

ORIGINAL

030000-Pu

RECEIVED-PPSC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

03 SEP 22 AM 10:13

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

COMMISSION
CLERK

Objection Deadline: October 1, 2003 at 4:00 p.m.
Hearing Date: October 8, 2003 at 2:00 p.m.

NOTICE OF MOTION

TO: The Office of the United States Trustee for the District of Delaware, counsel for the Official Committee of Unsecured Creditors, all parties requesting notice pursuant to Rule 2002 of the Bankruptcy Code and all parties in interest with respect to the subject matter of the Motion

The above-captioned debtors and debtors in possession (the "Debtors") have filed the attached Debtors' Amended Motion for Order, Pursuant to 11 U.S.C. §§ 105(a), 362, 363, 364, 365, 553 and 554(c) and Fed. R. Bankr. P. 2002, 4001, 6004, 6006, 6007, 9014 and 9019, Approving Settlement Agreement with Qwest, Including Sale and Transfer of Assets to Qwest and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "Motion").


Responses, if any, to the Motion must be filed with the United States Bankruptcy Court, 824 N. Market Street, 5th Floor, Wilmington, Delaware 19801, on or before October 1, 2003 at 4:00 p.m. (ET). At the same time, you must also serve a copy of the response upon the Debtors' undersigned attorneys so as to be received no later than 4:00 p.m. (ET) on October 1, 2003.

A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, 900 MARKET STREET, 2ND FLOOR, PHILADELPHIA, PENNSYLVANIA ON October 8, 2003 at 2:00 p.m. (ET).

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

Dated: Wilmington, Delaware
September 18, 2003

YOUNG CONAWAY-STARGATT & TAYLOR, LLP


Robert S. Brady (No. 2847)
Maureen D. Luke (No. 3062)
Edward J. Kosmowski (No. 3849)
Edmon L. Morton (No. 3856)
Matthew B. McGuire (No. 4366)
The Brandywine Building, 17th Floor
1000 West Street
P.O. Box 391
Wilmington, DE 19899-0391
Telephone: (302) 571-6600

2003 SEP 22 AM 8 49
DISTRIBUTION CENTER

AUS _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
SCL _____
DPC _____
AMS _____
SEC _____
DTH _____ *None*

Attorneys for Debtors and Debtors in Possession

DOCUMENT NUMBER-DATE

09032 SEP 22 8

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)
)
TOUCH AMERICA HOLDINGS, INC.,) Case No. 03-11915 (KJC)
et al.,) Jointly Administered
)
) Objection Deadline: October 1, 2003 at 4:00 p.m.
) Hearing Date: October 8, at 2:00 p.m.
)

**AMENDED MOTION FOR ORDER, PURSUANT TO 11 U.S.C. §§ 105(a), 362,
363, 364 365, 553 AND 554 (c) AND FED. R. BANKR. P. 2002, 4001, 6004, 6006, 6007, 9014
AND 9019, APPROVING SETTLEMENT AGREEMENT WITH QWEST, INCLUDING
SALE AND TRANSFER OF ASSETS TO QWEST AND ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby submit this amended motion (the "Motion")¹, pursuant to 11 U.S.C. §§ 105(a), 362, 363, 365, 553 and 554 and Fed. R. Bankr. P. 2002, 4001, 6004, 6006, 6007, 9014 and 9019 seeking entry of an order, substantially in the form attached hereto, (a) approving the terms and conditions of a settlement agreement (the "Settlement Agreement")², substantially in the form attached hereto as Exhibit "A" and incorporated herein by reference, by and among Qwest Communications Corporation and certain of its affiliates (collectively, "Qwest") and the Debtors and authorizing the Debtors to execute and deliver, from time to time, all such other documents and agreements and perform all such other acts as may be required in connection with

¹ Although this Motion amends a motion filed on August 8, 2003 (the "August Motion"), the Settlement Agreement attached as Exhibit A to this Motion is a duplicate of the Settlement Agreement attached to the August Motion.

² Capitalized terms herein, otherwise not defined, have the meaning ascribed to such terms in the Settlement Agreement.

the Settlement Agreement; (b) approving the sale of certain assets to Qwest; (c) authorizing the assumption and rejection by the Debtors of certain executory contracts; (d) authorizing the abandonment of certain property of the Debtors to Qwest; (e) granting Qwest relief from the automatic stay to allow Qwest to exercise certain of its setoff rights as described herein, and (f) granting certain related relief. In support of this Motion, the Debtors 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, 553 and 554 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, 6006, 6007, 9014 and 9019.

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. On July 27, 2003, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee") in these cases.

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 has been 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 also has 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. 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 required Touch America to evaluate its options for maximizing the value of its businesses and assets for the benefit of its creditors. Touch America eventually determined that the best way to obtain maximum value was by finding a purchaser for substantially all or portions of Touch America's assets.

12. To this end, Touch America entered into an asset purchase agreement with 360 networks ("360"), subject to higher and better offers and the approval of the Bankruptcy Court. At an auction on August 6 and 7, 2003, BC Fiber Acquisition LLC was determined to have submitted the highest and best bid. However, at the hearing scheduled to consider the sale, bidding was reopened, and after final bids were submitted, the Debtors determined that 360 had submitted the highest and best bid. At the conclusion of the hearing, the Court ruled that it would enter an order approving the sale to 360 and directed the Debtors to submit an order after circulation to interested parties. By Order dated September 10, 2003, the Bankruptcy Court approved the sale to 360.

RELIEF REQUESTED

13. Shortly after the Petition Date, the Debtors entered into an agreement in principle and term sheet with Qwest which will be documented in a Settlement Agreement, substantially in the form attached hereto as Exhibit "A." By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto: (a) approving the Settlement Agreement pursuant to Bankruptcy Rule 9019; (b) approving the sale of certain of the Debtors' assets to Qwest in accordance with the terms, and subject to the conditions, of the Settlement Agreement and related documents; (c) authorizing the assumption and rejection by the Debtors and of

certain executory contracts; (d) authorizing the Debtors to abandon certain property to Qwest; (e) granting Qwest relief from the automatic stay to allow Qwest to exercise certain setoff rights as described herein, and (f) granting certain related relief.

The Settlement Agreement

14. The pertinent terms of the proposed Settlement Agreement are summarized as follows:

a. Qwest will provide debtor in possession financing to the Debtors in the amount of \$10 million (the "DIP Financing"). The DIP Financing is not required to be repaid if Debtors satisfy all of their obligations under the Settlement Agreement (the DIP Agreement and loan were previously approved by the Court).

b. If the Debtors are not required to repay the DIP Financing, Qwest will be deemed to have paid \$10 million to the Debtors for GSP services provided by Debtors during May and June, 2003 and Qwest shall be granted relief from the automatic stay to setoff amounts owed for GSP services provided in March 2003 and April 2003 against amounts owed prior to the Petition Date to Qwest.

c. Qwest will acquire fiber and an IRU for seven (7) routes in the Debtors' network, in exchange for a payment of \$8 million and will enter into an IRU Agreement and Operations and Maintenance Agreement with respect to such acquired fiber.

d. The Debtors will continue to provide GSP services to Qwest through November 1, 2003 in all states where it is currently providing such services and through December 1, 2003 in Arizona. GSP services may be extended beyond such dates at Qwest's option.

e. The parties will dismiss all pending judicial and administrative actions, with prejudice.

f. The parties will release each other from all claims and causes of action, known or unknown, arising prior to the Effective Date of the Settlement Agreement, except for claims and causes of action that arose after the Petition Date or arising from or under the DIP Loan or the Settlement Agreement.

g. Qwest will, where necessary, at its expense, groom the Debtors' customers off of the Abandoned Circuits onto the Retained Circuits (as defined in the Settlement Agreement). The Debtors will abandon the Abandoned Circuits to Qwest.

h. Debtors will assume certain contracts and agree to provide the services thereunder, and either cause such contracts to be assigned to a third party or parties to provide such services or subcontract with a third party or parties to provide such services.

i. Debtors and Qwest will agree to make timely post-petition payments for all services purchased from each other.

j. The parties have agreed that neither will disparage the other.

15. The Committee acknowledges that, at Qwest's request, it has provided to Qwest a summary of its principal objections to the Settlement Agreement, and Qwest acknowledges and agrees that notwithstanding the provision of such summary to Qwest, the Committee's right to object to the Settlement Agreement on any ground, whether set forth in such summary or not, is in no way limited or prejudiced.

B. Applicable Authority in Support of Settlement

16. Bankruptcy Rule 9019 provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given

to creditors, the United States trustee, the debtor . . . and to any other entity as the court may direct." Fed. R. Bankr. P. 9019(a); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). The Supreme Court has recognized that "in administering a reorganization proceeding in an economical and practical manner, it will often be wise to arrange the settlement of claims in which there are substantial and reasonable doubts." *In re Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390 U.S. 414 (1986).

17. Approval of a proposed settlement is within the "sound discretion" of the Court. *See In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986). In determining whether to approve an application to settle a controversy, the Court must determine whether it is fair, reasonable and adequate by examining the four factors set forth by the Third Circuit in *Martin* (the "Martin Factors"):

- (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Martin, 91 F.3d at 393; *Official Comm. of Unsecured Creditors of Penn. Truck Lines, Inc., v. Penn Truck Lines, Inc. (In re Penn Truck Lines, Inc.)*, 150 B.R. 595, 598 (E.D. Pa. 1992); *In re Energy Coop., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989) (noting that a bankruptcy court must determine whether the proposed settlement is in the "best interests of the estate."). The Court should not substitute its judgment for that of a debtor. *See Neshaminy Office Bldg. Assocs.*, 62 B.R. at 803. The Court should review the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See In re W.T. Grant and Co.*, 699 F.2d 599, 608 (2d Cir. 1983). In addition, "because the bankruptcy judge is unequally situated to consider the equities and reasonableness of a particular compromise, approval or denial of a compromise will

not be disturbed on appeal absent a clear abuse of discretion." Neshaminy Office Bldg. Assocs., 62 B. R. at 803 (citing *In re Patel*, 43 B.R. 500, 505 (N.D. Ill. 1984))

18. As in every chapter 11 case, the Debtors are obligated to maximize the value of their estates and make decisions that are in the best interests of all of the creditors of their estates. See *Martin*, 91 F.3d at 394. The Debtors believe, in their business judgment, that approval of the Settlement Agreement is in the best interests of their estates and all of their creditors.

19. A review of the above-referenced four *Martin* Factors demonstrates that the settlement as documented in the Settlement Agreement is in the best interests of the estates and creditors. In summary, with Settlement Agreement, the Debtors obtain a DIP Loan that is not required to be repaid if certain obligations are met. Qwest and the Debtors dismiss their claims against each other without the expense and delay associated with further regulatory or judicial proceedings. Qwest obtains an IRU on certain routes from the Debtors in exchange for a payment of \$8 million, the established market price for such routes. The Debtors submit that this is an advantageous result for the estates and is in the best interest of creditors.

The Proposed Sale

20. Pursuant to the Settlement Agreement, the Debtors have agreed, subject to the approval of this Court, to (i) sell to Qwest an IRU in certain fiber routes owned by the Debtors. The fiber routes are: (a) Yakima to Spokane, Spokane, WA – 4 Fibers; (b) Missoula to Billings, MT – 2 Fibers; (c) Casper to Basin, WY – 2 Fibers; (d) Casper to Cheyenne, WY – 2 Fibers; (e) Basin to Frannie, WY – 2 Fibers; (f) Bend, OR Spur – 4 Fibers; and (g) Cheyenne – Denver – Omaha – DesMoines – Davenport – 4 Fibers (collectively, the “Fiber”).

21. The total amount of Fiber to be acquired by Qwest equals 7536 fiber miles with a total price of \$8 million or \$1,061.00 per fiber mile. In consultation with their advisors and the Committee, the Debtors have concluded that, in their business judgment, the purchase price offered by Qwest is fair and reasonable and in accordance with the fair market value for the Fiber.

22. The sale of the Fiber to Qwest pursuant to the terms of the Settlement Agreement will bring an additional \$8 million into the estates while eliminating certain mutual claims of the parties.

A. Applicable Authority for Sale of Debtors' Assets

(a) Sale Pursuant to Section 363(b)(1)

23. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In pertinent part, Bankruptcy Rule 6004 states that, “all sales not in the ordinary course of business may be by private sale or by public auction.” Fed.R.Bankr.P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that,

. . . the notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed.R.Bankr.P. 2002(c)(1).

24. To approve the use, sale, or lease of property out of the ordinary course of business under Bankruptcy Code section 363(b), this Court must find “some articulated business justification” for the proposed action. See *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the “articulated business justification” and good faith tests of *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983)); see also *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in *Abbotts Dairies*); *Titusville Country Club v. Penn Bank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc.*, 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

25. Generally, courts have applied four (4) factors in determining whether a sale of a debtor’s assets should be approved: (1) whether a sound business reason exists for the proposed transaction; (2) whether fair and reasonable consideration is provided; (3) whether the transaction has been proposed and negotiated in good faith; and (4) whether adequate and reasonable notice is provided. See *Lionel*, 722 F.2d at 1071 (setting forth the “sound business purpose” test); *Abbotts Dairies*, 788 F.2d at 145-57 (implicitly adopting the articulated business justification test and adding the “good faith” requirement); *Delaware & Hudson Ry.*, 124 B.R. at 176 (“Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.”).

