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UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION

In re:	:	Chapter 11
COMMCO TECHNOLOGY, L.L.C. d/b/a	:	Case No. 00-51488 (AHWS)
BROADCASTREAM COMMUNICATIONS	:	
CORPORATION,	:	
Debtor.	:	
BARBARA H. KATZ, CHAPTER 11	:	Adv. Pro. No. 03-05113
TRUSTEE,	:	
Plaintiff	:	
v.	:	
LAMAR ADVERTISING,	:	April 9, 2004
Defendant.	:	

**MOTION OF BARBARA H. KATZ, CHAPTER 11 TRUSTEE
FOR ENTRY OF AN ORDER PURSUANT TO FEDERAL RULE
OF BANKRUPTCY PROCEDURE 9019 COMPROMISING AND
SETTLING AVOIDANCE ACTION AGAINST LAMAR ADVERTISING**

Barbara H. Katz, Chapter 11 Trustee ("Trustee" or "Plaintiff"), by her attorneys, Pepe & Hazard LLP, moves pursuant to Fed.R.Bankr.P. 9019 ("Bankruptcy Rules") for an order authorizing her compromise and settlement of avoidance action against defendant, Lamar Advertising ("Lamar" or "Defendant"), in Adversary Proceeding No. 03-05113. In support of this Motion, the Trustee states as follows:

1. On November 12, 2003, the Trustee filed her complaint in Adversary Proceeding No. 03-05113 against Lamar seeking the recovery of \$394,007.18 in funds that

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the Trustee asserted were preferential pre-petition payments pursuant to Section 547 of the United States Bankruptcy Code (“Code”).

2. In response to the complaint in the adversary proceeding, Lamar has raised several affirmative defenses. Counsel for the Trustee has analyzed the defenses as well as other information regarding the transfers and has determined that Lamar presents a colorable new value defense with respect to a number of the transfers at issue.

3. The Trustee has concluded that it is in the best interest of the Debtor’s unsecured creditors to resolve the adversary proceeding against Lamar by agreeing to settle this matter for \$60,000.00 in accordance with the Stipulation of Settlement, attached hereto as Exhibit A.

BACKGROUND

4. TLC Properties, Inc. (“TLC”) is a wholly-owned subsidiary of Lamar, and TLC and Lamar did business with the Debtor prior to and after the commencement of the above-captioned Chapter 11 case.

5. On or about September 5, 2001, TLC filed TLC Properties, Inc.’s Motion for Payment of Administrative Expenses Pursuant to Section 503(b)(i)(A) and for Other Relief and Incorporated Memorandum in Support (the “Administrative Claim”), seeking payment of an administrative expense claim in the amount of \$394,687.00.

6. The Debtor filed a written objection to the Administrative Claim.

7. The Official Committee of Unsecured Creditors informally objected to the

Administrative Claim.

8. TLC, the Debtor, and the Official Committee of Unsecured Creditors entered into a Stipulation of Settlement (“Administrative Claim Settlement”) with respect to the Administrative Claim on September 25, 2002. The Court approved the Administrative Claim Settlement on October 30, 2002. Under the terms of the Administrative Claim Settlement, the Debtor agreed, inter alia, to pay Lamar \$100,000.00 on account of the Administrative Claim.

9. The Trustee has not yet paid Lamar the \$100,000.00 due and owing under the Administrative Claim Settlement.

10. In connection with the settlement of the above-captioned preference adversary proceeding, the parties agree that the Trustee shall offset the \$60,000.00 settlement amount from the \$100,000.00 the Trustee owes Lamar under the Administrative Claim Settlement. The Trustee shall make a net \$40,000.00 payment to Lamar.

11. This settlement is in the best interest of this estate and is the most cost-effective resolution of the Trustee’s claims against Lamar.

THE SETTLEMENT

12. The Trustee and Lamar have engaged in discussions and negotiations in an effort to reach a settlement of the adversary proceeding. During the course of these negotiations, the parties have had the opportunity to evaluate their positions, the relative strengths of their positions, and the cost and risk associated with prosecuting the adversary proceeding. The parties concluded that a viable settlement could be had which would reduce

the Trustee's obligations to Lamar under the Administrative Claim Settlement and would result in a corresponding benefit to all unsecured creditors.

13. In settlement of the Trustee's claims, the Trustee shall set off the \$60,000.00 settlement amount against the \$100,000.00 she owes Lamar pursuant to the Administrative Claim Settlement. Within fifteen (15) business days of the Court's approval of the settlement of this preference adversary proceeding, the Trustee shall forward to Lamar a certified check in the net amount of \$40,000.00.

THE COURT SHOULD APPROVE THE SETTLEMENT AND COMPROMISE

14. This Court is charged with making an informed, independent determination as to whether the proposed settlement is fair, equitable and in the best interests of the estate's creditors. As addressed herein, controlling precedent identifies a number of factors for this Court to examine in reaching its conclusion. Review of the proposed settlement in light of these factors will reveal that the creditors stand to receive tangible and immediate benefits that far outweigh the vagaries of litigation. Under all of the pertinent factors, this settlement rises above the lowest point in the range of reasonableness. The proposed settlement is fair and equitable and will yield substantial benefits for the creditors of this estate. For these reasons, the Court should approve the settlement discussed herein.

