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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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COMMISSION  
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In re: ) Chapter 11  
)  
CABLE & WIRELESS USA, INC., et al.,<sup>1</sup> )  
)  
) Case No. 03-13711 (CGC)  
) (Jointly Administered)  
Debtors. )  
)  
)

Objections Deadline: January 6, 2004 at 4:00 PM. (prevailing Eastern time)  
Hearing Date: January 16, 2004 at 9:30 a.m. (prevailing Eastern time)

**NOTICE OF MOTION  
FOR AN ORDER PURSUANT TO 11 U.S.C. § 363 AUTHORIZING  
THE DEBTORS TO SELL CERTAIN DE MINIMIS ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

TO: (i) the Office of the United States Trustee; (ii) counsel to agent to the Debtors' postpetition secured lenders; (iii) those parties who have filed a request for special notice under Bankruptcy Rule 2002 as of the date hereof; (iv) counsel for PLC; (v) counsel to the Committee; (vi) counsel for MBC; (vii) all known, potential secured creditors that have filed UCC statements against any property or assets of the Debtors; and (viii) all known taxing authorities in jurisdictions where the assets to be sold are located.

On December 23, 2003, the captioned debtors and debtors in possession (collectively, the "Debtors") filed the MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. § 363 AUTHORIZING THE DEBTORS TO SELL CERTAIN DE MINIMIS ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES (the "Motion"), with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware

19801 (the "Bankruptcy Court"). A copy of the Motion is attached hereto.

Objections and responses to the Motion, if any, must be in writing and filed with

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC \_\_\_\_\_
- OTH \_\_\_\_\_

<sup>1</sup> The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP.

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the Bankruptcy Court no later than 4:00 p.m. on January 6, 2004 (prevailing Eastern time). At the same time, you must also serve a copy of the objection or response on: (i) proposed co-counsel for the Debtors, James H.M. Sprayregen, P.C., Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601; Bennett L. Spiegel, Esquire and Kelly K. Frazier, Esquire, Kirkland & Ellis LLP, 777 South Figueroa Street, Los Angeles, CA 90017 and Laura Davis Jones, Esquire, Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C., 919 North Market Street, Suite 1600, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801); (ii) the Office of the United States Trustee, Attn: Richard Schepacarter, Esquire, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2313, Lock Box 35, Wilmington, Delaware 19801; (iii) counsel to the Lenders, Eric Rosof, Esquire and Philip Mindlin, Esquire, Wachtell, Lipton, Rosen & Katz, 51 West 52<sup>nd</sup> Street, New York, NY 10019; (iv) co-counsel to JPMC as DIP Agent, Robert Scheibe, Esquire and Jay Teitelbaum, Esquire, Morgan, Lewis & Bockius, 101 Park Avenue, New York, NY 10178 and Adam G. Landis, Esquire, Landis, Rath & Cobb LLP, 919 Market Street, Suite 600, Wilmington, DE 19801; (v) counsel to Cable & Wireless PLC, James D. Rosner, Esquire, Pepper Hamilton, LLP, 3000 Two Logan Square, Eighteenth and Arch Streets, Philadelphia, PA 19103 and Mark D. Collins, Esquire, Richards, Layton & Finger, P.A., One Rodney Square, PO Box 551, Wilmington, DE 19899-0551; and (vi) counsel to the Official Committee of Unsecured Creditors, Robert S. Brady, Esquire, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17<sup>th</sup> Floor, P.O. Box 391, Wilmington, DE 19899-0391 and David Neier, Esquire, Winston & Strawn LLP, 200 Park Avenue, New York, NY 10166-4193.

IF OBJECTIONS ARE TIMELY FILED, A HEARING ON THE MOTION  
SHALL BE HELD BEFORE THE HONORABLE CHARLES G. CASE II IN WILMINGTON,

DELAWARE 19801 ON JANUARY 16, 2004 AT 9:30 A.M. (PREVAILING EASTERN TIME). PLEASE CONTACT THE UNDERSIGNED COUNSEL, CHECK THE COURT'S DOCKET OR REVIEW THE HEARING AGENDA FOR LOCATION OF THE HEARING.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

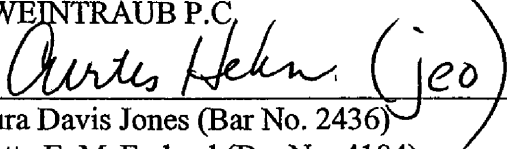
Dated: December 23, 2003

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[Proposed] Co-Counsel for the Debtors  
and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF DELAWARE**

In re: ) Chapter 11  
CABLE & WIRELESS USA, INC., et al.,<sup>1</sup> ) Case No. 03-13711 (CGC)  
 ) (Jointly Administered)  
 )  
Debtors. )  
Objections Deadline: January 6, 2004 at 4:00 PM. (prevailing Eastern time)  
Hearing Date: January 16, 2004 at 9:30 a.m. (prevailing Eastern time)

**MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. § 363 AUTHORIZING  
THE DEBTORS TO SELL CERTAIN DE MINIMIS ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

On December 8, 2003 (the "Petition Date"), the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Prior to the Petition Date, as part of their ongoing restructuring initiatives and efforts to reduce costs, the Debtors closed several unprofitable business locations and liquidated the assets contained at those locations. As described in greater detail below, on the Petition Date, the Debtors were in the process of concluding a sale of certain de minimis assets located at two of the business locations that the Debtors were in the process of decommissioning for \$1.1 million in cash (the "Assets"). However, since these cases were filed prior to the closing of the sale, the Debtors now seek Bankruptcy Court approval of this sale.

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<sup>1</sup> The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP.

The Debtors hereby move this Court (the "Motion") for entry of an order pursuant to 11 U.S.C. § 363 authorizing the Debtors to consummate this proposed sale transaction and to sell the Assets at the two decommissioned locations described below free and clear of all liens, claims and encumbrances.<sup>2</sup> In support of this Motion, the Debtors respectfully represent as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this matter as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this Motion is properly in this district under 28 U.S.C. § 1408. The statutory predicates for the relief requested herein are §§ 105(a) and 363 of chapter 11 of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **General Background**

2. The Debtors commenced their respective reorganization cases on the Petition Date by filing voluntary petitions 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 and 1108 of the Bankruptcy Code.

3. On December 18, 2003, the United States Trustee appointed an official committee of unsecured creditors in these cases (the "Committee"). No trustee or examiner has been appointed in these cases.

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<sup>2</sup> On the Petition Date, the Debtors filed a motion seeking to establish certain procedures for selling de minimis assets of the Debtors that generated less than \$1.25 million in proceeds. Because a hearing on that motion is scheduled before this Court on January 16, 2003 and thus an order granting the relief requested therein has not been entered, the Debtors have filed this Motion seeking authority to consummate their sale transaction and to sell the assets described herein as soon as possible.

4. The Debtors are leading providers of internet web hosting and network services throughout the United States. As of the Petition Date, the Debtors were the second largest hosting services provider in the United States and one of the largest carriers of Internet traffic, focusing on blue chip Fortune 1000 customers. The Debtors are headquartered in northern California and maintain primary network operations and sales in Reston, Virginia. The Debtors also maintain other offices and operations in 20 additional states throughout the United States plus the District of Columbia. The Debtors provide services representing approximately 12-15% of the customer base in the competitive hosting market when measured by revenue, with over 4,300 domestic and international customers including some of the nation's largest corporations such as Merrill Lynch, Yahoo, GE, Microsoft, Google, and Pearson.