26. This fundamental analysis does not change if the proposed sale is private, rather than public. See, e.g., *In re Ancor Exploration Co.*, 30 B.R. 802, 808 (Bankr. N.D. Okla.

1983) (“[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b).”). The bankruptcy court “has ample discretion to administer the estate, including authority to conduct public or private sales of estate property.” *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), *vacated on other grounds*, 165 B.R. 1 (D.P.R. 1992); accord, *In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). Here, the proposed sale of the Assets to Qwest meets all of these requirements and should be approved.

(b) The Settlement Agreement and the Related Sale is Supported by the Debtors' Sound Business Judgment

27. Good business reasons exist to justify the Debtors' sale of the Assets under section 363(b). The Debtors sought chapter 11 protection to conduct an orderly disposition of their assets. The Debtors and their advisers have concluded that the sale, which is a part of the global settlement with Qwest will ultimately benefit the Debtors' creditors. The sale is an integral part of the global settlement with Qwest. If the sale is not approved, the settlement with Qwest will not go into effect to the detriment of the Debtors and their creditors.

(c) The Debtors Will Provide Reasonable Notice of the Proposed Sale to Interested Parties

28. In compliance with Bankruptcy Rule 2002, the Debtors intend, no later than twenty (20) days prior to the Hearing on this Motion, 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 Qwest; (c) counsel to the Committee; (d) all entities on the Debtors' creditor matrix; (e) all entities known to have asserted any Lien in or upon any of the Assets; (f) all federal, state and local taxing or regulatory authorities or recording offices that have (A) jurisdiction over the Assets or (B) a reasonably known interest in the relief requested in

the Motion; (g) all parties expressing an interest in the Assets; (h) all governmental agencies having jurisdiction over the Assets with respect to environmental laws; (i) parties to governmental approvals or permits applicable to the Assets; (j) the United States Attorney's office and the attorneys general of all states in which the Assets are located; (k) the Federal Communications Commission and applicable state public utility commissions; (l) the Securities and Exchange Commission; (m) 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 and (n) the Internal Revenue Service.

(d) The Proposed Sale is for a Fair and Reasonable Price

29. The Debtors' and Committee's advisors have concluded that the sale price of \$8 million is the fair market value for the Assets and thus, is fair and reasonable. Testimony with respect to the fairness and reasonableness of this price will be presented at the hearing to consider the Settlement Agreement on September 22, 2003.

(e) The Proposed Sale was Negotiated in Good Faith

30. The Settlement Agreement is the product of good faith, arm's-length negotiations between the Debtors and Qwest and was negotiated with the active involvement of the Debtors' officers and professionals. Moreover, Qwest is not affiliated with the Debtors 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

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

32. 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).

33. As will be demonstrated at the hearing on September 22, 2003, the Debtors are able to meet several of the criteria set forth in § 363(f).

34. In addition, the Debtors 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 Settlement Agreement have tax liens on any of the Assets, as well as to all other parties that are known to the Debtors to hold liens on any of the Assets. The Debtors submit that to the extent such liens exist, they should attach to the proceeds of the sale of the Assets with the same validity, priority and force as they currently have with respect to the Assets, subject to all and any defenses that the Debtors may have.

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

C. Assumption of Agreements

36. By this Motion, the Debtors request that this Court enter an order, pursuant to section 365(a) of the Bankruptcy Code, authorizing the Debtors to assume the GSP Agreement and to assume the following additional agreements subsequent to review and approval by the Debtors and execution by the Debtors and Qwest: (a) the Prepaid Agreement; (b) the Calling Card Agreement; (c) the QC Agreement, (d) the 8xx Agreement and (e) the 2000 IRU Agreement (collectively, the "Agreements"). The Debtors have agreed pursuant to the terms of the Settlement Agreement to provide Qwest with services under the GSP Agreement and the additional contemplated Agreements, other than the 2000 IRU Agreement.

37. The Debtors submit that their proposed assumption of the Agreements, to the extent executory, will satisfy the standards governing such actions in the Third Circuit³.

³ The assumption and assignment of any additional Agreements pursuant to the Settlement Agreement will be effected on separate notice and under separate Order.

38. 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.

39. Qwest has advised the Debtors that it requires the benefits of the Agreements in order to proceed with the proposed sale. Thus, to secure the benefit of the proposed sale, the Debtors must assume the Agreements. In addition, pursuant to the terms of the Settlement Agreement, Qwest has agreed to permanently waive the requirement of section 365 of the Bankruptcy Code that the Debtors cure all defaults prior to assuming the Agreements. In light of these reasons, the Debtors believe there is a sound business justification supporting assumption of the Agreements.

40. 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). As noted above, pursuant to the Settlement Agreement, Qwest has agreed to waive section 365 (b)(1)’s cure requirement. In addition, if the Debtors assign any Agreement to a third party, such third party shall not be required to provide adequate assurance as required under section 365(b)(1) of the Bankruptcy Code.

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

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

42. 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).

43. 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 Debtors respectfully submit that section 363(m) is applicable to the present facts.

44. As required by section 363(m), the Debtors and Qwest 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).

45. Here, the sale of the Assets is being conducted in good faith. There is no evidence of fraud or collusion in the terms of the proposed sale. To the contrary, the Debtors and Qwest negotiated the terms and conditions of the Settlement Agreement at arm's length, assisted by counsel and other advisors of their own choice. The Debtors, on the one hand, and Qwest, on the other hand, are not related companies, and do not share corporate officers or directors. Additionally, the terms of the Settlement Agreement do not benefit any insiders of the Debtors. For these reasons, the Debtors submit that Qwest has acted in good faith within the meaning ascribed to that term by the Court of Appeals for the Third Circuit.

Rejection of Agreements

46. Pursuant to section 365 of the Bankruptcy Code, the Debtors seek authorization to reject the following contracts: (a) Stock Purchase Agreement dated as of March

13, 2000, between Qwest Communications International, Inc. and TAI and (b) Bilateral Wholesale Agreement dated as of June 26, 2000 between Qwest and TAI. The Debtors submit that these contracts are of no benefit to the Debtors and have no value to a third party.

47. A debtor in possession's decision to reject an executory contract is subject to the court's finding that such decision is a product of the debtor in possession's sound business judgment. *See Sharon Steel Corp. v. National Fuel Gas Distr. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989). In the present case, it is the Debtors' business judgment that rejection of these contracts is in the best interests of the Debtors' estates.

Abandonment of Property

48. Pursuant to the 2000 IRU Agreement with Qwest, the Debtors have the right to use certain existing Qwest circuits (the "Retained Circuits"). The parties have agreed that Qwest will, at its expense, groom the Debtors' customers off of certain circuits on the Retained Circuits, which were erroneously reprovisioned to the Debtors by Qwest in 2001. Upon assumption of the 2000 IRU Agreement by the Debtors, all of the Debtors' right, title and interest in and to the remaining circuits (the "Abandoned Circuits") shall be deemed abandoned by the Debtors in accordance with section 554 of the Bankruptcy Code and shall automatically revert to Qwest. It is the Debtors position that they shall retain the right to use the capacity on all of the Retained Circuits.

49. Section 554 of the Bankruptcy Code provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."⁴ Additionally, 11 U.S.C. § 105(a) of

⁴ Federal Rule of Bankruptcy Procedure 6007 provides that a debtor may abandon property of the estate by giving notice of the proposed abandonment to various parties, and allowing those parties to file an objection. However, the

the Bankruptcy Code provides, in pertinent 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.” The purpose of § 105(a) is “to assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy, ¶ 105.01 at 105-6 (15th ed. rev. 1999).

50. As is the case with a debtor in possession’s decision to reject an executory contract,³ this Court should apply the business judgment standard in reviewing the Debtors’ decision to abandon property that is either of inconsequential value or burdensome to the estate. “[I]f a trustee feels an asset is of inconsequential value and benefit to the estate or that it is ‘burdensome to the estate,’ he may abandon it.” *Reich v. Burke (In re Reich)*, 54 B.R. 995, 1003-04 (Bankr. E.D. Mich. 1985).

51. In the present case the Abandoned Circuits provide no benefit to the estates, and thus their abandonment is warranted pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007. The Debtors submit that their decision to abandon the Abandoned Circuits to Qwest is an exercise of the Debtors’ sound business judgment and should be approved.

Relief from Stay to Effect Setoff

52. Pursuant to the Settlement Agreement, if the DIP Financing does not have to be repaid, Qwest shall be deemed to have remitted to the Debtors payments received from its customers in connection with the billing of the GSP services provided by the Debtors under the

Debtors have determined that inclusion of the proposed abandonment of the circuits to Qwest is appropriate and will provide any parties ample opportunity to object to such abandonment.

GSP Agreement for the months of May 2003 and June 2003 and shall be entitled to setoff the amounts owed for GSP services provided in March 2003 and April 2003 against amounts owed by the Debtors to Qwest prior to the Petition Date.

53. Pursuant to the Settlement Agreement, the Debtors agree that Qwest had a valid right to set off under section 553 of the Bankruptcy Code solely for payments due for amounts owing for GSP services for the months of March and April 2003 against prepetition amounts owed by the Debtors to Qwest. The Debtors therefore have agreed that Qwest shall have limited relief from the automatic stay of section 362 of the Bankruptcy Code for the purpose of exercising these setoff rights.

Notice

54. Notice of this Motion has been given to: (i) the Office of the United States Trustee; (ii) counsel to Qwest; (iii) counsel for the Committee; and (iv) all entities known to have expressed an interest in acquiring any of the Assets; (v) all entities known to have asserted any Lien in or upon any of the Assets; (vi) 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; (vii) parties to governmental approvals or permits applicable to the Assets; (viii) the United States Attorney's office and the attorneys general of all states in which the Assets are located; (ix) the Federal Communications Commission and applicable state public utility commissions; (x) the Securities and Exchange Commission; (xi) all entities on the Debtors' creditor matrix; (xii) 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; and (xiii) the Internal Revenue Service.

WHEREFORE, the Debtors respectfully request that the Court (i) enter an order in the form attached hereto: approving the Settlement Agreement, authorizing the sale of the Assets to Qwest, authorizing the assumption and rejection of certain executory contracts, authorizing the abandonment of certain property of the Debtors to Qwest, granting Qwest relief from the automatic stay to allow Qwest to exercise certain of its setoff rights as described herein and granting the Debtors such other and further relief as this Court deems just and appropriate.

Dated: September 18, 2003

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Robert S. Brady (No. 2847)

Maureen D. Luke (No. 3062)

Edward J. Kosmowski (No. 3849)

Edmon L. Morton (No. 3856)

The Brandywine Building, 17th Floor

1000 West Street

P.O. Box 391

Wilmington, DE 19899-0391

Telephone: (302) 571-6600

Counsel for Debtors and Debtors in Possession

EXHIBIT A

GLOBAL SETTLEMENT AND RELEASE AGREEMENT

This Global Settlement and Release Agreement ("Settlement Agreement") is entered into as of August 6, 2003, by and between Qwest Communications Corporation; Qwest Communications International Inc.; Qwest Services Corporation; Qwest Corporation; Qwest Wireless, L.L.C.; and all other subsidiaries, Affiliates, predecessors, successors, and assigns thereof (collectively, "Qwest") and Touch America, Inc.; Touch America Holdings, Inc.; Entech, LLC; Touch America Purchasing Company LLC; Sierra Touch America, LLC; American Fiber Touch LLC; and Touch America Intangible Holding Company, LLC; and all other subsidiaries, Affiliates, predecessors, successors, and assigns thereof (collectively, "Debtors").

RECITALS

WHEREAS, on June 19, 2003 (the "Petition Date"), Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. By order entered on June 23, 2003, their cases were administratively consolidated under Bankruptcy Case No. 03-11915 (the "Bankruptcy Case"). 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.

WHEREAS, before the Petition Date, Qwest and Debtors were parties to numerous Agreements under which the Parties provided service to and obtained service from one another. The Parties continue to provide service to and obtain service from one another under certain of the Agreements.

WHEREAS, the Parties desire to enter into this Settlement Agreement to, among other things, (a) provide for the final resolution of all disputes, claims, and issues arising from or relating to the Agreements and the Parties' prepetition relationships and (b) ensure the continued provision of services by Debtors to Qwest and other parties pursuant to the Agreements.

WHEREAS, the Parties hereby acknowledge and agree that the intent and purpose of this Settlement Agreement is to resolve and settle all outstanding prepetition issues among the Parties arising from or related to the Agreements and the Parties' prepetition relationships and that each of the transactions contemplated by this Settlement Agreement is an integral part of this Settlement Agreement, without which the Parties would not have entered into this Settlement Agreement.

NOW THEREFORE, in consideration of the above recitals, the mutual promises, covenants, and representations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties hereto, intending legally to be bound, hereby agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

1.1 Definitions; Interpretation; Application of Definitions and Rules of Construction.

For purposes of this Settlement Agreement, the terms listed below shall have the meanings specified in this Article I. A term used but not defined herein that is used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code, and the rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction hereof. Any capitalized term used herein but not defined herein or in the Bankruptcy Code shall have the meaning ascribed to such term in the applicable Agreements. Wherever it appears appropriate from the context, each term stated in either the singular or the plural shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and neutral. Unless otherwise specified herein, all section, article, schedule or exhibit references in this Settlement Agreement are to the respective section in, article of, or Schedule to this Settlement Agreement. Headings in this Settlement Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. The words "herein," "hereof," "hereto," and "hereunder" and other words of similar import refer to this Settlement Agreement as a whole and not to any particular section, subsection, or clause contained in this Settlement Agreement.

