or this Order.

21. Upon payment of the Cure Amounts (or segregating appropriate amounts with respect to such Cure Amounts in accordance herewith), and assignment of the Initial Assumed Agreements to the Purchaser on the Closing Date, no default shall exist under any Initial Assumed Agreement, and no non-Debtor party to any Initial Assumed Agreement shall be permitted to declare a default by the Purchaser under such Initial Assumed Agreement or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the Initial Assumed Agreement. Upon entry of this Sale Order and assumption and assignment of the Assumed Contracts and Assumed Leases, the purchaser shall be deemed in compliance with all terms and provisions of the Assumed Agreement.

22. Sellers shall diligently and in good faith pursue the assumption by the applicable Debtors and assignment to the Purchaser of any Undesignated Agreements that subsequently become Assumed Contracts or Assumed Leases pursuant to Section 2.9 of the Purchase Agreement, and shall cooperate with the Purchaser in securing any counter-party consents that in the Purchaser's judgment are necessary or appropriate given the nature or legal status of the particular contract or lease with respect to which assumption and assignment is sought.

Additional Provisions

23. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement is fair and reasonable and may not be avoided under Bankruptcy Code section 363(n).

24. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Purchaser, unless such authorization is duly stayed pending such appeal. The Purchaser is a good-faith purchaser of the Purchased Assets, and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m).

25. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith (including, but not limited to, the Ancillary Agreements) in all respects, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Purchaser; (b) compel assumption of the Assumed Liabilities by the Purchaser; (c) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, and (d) interpret, implement and enforce the provisions of this Sale Order.

26. Pursuant to section 364(c)(1) of the Bankruptcy Code: (i) the obligation of the Sellers to pay the Adjustments, including interest with respect thereto; and (ii) the indemnification obligations of the Sellers pursuant to Article X of the Purchase Agreement, shall receive superpriority administrative claim status. Pursuant to section 364(c)(1) of the Bankruptcy Code, (i) the administrative claims in respect of the Adjustments, including interest with respect thereto; and (ii) the administrative claims in respect of the indemnification obligations of the Sellers pursuant to Article X of the Purchase Agreement, shall have priority

over any and all administrative expenses of the kinds specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code.

27. All entities who are presently, or on the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements) may be, in possession of some or all of the Purchased Assets hereby are directed to surrender possession of the Purchased Assets either to: (i) the Debtors prior to the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements), for subsequent transfer to the Purchaser on the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements); or (ii) to the Purchaser on the Closing Date (or the applicable Assumption Date, with respect to Assumed Agreements other than Initially Assumed Agreements).

28. On or before the Closing Date (or the applicable Assumption Date), each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Purchased Assets, if any, as such Interests may have been recorded or otherwise exist.

29. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens or other documents or agreements evidencing Encumbrances with respect to the Debtors and/or the Purchased Assets shall not have delivered to the Debtors and the Purchaser prior to the Closing Date, or relevant Assumption Date, as the case may be, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to the Debtors and/or the Purchased Assets or otherwise, then: (i) the Debtors hereby are authorized to execute and file such statements, instruments, releases and other documents on behalf of the

person or entity with respect to such assets and contracts; and (ii) the Purchaser hereby is authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Purchased Assets as of the Closing Date or the applicable Assumption Date, as the case may be, of any kind or nature whatsoever (other than the Permitted Liens and Assumed Liabilities).

30. Any amounts payable by the Sellers pursuant to the Purchase Agreement or any of the documents delivered by the Sellers pursuant to or in connection with the Purchase Agreement shall: (i) constitute administrative priority expenses of the Sellers' estates pursuant to Bankruptcy Code sections 503(b) and 507(a)(1), except as otherwise specifically provided in the Purchase Agreement; (ii) be paid by the Sellers in the time and manner provided in the Purchase Agreement without further order of this Court; and (iii) not be discharged, modified or otherwise affected by any plan of reorganization of any of the Sellers.

31. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, the Purchaser and its respective affiliates, successors and assigns, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

32. All persons who hold Claims against or Interests in (other than Permitted Liens and Assumed Liabilities) the Debtors are forever barred, estopped and permanently enjoined from asserting or prosecuting any claims or causes of action against the Purchaser, its affiliates, or any of its respective officers, directors, employees, attorneys or advisors, arising out of or in connection with the Sale.

33. After the Closing Date, no person or entity, including, without limitation, any federal, state or local taxing authority, may: (a) attach or perfect a lien or security interest against any of the Purchased Assets on account of; or (b) collect or attempt to collect from the Purchaser or any of its affiliates, any tax (or other amount alleged to be owing by one or more of the Debtors) (i) for any period commencing before and concluding prior to or after the Closing Date, or (ii) assessed prior to and payable after the Closing Date, except as otherwise specifically provided in the Purchase Agreement.

34. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the Purchase Agreement.

35. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

36. Nothing contained in any chapter 11 plan confirmed in these cases or any order confirming any such plan or in any other order in these cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Purchase Agreement or this Sale Order.

37. The failure specifically to include any particular provisions of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent.

38. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and 6006(d), this Sale Order shall not be stayed for ten (10) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein and the Debtors and the Purchaser intend to close the Sale as soon as practicable. Therefore, any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

Dated: Wilmington, Delaware

_____, 2003

UNITED STATES BANKRUPTCY JUDGE