5. The Debtors' web hosting business is currently comprised of approximately 15 operational world-class Internet Data Centers ("IDC") connected to their network in 8 major metropolitan markets across the United States. These latest-generation IDCs provide colocation services in a highly reliable and secure physical environment that keep customers' servers up and running without interruption 24 hours a day, 7 days a week. The Debtors also provide managed hosting services that allow them to monitor and manage their customers' online operations in a manner that is cost-effective and highly reliable.

6. The Debtors' network business provides a broad portfolio of leading-edge internet services, ranging from basic infrastructure products to higher-value managed services, using the Debtors' state of the art facilities-based network, consisting of a fiber infrastructure with approximately 21 network locations that house the major network nodes (the "Node Centers") that comprise the network, reaching all major markets across the country.

## The Proposed Sale

### A. Background and Marketing of the Assets

7. Prior to the filing of their chapter 11 cases, the Debtors decommissioned several of their IDCs and Node Centers after having determined they were no longer necessary for ongoing business operations. Consequently, the assets at each of these sites became surplus property and were subject to potential liquidation. These assets are located in leased premises which leases premises continue to accrue rent as an administrative expense, so long as the Debtors do not reject the lease for the premises. The Debtors cannot reject such non-residential real property lease until the assets within those premises can be sold and removed from the premises. The principal assets housed in each of these locations include electronic devices, electrical units and other technological apparatuses utilized in the Debtors' internet network service and web hosting businesses.

8. Prior to the Petition Date, the Debtors retained OLS Trading, Inc. ("OLS"),<sup>3</sup> a specialist in asset recovery and sales, to conduct the marketing and sale of the Assets located at two of the decommissioned sites, the IDC in Sunnyvale, California ("Sunnyvale") and the Node Center in Orlando, Florida ("Orlando"). The Debtors previously had used the services of OLS in a similar prepetition sale of site assets in Waltham, Massachusetts, and thus OLS was familiar with the Debtors' businesses and services.

9. OLS regularly conducts sales of this type and as such, has ongoing relationships with the target buying community for assets such as the ones the Debtors seek to sell here.

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<sup>3</sup> On December 8, 2003, the Debtors filed a "Motion Of The Debtors For An Order Authorizing The Debtors To Retain, Employ and Compensate Certain Professionals Utilized By The Debtors In The Ordinary Course of Business," pursuant to which the Debtors seek to retain and compensate OLS, among others, for professional services rendered to the Debtors in the ordinary course of business after the Petition Date.

Further, OLS has developed a variety of sales techniques to market assets of this type, depending on the individual circumstances and details surrounding the particular asset sale in question.

10. Upon being retained by the Debtors, OLS conducted a formal appraisal of the Assets located in Sunnyvale. The combined Sunnyvale assets were valued, on a liquidation and removal basis, at between \$775,000 and \$860,000 in the aggregate. OLS also performed an informal valuation of the Assets located in Orlando, which value was estimated to be between \$40,000 to \$70,000 in the aggregate on a liquidation and removal basis. Thus, the total approximate liquidation value of the Assets located in Sunnyvale and Orlando was between \$815,000 to \$930,000.

11. OLS made space available at each of the Sunnyvale and Orlando locations for private viewings of the Assets for sale. OLS also advertised the Assets for sale via broadcast, web advertising, and contact with their ongoing clients. Prospective buyers were instructed to contact OLS to make an appointment for a private showing to survey the Assets. OLS conducted multiple private viewings over several weeks, and decided to set up a private auction, scheduled on December 9, 2003, to determine a final purchaser. Prospective buyers were permitted to bid piecemeal for the Assets or to make a bid for the entire lot. Bids for the entire lot were due one week prior to the auction, but piecemeal bids were permitted to be made on the day of the auction.

12. Debtors received three formal bids for the entire lot of property at both Sunnyvale and Orlando in advance of the auction. Because the Debtors believed that management of a single purchaser would be less expensive and burdensome, as, for example it would allow the Debtors efficient removal of the property from the two sites, the Debtors preferred to have a single buyer purchase the assets en masse. MBC Technologies, Inc. ("MBC") entered the highest bid of \$1 million in cash, plus a 10% buyers' premium for foregoing the auction process



(for a total of \$1.1 million). The Debtors, after consultation with OLS, determined that MBC's offer was the highest and best offer for the Assets because MBC's offer far exceeded the appraised value of the property, as well as any of the other bids received by OLS, and provided for an expedient and efficient sale of the Assets to a single buyer. Therefore, the Debtors decided to proceed with the private sale and cancel the scheduled December 9, 2003 auction.

13. On December 8, 2003, the Debtors were in the process of executing the bill of sale and arranging for the removal of the Assets by MBC when the Debtors' intervening bankruptcy cases were filed.

**B. Terms of the Proposed Sale**

14. MBC seeks to purchase each of the Assets identified on Exhibit A attached hereto that are located in Sunnyvale, as well as each of the Assets identified on Exhibit B attached hereto that are located in Orlando, free and clear of all liens, claims and encumbrances for the aggregate cash purchase price of \$1.1 million. No liabilities are being assumed by MBC, and no other terms outside of the assets identified on Exhibits A and B are included. Rather, the Assets would be sold on an "as-is" basis, with no representations, warranties or guaranties as to, among other things, merchantability or fitness for a particular purpose. A copy of the bill of sale is attached hereto as Exhibit C.

**Relief Requested**

15. The Debtors seek leave to proceed in a sale of the Assets free and clear of all liens, claims and encumbrances, pursuant to section 363(b), (f) and (m) of the Bankruptcy Code.

## Basis for the Relief Requested

### A. Bankruptcy Code §363 Permits the Sale of the Debtors' Assets Outside the Ordinary Course of Business.

16. Section 363 of the Bankruptcy Code requires that a debtor in possession secure court approval for the use, sale, or lease of the debtor's assets outside the ordinary course of business. 11 U.S.C. § 363(b)(1). While no explicit standard is set forth in the Bankruptcy Code for evaluating such pre-confirmation sales, courts in the Third Circuit have generally found that transactions which arise from the sound business judgment of debtor management warrant approval under section 363. See, e.g., In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991); In re Phoenix Steel Corp., 82 B.R. 334, 335-46 (Bankr. D. Del. 1987) (approving sale under section 363 where proposed sale is fair and equitable, supported by valid business decision-making and entered into in good faith).

17. Four elements of proof must be shown to establish "sound business judgment" sufficient to merit court approval of the proposed sale: (i) that valid business purposes support the sale outside the ordinary course of business; (ii) that adequate and reasonable notice has been provided to interested parties; (iii) that the price obtained is fair and reasonable; and (iv) that the sale was the result of good-faith negotiations. See In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 149-50 (3rd Cir. 1986); In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); Phoenix Steel, 82 B.R. at 335-36. All four prongs of this test are satisfied in the sale of the Assets proposed herein.

#### 1. The Proposed Sale is Supported by Valid Business Justifications.

18. The Third Circuit espoused a non-exhaustive list of factors to consider when determining if sound business purposes underlie the consummation of the asset sale in question

in In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del 1991); In re Montgomery Ward Holding Co., 242 B.R. 147, 154 (Bankr. D. Del. 1999). The Montgomery Ward Holding Court eloquently articulated these factors and underscored the prudence courts should exercise with respect to the adjudication of such proposed sales:

In fashioning its findings, a bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, he should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions, and most importantly perhaps, whether the asset is increasing or decreasing in value.