"~~8xx~~ Agreement" means the agreement attached hereto as Exhibit A, which memorializes the Parties' prior business dealings with respect to the provision by the Debtors of ~~8xx~~ services to Qwest's customers.

"2000 IRU Agreement" means the lit IRU agreement between QCC and TAI dated June 30, 2000.

"Abandoned Circuits" means those Existing Circuits that are not Retained Circuits.

"Affiliate" means, with respect to any Party, any other party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For the purposes of this definition, "control" means, when used with respect to any Party, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Party, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings.

"Agreements" means any and all agreements between the Parties, including all oral or written agreements and including, without limitation, those listed on Schedule 2.

"Approval Order" means an order of the Bankruptcy Court approving and authorizing the execution and performance of this Settlement Agreement by the Parties, which order shall be in a form reasonably satisfactory to Qwest.

"Assumed Contracts" means (a) the GSP Agreement, (b) the Prepaid Agreement, (c) the Calling Card Agreement, (d) the QC Agreement, and (e) the ~~8xx~~ Agreement.

"Bankruptcy Case" has the meaning given to it in the first paragraph of the Recitals herein.

"Bankruptcy Code" means title 11 of the United States Code, as it may be amended from time to time

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as promulgated under 28 U.S.C. § 2075, as in effect on the Petition Date and as have been or may be amended.

"Business Day" means any day except a Saturday, Sunday, or other day on which commercial banks in the state of New York are not open for business.

"Calling Card Agreement" means the Calling Card Agreement dated June 30, 2000.

"Closing" means the execution of the Transaction Documents as contemplated by this Settlement Agreement, including the execution and delivery of the documents identified in Sections 3.2 and 3.3, which, subject to the satisfaction of all conditions identified in Section 3.4 of this Settlement Agreement, shall occur on the Closing Date.

"Closing Date" means the date of the Closing of the grant to QC of the New IRUs, which date shall be at least 11 days after the entry of the Approval Order.

"Contemplated Transactions" means all actions contemplated by this Settlement Agreement, including, without limitation, the making of the DIP Loan, the execution of the New IRU Agreement, the settlement and release of all claims, the continued provision of services by Debtors to Qwest and to common customers of Debtors and Qwest, and the assumption of the Assumed Contracts and 2000 IRU Agreement.

"Debtors" has the meaning given to it in the preamble.

"DIP Loan" means the debtor in possession loan in the amount of \$10 million to be made by QCC to Debtors pursuant to the terms of the DIP Loan Agreement to be entered into between the Parties and approved by the Bankruptcy Court

"DIP Loan Agreement" means the loan and security agreement between QCC and Debtors setting forth the terms and conditions of the DIP Loan.

"Effective Date" means the date that the Approval Order becomes a Final Order, provided, however, that the Effective Date shall have occurred on or before September 25, 2003.

"Encumbrance" means any lien, mortgage, claim, charge, pledge, security interest, or any other "interest" in property within the meaning of section 363(f) of the Bankruptcy Code.

"Environmental Law" means any federal, state, or local statute, law, rule, regulation,

ordinance, code, or rule of common law in effect as of the Closing Date, relating to natural resources, the environment, or the regulation of or contamination by controlled materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq*; the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq*; and the Clean Air Act, 42 U.S.C. § 7401, *et seq*

"Existing Circuits" means the capacity provided in 2000 and the capacity provisioned by QCC for TAI in 2001 under the 2000 IRU Agreement.

"FCC" means the Federal Communications Commission

"Final Order" means an order, ruling, or judgment of the Bankruptcy Court (a) that is in full force and effect; (b) that is not stayed; (c) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired, and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing is then pending; and (d) is no longer subject to review, reversal, modification, or amendment by appeal or writ of certiorari; provided, however, that an order will be deemed a Final Order notwithstanding the filing of a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other applicable rules.

"Governmental Authority" shall mean any foreign, national, regional, state, provincial, or local government, court, or governmental or regulatory agency, board, or commission with jurisdiction over Qwest or Debtors (including the Bankruptcy Court).

"GSP Agreement" means the First Amended and Restated Global Service Provider Agreement, dated March 21, 2001, as amended pursuant to the terms of the amendment attached as Exhibit B.

"GSP Services" means the services provided by Debtors to common customers of Debtors and Qwest pursuant to the terms of the GSP Agreement.

"IRU" means an indefeasible right of use.

"Laws" means all federal, state, local, foreign, and other statutes, laws, codes, ordinances, rules, regulations, judgments, writs, decrees, injunctions, orders, concessions, grants, franchises, permits, licenses, and other legal requirements applicable thereto (including, without limitation, Environmental Laws and all laws and regulations relating to health and safety and employment).

"Network" means Debtors' 21,000-mile fiber optic network, of which approximately fifty percent (50%) is currently lit.

"New IRU Agreement" means one or more Master IRU Agreements between QC and Debtors pursuant to which QC will obtain the New IRUs.

"New IRUs" means the IRUs in the fiber on the routes set forth on Schedule 3 to be granted to QC.

"O&M Agreement" means one or more operation and maintenance agreements relating to the New IRUs.

"Parties" means, as applicable, any combination of Debtors and Qwest.

"Pending Actions" means all pending litigation, administrative or regulatory proceedings, and arbitrations or mediations between the Parties or to which Debtors are petitioners, including, without limitation, those set forth on the attached Schedule 4.

"Person" means any natural person, firm, partnership, limited liability company, association, corporation, Debtor, Qwest Entity, trust, business trust, or other entity.

"Prepaid Agreement" means the Prepaid Calling Card Services Agreement dated June 30, 2000, as amended pursuant to the terms of the amendment attached as Exhibit C.

"Purchaser" means the successful purchaser or purchasers of Debtors' assets pursuant to Debtors' Motion for Order Pursuant to 11 U.S.C. §§ 105(a), 632, 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, or otherwise; provided, however, that the Purchaser shall acquire such assets subject to the New IRUs.

"Purchaser Closing Date" means the date(s) of the closing of the sale of Debtors' assets to Purchaser.

"QC" means Qwest Corporation.

"QC Agreement" means that certain Telecommunications Services Agreement dated April 24, 2000 between QC and TAJ pursuant to which Debtors provide telecommunications services to QC under the terms of service orders, as amended pursuant to the terms of the amendment attached as Exhibit D.

"QCC" means Qwest Communications Corporation.

"QCII" means Qwest Communications International Inc

"QSC" means Qwest Services Corporation

"QW" means Qwest Wireless, L.L.C.

"QW Payment" means the payment currently scheduled to be made by QW on February

24, 2004 pursuant to the terms of the Purchase Agreement dated February 24, 2003, between QW and TAI, in the amount of \$23 million to TAI in connection with QW's purchase of TAI's interest in TW Wireless.

"Qwest" has the meaning set forth in the preamble

"Qwest Entity" means any of QCC, QCII, QC, QW, QSC and all subsidiaries, Affiliates, predecessors, successors, and assigns thereof that are bound by the terms of this Settlement Agreement.

"Retained Circuits" means those Existing Circuits that will be retained by Debtors as set forth on Schedule 1.

"TAI" means Touch America, Inc.

"TW Wireless" means TW Wireless, L.L.C.

"Transaction Agreements" means the New IRU Agreement, the O&M Agreement, and all other agreements and documents necessary in connection with the grant of the New IRUs to QC.

"Trustee" means any trustee appointed under section 701, 702, 703, or 1104 of the Bankruptcy Code.

ARTICLE II

DIP LOAN

2.1 DIP Loan. QCC has agreed to provide Debtors with a DIP Loan pursuant to the terms of the DIP Loan Agreement. The DIP Loan, including repayment thereof, shall be subject to the terms and conditions of the DIP Loan Agreement.

2.2 Effect of DIP Loan. If under the terms of the DIP Loan Agreement Debtors are not required to repay the DIP Loan, Qwest shall be deemed to have remitted to Debtors payments received from customers in connection with the billing of the GSP Services provided by Debtors under the GSP Agreement for the months of May 2003 and June 2003. If Debtors are required to repay the DIP Loan pursuant to the terms of the DIP Loan Agreement, the Parties shall retain all rights with respect to the revenues associated with GSP Services for May 2003 and June 2003, including all prepetition and postpetition setoff rights.

ARTICLE III

NEW IRU AGREEMENT

3.1 New IRU Agreement. On the Closing Date, TAI shall enter into the New IRU Agreement, which grants an IRU in the New IRUs to QC and QC shall accept on the Closing Date, the grant of the New IRUs (subject to conditions set forth in the Transaction Agreements)

in exchange for consideration in the amount of \$8 million pursuant to the terms of the Transaction Agreements. The grant of the New IRUs shall be free and clear of all Encumbrances. The Parties agree that (a) the New IRUs have a market value of at least \$8 million, (b) this transfer was negotiated in good faith, at arms-length and is fair and reasonable, and (c) QC is a good faith purchaser under section 363(m) of the Bankruptcy Code. In connection with the granting of the New IRUs, QC, at its option and in its discretion, shall have authority to terminate service orders in accordance with the QC Agreement relating to Touch America Circuit Identification Number TA007257 (Missoula-Helena) and TA002737 (Casper-Basin) as well as the unlit Bend fiber.

3.2 Deliveries by Debtors. At the Closing, subject to the terms of this Settlement Agreement, Debtors shall deliver to QC, or cause any of their Affiliates having an ownership or other interest in any New IRU to deliver to QC, the following:

- (a) one or more duly executed copies of the Transaction Agreements;
- (b) all such other endorsements, assignments, and other instruments, documents, certifications, notices and agreements as are customarily delivered in similar transactions or reasonably necessary to carry out the transactions contemplated by this Article III and to comply with the terms hereof; and
- (c) all consents, orders, and approvals of the Bankruptcy Court (including, without limitation, a certified copy of the Approval Order, which order shall provide for the grant of the New IRUs to Qwest free and clear of any Encumbrances), all necessary creditors and other parties to the Bankruptcy Case, and any other third parties necessary to effectuate the grant of the New IRUs and to consummate the Contemplated Transaction.

3.3 Deliveries by QC. At the Closing, subject to the terms of this Settlement Agreement, QC will deliver to Debtors the following:

- (a) one or more duly executed copies of the Transaction Agreements;
- (b) immediately available funds in the amount of \$8 million; and
- (c) all such other endorsements, assignments, and other instruments, documents, certifications, notices and agreements as are customarily delivered in similar transactions or reasonably necessary to carry out the transactions contemplated by this Article III and to comply with the terms hereof.

3.4 Conditions to Closing. The Closing shall occur at the offices of Perkins Coie LLP, 1211 SW Fifth Avenue, Suite 1500, Portland, Oregon 97204, or at such other location as agreed to by the Parties after the following conditions have been either met or waived by the Parties:

- (a) the Parties shall have delivered all items required to be delivered as set forth in Sections 3.2 and 3.3 of this Settlement Agreement;

(b) no statute, rule, regulation, executive order, decree, decision, or ruling shall have been enacted, entered, or promulgated by any Governmental Authority that prohibits the consummation of the grant of the New IRUs, and no action, suit, or proceeding shall be pending or threatened by or before any Governmental Authority that would prevent or make illegal the consummation of the grant of the New IRUs; and

(c) the Approval Order shall have been entered by the Bankruptcy Court on or before September 25, 2003 and shall be a Final Order.

3.5 Overbid Protection. In the event that Debtors are required to conduct an auction to determine whether the price to be paid by QC for the New IRUs is the highest and best price available, the Parties agree that Qwest will be entitled to standard overbid protection, including a breakup fee and expense reimbursement, all of which will be subject to Bankruptcy Court approval.

3.6 Other Purchases. The Parties agree that if Qwest determines that there are additional assets that it would like to purchase from Debtors, to the extent that Debtors are not prohibited by the terms of any agreement with a third party, they will negotiate any such additional asset purchases in good faith with Qwest and will treat Qwest in the same manner as they treat all other interested parties.

ARTICLE IV

ASSUMPTION OF AGREEMENTS

4.1 Treatment as Executory Contracts. For purposes of this Settlement Agreement only, the Parties agree to treat the Assumed Contracts and the 2000 IRU Agreement as executory contracts within the meaning of section 365 of the Bankruptcy Code. The treatment of such agreements shall not be deemed to be an admission as to the characterization of such agreements for any other purpose or an admission relating to any contracts or agreements, whether among the Parties or otherwise, not addressed in this Article IV. No party is waiving, or shall be deemed to have waived, any rights or positions that it has asserted or might in the future assert in connection with any contract, agreement, claim, matter, or entity outside the scope of this Settlement Agreement.