APPROVAL OF THE SETTLEMENT IS IN THE BEST INTERESTS OF THE CREDITORS OF THIS ESTATE

15. The settlement proposed herein represents a fair, equitable and reasonable compromise of the causes of action maintained by the Trustee against Lamar. The settlement

recognizes that the potential recovery does not justify the cost of continuing the adversary proceeding.

16. The alternative to approval of the settlement is costly and time-consuming litigation. The Trustee submits that continued litigation with Lamar is not a prudent course of action.

17. Bankruptcy Rule 9019(a) permits this Court, following notice and a hearing as provided by Bankruptcy Rule 2002, to approve a compromise or settlement of claims. The Rule provides:

(a) *Compromise.* On 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 indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Neither Bankruptcy Rule 9019 nor any section of the Code explicitly sets forth the standards by which a court is to evaluate a proposed settlement for approval, but those standards are well-established and focus upon whether the proposed settlement is reasonable and in the best interests of creditors. In Protective Committee for Independent Stockholders of TMT Trailer Ferry v. Anderson, 390 U.S. 414 (1968), *reh'g denied*, 391 U.S. 909 (1968), the United States Supreme Court concluded that the trial court must make an informed, independent judgment as to whether a settlement is fair and equitable, and explained as follows:

There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such

litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation. Anderson, 309 U.S. at 424. (citations omitted).

18. The United States Court of Appeals for the Second Circuit has instructed that the responsibility of the judge "is not to decide the numerous questions of law and fact raised by appellants, but rather to canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied sub nom.*, Cosoff v. Rodman, 464 U.S. 822 (1983). See In re Purofied Down Products Corp., 150 B.R. 519, 522-23 (S.D.N.Y. 1993); In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 287 (Bankr. S.D.N.Y. 1990); In re Carla Leather, Inc., 44 B.R. 457, 470 (Bankr. S.D.N.Y. 1984), *aff'd*, 50 B.R. 764 (S.D.N.Y. 1984). The assessment of a settlement only requires identification of the issues in controversy "so that the bounds of reasonableness can be seen with some clarity." Carla Leather, 44. B.R. at 470.

19. In considering a proposed settlement, the Court is guided by a lenient standard consistent with the theory that "little would be saved by the settlement process if [in order to approve a settlement] bankruptcy courts [were required to conduct] . . . an exhaustive investigation and determination of the underlying claims." Purofied Down Products, 150 B.R. at 522-23. The bankruptcy court in Carla Leather explained the policy underlying the abridged review of settlements in bankruptcy as follows:

The very uncertainties of outcome in litigation, as well as the avoidance of wasteful litigation and expense, lay behind the Congressional infusion of a power to compromise . . . This could hardly be achieved if the test on hearing for approval meant establishing success or failure to a certainty.

Carla Leather, 44 B.R. at 470, *see also* Purofied Down Products, 150 B.R. at 522-23. Thus, in evaluating a settlement, the Court need not conduct a trial, "mini-trial," or "rehearsal of the trial" on the merits to actually resolve the existing factual and legal issues, but must simply consider whether against the background of those issues, the settlement is reasonable. Newman v. Stein, 464 F.2d 689, 692 (2d Cir.), *cert. denied*, 409 U.S. 1039 (1972). *See also* In re Drexel Burnham Lambert Group, 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991) ("Drexel I"); In re International Distribution Centers, Inc., 103 B.R. 420, 423 (S.D.N.Y. 1989).

20. In deciding whether a proposed compromise is fair and equitable, reasonable and in the best interests of creditors, courts in the Second Circuit follow the analysis first articulated by the Supreme Court in Anderson. Courts judge a proposed settlement based upon a consideration of some or all of the following factors:

- (a) the relative benefits to be received by creditors under the proposed settlement;
- (b) the likelihood of success in the litigation compared to the present and future benefits offered by the proposed settlement;
- (c) the prospect of complex and protracted litigation if settlement is not approved;
- (d) the attendant expense, inconvenience and delay of litigation;
- (e) the probable difficulties of collecting on any judgment that might be obtained;

- (f) the competency and experience of counsel who support the proposed settlement;
- (g) the extent to which the settlement is the product of arm's-length bargaining, and not the product of fraud or collusion;
- (h) the nature and breadth of any releases to be issued as a result of the proposed settlement; and
- (i) the paramount interest of the creditors and proper deference to their reasonable views.

See Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1975); In re Ionosphere Clubs, Inc., 156 B.R. 414, 427 (S.D.N.Y. 1993); Purofied Down Products, 150 B.R. at 522; In re Fugazy, 150 B.R. 103, 106 (Bankr. S.D.N.Y. 1993); Drexel I, 134 B.R. at 497; In re Drexel Burnham Lambert Group, Inc., 134 B.R. 499, 506 (Bankr. S.D.N.Y. 1991); Crowthers McCall, 120 B.R. at 287; International Distribution Centers, 103 B.R. at 422; In re Texaco, Inc., 84 B.R. 893, 901; In re Lion Capital Group, 49 B.R. 163, 175 (Bankr. S.D.N.Y. 1985); Carla Leather, 44 B.R. at 466.

21. The Trustee submits that, absent settlement, the costs and expenses associated with prosecuting the adversary proceeding against Lamar will be significant. Even if the Court is confident that the Trustee would prevail, it can still approve the settlement if it is above the lowest point in the range of reasonableness. The Trustee submits that the proposed settlement meets this test.