242 B.R. at 154-55.

19. Debtors have exercised sound business judgment in electing to liquidate these Assets. The Assets are currently sitting in decommissioned sites, idle and collecting dust. The cost of removing the Assets for use elsewhere is prohibitive and no known location for the Assets is available in any case. As surplus property, the cash value of these inoperative items is worth far more to the financially strapped company than retaining the Assets for some unknown and contingent purpose. Further, the Assets are depreciating daily, making a hastened sale all the more sensible from a business perspective.

20. In addition, as previously discussed, MBC's bid represents a significant increase over the appraised value of the Assets. As such, the Debtors stand to profit handsomely from the sale of Assets which are presently of no worth to them. This further signifies the sound business purpose motivating the Debtors in going forward with the proposed sale of the Assets.

21. Further, the Debtors continue to incur administrative rent obligations for the two properties while the Assets remain there. The Debtors are unable to vacate the premises until the

Assets have been sold and removed. The current monthly rent obligations at Sunnyvale and Orlando are respectively about \$179,626 and \$28,914. Therefore, the Debtors are incurring \$208,540 per month in rent charges for unused property housing depreciating assets. An expeditious sale clearly is motivated by sound business purposes.

2. **Adequate Notice will be Provided to All Parties in Interest.**

22. As set forth *infra*, notice will be provided to all parties in interest and the Debtors submit that such notice is sufficient in light of the request for relief contained herein. Hence, the Debtors believe this prong is satisfied.

3. **The Proposed Sale Price is Fair and Reasonable.**

23. Courts have determined that a fair and reasonable purchase price under section 363(b) is a price equal to at least 75% of the appraised value of the property. See, e.g., In re Abbotts Dairies of Pa., Inc., 788 F.2d at 149; In re Karpe, 84 B.R. 926, 933 (Bankr. M.D. Pa. 1988). As mentioned previously, OLS conducted an appraisal of the Sunnyvale and Orlando Assets prior to the Petition Date, and valued the combined Assets at between \$815,000 and \$930,000, on a liquidation and removal basis. MBC's bid of \$1.1 million approximately 118% of the appraised value, is far over and above that required under Abbotts to be deemed a fair and reasonable price for the Assets.

24. Moreover, this price represents the highest and best offer for the Assets. Significant marketing efforts were made by OLS, with expenditures of Debtors' time and fragile resources, resulting in three bids for the entire lot of assets. MBC's offer was the highest and best offer by way of both cash consideration, as well as the least number of contingencies or other obstacles to consummation of the sale, making such a sale fair, reasonable and in the best interests of the estates.

4. **The Sale Arose Out of Good-Faith Negotiations and MBC Should Be Protected Under §363(m) of the Bankruptcy Code.**

25. Section 363(m) provides:

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

26. While the Code does not internally define “good faith,” the judicial standard that has evolved primarily requires disclosure of all material sale terms and the absence of fraud or collusion. See, e.g., In re Abbott Dairies of Pa., Inc., 788 F.2d at 147-48; see also In re Apex Oil Co., 92 B.R. 847, 869-71 (Bankr. E.D. Mo. 1988).

27. The Debtors and MBC have acted in good faith at all junctures in this proposed sale. The sale of Assets is a culmination of extensive marketing by Debtors and their professionals, as well as negotiations among the parties. MBC is an unrelated third-party who has negotiated at arms-length with the Debtors and OLS, an independent intermediary. MBC is not an insider or affiliate of the Debtors, and all parts of the transaction have been conducted at arms-length. The entire process was conducted over a period of several weeks.

28. In addition, full disclosure of the material terms of the proposed sale is provided to all interested parties by this Motion, which describes with detail all aspects of the sale of Assets and attaches a copy of the bill of sale, as well as a description of the Assets to be sold. In light of the foregoing, Debtors submit that this sale of Assets is proposed in good faith and MBC should therefore be afforded the protections of section 363(m) of the Bankruptcy Code upon closing of the sale.

**B. A Private Sale of the Assets is Authorized Under Bankruptcy Rule 6004.**

29. Under Bankruptcy Rule 6004, proposed assets sales outside the ordinary course of business are permitted to be made by private sale or public auction. Fed. R. Bank. P. 6004(f)(1). Here, resort to a public auction would require the expenditure of further resources of the estates, with little likelihood of return in the way of a higher or better offer. Because the Assets will further depreciate in the interim, and ongoing maintenance and administration costs will be prolonged, including the incurrence of approximately \$210,000 a month in rental obligations, this private sale is the optimum alternative for the Debtors.

30. As a private sale is specifically contemplated and authorized in Bankruptcy Rule 6004 and is more than appropriate under the circumstances, the Debtors request that the Court approve the contemplated private sale.

**C. The Proposed Sale Should be Approved Free and Clear of Liens, Claims and Encumbrances under Section 363(f) of the Bankruptcy Code.**

31. Under section 363(f) of the Bankruptcy Code, a debtor in possession is empowered to sell property outside the ordinary course of business “free of an interest in such property of an entity” if any one of five conditions is met: (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; (5) such entity would be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. Satisfaction of any of the above will be sufficient to allow a sale free and clear of liens because section 363(f) is written in the disjunctive. See, e.g., Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988); Mutual Life Ins. Co. of N.Y. v. Red Oak Farms, Inc. (In re Red Oak Farms, Inc.), 36 B.R. 856, 857-58 (Bankr. W.D. Mo. 1984).

1. **The Debtors Believe that PLC, a Lien Holder, Consents to the Sale of the Assets Free and Clear of its Lien Under Section 363(f)(2) of the Bankruptcy Code.**

32. Cable and Wireless plc (“PLC”), the parent company of the Debtors, holds a blanket lien on the property to be sold pursuant to this sale of Assets. However, PLC has indicated to the Debtors that it consents to the proposed sale, provided that its liens attach to the proceeds of the sale. Therefore, section 363(f)(2) of the Bankruptcy Code is satisfied and a sale free and clear of PLC’s liens should be permitted by this Court.

2. **If Any Other Secured Creditor Objects to the Sale Free and Clear of Its Liens, Approval of the Sale is Nevertheless Appropriate Under Sections 363(f)(3) and (f)(5) of the Bankruptcy Code.**

33. Section 363(f)(3) permits a sale of encumbered property of the estate free and clear of liens, if the interests of the secured creditor is adequately protected and the sale produces a fair and reasonable price for the assets under the circumstances. This sale is permitted even if the sale price will not be sufficient to pay the claims of the secured creditor in full, as is the case here. See, e.g., In re Collins, 180 B.R. 447, 450-51 (Bankr. E.D. Va. 1995); Milford Group, Inc. v. Concrete Steps Units, Inc. (In re Milford Group, Inc.), 150 B.R. 904, 906 (Bankr. M.D. Pa. 1992); In re Oneida Lake Dev., Inc., 114 B.R. 352, 357 (Bankr. N.D.N.Y. 1990); In re Beker Indus. Corp., 63 B.R. 474, 476-77 (Bankr. S.D.N.Y. 1986).<sup>4</sup>

34. This rule permitting the sale of property free and clear of the lien of a secured creditor is derived from the interplay between Bankruptcy Code § 363(f)(3) and 506(a). Section 363(f)(3) allows such a sale where “the price at which such property is to be sold is greater than

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<sup>4</sup> At least one court has required that the sale proceeds exceed the amount of the secured creditor’s claims (as opposed to the value of the creditor’s liens) against the debtor. See, e.g., In re Heine, 141 B.R. 185, 189 (Bankr. D.S.D. 1992). Because this holding ignores plain statutory language and is suspect, it should not be followed by this Court.

the aggregate value of all liens on such property.” Section 506(a) operates to reduce the value of the lien of any secured creditor to “the extent of the value of such creditor’s interest in the estate’s interest in such property.” In a sale, as is occurring here, both the collateral and the lien value should be based on the sale price itself. See Ford Motor Credit Co. v. Dobbins, 35 F.3d 860, 870 (4th Cir. 1994); Romley v. Sun Nat’l Bank (In re Two “S” Corp.), 875 F.2d 240, 244 (9th Cir. 1989). Therefore, the proceeds from the sale will be no less than the value of the undersecured creditor’s lien on the property, where a fair price is adequately shown by the movant, and property may be sold free and clear under section 363(f)(3) of the Bankruptcy Code.