4.2 Assumption Subject to all of the terms and conditions set forth in this Settlement Agreement, Debtors agree that pursuant to section 365 of the Bankruptcy Code, they will assume the Assumed Contracts and the 2000 IRU Agreement, effective on the Effective Date. The Parties hereby agree that no cure payments shall be required pursuant to section 365 of the Bankruptcy Code, other than the payment of all amounts arising after the Petition Date, and that Debtors shall not be required to provide Qwest with adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

4.3 Effect of Assumption on Circuits. Subject to all of the terms and conditions set forth in this Settlement Agreement, the Parties agree that, effective on the assumption of the 2000 IRU Agreement, (a) all of Debtors' right, title, and interest in and to the Abandoned

Circuits shall be deemed abandoned by Debtors in accordance with the provisions of section 554 of the Bankruptcy Code and shall automatically revert to Qwest and (b) Debtors shall have full equitable title to all Retained Circuits pursuant to the 2000 IRU Agreement and Qwest will be deemed to have released any and all claims, rights and entitlements it may have had in the Retained Circuits; provided, however, that Qwest shall retain legal title to the underlying fiber and conduit. The Parties hereby agree that they will cooperate with each other in grooming all Debtors' customers now on Abandoned Circuits onto the Retained Circuits or other of Debtors' capacity at Debtors' direction at Qwest's sole cost and expense, in an efficient manner.

4.4 Local Access Service and Cross Connect. The Parties hereby agree that Debtors shall be responsible for obtaining and paying for all local access and cross connect service pursuant to the terms of the 2000 IRU Agreement. Debtors shall be entitled to obtain local access and cross connect service from the carrier(s) of their choice (and, in such event, Qwest shall provide physical access to the relevant facilities at appropriate market rates). If Debtors elect to obtain such service from Qwest, the parties hereby agree that they will negotiate in good faith to reach a mutually acceptable agreement for the provisioning, including pricing, of such local access and cross connect services. To the extent such services are available under tariff, Debtors may purchase such services pursuant to applicable tariffs.

4.5 Assignment Debtors shall use their best efforts to assign the Assumed Contracts, the 2000 IRU Agreement and the New IRU Agreement to Purchaser on the Purchaser Closing Date. If Purchaser elects not to take assignment of any of these agreements, Debtors shall be solely responsible for meeting their obligations thereunder and the failure of Purchaser to take assignment of any of the Assumed Contracts, the 2000 IRU Agreement or the New IRU Agreement, shall not relieve Debtors of any of their obligations under those agreements or under this Settlement Agreement. The Parties agree that if Purchaser takes assignment of any or all of the Assumed Contracts, the 2000 IRU Agreement or the New IRU Agreement, that Purchaser shall be required to provide Qwest with adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.1 Debtors' Representations Debtors represent and warrant to Qwest as follows:

(a) Board Approval; Authority Relative to this Settlement Agreement Each Debtor has the corporate and other organizational power and authority to enter into this Settlement Agreement and to carry out its obligations hereunder. The execution, delivery, and performance of this Settlement Agreement by each of the Debtors and the consummation by each of the Debtors of the Contemplated Transactions have been duly authorized by all requisite corporate action. Subject to the entry and effectiveness of the Approval Order, this Settlement Agreement has been duly and validly executed and delivered by or on behalf of each of the Debtors and (assuming this Settlement Agreement constitutes a valid and binding obligation of Qwest) constitutes a valid and binding agreement of Debtors, enforceable against Debtors in

accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium, and other Laws affecting creditors' rights generally and to general equitable principles.

(b) Consents and Approvals. To the best of Debtors' knowledge, no consent, approval or authorization of, and no declaration, filing, or registration with, any Governmental Authority or other Person is required to be made or obtained by any of the Debtors in connection with the execution, delivery, and performance of this Settlement Agreement and the consummation of the Contemplated Transactions, except for consents, approvals, and authorizations of, and declarations and filings with, the Bankruptcy Court and those contemplated by Section 6.2.

(c) Title to New IRUs. Debtors have good and valid title to the fiber subject to the New IRUs, and at the Closing, QC will acquire equitable title to the New IRUs, in each case free and clear of any and all Encumbrances.

(d) Actions Affecting New IRUs. No Debtor shall lease, license, or otherwise surrender, relinquish, encumber, or dispose of any fiber subject to any New IRU, provided, however, that Debtors shall be entitled to transfer ownership of all or a portion of the Network to Purchaser, subject to the New IRUs; no Debtor shall grant any indefeasible right of use with respect to any New IRU; and no Debtor shall enter into any prepaid or below-market lease, license, or other agreement relating to any New IRU.

(e) Touch America Services. On or about January 22, 2002, Touch America Services, Inc. was merged with and into TAI and no longer exists as a separate entity. Prior to its merger into TAI, Touch America Services, Inc. did not convey, assign or otherwise transfer any claims or liabilities that it may have had against Qwest or any Qwest Entity to any third party other than TAI in connection with the merger.

5.2 Qwest's Representations. Qwest represents and warrants to Debtors as follows:

(a) Authority Relative to this Settlement Agreement. Each Qwest Entity has the corporate power and authority to enter into this Settlement Agreement and to carry out its obligations hereunder. The execution, delivery, and performance of this Settlement Agreement by each Qwest Entity and the consummation by each Qwest Entity of the Contemplated Transactions have been duly authorized by all requisite corporate actions. This Settlement Agreement has been duly and validly executed and delivered by each Qwest Entity and (assuming this Settlement Agreement constitutes a valid and binding obligation of Debtors) constitutes a valid and binding agreement of each Qwest Entity, enforceable against each Qwest Entity in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium, and other Laws affecting creditors' rights generally and to general equitable principles.

(b) Consents and Approvals. To the best of Qwest's knowledge, no consent, approval, or authorization of, and no declaration, filing, or registration with, any Governmental Authority or other Person is required to be made or obtained by any Qwest Entity in connection

with the execution, delivery, and performance of this Settlement Agreement and the consummation of the Contemplated Transactions, except for consents, approvals, and authorizations of, and declarations and filings with, the Bankruptcy Court and those contemplated by Section 6.2.

ARTICLE VI

COVENANTS

6.1 Conduct of Debtors Before the Effective Date. Subject to any obligations as a debtor in possession under the Bankruptcy Code, before the Effective Date each Debtor shall use its commercially reasonable best efforts to preserve intact and operate in the ordinary course the Network and the New IRUs.

6.2 Filings; Other Action. Subject to the terms and conditions herein provided, as promptly as practicable, Debtors and Qwest shall (a) use all commercially reasonable best efforts to cooperate with one another in (i) determining which filings are required to be made before the Effective Date with, and which material consents, approvals, and permits are required to be obtained before the Effective Date from, Governmental Authorities or other Persons in connection with the execution and delivery of this Settlement Agreement and the consummation of the Contemplated Transactions, and (ii) timely making all such filings and timely seeking all such material consents, approvals, and permits; and (b) use all commercially reasonable best efforts to take, or cause to be taken, all other action and do, or cause to be done, all other things reasonably necessary or appropriate to consummate the Contemplated Transactions as soon as is practicable.

6.3 Public Announcements; Disparagement. Debtors and Qwest agree that they will not issue any press release or respond in writing to any press inquiry with respect to this Settlement Agreement or the Contemplated Transactions without the prior written approval of Qwest and Debtors (which approval will not be unreasonably withheld or delayed), except as may be required by applicable Laws, the Bankruptcy Court, or any requirement of any stock exchange or inter-dealer quotation system on which the stock of any Party is listed or quoted. The Parties agree that they will not disparage the other Party in any public statement made by them or by any of their officers, directors, employees, or agents.

6.4 Bankruptcy Actions. Qwest and Debtors agree to use their commercially reasonable best efforts to cause the Bankruptcy Court to enter the Approval Order.

(a) If the Approval Order, or any other orders of the Bankruptcy Court relating to this Settlement Agreement, is appealed by any Person (or if a petition for certiorari or motion for rehearing or reargument is filed with respect thereto), Debtors agree to take all steps as may be reasonable and appropriate to defend against such appeal, petition, or motion, Qwest agrees to cooperate in such efforts, and each Party agrees to use its commercially reasonable best efforts to obtain an expedited resolution of such appeal; provided, however, that nothing herein shall preclude the Parties from consummating the Contemplated Transactions if the Approval Order has been entered and not stayed.

(b) Debtors shall use their commercially reasonable best efforts to cooperate with Qwest and its representatives in connection with the Bankruptcy Court proceedings relating to the Approval Order. Such cooperation shall include consulting with Qwest, at Qwest's reasonable request, concerning the status of such proceedings and providing Qwest with copies of requested pleadings, notices, proposed orders, and other documents relating to such proceedings as soon as reasonably practicable and before any submission thereof to the Bankruptcy Court. Debtors further covenant and agree that the terms of any plan submitted by Debtors to the Bankruptcy Court for confirmation shall not conflict with, supersede, abrogate, nullify, modify, or restrict the terms of this Settlement Agreement and the rights of Qwest hereunder or, assuming the occurrence of the Closing, in any way prevent or interfere with the consummation or performance of the Contemplated Transactions, including any transaction that is contemplated by or approved pursuant to the Approval Order.

6.5 Postpetition Payments; Deposit. The Parties agree that they will make all payments relating to services provided to one another (other than GSP Services) from and after June 1, 2003, notwithstanding the Bankruptcy Cases and any prohibition against the payment of prepetition claims in the Bankruptcy Code, in a timely manner and in accordance with the terms of the Agreements. Qwest hereby agrees that it will not seek any additional deposits from Debtors for services provided to Debtors, except as required by applicable Laws.

ARTICLE VII

RELEASES; IMPLEMENTATION

7.1 Release by Debtors. Effective on the Effective Date, each Debtor and its Affiliates, on its own behalf and on behalf of its stockholders, officers, employees, directors, agents, representatives, attorneys, successors, and assigns, hereby fully and finally releases, acquits, and forever discharges each Qwest Entity and its Affiliates, together with their respective stockholders, officers, employees, directors, agents, representatives, attorneys, successors, and assigns, from any and all past, present, and future claims, defaults, demands, obligations, actions, causes of action, rights, and damages relating to or arising out of (i) the Pending Actions, (ii) any contractual obligations or other claims arising from the Agreements, and (iii) except as otherwise provided in the following sentence, any claim under any legal theory, including, without limitation, under contract, tort, or otherwise, which any Debtor or its Affiliates now has, may claim to have, ever had, or may hereafter acquire, whether such claims are currently known, unknown, foreseen, or unforeseen, from the beginning of time through and including the Effective Date of this Settlement Agreement, including, without limitation, any and all claims arising under chapter 5 of the Bankruptcy Code or as defined in section 101(5) of the Bankruptcy Code. Notwithstanding the foregoing, the provisions contained in clause (iii) of this Section 7.1 shall not release any claims, defaults, demands, obligations, actions, causes of action, rights, or damages relating to or arising out of (a) this Settlement Agreement, (b) the DIP Loan Agreement, (c) the New IRU Agreement or O&M Agreement, (d) any other agreement entered into between the Parties in connection with the Contemplated Transactions, or (e) any payments made by TRW to Qwest for services rendered by Debtors ("Disputed TRW Payments").

7.2 Release by Qwest. Effective on the Effective Date, each Qwest Entity and its Affiliates, on its own behalf and on behalf of its stockholders, officers, employees, directors, agents, representatives, attorneys, successors, and assigns, hereby fully and finally releases, acquits, and forever discharges Debtors and their Affiliates, together with their respective stockholders, officers, employees, directors, agents, representatives, attorneys, successors, and assigns, from any and all past, present, and future claims, defaults, demands, obligations, actions, causes of action, rights, and damages relating to or arising out of (i) the Pending Actions, (ii) any contractual obligations or other claims arising from the Agreements, and (iii) except as otherwise provided in the following sentence, any claim under any legal theory, including, without limitation, under contract, tort, or otherwise, which any Qwest Entity or its Affiliates now has, may claim to have, ever had, or may hereafter acquire, whether such claims are currently known, unknown, foreseen, or unforeseen, from the beginning of time through and including the Effective Date of this Settlement Agreement. Notwithstanding the foregoing, the provisions contained in clause (iii) of this Section 7.2 shall not release any claims, defaults, demands, obligations, actions, causes of action, rights, or damages relating to or arising out of (a) this Settlement Agreement, (b) the DIP Loan Agreement, (c) the New IRU Agreement or O&M Agreement, or (d) any other agreement entered into between the Parties in connection with the Contemplated Transactions.

7.3 Standstill Agreement. The Parties hereby agree that all Pending Actions shall be stayed as of the date of this Settlement Agreement until this Settlement Agreement is approved and such Pending Actions shall be dismissed with prejudice in accordance with Section 7.4 hereof. The Parties agree that they will fully cooperate with one another and take all necessary action to inform the appropriate tribunal of the bankruptcy filing by Debtors and the Parties' agreement to stay all action pending approval of this Settlement Agreement.

7.4 Dismissal of Litigation. Within five business days after the Approval Order becomes a Final Order, Debtors and Qwest shall cause stipulated dismissals with prejudice to be filed in each of the Pending Actions.

7.5 Accounts Receivable. As consideration for the releases set forth in Sections 7.1 and 7.2 and the making of the DIP Loan, the Parties hereby agree that any and all amounts due and owing among them for services purchased and sold under the Agreements or otherwise through May 31, 2003 (other than for GSP Services) shall be forever waived and released. The Parties shall be entitled to treat such waiver as a setoff or other discharge of debt for accounting purposes only.