22. The Trustee further submits that this settlement is the product of completely arms'-length negotiations. Settlement discussions proceeded in earnest over the course of several months. Each of the parties' positions was analyzed and evaluated. The final

agreement reflects the efforts of both parties to resolve this matter, particularly the Trustee's effort to maximize the recovery for the estate.

23. As discussed above, this Court can and should give great weight to the informed judgment of the Trustee that the settlement is fair and equitable. On balance, the settlement benefits all parties.


24. Relevant case law holds that it is also appropriate for this Court to consider the opinions of the counsel who support the settlement in reaching its conclusion. Counsel for the Trustee are accomplished practitioners. The Trustee submits that counsel has carefully considered and balanced the merits of settlement versus continued litigation, and have concluded that this settlement is fundamentally fair and equitable in light of the totality of the circumstances present.

CONCLUSION

25. The settlement represents a fair and balanced compromise and resolution of the estate's claim against Lamar. As demonstrated herein, all of the criteria for approval of the proffered settlement have been met. Consideration of all relevant factors shows that there is no benefit to be gained from continuing the litigation. The creditors of this estate will realize immediate and tangible benefits through settlement, and their paramount interests will thus be best served. The Trustee proffers compelling and sound reasons for accepting this settlement as being in the best interests of the creditors of this estate. For all of the reasons discussed herein, the Trustee strongly recommends that the Court approve the settlement and enter an Order, substantially in the form annexed hereto.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order approving the compromise and settlement of adversary proceeding no. 03-05113 together with such other, further, and different relief as this Court deems just, proper, and equitable under the circumstances.

BARBARA H. KATZ, CHAPTER 11 TRUSTEE

By 
Mark I. Fishman (ct06896)
Joshua W. Cohen (ct14731)
Pepe & Hazard LLP
30 Jelliff Lane
Southport, CT 06890-1436
Tel. (203) 319-4000
Fax (203) 259-0251
mfishman@pepehazard.com
jcohen@pepehazard.com

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION**

In re:	:	Chapter 11
COMMCO TECHNOLOGY, L.L.C. d/b/a BROADCASTREAM COMMUNICATIONS CORPORATION,	:	Case No. 00-51488 (AHWS)
Debtor.	:	
BARBARA H. KATZ, CHAPTER 11 TRUSTEE,	:	Adv. Pro. No. 03-05113
Plaintiff	:	
v.	:	
LAMAR ADVERTISING,	:	
Defendant.	:	

**ORDER PURSUANT TO FED.R.BANKR.P. 9019
APPROVING THE SETTLEMENT AND COMPROMISE OF
AVOIDANCE ACTION AGAINST LAMAR ADVERTISING**

Upon the motion of Barbara H. Katz, Chapter 11 Trustee (the "Trustee"), by her attorneys Pepe & Hazard LLP, for approval of a settlement pursuant to Fed.R.Bankr.P. 9019(a); the motion having been served upon those parties required to be served; the Trustee having commenced an adversary proceeding by filing a complaint against Lamar Advertising ("Lamar"), which sought, *inter alia*, to recover preferential payments totaling \$394,007.18 to Lamar; the parties having negotiated a settlement of their dispute for \$60,000.00, which amount the Trustee has agreed to offset against the \$100,000.00 she owes Lamar pursuant to a settlement of an administrative priority claim dispute, resulting in a net payment of \$40,000.00

from the Trustee to Lamar in accordance with the Stipulation of Settlement attached to the motion as Exhibit A; the Trustee having represented to the Court that both the Trustee and Lamar carefully have considered and balanced the merits of settlement against the costs and vagaries of litigation and have concluded that the proposed settlement is fair and equitable in light of the circumstances present, and having further represented to the Court that the settlement is above the lowest point in the range of reasonableness and in the best interests of the creditors of this estate and all other parties in interest; the Court having determined based upon the motion and the representations made therein and during the hearing that the settlement is fair, equitable and in the best interests of the Debtor's unsecured creditors, and that the settlement rises above the lowest point in the range of reasonableness; no objections having been filed or interposed; no adverse interest having been represented; and good and sufficient cause appearing therefor; it is

ORDERED, that pursuant to Bankruptcy Rule 9019(a), the motion of the Trustee be, and it hereby is, granted in its entirety; and it is further

ORDERED, that pursuant to Bankruptcy Rule 9019(a), the settlement as described above and in the motion be, and it hereby is, approved, with the terms of the settlement incorporated in full into this Order; and it is further

ORDERED, that the Trustee is authorized to make a net payment to Lamar in the amount of \$40,000.00 in accordance with the Stipulation of Settlement attached to the motion as Exhibit A; and it is further

ORDERED, that the Trustee and Lamar be, and they hereby are, authorized and empowered to take any and all actions necessary to effectuate the terms of the settlement.