35. Because section 363(f)(3) of the Bankruptcy Code applies to all lien holders of the property, the fact that the amount of the liens is unknown does not change this result. Each creditor’s lien will be reduced by the value attributed to it under the sale pursuant to § 506(a), and the liens will therefore be no less than the sale price, regardless of their original value.

36. Section 363(f)(5) may also be utilized by the Debtors to sell the Assets free and clear of the lien holder’s liens because it provides that the property may be sold free and clear if the lien holder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of the lien. Courts have held that the money satisfaction requirement does not mean “full money satisfaction.” See, e.g., Scherer v. Federal Nat’l Mortgage Ass’n (In re Terrace Chalet Apartments Ltd.), 159 B.R. 821, 829 (N.D. Ill. 1993); In re WPRV-TV, Inc., 143 B.R. 315, 321 (D. P.R. 1991), vacated on other grounds, 165 B.R. 1 (D. P.R. 1992), aff’d in part and rev’d in part on other grounds, 983 F.2d 336 (1st Cir. 1993). These courts found that because Bankruptcy Code section 1129 allows the estate to retain property and cram down a plan on objecting creditors so long as payment of the actual value of the collateral occurs, section 363 sales are permitted without full satisfaction of a lien holder’s claim. See also In re Hunt Energy



Co., Inc., 48 B.R. 472, 485 (Bankr. N.D. Ohio 1985) (“Section 1129(b)(2)(A) allows cram-down of a secured creditor, providing he received the ‘indubitable equivalent’ of his claim.”).

37. The Hunt court finds that section 1129(b)(2)(A) was satisfied where the assets were being sold at their highest value and the lien holder’s lien would be transferred to the proceeds of the sale. In so holding, the court approved the sale free and clear of liens under §363(f)(5). Several other holdings concurred with this decision. See, e.g., In re Red Oak Farms, Inc., 38 B.R. 856, 858-59 (Bankr. W.D. Mo. 1984)(finding that a debtor may substitute collateral for a lien even if the creditor opposes the substitution); In re James Wilson Ass’n, 965 F.2d 160, 172 (7th Cir. 1992)(stating that cramdown will force a creditors to accept the “indubitable equivalent” of their claims which serves to extinguish their liens). Because the lien holders could be compelled to accept a money judgment in satisfaction of their liens, the liens assets will simply attach to the proceed of the sale. Thus, a sale free and clear is appropriate.

38. The Debtors do not believe any other creditors hold liens on the Assets to be sold, other than the blanket lien of PLC. Nevertheless, the Debtors are providing notice and copies of this Motion to all known, potential secured lenders who have filed UCC statements against any property or assets of the Debtors, as well as all known taxing authorities in jurisdictions where the Assets to be sold are located.

39. The Debtors believe, in consideration of the foregoing, that a sale of the Assets free and clear of liens, claims and encumbrances, is permissible under § 363(f)(2), (3) and/or (5) of the Bankruptcy Code.

**Waiver of the Provision of Bankruptcy Rule 6004(g) is Appropriate.**

40. Bankruptcy Rule 6004(g) provides that an order approving the sale of estate property is “stayed until the expiration of 10 days after the entry of the order, unless the court

orders otherwise.” Setting aside this stay provision is necessary because, as explained in great detail above, the expeditious closing of the sale to MBC is in the best interests of the estates. The Debtors continue to incur administrative rent obligations of approximately \$200,000 per month so long as they remain in the leased premises. Further, the Debtors were on the verge of consummating this sale when they filed for bankruptcy protection and thus desire to close this sale as soon as possible and prevent the potential loss of MBC as a purchaser. For these reasons, the Debtors request that the Court waive the requirements of Bankruptcy Rule 6004(g) so that an order approving the proposed sale transaction is deemed immediately effective upon entry by the Court.

#### **No Prior Request**

41. No prior request for the relief sought herein has been made in this or any other court.

#### **Notice**

42. Notice of this Motion has been given to (i) the Office of the United States Trustee; (ii) counsel to agent to the Debtors’ postpetition secured lenders; (iii) those parties who have filed a request for special notice under Bankruptcy Rule 2002 as of the date hereof; (iv) counsel for PLC; (v) counsel to the Committee; (vi) counsel for MBC; (vii) all known, potential secured creditors that have filed UCC statements against any property or assets of the Debtors; and (viii) all known taxing authorities in jurisdictions where the assets to be sold are located. The Debtors submit that such notice is sufficient, and that no further notice need be given in light of the relief requested.

**WHEREFORE**, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, approving the proposed private sale of the Assets free and clear of all liens, claims and encumbrances, and granting such other and further relief as is just and proper.

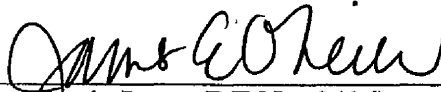
Dated: December 23, 2003

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[Proposed] Counsel for the Debtors and Debtors in  
Possession