7.6 QW Payment. The Parties hereby agree that QW shall not be required to make the QW Payment to Debtors and that QW shall be deemed to have paid in full for TAI's interest in TW Wireless and shall own such interest free and clear of all liens, claims, and encumbrances.

7.7 Deposits. The Parties hereby agree that all deposits for services provided by Debtors to Qwest or by Qwest to Debtors shall be retained by the appropriate Party and used to offset amounts due and owing between the Parties prior to the Petition Date.

7.8 Security Each of the Debtors acknowledge that its obligations under this Settlement Agreement are secured by a Security Agreement and Pledge Agreement entered into on the date hereof among QCC and certain of the Debtors in connection with the DIP Loan Agreement and that the extent and duration of Qwest's security interest shall be as set forth in such Security Agreement and Pledge Agreement.

7.9 Further Assurances. The Parties agree, after the Effective Date and without further consideration, at their own expense, that each Party will from time to time, at the reasonable request of the other Party, to do such further things, to execute, acknowledge, deliver and cause to be duly filed all such further instruments of conveyance and transfer and such other instruments, documents and agreements, seek the entry of any necessary orders from the Bankruptcy Court, and take such other actions as such other Party may reasonably request or as may be reasonably requested by any third parties in order to effect the transfers or purposes contemplated by this Settlement Agreement

7.10 Rejection of Agreements. The Parties hereby agree that Debtors shall reject the following agreements and that any and all remaining obligations thereunder, if any, shall be terminated and of no further force and effect: (a) Stock Purchase Agreement dated as of March 13, 2000, between QCI and TAI, and (b) Bilateral Wholesale Agreement dated as of June 26, 2000 between QCC and TAI. The Parties specifically acknowledge and agree that the provisions set forth in Section 6.14 of the Stock Purchase Agreement are of no further force and effect.

7.11 Waiver of Confidentiality Provisions. The Parties hereby agree that notwithstanding any confidentiality provisions contained in any of the Agreements, that from and after the Effective Date (a) Qwest may disclose all or any portion of the Agreements to third parties as it deems reasonably necessary in the conduct of its business operations and (b) Debtors, or any successor to Debtors, will not now or in the future claim that any such disclosure violates the confidentiality provisions of any of the Agreements.

7.12 Disputed TRW Payments. The Disputed TRW Payments shall be subject to further good faith negotiation between the Parties and, upon a resolution consented to by the Official Committee of Unsecured Creditors in Debtors' Bankruptcy Case, the Parties shall execute an appropriate amendment to this Settlement Agreement.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Bankruptcy Court Approval. Debtors shall, as promptly as reasonably practicable and in any event no later than August 8, 2003, file a motion, and shall cause any Affiliates of a Debtor necessary for the consummation of the Contemplated Transactions to file a motion, with the Bankruptcy Court seeking the Approval Order approving the Contemplated Transactions.

8.2 Fees and Expenses. The Parties shall pay all of their own expenses relating to the Contemplated Transactions, including, without limitation, the fees and expenses of their respective counsel, financial advisors, and accountants; provided, however, that if this Settlement

Agreement is not approved by the Bankruptcy Court or if the Effective Date does not occur, Debtors shall pay all reasonable costs and expenses of Qwest as part of the DIP Loan as more fully set forth in the DIP Loan Agreement. To the extent that such taxes are not discharged by the Bankruptcy Court, all sales, use, transfer, filing, recordation, registration, and similar taxes and fees arising from or associated with the Contemplated Transactions shall be borne by Qwest. Qwest shall, at its own expense, file any necessary tax returns and other documentation with respect to such taxes and shall provide to Debtors evidence of filing and payment of all such taxes. Qwest agrees to indemnify and hold Debtors harmless from and against any claims for such taxes, including penalties or interest arising therefrom

8.3 Notices. All notices, requests, and demands to or upon the respective Parties hereto must be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand; or three Business Days after being deposited in the mail, postage prepaid; or one day after being entrusted to a reputable commercial overnight delivery service, or, in the case of facsimile notice, when confirmation of receipt is received in each case, addressed as follows for Debtors and Qwest or to such other address as may be hereafter noticed by such respective Parties hereto:

With a copy to: Qwest Communications Corporation
Attn: General Counsel
1801 California Street
49th Floor
Denver, CO 80202
Fax: (303) 295-6973

And: Perkins Coie LLP
Attn: Jeanette L. Thomas
1211 SW Fifth Avenue, Suite 1500
Portland, OR 97204
Fax: (503) 727-222

And: Perkins Coie LLP
Attn: Bruce G. MacIntyre
1201 Third Avenue, Suite 4000
Seattle, WA 98101
Fax: (206) 583-8500

If to Qwest: Qwest Communications Corporation
Attn: Wholesale Markets Contracts Administration
1801 California Street
24th Floor
Denver, CO 80202
Fax: (303) 295-6973

If to Debtors: c/o Touch America Holdings, Inc.
Attn: Michael Meldahl
40 E Broadway
Butte, MT 59701
Fax: (406) 497-5376

With a copy to: Young Conaway Stargatt & Taylor, LLP
Attn: Craig Grear
PO Box 391
The Brandywine Building
100 West Street, 17th Floor
Wilmington, DE 19801
Fax: (302) 576-3296

8.5 APPLICABLE LAW. THIS SETTLEMENT AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN, WITHOUT REFERENCE TO CHOICE-OF-LAW PRINCIPLES THAT WOULD REQUIRE APPLICATION OF THE LAW OF ANOTHER JURISDICTION, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE.

8.6 JURISDICTION; WAIVER OF JURY TRIAL. THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS SETTLEMENT AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS SETTLEMENT AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS SETTLEMENT AGREEMENT OR THE CONTEMPLATED TRANSACTIONS.

8.7 Headings. The article and section captions and the headings set forth herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Settlement Agreement.

8.8 Executory Contracts Except as otherwise provided herein, nothing in this Settlement Agreement shall be deemed to be either an assumption or rejection of the Agreements as executory contracts, or an acknowledgement that any or all of the Agreements are executory contracts. The Parties shall cooperate with each other as to the assumption or rejection of the

Agreements, to the extent that they are determined to be executory contracts. In connection with any assumption or rejection of any of the Agreements, the Parties hereby agree that Debtors will have no obligation to make any cure payment in connection with the assumption of an Agreement and that Qwest shall not be entitled to a rejection claim in the event of the rejection of an Agreement.

8.9 Reliance on Counsel and Independent Judgment. Each of the Parties agrees that no representations or statements have been made by any Party or its attorneys inducing the Parties to execute this Settlement Agreement, other than as set forth in writing herein. The Parties acknowledge, agree, and represent that they are relying solely on the advice of their own counsel and on the independent judgment and discretion of their own representatives and attorneys.

8.10 Successors and Assigns. The provisions of this Settlement Agreement shall be binding upon and inure to the benefit of the Parties and the respective successors and assigns of each of the Parties, including, without limitation, any Trustee hereinafter appointed in the Bankruptcy Case as the representative of the estates of Debtors, or any other representative of Debtors who qualifies in a case under the Bankruptcy Code or in connection with any other state, provincial, or federal proceeding. The terms and conditions of this Settlement Agreement shall survive:

- (a) the entry of any subsequent order converting any Debtor's Bankruptcy Case from chapter 11 of the Bankruptcy Code to chapter 7 of the Bankruptcy Code;
- (b) the appointment of any Trustee in any Debtor's Bankruptcy Case in any ensuing chapter 7 case under the Bankruptcy Code;
- (c) the confirmation of a plan of reorganization under the Bankruptcy Code;
- (d) the dismissal of any Debtor's Bankruptcy Case or an order withdrawing the reference from the Bankruptcy Court;
- (e) an order from the Bankruptcy Court abstaining from handling any Debtor's Bankruptcy Case; and
- (f) a sale, assignment, or other disposition of all or part of Debtors' assets to any third party and/or assignee.

8.11 Entire Agreement; Amendments; Joint Work Product This Settlement Agreement, the Schedules and Exhibits hereto, and the documents referred to herein constitute the complete agreement between the Parties related to the subject matter hereof and supersede any prior or contemporaneous agreements or representations affecting the same subject matter. No amendment, modification, or change to this Settlement Agreement shall be enforceable unless it (a) is reduced to a writing that is executed by the Parties against whom such amendment, modification, or change is sought to be enforced and (b) specifically references this Settlement Agreement. This Settlement Agreement is the joint work product of the Parties, has

been negotiated by the Parties and their respective counsel, and shall be fairly interpreted in accordance with its terms, and, in the event of any ambiguities herein, no inferences shall be drawn against any Party.

8.12 Integration. This Parties acknowledge and agree that each and every provision of this Settlement Agreement has been bargained for and is in consideration for the other provisions of this Settlement Agreement and is integral to this Settlement Agreement and that without each and every provision hereof the Parties would not have agreed to enter into this Settlement Agreement. If a court or other tribunal of competent jurisdiction finds any provision of this Settlement Agreement to be invalid or unenforceable for any reason as to any person or circumstance, then the Parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid, legal and enforceable provisions as promptly as possible.

8.13 Counterparts; Facsimile Delivery. This Settlement Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties shall not have signed the same counterpart. This Settlement Agreement may be delivered by facsimile transmission of an executed counterpart signature page hereof, and after attachment of such transmitted signature page to a copy of this Settlement Agreement, such copy shall have the same effect and evidentiary value as copies delivered with original signatures. Any Party delivering this Settlement Agreement by facsimile transmission shall deliver to the other Parties, as soon as practicable after such delivery, an original executed counterpart signature page of this Settlement Agreement, provided that delivery of such original executed counterpart shall not be a condition to enforcement of this Settlement Agreement.

8.14 Authorship. The Parties have negotiated this Settlement Agreement at arm's length. Each Party has had ample opportunity to consult with independent legal counsel. None of the Parties will be entitled to have any language contained in this Settlement Agreement construed against any other Party because of the identity of the drafter of such language.

8.15 Third Party Beneficiaries. The Parties hereby agree that the Purchaser is intended to be a third party beneficiary of Sections 3.1, 3.2, 3.3 and 4.4 of this Settlement Agreement and shall be entitled to enforce the terms of those Sections against Qwest. The Parties agree that there are no other intended third party beneficiaries.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by Qwest and Debtors as of the date first above written.

QWEST COMMUNICATIONS CORPORATION

By: Thomas F. Gillett
Name: Thomas F. Gillett
Title: PRESIDENT - QCC

TOUCH AMERICA, INC.

By: _____
Name: _____
Title: _____

QWEST COMMUNICATIONS INTERNATIONAL, INC.

By: _____
Name: _____
Title: _____

TOUCH AMERICA HOLDINGS, INC.

By: _____
Name: _____
Title: _____

QWEST CORPORATION

By: _____
Name: _____
Title: _____

ENTECH, LLC

By: _____
Name: _____
Title: _____

QWEST WIRELESS, L.L.C.

By: _____
Name: _____
Title: _____

TOUCH AMERICA PURCHASING COMPANY, LLC

By: _____
Name: _____
Title: _____

QWEST SERVICES CORPORATION

By: _____
Name: _____
Title: _____

SIERRA TOUCH AMERICA, LLC

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by Qwest and Debtors as of the date first above written.

QWEST COMMUNICATIONS CORPORATION

By: _____
Name: _____
Title: _____

QWEST COMMUNICATIONS INTERNATIONAL, INC

By: _____
Name: _____
Title: _____

QWEST CORPORATION

By: _____
Name: _____
Title: _____

QWEST WIRELESS, L.L.C.

By: _____
Name: _____
Title: _____

QWEST SERVICES CORPORATION

By: _____
Name: _____
Title: _____

TOUCH AMERICA, INC ^{alt.}

By: Michael J. Melchior
Name: Michael J. Melchior
Title: President

TOUCH AMERICA HOLDINGS, INC.

By: Michael J. Melchior
Name: Michael J. Melchior
Title: President

ENTECH, LLC

By: Michael J. Melchior
Name: Michael J. Melchior
Title: President

TOUCH AMERICA PURCHASING COMPANY, LLC

By: Michael J. Melchior
Name: Michael J. Melchior
Title: President

SIERRA TOUCH AMERICA, LLC

By: Michael J. Melchior
Name: Michael J. Melchior
Title: President

AMERICAN FIBER TOUCH LLC

By: Michael R. McLaughlin
Name: Michael R. McLaughlin
Title: President

**Schedule 1
Retained Circuits**

Subject to Confirmation

**Schedule 2
Agreements**

1. Stock Purchase Agreement dated March 13, 2002 between Qwest Communications International Inc. and Touch America, Inc., as amended
2. Bilateral Wholesale Agreement dated as of June 26, 2000 between Qwest Communications Corporation and Touch America Services, Inc.
3. Collocation License Agreement dated June 30, 2000 between Qwest Communications Corporation and Touch America Services, Inc.
4. IRU Agreement dated as of June 30, 2000 by and between Qwest Communications Corporation, Touch America Services, Inc. and Touch America, Inc., as amended.
5. IRU Agreement dated as of June 30, 2000 by and between Qwest Communications Corporation and Touch America, Inc.
6. First Amended and Restated Global Service Provider Agreement dated as of March 21, 2001 by and between Qwest Communications Corporation and Touch America Services, Inc.
7. Switch Functionality Access Right Agreement dated June 30, 2000 between Qwest Communications Corporation, Touch America Services, Inc. and Touch America, Inc.
8. Operator Services Agreement dated June 30, 2000 between Qwest Communications Corporation and Touch America Services, Inc.
9. Calling Card Agreement dated June 30, 2000 between Qwest Communications Corporation, Touch America Services, Inc. and Touch America, Inc.
10. Prepaid Calling Card Services Agreement dated June 30, 2000 between Qwest Communications Corporation, Touch America Services, Inc. and Touch America, Inc.
11. IP Router Functionality Access Right Agreement dated March 21, 2001 between Qwest Communications Corporation, Touch America Services, Inc. and Touch America, Inc.
12. Local Access Agreement dated June 30, 2000, between Qwest Communications International, Inc. and Touch America Services, Inc., n/k/a Touch America, Inc
13. Reorganization Agreement dated June 30, 2000, between Qwest Communications International, certain Qwest affiliates, Touch America, Inc, Touch America Services, Inc., and Touch America Services Holdings, Inc

14. Non-Disclosure Agreement dated December 9, 1999, between Touch America, Inc. and Qwest Communications Corporation.

15. Transfer of Service Agreement dated April 3, 2003, between Touch America, Inc., Qwest Communications Corporation and AT&T Corp.