Dated: Bridgeport, Connecticut
 April __, 2004

The Honorable Alan H.W. Shiff
United States Bankruptcy Judge

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION**

In re:	:	Chapter 11
COMMCO TECHNOLOGY, L.L.C. d/b/a BROADCASTREAM COMMUNICATIONS CORPORATION,	:	Case No. 00-51488 (AHWS)
Debtor.	:	
BARBARA H. KATZ, CHAPTER 11 TRUSTEE,	:	Adv. Pro. No. 03-05113
Plaintiff	:	
v.	:	
LAMAR ADVERTISING,	:	
Defendant.	:	

STIPULATION OF SETTLEMENT

WHEREAS, on December 18, 2000, Commco Technology, L.L.C. d/b/a Broadstream Communications Corporation ("Commco") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"); and

WHEREAS, the United States Bankruptcy Court for the District of Connecticut authorized the appointment of Barbara H. Katz as Chapter 11 Trustee (the "Trustee") on November 21, 2002; and

WHEREAS, Commco had a business relationship with Lamar Advertising and its wholly owned subsidiary, TLC Properties, Inc. (collectively "Lamar"), whereby Lamar licensed portions of its outdoor displays and warehouses to Commco pursuant to a Master License Agreement between TLC Properties and Broadstream dated June 22, 2000 (the "Agreement") and Commco installed telecommunications equipment on those outdoor displays and warehouses; and

WHEREAS, Lamar also provided services to Commco in connection with installation of telecommunications equipment on Lamar's outdoor displays and warehouses pursuant to the Agreement; and

WHEREAS, Lamar filed a proof of claim on April 30, 2001 asserting a general unsecured claim against Commco in the amount of \$1,073,989.00 (Claim No. 28); and

WHEREAS, on or about September 5, 2001, Lamar filed TLC Properties, Inc.'s Motion for Payment of Administrative Expenses Pursuant to Section 503(b)(i)(A) and for Other Relief and Incorporated Memorandum in Support (the "Administrative Claim"), seeking payment of an administrative expense claim in the amount of \$394,687.00; and

WHEREAS, Commco filed a written objection to the Administrative Claim; and

WHEREAS, the Official Committee of Unsecured Creditors informally objected to the Administrative Claim; and

WHEREAS, the parties entered into a Stipulation of Settlement with respect to the Administrative Claim on September 25, 2002, approved by the Court on October 30, 2002, whereby Commco agreed to pay Lamar \$100,000.00 following which Lamar would "be deemed to have released the Debtor and its estate from all claims, liabilities and/or causes of action (but

not Claim 28 ...)" and Commco would "be deemed to have released TLC from all claims, liabilities and/or causes of action except those which may be asserted under Chapter 5 of the Bankruptcy Code..."; and

WHEREAS, the Trustee has not yet paid Lamar the \$100,000.00 due and owing under the Stipulation of Settlement; and

WHEREAS, Lamar has represented that its Proof of Claim in the amount of \$1,073,989.00 (Claim No. 28) includes a portion attributable to the Administrative Claim and that the general unsecured claim does not exceed \$350,000.00; and

WHEREAS, the Trustee commenced an adversary proceeding against Lamar to recover alleged preferential transfers in the amount of \$394,007.18; and

WHEREAS, the Trustee and Lamar have agreed to settle this matter to avoid the costs and risk associated with litigating the issues set forth in the adversary proceeding.

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustee and Lamar agree to resolve the claims set forth in the adversary proceeding as follows:

1. The parties agree that the preference litigation against Lamar shall be fully and finally settled for the sum of \$60,000.00 (the "Settlement Amount"). The parties agree that the Trustee shall offset the Settlement Amount from the \$100,000.00 the Trustee owes Lamar under the Administrative Claim settlement. Within fifteen (15) business days of the Court's approval of

this Stipulation, the Trustee shall forward Lamar a certified check in the net amount of \$40,000.00.

2. Other than its rights under its proof of claim filed in this case (Claim No. 28), in connection with this Settlement, Lamar waives, relinquishes and withdraws, without the need for further action on behalf of the parties, all claims against the Debtor and the Trustee including, but not limited to, claims arising out of the amount paid pursuant to this Stipulation which might otherwise be allowable pursuant to Bankruptcy Code Section 502(h).

3. Except as otherwise provided herein, the Trustee and the Debtor's estate hereby waive and relinquish any and all claims against Lamar. However, nothing contained herein shall affect the Trustee's right to object to Lamar's proof of claim (Claim No. 28) on any and all legal grounds.

4. Lamar agrees to amend its proof of claim (Claim No. 28), upon approval of this Stipulation of Settlement by the Court, to an amount not to exceed \$350,000.

5. The Trustee agrees to seek approval of this Stipulation of Settlement on an expedited basis.

6. The Stipulation and the documents referred to herein constitute the entire agreement among the parties with regard to the subject matter hereof. This Stipulation may not be modified or amended except in writing, signed by all signatories hereto, or their successors in interest.

7. This Stipulation shall be interpreted and construed in accordance with the provisions of the Bankruptcy Code and, where not inconsistent, the laws of the State of Connecticut.

8. Any dispute, action or proceeding arising out of or relating to this Stipulation shall be within the exclusive jurisdiction of the Bankruptcy Court.

9. This Stipulation may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document.

10. The undersigned represent and warrant that they have full authority to execute this Stipulation on behalf of their respective parties, and that the respective parties have full knowledge of and have consented to this Stipulation.

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11. Upon approval of this Stipulation by the Court, the Trustee shall file with the Court a Notice of Dismissal and shall provide a copy to Lamar.