**EXHIBIT A**

**Assets to be Sold Located in Sunnyvale**

CW SUNNYVALE  
SCHEDULE A

Lot	ID#	ITEM	DESCRIPTION
100	4847	SECURITY SYSTEM	8X DATATRAK CONTROL PANELS, 8X DISS NETMASTER D185025G08BPQUSS99 & ALL. CAMERAS AND ENCLOSURES
101	4898	AV RACK EQUIP	ACCENT INTEGRATED ACCESS CONTROL, 2X EXTRON DDS100, 1X EXTRON CROSSPOINT SERIES SWITCHER, EXTRON MAV1616 SWITCHER, SONY VCR SBC-1630, SONY DVD/CD/VIDEO CD DVP-S560D, TASCAM CASSETTEE PLAYER CO8500, GUNTHER AP400 INTERCOM, RECEIVER YAMAHA RXV985, SUB WOOFER AMP TH-CXB, AMP BGW PERFORMANCE SERIES 1
102	4480	DATA CAGE	WIRE CRAFTERS 10X188
103	4408	DATA CAGE	WIRE CRAFTERS 10X32
104	4522	DATA CAGE	WIRE CRAFTERS 10X64
105	4417	DATA CAGE	WIRE CRAFTERS 10X82
106	4553	DATA CAGE	WIRE CRAFTERS 10X90
107	4555	DATA CAGE	WIRE CRAFTERS 10X98
108	4423	DATA CAGE	WIRE CRAFTERS 12X68
109	4440	DATA CAGE	WIRE CRAFTERS 12X74
110	4493	DATA CAGE	WIRE CRAFTERS 22X30
111	4508	DATA CAGE	WIRE CRAFTERS 22X30
112	4407	DATA CAGE	WIRE CRAFTERS 22X32
113	4408	DATA CAGE	WIRE CRAFTERS 22X32
114	4410	DATA CAGE	WIRE CRAFTERS 22X36
115	4414	DATA CAGE	WIRE CRAFTERS 22X36
116	4416	DATA CAGE	WIRE CRAFTERS 22X36
117	4531	DATA CAGE	WIRE CRAFTERS 22X36
118	4412	DATA CAGE	WIRE CRAFTERS 22X68
119	4409	DATA CAGE	WIRE CRAFTERS 26X22
120	4492	DATA CAGE	WIRE CRAFTERS 26X22
121	4500	DATA CAGE	WIRE CRAFTERS 26X22
122	4507	DATA CAGE	WIRE CRAFTERS 28X22
123	4438	DATA CAGE	WIRE CRAFTERS 30X22
124	4481	DATA CAGE	WIRE CRAFTERS 30X22
125	4537	DATA CAGE	WIRE CRAFTERS 30X22
126	4538	DATA CAGE	WIRE CRAFTERS 30X22
127	4532	DATA CAGE	WIRE CRAFTERS 32X22
128	4437	DATA CAGE	WIRE CRAFTERS 36X22
129	4487	DATA CAGE	WIRE CRAFTERS 36X22
130	4489	DATA CAGE	WIRE CRAFTERS 36X22
131	4471	DATA CAGE	WIRE CRAFTERS 36X22
132	4473	DATA CAGE	WIRE CRAFTERS 36X22
133	4475	DATA CAGE	WIRE CRAFTERS 36X22
134	4534	DATA CAGE	WIRE CRAFTERS 36X22
135	4535	DATA CAGE	WIRE CRAFTERS 36X22
136	4536	DATA CAGE	WIRE CRAFTERS 36X22
137	4447	DATA CAGE	WIRE CRAFTERS 38X22
138	4454	DATA CAGE	WIRE CRAFTERS 38X22
139	4533	DATA CAGE	WIRE CRAFTERS 40X22
140	4479	DATA CAGE	WIRE CRAFTERS 6X12
141	4833	SECURITY CAGE	BLACK 10X 8 10'
142	4854	SECURITY CAGE	BLACK 12X 28 12'
143	4584	SECURITY STORAGE CAGE	WHITE ENAMEL 22X32
144	4585	SECURITY STORAGE CAGE	WHITE ENAMEL 22X64
145	4586	SECURITY STORAGE CAGE	WHITE ENAMEL 44X64
146	4559	SERVER RACK	BLACK WITH DOORS
147	4580	SERVER RACK	BLACK WITH DOORS
148	4557	SERVER RACK	BLUE WITH DOORS
149	4558	SERVER RACK	ENCORE BLK WITH DOORS
150	4561	SERVER RACK	ENCORE BLK WITH DOORS
151	4556	SERVER RACK	IBM BLACK WITH DOORS
152	4582	STATIC TRANSFER SWITCH	LIEBERT STA0250P114690 250 AMP
153	4583	STATIC TRANSFER SWITCH	LIEBERT STA0250P114690 250 AMP
154	4584	STATIC TRANSFER SWITCH	LIEBERT STA0250P114690 250 AMP

CW#

155	4565	STATIC TRANSFER SWITCH	LIEBERT STA0250P114890 250 AMP	
156	4572	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C1
157	4419	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	ASTS-11
158	4420	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	ASTS-12
159	4427	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	ASTS-A9
160	4428	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	ASTS-A10
161	4433	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A7
162	4434	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A8
163	4452	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A2
164	4453	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A1
165	4457	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A4
166	4458	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A3
167	4483	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A6
168	4484	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-A5
169	4483	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C9
170	4489	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B4
171	4490	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B1
172	4496	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B3
173	4497	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B2
174	4503	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B6
175	4504	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B5
176	4511	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B7
177	4512	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B8
178	4517	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B10
179	4518	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-B9
180	4544	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C8
181	4549	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C7
182	4552	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C6
183	4576	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C2
184	4581	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C4
185	4590	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C3
186	4595	STATIC TRANSFER SWITCH	LIEBERT STA0250P11S9531 250 AMP	PDU-C5
187	4426	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-9
188	4431	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A8
189	4432	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A7
190	4450	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A1
191	4451	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A2
192	4459	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A4
193	4460	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A3
194	4465	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A6
195	4466	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A5
196	4485	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C9
197	4488	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B1
198	4491	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B4
199	4498	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B2
200	4499	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B3
201	4505	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B5
202	4506	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B6
203	4513	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B8
204	4514	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B7
205	4519	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B10
206	4520	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-B9
207	4545	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C8
208	4548	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C7
209	4551	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C6
210	4571	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C1
211	4575	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	NONE
212	4580	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C4
213	4591	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C3
214	4596	PRECISION POWER CENTER	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-C5
215	4429	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A10