16. Telecommunications Services Agreement dated April 24, 2000 between Qwest Corporation and Touch America, Inc

17. Limited Liability Company Agreement of Touch Wireless, L.L.C., dated as of July 23, 1999, between Touch America, Inc., U S West Wireless, L.L.C. n/k/a Qwest Wireless, L.L.C., and Touch Wireless, L.L.C.

18. Services Agreement, dated as of October 22, 1999, between Touch Wireless, L.L.C., U S West Wireless, L.L.C. n/k/a/ Qwest Wireless, L.L.C. and Touch America, Inc.

19. Separation Agreement, dated as of October 22, 1999, between Touch Wireless, L.L.C., U S West Wireless, L.L.C. n/k/a Qwest Wireless, L.L.C., U S West, Inc. n/k/a Qwest Services Corporation, Inc., and Touch America, Inc.

20. Purchase Agreement dated February 24, 2003, between Qwest Wireless, LLC and Touch America, Inc.

**Schedule 3
New IRUs**

1. Yakima to Spokane, WA - 4 Fibers
2. Missoula to Billings, MT - 2 Fibers
3. Casper to Basin, WY - 2 Fibers
4. Casper to Cheyenne, WY - 2 Fibers
5. Basin to Frannie, WY - 2 Fibers
6. Bend, OR Spur - 4 Fibers
7. Cheyenne - Denver - Omaha - Des Moines - Davenport - 4 Fibers

**Schedule 4
Pending Actions**

1. *Qwest Communications Corporation v. Touch America Services, Inc*, Cause No AAA No 74Y181017961, pending before Judge Lynch.
2. Formal Complaint EB-02-MD-003, pending before the FCC.
3. *In the Matter of An Arbitration Under a Private Arbitration Agreement between Touch America, Inc and Qwest Communications, Inc., et al*, pending before Judge Joseph W Morris.
4. Formal Complaint EB-02-MD-004, pending before the FCC.
5. *Qwest Communications International Inc., et al v. Touch America, Inc., et al.*, Civil Case No. 01-B-1696 (BNB), pending in the United States District Court for the District of Colorado.
6. Petition for Expedited Reconsideration and Further Proceedings of FCC Order 03-107, pending before the FCC

	Customer	Eng. Core ID	Sales Core ID	LOGA	LOGZ	Circuit Type	QWEST CIRCUIT ID#
1	Touch America	25858562	25803640	ATLNGA 55 Marietta St	STTLWA 2001 6th Ave	OC3	OC3-3997983
2	Touch America	25869547	25812979	BLTMMD 111 Market Place Suite 400	DNVRCO 910 15th St	OC3	OC3-3998546
3	Touch America	25869597	25813229	CHCGIL 455 N Cityfront Suite 700 (NBC Building)	MPLTMN 422 3rd St	OC3	OC3-3998620
4	Touch America	25869771	25819273	DLLSTX 2323 Bryan St	TKWLWA 6101 S. 180th	OC3	OC3-3998653
5	Touch America	25876041	25818332	CLMBOH 180 E Broad St	TKWLWA 6101 S. 180th	OC3	OC3-4000740
6	Touch America	25876147	25847697	CNCNOH 205 W 4th St	DNVRCO 910 15th St	OC3	OC3-4000743
7	Touch America	25876196	25847952	CLEVOH 50 Public Square Suite 640	DNVRCO 910 15th St	OC3	OC3-4000754
8	Touch America	25876224	25848297	CLEVOH 50 Public Square Suite 641	TKWLWA 6101 S. 180th	OC3	OC3-4000763
9	Touch America	25876283	25848705	DNVRCO 910 15th St	JRCYNJ 111 Pavonia Ave	OC3	OC3-4000764
10	Touch America	25876400	25850591	DNVRCO 910 15th St	KSCAMO 711 E. 19 Street	OC3	OC3-4000791
11	Touch America	25878112	25851001	DNVRCO 910 15th St	TKWLWA 6101 S. 180th	OC3	OC3-4001066
12	Touch America	25878138	25851184	DESMIA 101 SE 7th St	SLKCUT 1499 South 4800	OC3	OC3-4001072
13	Touch America	25878279	25851897	EUGNOR 1460 Railroad Ave	SCRMCA 770 L St 6th Floor	OC12	OC12-4001072
14	Touch America	25878319	25851689	EUGNOR 1460 Railroad Ave	PTLDOR 707 Southwest Washington Suite 400	OC3	OC3-4001073
15	Touch America	25894909	25833591	DNVRCO 910 15th St	LSVLKY 1538 S 7th	OC3	OC3-4003888
16	Touch America	25895550	25833595	DNVRCO 910 15th St	MPLTMN 422 3rd St	OC3	OC3-4003891
17	Touch America	25895620	25833605	DNVRCO 910 15th St	OKCYOK 100 N. Broadway	OC3	OC3-4003892
18	Touch America	25895725	25833614	DNVRCO 910 15th St	PHLAPA 2400 Market St	OC3	OC3-4003921
19	Touch America	25895790	25833620	DNVRCO 910 15th St	PTLDOR 707 Southwest Washington Suite 400	OC3	OC3-4003999
20	Touch America	25895829	25833626	DNVRCO 910 15th St	PROVUT 978 West 400 South	OC3	OC3-4004000
21	Touch America	25895868	25833643	DNVRCO 910 15th St	STLUMO 20 Ferry Street	OC3	OC3-4004001
22	Touch America	25895997	25833645	DNVRCO 910 15th St	STLUMO 20 Ferry Street	OC12	OC12-4004003
23	Touch America	25896392	25833668	DNVRCO 910 15th St	STTLWA 2001 6th Ave	OC3	OC3-4004052
24	Touch America	25897257	25870070	EUGNOR 1460 Railroad Ave	STTLWA 2001 6th Ave	OC12	OC12-4004083

25	Touch America	25897301	25870176	EUGNOR 1460 Railroad Ave	TKWLWA 6101 S. 180th	OC3	OC3-4004084
26	Touch America	25898098	25870256	FTWOTX 14850 FAA Blvd	SLKCUT 1499 South 4800	OC3	OC3-4004092
27	Touch America	25898167	25870822	FTWOTX 14850 FAA Blvd	TKWLWA 6101 S. 180th	OC3	OC3-4004093
28	Touch America	25898270	25871021	HSTNTX 8413 Hempstead Rd	STTLWA 2001 6th Ave	OC3	OC3-4004094
29	Touch America	25902349	25872056	IPLSIN 550 Kentucky Ave Suite 200	MPLTMN 422 3rd St	OC3	OC3-4004486
30	Touch America	25902589	25898399	LSANCA 624 S Grand Ave	TKWLWA 6101 S. 180th	OC3	OC3-4004489
31	Touch America	25902654	25898496	MILAWI 500 S. Water St	MPLTMN 422 3rd St	OC3	OC3-4004490
32	Touch America	25902699	25898699	NYCMNY 60 Hudson Mezz Level	STTLWA 2001 6th Ave	OC3	OC3-4004491
33	Touch America	25902722	25898867	NYCMNY 60 Hudson Mezz Level	TKWLWA 6101 S. 180th	OC3	OC3-4004492
34	Touch America	25902764	25898943	PHLAPA 2400 Market St	TKWLWA 6101 S. 180th	OC3	OC3-4004494
35	Touch America	25902924	25899024	PHNXAZ 2120 North Central	SLKCUT 1499 South 4800	OC3	OC3-4004557
36	Touch America	25902958	25899173	PTLDOR 707 Southwest Washington Suite 400	SCRMCA 770 L St 6th Floor	OC3	OC3-4004681
37	Touch America	25902992	25899361	PTLDOR 707 Southwest Washington Suite 400	SCRMCA 770 L St 6th Floor	OC3	OC3-4004682
38	Touch America	25903015	25899968	PTLDOR 707 Southwest Washington Suite 400	SCRMCA 770 L St 6th Floor	OC3	OC3-4004684
39	Touch America	25903041	25900058	PTLDOR 707 Southwest Washington Suite 400	SCRMCA 770 L St 6th Floor	OC12	OC12-4004685
40	Touch America	25903072	25875727	KSCAMO 711 E. 19 Street	MPLTMN 422 3rd St	OC3	OC3-4004717
41	Touch America	25903110	25875865	LFYTLA 375 South Chestnut St	STTLWA 2001 6th Ave	OC3	OC3-4004719
42	Touch America	25903135	25876013	LSVGNV 4275 E Sahara Ave	SLKCUT 1499 South 4800	OC3	OC3-4004721
43	Touch America	25903197	25876415	LSVGNV 4275 E Sahara Ave	SLKCUT 1499 South 4800	OC3	OC3-4004726
44	Touch America	25903219	25876884	LSANCA 624 S Grand Ave	MPLTMN 422 3rd St	OC3	OC3-4004730
45	Touch America	25903249	25877046	LSANCA 624 S Grand Ave	PTLDOR 707 Southwest Washington Suite 400	OC3	OC3-4004733
46	Touch America	25903272	25901031	PTLDOR 707 Southwest Washington Suite 400	SCRMCA 770 L St 6th Floor	OC12	OC12-4004735
47	Touch America	25903396	25901530	PTLDOR 707 Southwest Washington Suite 400	SLKCUT 1499 South 4800	OC3	OC3-4004736

48	Touch America	25911947	25877178	LSANCA 624 S Grand Ave	PTLDOR 707 Southwest Washington Suite 400	OC3	OC3-4005390
49	Touch America	25911962	25880280	LSANCA 624 S Grand Ave	SLKCUT 1499 South 4800	OC3	OC3-4005391
50	Touch America	25912076	25880913	LSANCA 624 S Grand Ave	SLKCUT 1499 South 4800	OC3	OC3-4005393
51	Touch America	25912119	259028097	PTLDOR 707 Southwest Washington Suite 400	SLKCUT 1499 South 4800	OC3	OC3-4005420
52	Touch America	25914118	25801772	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	ROCHNY 95 North Fitzhugh Street	OC3	OC3-4005795
53	Touch America	25914176	25812353	ATLNGA 55 Marietta St	TKWLWA 6101 S. 180th	OC3	OC3-4005798
54	Touch America	25914203	25880396	LSANCA 624 S Grand Ave	SLKCUT 1499 South 4800	OC3	OC3-4005799
55	Touch America	25914226	25881012	LSANCA 624 S Grand Ave	TKWLWA 6101 S. 180th	OC3	OC3-4005800
56	Touch America	25921857	25917866	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	DESMIA 101 SE 7th St	OC3	OC3-4007490
57	Touch America	25931508	25917959	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	DESMIA 101 SE 7th St	OC3	OC3-4009433
58	Touch America	25931526	25919735	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	DNVRCO 910 15th St	OC3	OC3-4009434
59	Touch America	25931539	25920984	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	DNVRCO 910 15th St	OC3	OC3-4009435
60	Touch America	25931556	25921636	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	DNVRCO 910 15th St	OC3	OC3-4009437
61	Touch America	25935576	25934294	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	DNVRCO 910 15th St	OC12	OC12-4010731
63	Touch America	25962857	25935873	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	MPLTMN 422 3rd St	OC12	OC123-4011397
64	Touch America	25962877	25839532	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	OMAHNE 1304 Mason St	OC3	OC3-4011401
65	Touch America	25965834	25964104	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	STTLWA 2001 6th Ave	OC3	OC3-4013275
67	Touch America	25990901	25972392	DNVRCO 910 15th St	SLKCUT 1499 South 4800	OC12	OC12-4025809
68	Touch America	25992339	25972513	DNVRCO 910 15th St	SLKCUT 1499 South 4800	OC12	OC12-4025816