LAMAR ADVERTISING COMPANY

Dated: 3/31/04

By: Janis Ann Stawan
Secretary
Duly Authorized

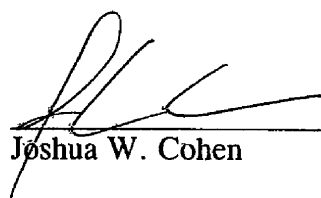
BARBARA H. KATZ,
CHAPTER 11 TRUSTEE, PLAINTIFF

Dated: 4/8/04

By: [Signature]
Joshua W. Cohen (ct14731)
Pepe & Hazard LLP
30 Jelliff Lane
Southport, CT 06890-1436
(203) 319-4041
(203) 319-4034 Facsimile
E-mail: jcohen@pepehazard.com

CERTIFICATE OF SERVICE

I, Joshua W. Cohen, hereby certify that copies of the foregoing Motion of Barbara H. Katz, Chapter 11 Trustee for Entry of an Order Pursuant To Federal Rule of Bankruptcy Procedure 9019 Compromising and Settling Avoidance Action Against Lamar Advertising with exhibits and proposed order were served by first-class U.S. mail, postage pre-paid, on April 9, 2004 upon the parties shown below and also listed on the attached Certification List.



Joshua W. Cohen

Office of the U.S. Trustee
265 Church Street, Suite 1103
New Haven, CT 06510

Lamar Advertising Co.
Brad Axelrod, Esq.
Jones, Walker
8555 United Plaza Boulevard
Baton Rouge, LA 70809-7000

Peter Kopfinger, Esq.
Breazeale, Sachse & Wilson, L.L.P.
One American Place, Suite 2300
P.O. Box 3197
Baton Rouge, LA 70821-3197

SERVICE LIST

James J. Tancredi, Esq.
Day, Berry & Howard
City Place
Hartford, CT 06103
Attorney for Debtor

Elizabeth J. Austin, Esq.
Pullman & Comley
850 Main Street
P.O. Box 7006
Bridgeport, CT 06601
Attorney for Advance Radio Telecom

Darcie P.L. Beaudin, Esq.
Steven T. Hoort, Esq.
Ropes & Gray
One International Place
Boston, MA 02110
Attorneys for Advance Radio Telecom

Craig I. Lifland, Esq.
Zeisler & Zeisler
558 Clinton Avenue
Bridgeport, CT 06605
Attorney for B. Scott Reardon & Commco, LLC

Douglas S. Skalka, Esq.
Neubert, Pepe and Montieth
195 Church Street, 13th Floor
New Haven, CT 06510
Attorney for M. Reardon, T. Reardon & T.J. Reardon

Ronald E. Lyles, Esq.
Donald J. Marchesseault, Esq.
Day, Berry & Howard LLP
CityPlace I
Hartford, CT 06103-3499
Attorneys for the Debtor

William S. Fish, Jr., Esq.
Tyler Cooper & Alcorn LLP
City Place I, 35th Floor
185 Asylum Street
Hartford, CT 06103
Attorney for U.S. Bank National Assoc.

Stuart Bear, Esq./Charles M. Needle, Esq.
Zeldes, Needle & Cooper
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, CT 06601
Attorneys for SAIC

Clair R. Gerry, Esq.
507 W. 10th Street
P.O. Box 966
Sioux Falls, SD 57101
Attorney for RCSCO

Deirdre A. Martini, Esq.
Ivey, Barnum & O'Mara, LLC
170 Mason Street
Greenwich, CT 06830
Attorney for Devon Group, Inc.

David H. Flynn, Esq.
Day, Berry & Howard LLP
CityPlace I
Hartford, CT 06103-3499
Attorney for the Debtor

Bart Hartman
Treasurer-Tax Collector
County of San Diego
Attention: Elizabeth Molina
1600 Pacific Highway, Room 162
San Diego, CA 92101-2475

Roger W. Damgaard, Esq.
Woods, Fuller, Shultz & Smith P.C.
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, SD 57117-5027

Missouri Department of Revenue
Bankruptcy Unit
Attention: Gary L. Barnhart
P.O. Box 475
Jefferson City, MO 65105-0475

Roberta Napolitano, Esq.
Weinstein, Weiner, Ignal et al
350 Fairfield Avenue
P.O. Box 9177
Bridgeport, CT 06601
Attorney for TLC Properties

Mr. Eugene Fitz
Diversitec
14321 Sommerville Court
Midlothian, VA 23113

Ms. Connie Wosje
1100 So. Second Avenue
Sioux Falls, SD 57105

Brad Axelrod, Esq.
Jones Walker
8555 United Plaza Boulevard
Baton Rouge, LA 70809-7000

Mr. F. Edward Clinton, President
Plaincom, Inc.
609 East Meadowlark Trail
Sioux Falls, SD 57108

Houston Putnam Lowry, Esq.
Brown & Welch
553 Preston Avenue, 2nd Floor
P.O. Box 183
Meriden, CT 06450-0183

Michael Enright, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

Elar Cellular
c/o Robert White, Esq.
Murtha Cullina LLP
185 Asylum Street
Hartford, CT 06103-3469

Bear Stearns & Co., Inc.
c/o Janet M. Weiss, ESq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10116-0193

Corporate Renewal Services
1000 Oronoque Lane, Suite 104
Stratford, CT 06497

Blum Shapiro & Company, P.C.
Attn: Richard Finkel, CPA
29 S. Main Street
P.O. Box 272000
West Hartford, CT 06127

Advanced Radio Telecom Corp.
Paul N. Silverstein, Esq.
805 Third Ave.
New York, NY 10022

Alabama Department of Revenue
Business Privilege and Corporate Shares
P.O. Box 327431
Montgomery AL 35132-7431