218	4430	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A9
217	4435	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A7
216	4436	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A8
219	4448	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A1
220	4449	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A2
221	4455	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A3
222	4456	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A4
223	4461	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A5
224	4462	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-A6
225	4462	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C9
226	4486	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B1
227	4487	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B4
228	4494	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B2
229	4495	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B3
230	4501	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B5
231	4502	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B6
232	4509	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B8
233	4510	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B7
234	4515	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B10
235	4516	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-B9
236	4543	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C8
237	4547	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C7
238	4550	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C6
239	4573	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C1
240	4577	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C2
241	4582	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C4
242	4589	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C3
243	4594	PRECISION POWER CENTER	LIEBERT PERCISION POWER PPA200C 4 PANEL WITH CONTROL PANEL	PDU-C5
244	4425	SION POWER CENTER PANEL	LIEBERT PERCISION POWER EXC300/EXC100 4 PANEL	PDU-A10
245	4639	GENERATOR	CATERPILLAR 3518B 2500 KVA 2000 KW SR-4B GENERATOR SET 351 6B 58 HRS S/N 8DM00694	GEN 1
246	4640	GENERATOR	CATERPILLAR 3518B 2500 KVA 2000 KW SR-4B GENERATOR SET 351 6B 50 HRS S/N 8DM00696	GEN 2
247	4643	GENERATOR	CATERPILLAR 3518B 2500 KVA 2000 KW SR-4B GENERATOR SET 351 6B 43 HRS S/N 8DM00748	GEN 3
248	4644	GENERATOR	CATERPILLAR 3518B 2500 KVA 2000 KW SR-4B GENERATOR SET 351 6B 35 HRS S/N 8DM00746	GEN 4
249	4638	FUEL STORAGE TANK	FIREGUARD M-85509 15,700 GALLONS	DFT-1
250	4637	FUEL STORAGE TANK	FIREGUARD M-85509 15,700 GALLONS	DFT-2
261	4641	FUEL STORAGE TANK	FIREGUARD M-85509 15,700 GALLONS	DFT-2
262	4642	FUEL STORAGE TANK	FIREGUARD M-85509 15,700 GALLONS	DFT-2
253	4897	LOAD BANK	RUSSELECTRIC CUTLER HAMMER 6X DSII-632 3200 AMP BREAKER, 4X DSII-840 4000 AMP BREAKER, 1X DSII-616 1600 AMP BREAKER	
254	4898	RESISTIVE LOAD BANK	SIMPLEX SATURN 2000 KW 480VAC MN UPFLOW FORCED AIR COOLED SN 38028-89-43	
255	4890	UPS	LIEBERT 750KVA UDA83750A36HS13	UPS-R2
256	4844	UPS	LIEBERT 750KVA UDA83750A36HS13	UPS-A1
257	4829	UPS	LIEBERT 750KVA UDA83750A36HS13	UPS-R1
258	4845	UPS	LIEBERT 750KVA UDA83750A36HS13	UPS-A2
259	4611	UPS	LIEBERT 750KVA UDA83750A36HS13	UPS-B1
260	4610	UPS	LIEBERT 750KVA UDA83750A36HS13	UPS-B2
261	4833	UPS BATTERY CABINET	LIEBERT U36BP750WJS2864 4X395 AMP CABINET 395AMP 40 BATTERY	BATTERY R1
262	4842	UPS BATTERY CABINET	LIEBERT U36BP750WJS2864 4X395 AMP CABINET 395AMP 40 BATTERY	BATTERY A2
263	4843	UPS BATTERY CABINET	LIEBERT U36BP750WJS2864 4X395 AMP CABINET 395AMP 40 BATTERY	BATTERY A1
264	4834	UPS BATTERY CABINET	LIEBERT U36BP750WJS2864 4X395 AMP CABINET 395AMP 40 BATTERY	BATTERY R2
265	4831	UPS SWITCHGEAR	CUTLER HAMMER POW-R-LINE SWITCHBOARD CABINETS WITH LIEBERT 1 3000 AMP USCID30A276SO5 WITH 5X3000 AMP CUTLER HAMM RESERVE UPS SYSTEM	
266	4840	UPS SWITCHGEAR	CUTLER HAMMER POW-R-LINE SWITCHBOARD CABINETS WITH LIEBERT B 2000 AMP USCID20A276SO6 WITH 7X2000 AMP CUTLER HAMM MCC-1	
267	4569	UPS SWITCHGEAR	LIEBERT 2000A USCID20276S09 SWITCH, 5X CH SPB-65 2000 AMP, 2X CH SB-100 2000 AMP, 1X 1200 AMP, 14X 400 AMP G.O. # RC40021	
268	4801	BATTERY CABINET	LIEBERT W/ 4X 395 AMP U36BP750WJS2864	
269	4802	BATTERY CABINET	LIEBERT W/ 4X 395 AMP U36BP750WJS2864	
270	4619	LV SWITCHGEAR	CUTLER HAMMER DS2 METAL ENCLOSED LV SWITCHGEAR WITH 3X CH DSII-840 4000 AMP, 2X CH DSII-620 2000 AMP, 2X CH DSII-616 1600 MS4	
271	4835	LV SWITCHGEAR	CUTLER HAMMER DSII LV WITH 5X CH DSII-608 800 AMP BREAKERS, 2X CH DSII-632 3200 AMP, 2X DSII-616 1600 AMP, 2X DSII-840 4000 AMP BREAKERS S. O. # 82Y8045	
272	4609	LV SWITCHGEAR	CUTLER HAMMER WITH 2X CH DSII-840 4000 AMP, 2X CH DSII-620 2000 AMP, 2X CH DSII-616 1600 AMP, 2X CG DSII-608 800 AMP, S.O. # 82Y8044	
273	4841	LV SWITCHGEAR	CUTLER HAMMER WITH 2X CH DSII-840 4000 AMP, 2X CH DSII-620 2000 AMP, 2X CH DSII-616 1600 AMP, 3X CG DSII-608 800 AMP, S.O. # 82Y8044	
274	4827	SWITCHBOARD	CUTLER HAMMER 1X200, 1X250, 1X400, 2X70, 1X60 AMP BREAKERS	PP-2B
275	4828	SWITCHBOARD	CUTLER HAMMER 2X1200, 5X80, 6X70 AMP BREAKERS	PP-2A
276	4837	SWITCHBOARD	CUTLER HAMMER 2X400, 1X250, 1X200, 1X100, 1X70 AMP BREAKERS	PP-2A

277	4848	SWITCHBOARD	CUTLER HAMMER POW-R-LINE C 1X 100, 6X80, 7X 70, 2X 1200 AMP BREAKERS	
278	4817	SWITCHBOARD	CUTLER HAMMER POW-R-LINE C PANEL 1X 400, 1X 200, 1X 125, 1X 180, 1X 150 AMP	
279	4597	SWITCHBOARD	CUTLER HAMMER POW-R-LINE C PANEL 1X 400, 1X 225, 1X 100, 1X70	PP3B
280	4816	SWITCHBOARD	CUTLER HAMMER POW-R-LINE C SWITCHBOARD 2X SB-100 2000 AMP, 12X 400 AMP	NONE
281	4401	SWITCHEGEAR	CUTLER HAMMER VACCLAD-W METAL CLAD SWITCHGEAR UNIT 1 2X UTX-1 BREAKER 1200AMP UNIT 2 UTX3&4 1200AMP BREAKER UNIT 3 MAIN BREAKER 1200AMP	
282	4404	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-21
283	4593	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-1
284	4578	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-3
285	4583	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-4
286	4554	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-5
287	4528	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-10
288	4528	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-11
289	4524	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-12
290	4521	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-13
291	4477	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-14
292	4474	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-15
293	4470	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-16
294	4439	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-17
295	4442	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-18
296	4444	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-19
297	4446	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-20
298	4413	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-23
299	4542	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	PDU-AC8
300	4540	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-7
301	4530	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-8
302	4484	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-9
303	4418	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-24
304	4402	CRAC	LIEBERT SYSTEM 3 FH315W-AAGS 22 TON WATER COOLED DOWNFLOW WITH STEAM GENERATED HUMIDIFIER	AC-22
305	4405	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-44
306	4403	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-45
307	4587	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	
308	4582	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-25
309	4588	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-26
310	4574	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-27
311	4579	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-28
312	4670	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-29
313	4546	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-30
314	4541	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-31
315	4539	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-32
316	4529	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-33
317	4527	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-34
318	4525	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-35
319	4523	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-36
320	4478	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-37
321	4476	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-38
322	4472	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-39
323	4468	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-40
324	4441	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-41
325	4443	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-42
326	4445	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-43
327	4411	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-46
328	4415	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-47
329	4424	CRAC	LIEBERT SYSTEM 3 FH315W-AA00 22 TON WATER COOLED DOWNFLOW	AC-48
330	4824	CRAC	LIEBERT SYSTEM 3 FRONTFLOW VH138W-AA00	AC-69
331	4832	CRAC	LIEBERT SYSTEM 3 FRONTFLOW VH138W-AA00	AC-55
332	4836	CRAC	LIEBERT SYSTEM 3 FRONTFLOW VH138W-AA00	AC-54
333	4846	CRAC	LIEBERT SYSTEM 3 FRONTFLOW VH138W-AA00	AC-53
334	4825	CRAC	LIEBERT SYSTEM 3 FRONTFLOW VH138W-AA0S STEAM GENERATED HUMIDIFIER	AC-50
335	4838	CRAC	LIEBERT SYSTEM 3 FRONTFLOW VH138W-AA0S STEAM GENERATED HUMIDIFIER	AC-54
336	4804	CRAC	LIEBERT SYSTEM 3 VH128W-AA00 UPFLOW	AC-52
337	4603	CRAC	LIEBERT SYSTEM 3 VH128W-AA00 UPFLOW	AC-59