69	Touch America	25992716	25964336	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	STTLWA 2001 6th Ave	OC3	OC3-4025884
70	Touch America	25992767	25965625	DNVRCO 910 15th St	IPLSIN 700 Kentucky	OC3	OC3-4025935
71	Touch America	25992815	25965059	DNVRCO 910 15th St	IPLSIN 700 Kentucky	OC3	OC3-4025938
72	Touch America	25992971	25966143	DNVRCO 910 15th St	IPLSIN 700 Kentucky	OC3	OC3-4025973
73	Touch America	25993022	25968174	DNVRCO 910 15th St	KSCYMO 1301 W 25th St	OC3	OC3-4025976
74	Touch America	25993475	25968568	DNVRCO 910 15th St	NYCMNY 60 Hudson Mezz Level	OC3	OC3-4026027
75	Touch America	25993693	25968696	DNVRCO 910 15th St	NYCMNY 60 Hudson Mezz Level	OC3	OC3-4026033
76	Touch America	25993975	25968821	DNVRCO 910 15th St	SLKCUT 1499 South 4800	OC3	OC3-4026106
77	Touch America	25994239	25968938	DNVRCO 910 15th St	SLKCUT 1499 South 4800	OC3	OC3-4026107
78	Touch America	25994787	25972900	EUGNOR 1460 Railroad Ave	SNJSCA 55 Alamden Blvd	OC12	OC12-4026109
79	Touch America	25995159	25973135	EUGNOR 1460 Railroad Ave	STTLWA 2001 6th Ave	OC3	OC3-4026115
80	Touch America	25995293	25982106	CHCGIL 455 N Cityfront Suite 700 (NBC BLDG)	TKWLWA 6101 S 180th	OC3	OC3-4026446
81	Touch America	25995351	25982511	PTLDOR 707 Southwest Washington Suite 400	SLKCUT 1499 South 4800	OC3	OC3-4026448
82	Touch America	25995378	25982661	PTLDOR 707 Southwest Washington Suite 400	SNDGCA 4216 University Ave	OC3	OC3-4026449
83	Touch America	25995399	25982811	PTLDOR 707 Southwest Washington Suite 400	SNFCCA 60 Federal St	OC12	OC12-4026451
84	Touch America	25995412	25982982	PTLDOR 707 Southwest Washington Suite 400	SNJSCA 55 Alamden Blvd	OC3	OC3-4026456
85	Touch America	26000476	25983073	PTLDOR 707 Southwest Washington Suite 400	STTLWA 2001 6th Ave	OC12	OC12-4027645
86	Touch America	26000527	25984209	PTLDOR 707 Southwest Washington Suite 400	SNVACA 1400 Kifer Rd	OC3	OC3-4027696
87	Touch America	26000545	25986677	PTLDOR 707 Southwest Washington Suite 400	TKWLWA 6101 S 180th	OC3	OC3-4027701
88	Touch America	26000564	25986951	PTLDOR 707 Southwest Washington Suite 400	TKWLWA 6101 S 180th	OC3	OC3-4027702

88	Touch America	26000807	25987388	PTLDOR 707 Southwest Washington Suite 400	TKWLWA 6101 S 180th	OC3	OC3-4027703
90	Touch America	26001148	25987482	PTLDOR 707 Southwest Washington Suite 400	TKWLWA 6101 S 180th	OC12	OC12-4027705
91	Touch America	26001303	25987636	SCRMCA 770 L St 6th floor	SLKCUT 1499 South 4800	OC3	OC3-4027706
92	Touch America	26001318	25988122	SCRMCA 770 L St 6th floor	SLKCUT 1499 South 4800	OC3	OC3-4027709
93	Touch America	26001332	25989896	SCRMCA 770 L St 6th floor	SLKCUT 1499 South 4800	OC3	OC3-4027710
94	Touch America	26001346	25990055	SCRMCA 770 L St 6th floor	STTLWA 2001 6th Ave	OC3	OC3-4027711
95	Touch America	26001354	25990137	SCRMCA 770 L St 6th floor	STTLWA 2001 6th Ave	OC3	OC3-4027713
96	Touch America	26001366	25990753	SCRMCA 770 L St 6th floor	STTLWA 2001 6th Ave	OC3	OC3-4027714
97	Touch America	26001381	25990899	SCRMCA 770 L St 6th floor	STTLWA 2001 6th Ave	OC12	OC12-4027715
98	Touch America	26002467	26001865	SLKCUT 1499 South 4800	SNJSCA 55 Alamden Blvd	OC3	OC3-4027919
99	Touch America	26025070	26002017	SLKCUT 1499 South 4800	SNJSCA 55 Alamden Blvd	OC3	OC3-4032617
100	Touch America	26025108	26002195	SLKCUT 1499 South 4800	SNJSCA 55 Alamden Blvd	OC3	OC3-4032653
101	Touch America	26025131	26007655	DNVRCO 910 15th St	KSCAMO 711 E. 19 Street	OC12	OC12-4032678
102	Touch America	26025145	26007849	LSANCA 624 S Grand Ave	STTLWA 2001 6th Ave	OC12	OC12-4032688
103	Touch America	26025160	26008131	SLKCUT 1499 South 4800	STTLWA 2001 6th Ave	OC3	OC3-4032713
104	Touch America	26025183	26008333	SLKCUT 1499 South 4800	TKWLWA 6101 S. 180th	OC3	OC3-4032715
105	Touch America	26028170	26025511	SNFCCA 60 Federal St	STTLWA 2001 6th Ave	OC3	OC3-4034084
106	Touch America	26028198	26026060	SNFCCA 60 Federal St	STTLWA 2001 6th Ave	OC3	OC3-4034087
107	Touch America	26028225	26026142	SNFCCA 60 Federal St	STTLWA 2001 6th Ave	OC12	OC12-4034089
108	Touch America	26028258	26027071	SNFCCA 60 Federal St	STTLWA 2001 6th Ave	OC12	OC12-4034094
109	Touch America	26039889	26007234	SLKCUT 1499 South 4800	STTLWA 2001 6th Ave	OC3	OC3-4036454
110	Touch America	26040515	26008659	SNFCCA 60 Federal St	STTLWA 2001 6th Ave	OC3	OC3-4036455
111	Touch America	26040746	26027174	SNFCCA 60 Federal St	STTLWA 2001 6th Ave	OC12	OC12-4036456
112	Touch America	26041097	26027356	SNJSCA 55 Alamden Blvd	STTLWA 2001 6th Ave	OC3	OC3-4036457
113	Touch America	26041520	26027756	SNJSCA 55 Alamden Blvd	STTLWA 2001 6th Ave	OC3	OC3-4036458
114	Touch America	26041800	26027868	SNJSCA 55 Alamden Blvd	STTLWA 2001 6th Ave	OC3	OC3-4036459
115	Touch America	26041805	26029712	STTLWA 2001 6th Ave	SNVACA 1400 Kifer Rd	OC3	OC3-4036461
116	Touch America	26041808	26030003	TAMPFL 5908 A Hampton Pwky	TKWLWA 6101 S. 180th	OC3	OC3-4036462

117	Touch America	26041614	25991071	SLKCUT 1499 South 4800	SNFCCA 60 Federal St	OC3	OC3-4036463
118	Touch America	26076398	26043182	BRBNCA 3015 Winona Ave	TKWLWA 6101 S. 180th	OC3	OC3-4040417
119	Touch America	26076483	26043582	DELTOH 8793 Fulton County Rd H	DNVRCO 910 15th St	OC3	OC3-4040418
120	Touch America	26076504	26043762	EUGNOR 1460 Railroad Ave	MDFDOR 1 East Clark Street	OC3	OC3-4040420
121	Touch America	26076526	26047395	EUGNOR 1460 Railroad Ave	SALMOR 2080 Hyacynth	OC3	OC3-4040421
122	Touch America	26076553	26052202	MDFDOR 1 East Clark Street	TKWLWA 6101 S. 180th	OC3	OC3-4040424
123	Touch America	26076666	26054228	RCDCA 3040 Gold Camp Road	STTLWA 2001 6th Ave	OC3	OC3-4040429
124	Touch America	26076702	26055215	SALMOR 2080 Hyacynth	STTLWA 2001 6th Ave	OC3	OC3-4040433
125	Touch America	26118803	25812511	BLTMMD 111 Market Place Suite 400	TKWLWA 6101 S 180th	OC3	OC3-4052870
126	Touch America	26166352	25973205	EUGNOR 1460 Railroad Ave	STTLWA 2001 6th Ave	OC3	OC3-4068854
OC3							
OC12							

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**ORDER, PURSUANT TO 11 U.S.C. §§ 105(a), 362, 363, 364, 365, 553 AND 554
(c) AND FED. R. BANKR. P. 2002, 4001, 6004, 6006, 6007, 9014 AND 9019, APPROVING
SETTLEMENT AGREEMENT WITH QWEST, INCLUDING SALE AND TRANSFER OF
ASSETS TO QWEST AND ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

This matter came before the Court on the amended motion (the "Settlement Motion")¹ of the above-captioned debtors, as debtors and debtors in possession herein (the "Debtors") for the entry of an order (the "Settlement Order") approving a settlement agreement (the "Settlement Agreement") with Qwest Communications Corporation and its affiliates (collectively "Qwest") pursuant to sections 105, 362, 363, 365, 553 and 554 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 6007, 9014 and 9019; and the Court having determined that adequate notice of the Settlement Motion has been provided pursuant to Bankruptcy Rules 2002 and 9019; and a hearing having been held before this Court on September 10, 2003 (the "Hearing") to consider the Settlement Motion and the relief requested therein, including, without limitation the transactions contemplated in the Settlement Agreement; and the Court having considered the Settlement Motion and objections to the Settlement Motion, if any, and arguments of counsel; and the Court having determined that the legal and factual bases set forth in the Settlement Motion and at the Hearing on the Settlement Motion and the Settlement Agreement establish just cause for the relief granted herein:

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

IT IS HEREBY FOUND AND DETERMINED THAT:²

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

B. The statutory predicates for the relief sought in the Settlement Motion are sections 105(a), 362, 363(b), (f), and (m), 365, 553 and 554 of title 11 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, 6006, 6007, 9014 and 9019(a).

C. As evidenced by the affidavits of service [and publication] previously filed with the Court, and based on representations of counsel at the Hearing, (i) proper, timely, adequate and sufficient notice of the Settlement Motion, the Hearing and the proposed Settlement Order has been provided in accordance with sections 102(l), 363, 365 and 554 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 6007, 9014 and 9019 and Local Rule of Delaware Procedure 2002-1; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Settlement Motion, the Hearing or this Order shall be required.

D. Approval of the Settlement Agreement and consummation of the terms memorialized therein at this time are in the best interest of the Debtors, their Affiliates, their creditors, their estates and other parties in interest.

E. The Debtors have demonstrated both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the Settlement Agreement

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.

pursuant to Bankruptcy Rule 9019(a) and section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization.

F. A reasonable opportunity to object or be heard with respect to the Settlement Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) all parties filing a request for notice under Bankruptcy Rule 2002; (ii) entities known to have expressed an interest in acquiring the New IRUs; (iii) all entities known to have an interest in the New IRUs or to claim an interest in the New IRUs; (iv) all federal, state, and local regulatory or taxing authorities or recording offices which have a known interest in the relief requested in the Settlement Motion; (v) all creditors; (vi) the United States Attorney's Office; (vii) the Securities and Exchange Commission; and (viii) the Internal Revenue Service.

G. The Settlement Agreement was negotiated, proposed and entered into by the Debtors and Qwest without collusion, good faith and from arm's-length bargaining positions.

H. Qwest is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. Qwest will be acting in good faith within the meaning of section 363(m) in closing the transactions contemplated in the Settlement Agreement.

I. The consideration provided by the parties pursuant to the Settlement Agreement (i) is fair and reasonable; (ii) is the offer for the New IRUs; (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practicable available alternative; and (iv) 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. In addition to the cash components of the Settlement Agreement, the consideration for the Settlement Agreement includes the release of the Debtors and their Affiliates from all

claims, including cure obligations, rejection damages, all setoff rights (except as otherwise provided herein), recoupment, prepetition damages and obligations for adequate assurance of future performance.

J. The Settlement Agreement must be approved and consummated by final order no later than September 25, 2003 in order to preserve the value of the Settlement agreement to the Debtors' and their estates. Pursuant to the Settlement Agreement, Qwest has advanced the DIP Loan in the amount of \$10,000,000, which amount will not need to be repaid if the Settlement Agreement is approved by final order on or before October 18, 2003 and the Debtors comply with all their obligations under the Settlement Agreement. The Settlement Agreement provides for payment of an additional \$8,000,000 to the Debtors' estates for the New IRUs and relieves Debtors and their Affiliates of onerous payment obligations and resolves numerous complex legal issues without the expense of protracted litigation.

K. Qwest would not have entered into the Settlement Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates and their creditors if all components of the Settlement Agreement, including approval of the DIP Loan, the transfer of the New IRUs free and clear of all Claims (defined below) of any kind or nature whatsoever, or if Qwest would, or in the future could be, liable for any Claims that could be made by any party against the New IRUs or against Qwest as a result of the prepetition relationship between the Debtors and Qwest.

L. The Debtors may transfer the New IRUs free and clear of all Claims of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f)(1) - (5) has been satisfied. Those holders of Claims are adequately protected by having

their Claims, if any, attach to the case proceeds received pursuant to the Settlement Agreement ultimately attributable to the property against or in which they claim an interest.

M. The transfer to Qwest of the New IRUs, except as otherwise agreed by Qwest and as provided in the Settlement Agreement, will not subject Qwest to any liability with respect to the operation of the Debtors or their businesses prior to the Closing Date.

N. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume the Assumed Contracts and the 2000 IRU Agreement in connection with the consummation of the Settlement Agreement, and the assumption of the Assumed Contracts and the 2000 IRU Agreement is in the best interests of the Debtors, their estates, and their creditors. The Assumed Contracts and the 2000 IRU Agreement and the liabilities being assumed by the Debtors are an integral part of the Settlement Agreement and the consideration for entering into the Settlement Agreement by Qwest, and accordingly, such assumption of the Assumed Contracts and the 2000 IRU Agreement and their attendant liabilities are reasonable, enhance the value of the Debtors' estates, and do not constitute unfair discrimination.

O. Debtors have demonstrated that it is an exercise of their sound business judgment to reject the Stock Purchase Agreement and the Bilateral Wholesale Agreement and that the rejection of the Stock Purchase Agreement and the Bilateral Wholesale Agreement is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated that the Stock Purchase Agreement and the Bilateral Wholesale Agreement are of inconsequential value and benefit to their estates.

P. Pursuant to the terms of the Settlement Agreement, the Debtors are not required to cure any defaults arising prior to the Petition Date relating to the Assumed Contracts and the 2000 IRU Agreement or provide adequate assurance of future performance in connection with

the assumption of the Assumed Contracts and the 2000 IRU Agreement; provided, however, that if the Debtors assign any or all of the Assumed Contracts or 2000 IRU Agreement to a third party, such party shall be responsible for providing Qwest with adequate assurance of future performance of its obligations within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

Q. Qwest holds a prepetition claim against the Debtors and Qwest owed the Debtors for GSP Services for the months of March 2003 and April 2003. These debts are owing to the same parties in the same capacity and are valid and enforceable against each other and both arose before the Petition Date. Qwest had a valid right to set off under applicable state law prior to the Petition Date.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
THAT:**

1. The Settlement Motion is granted in its entirety and in all respects.

Approval of Agreement

2. The Settlement Agreement, attached to the Settlement Motion as Exhibit A, and all of the terms and conditions thereof, is hereby approved in its entirety. The releases contained in the Settlement Agreement are valid, enforceable obligations of the parties and are hereby approved in their entirety.

3. Pursuant to Bankruptcy Rule 9019 and section 363(b) of the Bankruptcy Code, the Debtors, as provided in the Settlement Agreement, are authorized and directed to consummate the Settlement Agreement, pursuant to and in accordance with the terms of the Settlement Agreement.

4. The Debtors are authorized and directed to execute and deliver, and are empowered to perform under, consummate and implement, the Settlement Agreement, together with all additional instruments, documents and pleadings (including the dismissals of the Pending Actions) that may reasonably be necessary to implement the Settlement Agreement, and to take all further actions as may be reasonably requested by Qwest for the purpose of assigning, transferring, granting, conveying and conferring to Qwest or reducing to possession, the New IRUs, or as may be necessary to the performance of the obligations as contemplated by the Settlement Agreement.

Transfer of Assets

5. Pursuant to sections 105(a) and 363(b) and (f), the New IRUs, shall be transferred to Qwest. As of the Closing Date, the New IRUs shall be transferred to Qwest, pursuant to section 363(f) of the Bankruptcy Code, free and clear of all interests (including claims (as defined in section 101(5) of the Bankruptcy Code) and liens (as defined in section 101(37) of the Bankruptcy Code)), rights of setoff, netting, deduction or recoupment (collectively, the "Claims"), provided, that any existing Claims, if any, shall be transferred and attach to the proceeds obtained for such the New IRUs, with the same validity, enforceability, priority, force and effect that they now have as against the New IRUs, subject to the rights, claims, defenses and objections of the Debtors and all interested parties with respect to such Claims, and Qwest shall not be liable in any way for any Claims that any of the foregoing or any third party may have against any of the Debtors.

6. Except as expressly permitted or otherwise specifically provided by the Settlement Agreement or this Settlement Order, 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 Claims of any kind or nature whatsoever against or in the Debtors or the New IRUs (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the New IRUs, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the New IRUs to Qwest, hereby are forever barred, estopped, and permanently enjoined from asserting against Qwest, its successors or assigns, its property, or the New IRUs, such persons' or entities' Claims. Nothing herein contained shall release or nullify any potential liability of Qwest or any successor of Qwest to the Debtors under the Settlement Agreement or the Settlement Order or to a governmental entity under the environmental statutes or regulations to the extent that such statutes or regulations would apply to the owner or operator of any New IRU after the Closing Date.

7. The transfer of the New IRUs to Qwest pursuant to the Settlement Agreement constitutes a legal, valid and effective transfer of the New IRUs, and shall vest Qwest with all right, equitable title and interest of the Debtors in and to the New IRUs free and clear of all Claims of any kind or nature whatsoever, provided that, any existing Claims, if any, shall be transferred and attach to the proceeds obtained for the New IRUs, with the same validity, enforceability, priority, force and effect that they now have as against the New IRUs, subject to the rights, claims, defenses and objections of the Debtors and all interested parties with respect to such Claims.

Assumption of Assumed Contracts and the 2000 IRU Agreement

8. The Assumed Contracts and the 2000 IRU Agreement shall consist of those unexpired leases and executory contracts as defined in the Settlement Agreement, all of which

the parties agree for purposes of the Settlement Agreement are subject to assumption and assignment pursuant to section 365 of the Bankruptcy Code.

9. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, the Debtors' assumption, on the terms set forth in the Settlement Agreement, of the Assumed Contracts and the 2000 IRU Agreement is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied; provided, however, that if the Debtors assign any one or all of the Assumed Contracts or 2000 IRU Agreement to a third party, such third party shall be required to provide Qwest with adequate assurance of future performance as required by section 365(b)(1) of the Bankruptcy Code.

10. The Debtors are hereby authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume, effective upon the Effective Date, the Assumed Contracts and 2000 IRU Agreement.

11. The Assumed Contracts and the 2000 IRU Agreement shall remain in full force and effect for the benefit of, Qwest in accordance with their respective terms, and the Debtors shall be responsible for fully and completely performing their obligations with respect to the Assumed Contracts and the 2000 IRU Agreement after such assumption.

12. Pursuant to the terms of the Settlement Agreement, the Debtors shall not be required to cure any defaults arising prior to the Petition Date, but shall be required to cure any and all defaults, in any, arising after the Petition Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code); provided, however, that in no event shall the Debtors be liable for or required to pay any administrative claim arising from the subsequent rejection of an Assumed Contract.

13. The failure of the Debtors or Qwest to enforce at any time one or more terms or conditions of any Assumed Contract or the 2000 IRU Agreement shall not be a waiver of such terms or conditions, or of the Debtors' or Qwest's rights to enforce every term and condition of the Assumed Contracts and the 2000 IRU Agreement.

Rejected Contracts

14. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, Debtors' rejection of the Stock Purchase Agreement and the Bilateral Wholesale Agreement on the terms set forth in the Settlement Agreement is hereby approved.

15. Qwest waives and forever releases any and all claims, rights and damages relating to and arising from the rejection of the Stock Purchase Agreement and Bilateral Wholesale Agreement.

16. With respect to the Stock Purchase Agreement and the Bilateral Wholesale Agreement, effective upon rejection as provided in paragraph 14 above, the Debtors' interests in such agreements, and all property previously acquired under such agreements, shall be deemed terminated and abandoned to Qwest on the Effective Date, and Debtors shall have no further rights or interest therein, or obligations thereunder pursuant to section 554 of the Bankruptcy Code.

Additional Provisions

17. The consideration provided by Qwest under the Settlement Agreement is fair and reasonable and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code.

18. After the Effective 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 Claims in the New IRUs, if any, as such Claims may have been recorded or may otherwise exist.

19. This Settlement Order (a) shall be effective as a determination that, on the Closing Date, all Claims of any kind or nature whatsoever existing as to the New IRUs prior to the Closing Date have been released, discharged and terminated, and that the conveyances described herein have been effected, and (b) 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, 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 any title or state of title in or to any of the New IRUs.

20. 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 Settlement Agreement.

21. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Claims in the New IRUs shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims which the person or entity has with respect to the New IRUs, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the New IRUs and (b) Qwest is

hereby authorized to file, register, or otherwise record a certified copy of this Settlement Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims in the New IRUs of any kind or nature whatsoever.

22. Except as otherwise specifically provided herein or in the Settlement Agreement, Qwest shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the New IRUs. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Settlement Agreement, Qwest shall not be liable for any Claims against the Debtors or any of their predecessors or Affiliates except as set forth in the Settlement Agreement, and Qwest shall not be liable for any liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing Date.

23. Except as provided in the Settlement Agreement: (a) the sale, transfer, assignment and delivery of the New IRUs shall not be subject to any Claims, provided, that any existing Claims, if any, shall be transferred and attach to the proceeds obtained for the New IRUs, with the same validity, enforceability, priority, force and effect that they now have as against the New IRUs, subject to the rights, claims, defenses and objections of the Debtors and all interested parties with respect to such Claims, and Claims of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors; (b) all persons holding Claims against or in the Debtors or the New IRUs of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing

such Claims of any kind or nature whatsoever against Qwest, its property, its successors and assigns, or the New IRUs with respect to any interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders or the New IRUs; and (c) following the Closing Date, no holder of an interest in the Debtors shall interfere with Qwest's title to or use and enjoyment of the New IRUs based on or related to such interest, or any actions that the Debtors may take in their chapter 11 cases.

24. Any amounts that become payable by the Debtors pursuant to the Settlement Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Settlement Agreement shall (a) constitute administrative expenses of the Debtors and their estates pursuant to sections 503(b)(1)(A) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner as provided in the Settlement Agreement, without further order of this Court.

25. This Court retains jurisdiction to enforce and implement the terms and provisions of the Settlement Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the New IRUs to Qwest, (b) resolve any disputes arising under or related to the Settlement Agreement, except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Settlement Order, and (d) protect Qwest against any Claims in or against the Debtors or the New IRUs, of any kind or nature whatsoever, attaching to the proceeds of the Settlement Agreement.

26. Nothing contained in any plan of reorganization or plan of liquidation confirmed in these cases or any order of this court confirming such plan shall conflict with or derogate from the provisions of the Settlement Agreement or the terms of this Settlement Order.

27. The transactions contemplated by the Settlement Agreement are undertaken by Qwest in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Settlement Agreement shall not affect the validity of the transfer to Qwest, unless such authorization is duly stayed pending such appeal. Qwest is a purchaser in good faith of the New IRUs, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

28. The terms and provisions of the Settlement Agreement and this Settlement Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, Qwest and their respective Affiliates, successors and assigns and any affected third parties including, but not limited to, all persons asserting Claims in the New IRUs to be transferred to Qwest pursuant to the Settlement Agreement, notwithstanding any subsequent appointment or election of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

29. The failure specifically to include any particular provision of the Settlement Agreement in this Settlement Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Settlement Agreement be authorized, approved and enforceable in its entirety. To the extent any provision of the Settlement Agreement is inconsistent with the terms of this Settlement Order, the terms of the Settlement Agreement shall govern.

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

the Court; provided however, that in connection therewith, the parties shall obtain the prior written consent of the Creditors' Committee, which consent shall not be unreasonably withheld; and, provided further, that any such modification, amendment or supplement shall neither be material nor change the economic substance of the transactions contemplated hereby.

31. " As provided by Bankruptcy Rule 7062, this Settlement Order shall be effective and enforceable immediately upon entry, and, as authorized by Bankruptcy Rule 6004(g) and 6006(d), this Settlement Order shall not be stayed until the expiration of 10 days after its entry. Any party objecting to this Settlement Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot in the event Qwest and the Debtors elect to close prior to this Settlement Order becoming a final order.

32. For purposes of the Settlement Agreement only, Qwest and the Debtors have agreed to treat their disputed agreements as executory contracts or unexpired leases within the meaning of section 365 of Bankruptcy Code. Neither such treatment, the Settlement Agreement, nor this Settlement Order shall be deemed an admission as to the characterization of such agreements for any other purpose, or as an admission relating to any contracts or agreements, whether between Qwest and the Debtors or otherwise, not addressed in the Settlement Agreement.

33. The Debtors are hereby authorized and directed pursuant to section 554 of the Bankruptcy Code to abandon any and all of Debtors' right, title, and interest in and to the Abandoned Circuits or Retained Circuits that are later determined to be Abandoned Circuits. The Debtors' right title and interest in an to the Abandoned Circuits shall automatically revert to Qwest.

34. Qwest is hereby granted relief from the automatic stay imposed by section 362 of the Bankruptcy Code so that Qwest may set off, pursuant to section 553 of the Bankruptcy Code, all amounts owing for GSP Services for the months of March and April 2003 against amounts owed to Qwest by the Debtors prior to the Petition Date; provided, however, that nothing contained in this Settlement Order shall be construed in anyway to grant Qwest relief from the automatic stay for any reason other than to implement the parties' agreement in the Settlement Agreement. Pursuant to the Settlement Agreement, Qwest is hereby authorized and directed to set off all amounts owing for GSP Services for the months of March and April 2003 against amounts owed to Qwest by the Debtors prior to the Petition Date.

Dated: Wilmington, Delaware
October __, 2003

Kevin J. Carey
United States Bankruptcy Judge