Alaska Department of Revenue
PO Box 110420
Juneau AK 99811-0420

American Express
American Express Suite 0001
Chicago IL 60679-0001

American Express Travel Related
Svcs Co Inc Corp Card
Becket & Lee LLP
P.O. Box 3001 Dept. AC
Malvern, PA 19355-0701

Applied Graphics Technologies
450 West 33rd Street 11 F
New York NY 10001

Arizona Department of Revenue
Property Tax Division
Centrally Valued Property Unit
1600 West Monroe
Phoenix AZ 85007-2650

Arthur Andersen LLP
21659 Network Place
Chicago IL 60673-1216

Atlanta Taxpayer Service Center
1691 Phoenix Blvd. Ste. 350
College Park GA 30349

Avaya Financial Services
P.O. Box 93000
Chicago IL 60673-3000

Bellsouth Telecommunications, Inc.
Bellsouth Regional Bankruptcy Center
12DD1-301 West Bay Street
Jacksonville, FL 32202

Birch Telecom
P.O. Box 927
Emporia, KS 66801

Brian Adcock
Robert S. Evans, Esq.
Evans & Hoffung, LLC
110 Whitney Avenue
New Haven, CT 06510-1238

Brian Luster
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hoffnu
110 Whitney Avenue
New Haven, CT 06510-1238

Brian Winikoff
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans, Hoffn
110 Whitney Avenue
New Haven, CT 06510-1238

Burns Moving & Storage
4205 N 4th Ave.
Sioux Falls SD 57118-5675

C & B Real Estate Ventures LLC
Jim Cornerford
P.O. Box 973
Decatur, IL 62525-0973

CDW
P.O. Box 75723
Chicago IL 60675-5723

CIT Communications Finance Corp.
f/k/a Newcourt Credit Communications
f/k/a AT&T Credit Corp.
650 CIT Drive, Suite 4104A
Livingston, NJ 07039

Cable & Wireless USA Inc.
P.O. Box 371968
Pittsburgh PA 15250-7968

California Public Utilities Commission
P.O. Box 942867
Sacramento CA 94267-7081

California State Controller
18th Floor 300 Capitol Mall
Sacramento CA 95814

Chester J Culver
Secretary of State
Hoover Building
Des Moines IA 50319-0138

Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701-1827

Christopher Lanasa
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avenue
New Haven, CT 06510-1238

Clark County Department of Business Lice
500 S Grand Central Pky
P.O. Box 551810
Las Vegas NV 89155-1810

Cole Raywid and Braveman
1919 Pennsylvania Ave. N.W.
Washington D.C. 20006

Commco Partners, LLC
109 East Glenwood Drive
Brandon, SD 57005

Commercial Division
P.O. Box 94125
Baton Rouge LA 70804-9125

Commissioner of Revenue, State of TN
Gina Baker Hantel
Attorney for Commissioner of Revenue
312 Eighth Avenue, 27th Floor
Nashville, TN 37243

Comptroller of the Treasury
Revenue Admin Division
Annapolis MD 21411-0001

Connecticut Secretary of the State
Document Review
30 Trinity Street
P.O. Box 150470
Hartford CT 06115-0470

Connie Wosje
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avenue
New Haven, CT 06510-1238

Consumers Energy Alma Customer Service C
1325 Wright Ave.
Alma MI 48801

Continental Resources Inc.
175 Middlesex Turnpike
Bedford MA 01730-9137

Corporation Tax Annual Report
P.O. Box 666
Trenton NJ 08646-0666

Corporations Division
P.O. Box 105607
Atlanta GA 30348-5607

Dakon Venture Capital, LLC
109 E. Glenwood Drive
Brandon, SD 57005

David Roscher
25260 La Paz Road, Suite 2
Laguna Hills, CA 92653

Department of Business Services
Room 330 Howlett Building
Springfield IL 62756

Department of Licensing
Business And Professions Division
P.O. Box 9034
Olympia WA 98507-9034

Department of Taxation
Business Tax
P.O. Box 98596
Las Vegas NV 89193-8596

Dept of Commerce and Consumer Affairs
Annual Filing
P.O. Box 40
Honolulu HI 96810

Dept. of Revenue Services
C&E Division, Bankruptcy Section
25 Sigourney Street
Hartford, CT 06106

Division of Corporations
Uniform Business Report Filings
P.O. Box 1500
Tallahassee FL 32302-1500

EarthLink Inc.
P.O. Box 7645
Atlanta GA 30357-0645

Electronic Sales & Service Inc.
1472 Airport Road
New Bedford MA 02746

Eva Lee
3355 W. Spring Mountain Road Unit 3
Las Vegas NV 89102

Excel Telecommunications Inc.
P.O. Box 650582
Dallas TX 75265-0582

Federal Communications Commission
Attn Secretary
445 21st Street. S.W.
Washington D.C. 20554

Federal Communications Commission
Common Carrier Bureau Industry Analysis
Washington DC 20554

Filk International Corp.
P.O. Box 91337
Chicago IL 60693-1337

Finance and Budget Group
North Carolina Department of Revenue
P.O. Box 29510
Raleigh NC 27626-0510

Fitzgeralds Las Vegas Inc.
301 Fremont Street
Las Vegas NV 89101

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee FL 32399-0876

Foreign Corporation Annual Report
Drawer 978
Milwaukee WI 53293-0978

Form 499
c o NECA
80 Jefferson Rd
Whippany NJ 07981

Franchise Tax Board
P.O. Box 942857
Sacramento CA 94257-0531

Frontier Telephone of Rochester, Inc.
180 S. Clinton Avenue
Rochester, NY 14646-0300