338	4605	CRAC	LIEBERT SYSTEM 3 VH128W-AAOO UPFLOW	AC-6-
339	4615	CRAC	LIEBERT SYSTEM 3 VH138W-AAOO	AC-58
340	4621	CRAC	LIEBERT SYSTEM 3 VH138W-AAOS	AC-61
341	4622	CRAC	LIEBERT SYSTEM 3 VH138W-AAOO	AC-57
342	4630	CRAC	LIEBERT SYSTEM 3 VH218W-AAES	AC-62
343	4624	CRAC	LIEBERT SYSTEM 3 VH218W-AAES	AC-61
344	4631	CRAC	LIEBERT SYSTEM 3 VH218W-AAOO	AC-66
345	4625	CRAC	LIEBERT SYSTEM 3 VH218W-AAOO	AC-63
346	4623	CRAC	LIEBERT SYSTEM 3 VH218W-AAOO	AC-64
347	4632	CRAC	LIEBERT SYSTEM 3 VH218W-AAOO FRONTFLOW	AC-65
348	4648	CHILLER	EVAPCO MODEL 4BW135C	CCC1
349	4646	CHILLER	EVAPCO MODEL ATW135C	CCC3
350	4647	CHILLER	EVAPCO MODEL ATW135C	CCC4
351	4645	CHILLER	EVAPCO MODEL UBW135C	CCC2
352	4649	FLUID PUMP	CA HYDRAULIC MODEL 5G127/8BR	CWP1
353	4650	FLUID PUMP	CA HYDRAULIC MODEL 5G127/8BR	CWP2
354	4661	FLUID PUMP	CA HYDRAULIC MODEL 5G127/8BR	CWP3
355	4652	FLUID PUMP	CA HYDRAULIC MODEL 5G127/8BR	CWP4
356	4635	WATER STORAGE TANK	XERKES MODEL 12X23 HORIZ 20,420 GALLONS 8000 LBS	
357	4636	WATER STORAGE TANK	XERKES MODEL 12X23 HORIZ 20,420 GALLONS 8000 LBS	
358	4598	MOTOR CONTROL CENTER	CUTLER HAMMER FREEDOM SERIES 2100	MCC-3
359	4618	MOTOR CONTROL CENTER	CUTLER HAMMER FREEDOM SERIES 2100	
360	4628	MOTOR CONTROL CENTER	CUTLER HAMMER FREEDOM SERIES 2100	MCC-2
361	4639	MOTOR CONTROL CENTER	CUTLER HAMMER FREEDOM SERIES 2100	AC-49
362	4628	TELCO RACK	CPI CHATSWORTH ALUM 7'	
363	4629	TELCO RACK	CPI CHATSWORTH ALUM 7'	
364	4627	TELCO RACK	CPI CHATSWORTH ALUM 7'	
365	4626	TELCO RACK	CPI CHATSWORTH ALUM 8'	
366	4421	TRANSFORMER	CUTLER HAMMER DRY TYPE DISTRIBUTION MODEL N48M28T22A 225KVA T-B	
367	4422	TRANSFORMER	CUTLER HAMMER DRY TYPE DISTRIBUTION MODEL N48M28T22A 225KVA T-A	
368	4566	TRANSFORMER	CUTLER HAMMER DRY TYPE DISTRIBUTION MODEL N48M28T22A 225KVA A	
369	4567	TRANSFORMER	CUTLER HAMMER DRY TYPE DISTRIBUTION MODEL N48M28T22A 225KVA B	
370	4568	TRANSFORMER	CUTLER HAMMER DRY TYPE DISTRIBUTION MODEL N48M28T22A 225KVA C	
371	4569	TRANSFORMER	CUTLER HAMMER DRY TYPE DISTRIBUTION MODEL N48M28T22A 225KVA D	
372	4608	TRANSFORMER	CUTLER HAMMER MODEL N48M28T45A DRY TYPE DISTRIBUTION	
373	4607	TRANSFORMER	CUTLER HAMMER MODEL V48M28T45K DRY TYPE DISTRIBUTION	
374	4612	TRANSFORMER	CUTLER HAMMER MODEL V48M28T75J DRY TYPE DISTRIBUTION	
375	4620	TRANSFORMER	CUTLER HAMMER MODEL V48M4733E DRY TYPE DISTRIBUTION	
376	4606	TRANSFORMER	CUTLER HAMMER MODEL V48M47T75F DRY TYPE DISTRIBUTION	
377	4613	TRANSFORMER	CUTLER HAMMER MODEL V48M47T75F DRY TYPE DISTRIBUTION	
378	4614	TRANSFORMER	CUTLER HAMMER MODEL V48M48T30K DRY TYPE DISTRIBUTION	
379	4696	TRASH COMPACTOR	BAY CON	
379.1	4696	TRASH COMPACTOR	BAY CON	

**EXHIBIT B**

**Assets to be Sold Located in Orlando**

250 SOUTH ORANGE, ORLANDO, FLA  
SCHEDULE OF ASSETS

- (6) LIEBERT CONDENSOR CDF291AS6297 CONDENSOR
- (2) LIEBERT ECU BU67A-AAM ECU
- (4) LIEBERT ECU FH245AUAAM ECU
- (1) PILLER UPS AS 100 UPS
- (1) EXIDE C UPS BATTERY STRING LS12-100 UPS BATTERY STRING
- (8) PECO II RECTIFIERS PEC 3875B-L22 RECTIFIERS
- (1) PECO II MAIN POWER BAY 155N-B1/687155 MAIN POWER BAY
- (1) PECO II SUPPLEMENTAL POWER BAY 155N/687-155NB1-7 SUPPLEMENTAL POWER BAY
- (4) RATELCO BDCBB BAYS 110.2716TYPE PDU 481200 BDCBB BAYS
- (4) BOLTSWITCH BATTERY DISCONNECTS VLDC 269-ST BATTERY DISCONNECTS
- (2) BOLTSWITCH BATTERY DISCONNECTS ET118-ST BATTERY DISCONNECTS
- (6) C&D TECHNOLOGIES DC PLANT BATTERY STRINGS LCT-2175 DC PLANT BATTERY STRINGS
- (1) DETROIT DIESEL GENERATOR 8163-7416 GENERATOR 750KV
- (1) N/A DIESEL FUEL TANK 500 GALLON DIESEL FUEL TANK
- (1) N/A DIESEL FUEL PORT N/A DIESEL FUEL PORT
- (1) GUARDIAN DIESEL FUEL MONITORING PANEL N/A DIESEL FUEL MONITORING PANEL
- (1) SIMPLEX PRE ACTION SYSTEM 4100 PRE ACTION SYSTEM
- (1) STAR PRE ACTION SYSTEM N/A PRE ACTION SYSTEM
- (1) GRP4 425 ACCESS CONTROL SYSTEM 425-HOST-NT 15-D 425 ACCESS CONTROL SYSTEM
- (1) ATV 4-CHANNEL MULTIPLEXER MX4M 4-CHANNEL MULTIPLEXER
- (1) ADEMCO ALARM CONTROL PANEL- VISTA 5 V50-VIPKT ALARM CONTROL PANEL- VISTA 5
- (4) ALT BATTERY, 12V 12V-7AH BATTERY, 12V
- (4) PSA COLOR CAMERA, 1/3, HIGH RESOLUTION DSP. DS01054HRS COLOR CAMERA, 1/3, HIGH RESOLUTION DSP.
- (1) GRP4 HARDWARE INTERFACE: RS232 302-CON HARDWARE INTERFACE: RS232
- (250) GRP4 ISO PROX ACCESS CARDS 1385-LGGMN/37 ISO PROX ACCESS CARDS
- (1) PANASONIC MONITOR WVCK2020 MONITOR
- (1) N/A MOUNT, WALL ADAPTER FOR DOMES AND MR3000 MRWA MOUNT, WALL ADAPTER FOR DOMES AND MR3000
- (1) GRP4 MULTINODE 2 DATABASE 4 CARD READER UNIT MDU-4 MULTINODE 2 DATABASE 4 CARD READER UNIT
- (1) GRP4 MULTINODE CONTROLLER 2-DC MULTINODE CONTROLLER
- (4) GRP4 READER, PROX CARD & KEYPAD 671-AG READER, PROX CARD & KEYPAD
- (1) GRP4 TRANSFORMER FOR MD DCU-4 TRANSFORMER TRANSFORMER FOR MD
- (2) PHILIPS VCR, TIME LAPSE LTC3991/60 VCR, TIME LAPSE
- (1) N/A BATTERY ROOM EXHAUST PANEL/FANS N/A BATTERY ROOM EXHAUST PANEL/FANS

**EXHIBIT C**

**Proposed Bill of Sale**

## **BILL OF SALE**

**THIS BILL OF SALE** ("Bill of Sale") is made as of the 8th day of December, 2003, by and among Cable & Wireless USA, Inc., a Delaware corporation ("Seller"), and MBC Technologies, Inc., a Maryland corporation ("Purchaser").

### **WITNESSETH**

WHEREAS, Seller desires to sell, convey, assign, transfer and deliver to Purchaser all of Seller's right, title and interest in, to and under the assets described on Exhibit A to this Bill of Sale (the "Assets") and Purchaser desires to purchase and accept the sale, conveyance, assignment, transfer and delivery of the Assets.

**NOW THEREFORE**, intending to be legally bound and for and in consideration of the payment of an aggregate amount of \$1,100,000.00 in immediately available U.S. funds (the "Purchase Price"), the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby covenant and agree as follows:

Seller hereby irrevocably sells, conveys, assigns, transfers and delivers (the "Transfer") to Purchaser all of Seller's right, title and interest in, to and under the Assets and Purchaser hereby purchases and accepts the sale, conveyance, assignment, transfer and delivery of the Assets. Notwithstanding the foregoing, nothing herein is intended to effect, nor shall this Bill of Sale evidence, the Transfer of any real or personal property other than the Assets.

Seller has fully paid for, and is the owner of, and has absolute title to, all of the Assets, free and clear of all mortgages, pledges, liens, claims, charges, encumbrances, community property rights, security interests and other defects of title, of any kind or nature.

**EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THIS TRANSFER IS MADE WITHOUT REPRESENTATION, WARRANTY OR GUARANTY OR RECOURSE AGAINST SELLER OF ANY KIND WHATSOEVER. SELLER EXPRESSLY DISCLAIMS ANY EXPRESS WARRANTIES, STATUTORY WARRANTIES OR ANY OTHER WARRANTIES THAT MAY BE IMPLIED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.** Except as expressly set forth in this

Bill of Sale, the Assets are being sold, conveyed, assigned, transferred and delivered "AS IS/WHERE IS", with all faults, and without express, statutory or implied warranty, representation, agreement, statement or expression of opinion of or with respect to: the merchantability, usage, suitability or fitness for any particular purpose of the Assets or any part thereof; the nature or quality of construction, workmanship, structural design or engineering of the improvements constituting any part of the Assets or the presence or absence of defects thereon or therein, whether latent or patent; the quality of labor or materials included in the improvements constituting any part of the Assets or the presence or absence of defects thereon or therein, whether latent or patent; the size, shape, configuration, location, capacity, quantity, quality, cash flow, expenses, value, condition, make, model, composition, accuracy, completeness, usefulness or amount of the Assets or any part thereof; and any structural condition or hazard or absence thereof, whether latent or patent.

**PURCHASER ACKNOWLEDGES AND AGREES THAT THE ASSETS ARE BEING TRANSFERRED HEREUNDER "AS IS/WHERE IS"** and that, except as specifically contained herein, Purchaser has not relied upon any warranties, guaranties, inducements, representations or information made or provided by Seller or any affiliate, agent or representative of Seller in connection with the Transfer of the Assets. Purchaser further acknowledges and agrees that, except as specifically contained herein, neither Seller nor any agent, affiliate or representative of Seller has made, and Seller is not liable or bound in any manner by, any express, statutory or implied warranties, guaranties, inducements, representations or information pertaining to the Assets or any part thereof, including, without limitation, the physical condition, merchantability, suitability of the Assets for any particular purpose, the value of the Assets or collectability of the Assets or any other matter or thing with respect thereto.

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

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

The parties hereto irrevocably consent to exclusive jurisdiction of courts located in

the State of Virginia, and hereby waive any argument of lack of personal jurisdiction or forum non-conveniens with respect to any claim or controversy arising out of or relating to this Bill of Sale.

Purchaser hereby acknowledges and agrees that Purchaser's sole remedy for Seller's breach of any representation, warranty or covenant contained herein shall be the right to the return of the Purchase Price upon the deliver of the Assets to Seller and Seller's liability shall be limited to the Purchase Price.

This Bill of Sale shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Bill of Sale on the day and year first written above.

**CABLE & WIRELESS USA, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

**PURCHASER:** \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_



**EXHIBIT A**

Personal property located at ORD POP facility 250 South Orange, Orlando, FL (See attached listing)

Personal property located at Sunnyvale data center 1215 Borregas Ave, Sunnyvale, CA (See attached listing)

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
CABLE & WIRELESS USA, INC., et al., <sup>1</sup>	)	Case No. 03-13711 (CGC)
	)	(Jointly Administered)
	)	
Debtors.	)	

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO  
11 U.S.C. § 363 AUTHORIZING DEBTORS TO SELL CERTAIN DE MINIMIS  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

Upon consideration of the "Motion For an Order Pursuant to 11 U.S.C. §363 Authorizing the Debtors to Sell Certain De Minimis Assets Free and Clear of Liens, Claims and Encumbrances" (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") for an order pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 6004 authorizing Debtors to sell certain assets (the "Assets") free and clear of liens, claims and encumbrances; the Court having found that it has jurisdiction over the Motion under 28 U.S.C. § 1334 and that this is a core proceeding under 28 U.S.C. § 157(b)(2); and the Court having concluded that the relief requested in the Motion is in the best interests of the estates and their creditors; and the Court having determined that adequate and sufficient notice of the Motion was

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<sup>1</sup> The Debtors consist of the following entities: Cable & Wireless USA, Inc., Cable & Wireless USA of Virginia, Inc., Cable & Wireless Internet Services, Inc., Exodus Communications Real Property I, LLC, Exodus Communications Real Property Managers I, LLC, and Exodus Communications Real Property I, LP.

<sup>2</sup> Unless otherwise defined herein, the capitalized terms shall have the meanings ascribed to them in the Motion.

provided; and after due deliberation and good and sufficient cause appearing for the relief granted herein;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED in all respects.
2. The Debtors are authorized to sell the Assets in a private sale to MBC under section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004.
3. The Assets shall be sold to MBC free and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, with any such claims or interests to attach to the proceeds paid to the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the Assets.
4. Those parties served with a copy of this Motion who did not object to the Motion are deemed to have consented to the sale of the Assets pursuant to section 362(f)(2) of the Bankruptcy Code.
5. MBC is acting in good faith in purchasing the Assets and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.
6. The Bill of Sale, a copy of which is attached to the Motion as Exhibit C, and each term therein is hereby approved in all respects.
7. This Court retains jurisdiction to hear and determine all matters arising out of the interpretation, implementation or enforcement of this Order and the Bill of Sale.
8. This Order shall be effective immediately upon entry. No automatic stay of execution, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure, or Rule

6004(g) of the Bankruptcy Rules applies with respect to this Order. Debtors may effectuate the Bill of Sale as soon as practicable after the entry of this Order.

Dated: \_\_\_\_\_, 200\_\_

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The Honorable Charles G. Case II  
United States Bankruptcy Judge