Georgia Public Service Commission
244 Washington St. SE
Atlanta GA 30334-5701

Gerald Prothro
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hoffnu
110 Whitney Avenue
New Haven, CT 06510-1238

Gibson, Dunn and Crutcher, LLP
Attn: Bennett L. Silverman/Richard L. Da
333 S. Grand Avenue, 44th Floor
Los Angeles, CA 90071

Graybar Electric Company Inc.
P.O. Box 9147
Boston MA 02205

Gurman, Blask and Freedman, Chtd.
Norman Lester
Lester and Co.
8601 Georgia Ave., Ste. 508
Silver Springs, MD 20910

Howalt McDowell Insurance Inc.
225 S. Minnesota Ave.
Sioux Falls SD 57115-5113

Illinois Commerce Commission Public Uti
527 East Capitol Avenue
Springfield, IL 62701-1827

Info USA Inc.
5701 S. 85th Plaza
Omaha NE 68127

Internal Revenue Service
Andover MA 05501
ATTN Special Procedures

Internal Revenue Service
Department of the Treasury
135 High Street
Stop 155
Hartford CT 06103

International Fiber Com
Attn: Eugene Fitz
14321 Sommerville Court
Midlothian, VA 23113

International FiberCom Inc.
P.O. Box 79302
Baltimore MD 21279-0302

Iowa Telecom
115 S. Second Avenue W.
Newton, IA 50208

James R. Langevin Secretary of State
Corporations Division
100 North Main Street
Providence RI 02903-1335

James Todd Eis
1186 Normandy Road
Beaumont, CA 92223

Jeffrey Pugay
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hoffnu
110 Whitney Avenue
New Haven, CT 06510-1238

Jesse White
Secretary of State
Department of Business Services
501 S 2nd Street
Springfield IL 62756

John Falb
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hoffnu
110 Whitney Avenue
New Haven, CT 06510-1238

John Giaquinta
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avenue
New Haven, CT 06510-1238

John Y. Brown III
Secretary of State
PO Box 1150
Frankfort KY 40602-1150

Joseph Skudlarek
3715 S. 49th St.
Omaha NE 68106

Julie Clausing
1801 W. Larchmont Avenue
Unit 114
Chicago, IL 60613

Kansas Department of Revenue
Division of Property Valuation
915 SW Harrison
Robert B. Docking State Office Building
Topeka KS 66612-1585

Karen Puckett
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hoffnu
110 Whitney Avenue
New Haven, CT 06510-1238

Katherine Smolen
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avenue
New Haven, CT 06510-1238

Kurtis and Associates
2000 M Street
Suite 600
Washington D.C. 20036

Lamar Advertising Co.
c/o Peter A. Kopfinger, Esq.
Breazeale, Sachse & Wilson, LLP
1 American Plaza, 23rd Floor
Baton Rouge, LA 70821-3197

Law Offices of Joseph E. Bacheider
780 Third Avenue
New York NY 10017

Louis and Gail Rose Gurman
708 Potomac Knolls Drive
McLean, VA 22102

Mark Ahasic
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avneue
New Haven, CT 06510-1238

Mark Roberts Consulting
102 Gateway Drive
Enterprise, AL 36330

Mary Kiffmeyer
Secretary of State of Minnesota
180 State Office Building
100 Constitution Avenue
St. Paul MN 55155-1299

Massachusetts DTE Telecom Division
One South Station
Boston MA 02110

Michael & Terri Reardon
5990 E. Sapphire Lane
Paradise Valley, AZ 85253

Michael Heil
Eric S. Prezant, Esq.
Vedder, Price, Kaufman & Kammholz
222 N. LaSalle St., Suite 2600
Chicago, IL 60601-1003

Michael Heil
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avenue
New Haven, CT 06510-1238

Michigan Department of Consumer & Indust
Corporation Securities and Land Developm
PO Box 30702
Lansing MI 48909-8202

Michigan Public Service Commission
P.O. Box 30221
Lansing MI 48909

Milan Properties LTD
111 East 61st Street
New York NY 10021

Missouri Department of Revenue
Linda L. Lanning
Special Asst. Attorney General
P.O. Box 475
Jefferson City, MO 65105-475

Missouri Dept. of Revenue
Division of Taxation and Collection
P.O. Box 3080
Jefferson City MO 65105-3080

Missouri Public Service Commission
P.O. Box 360
Jefferson City MO 65102

Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006-1888
Attn: Alexandra Steinberg Barrage, Esq.

NYS Dept. of Public Service
Attn Albert J Howard
Director of Finance & Budget
Three Empire State Plaza 16 Floor
Albany NY 12223-1350

New Jersey Sales & Use Tax
P.O. Box 260
Trenton NJ 08646-0260

North Carolina Department of Revenue
P.O. Box 25000
Raleigh NC 27640-0500

North Carolina Secretary of State
Corporations Division
P.O. Box 29525
Raleigh NC 27626-0525

Office of the Attorney General
State of Connecticut
55 Elm Street 4th Floor
Hartford CT 06106

Office of the U.S. Attorney
P.O. Box 1824
New Haven CT 06508

Oregon Public Utility Commission
P.O. Box 2148
Salem, OR 97308-2148

Oregon Secretary of State
P.O. Box 4353
Portland OR 97208-7353

P-Com
c/o Creditor
7 Entin Road
Parsippany, NJ 07054-0454
Attn: Paul Rome

PageNet
P.O. Box 7167
Pasadena CA 91109-7167

Pamela Schaffer
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avenue
New Haven, CT

Pennsylvania Public Utility Commission
Bureau of Fixed Utility Services Teleco
P.O. Box 3265
Harrisburg PA 17105-3265

Pilot Network Services Inc.
P.O. Box 572
Alameda CA 94501-9672

Public Utilities Commission of Nevada
1150 E William Street
Carson City NV 89701-3109

Public Utility Commission
550 Capitol Street NE
Salem OR 97301

RRHOWDS, L.L.C.
R & R Realty Group
1280 Office Plaza Drive
West Des Moines, IA 50266

Raphael Shaw
12719 Robison Blvd, Apt. 11
Poway, CA 92064

Raymond K Vawter Jr.
Iowa Utilities Board
350 Maple Street
Des Moines IA 50319-0069

Reporting Section
Bureau of Corporations
Elections and Commissions
101 State House Station
Augusta ME 04333-0101

Roderick M. Sherwood, III
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hoffnu
110 Whitney Avenue
New Haven, CT 06510-1238

Ron Thornburgh
Kansas Secretary of State
First Floor Memorial Hall
120 SW 10th Ave.
Topeka KS 66612-1594

Secretary of State
101 North Carson Street Suite 3
Carson City NV 89701-4786

Secretary of State
1305 State Capitol
P.O. Box 94608
Lincoln NE 68509-4608

Secretary of State
Annual Reports Project
P.O. Box 23083
Jackson MS 39225-3083

Secretary of State
P.O. Box 1366
Jefferson City MO 65102

Secretary of State
State House Room 204
107 North Main St.
Concord NH 03301-4989

Secretary of State
Suite 1800 James K. Polk Building
Nashville TN 37243-0306

Securities Exchange Commission
Judiciary Plaza
450 5th St.
Washington D.C. 20549

Sharon Priest
Secretary of State
Corporations Division
State Capitol Building
Little Rock AR 72201-1094

SierraCom
Attn: Daniel R. Renzella
99 South Street
Hopkinton, MA 01748

Snelling Personnel Services
P.O. Box 650765
Dallas TX 75265-0765

South Dakota Department of Labor
420 S. Roosevelt St.
P O Box 4730
Aberdeen, SD 57402

Southwestern Bell Telephone Co.
Bankruptcy Dept.
PO Box 769
Arlington, TX 76004

Sprint
P O Box 190
Plymouth, IN 46563

Standard Parking Two Stamford Plaza
281 Tresser Boulevard
Stamford CT 06901

State Board of Equalization Valuation Di
PO Box 942879
Sacramento CA 94279-0061

State Tax Commission
P.O. Box 23050
Jackson MS 39225-3050

State of Connecticut
Department of Revenue Services
P.O. Box 2974
Hartford CT 06104-2974

State of Connecticut
Department of Revenue Services
PO Box 5030
Hartford CT 06102-5030

State of Maryland
Department of Assessments and Taxation
Personal Property Division
301 West Preston St Rm 801
Baltimore MD 21201-2395

State of Nevada, Dept. of Employment
Dept. of Employment, Training & Rehab.
Employment Security Division
500 East Third Street
Carson City, NV 89713

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark NJ 07102

Stewart & Irwin
251 East Ohio Street
Indianapolis IN 46204-2142

Stuart Wilhoite
6436 Alta Drive
Las Vegas, NV 89107

Sunrise Trust II
John Burton, Jr. and
Scott Reardon IV, Trustees
109 E. Glenwood Drive
Brandon, SD 57006

TEKsystems
P.O. Box 198568
Atlanta GA 30384-8568

Tax Collector City of Stamford
Stamford Government Center
888 Washington Blvd.
P.O. Box 891
Stamford CT 06904-0891

Teksystems, Inc.
Attn: Shirley Evans
7301 Parkway Drive
Hanover, MD 21076

Tennessee Department of Revenue
Andrew Jackson State Office Bldg.
500 Deaderick Street
Nashville TN 37243-0306

The Commonwealth of Massachusetts
William Francis Galvin Secretary
One Ashburton Place
Boston MA 02108-1512

The Radio Carriers Service Co. Inc.
R.R. 1 Box 87Y
Wentworth SD 57075

Thomas Kukla
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans, Hoffnun
110 Whitney Avenue
New Haven, CT 06510-1238

Thornview Electric Co. LLC.
4159 Brockton Dr. SE
Suite A
Grand Rapids MI 49512

U.S. Internal Revenue Services
135 High Street, Stop 155
Hartford, CT 06103

Utilities Division Annual Reports Section
Arizona Corporation Commission
1200 West Washington Street Suite 206
Phoenix AZ 85007-2996

Van Belkum Voice & Data Svc.
535 Cascade West Pkwy SE
Grand Rapids MI 49546

Verizon
1500 MacCorkle Avenue
Room 203
Charleston, WV 25314

Verizon
Bankruptcy Department
210 West 18th Street, Flr. 15
New York, NY 10011

Verizon Major Case
AFNI Verizon
404 Brock Drive
Bloomington, IL 61701

Verizon Wireless
185 Franklin St. Room 903
Boston, MA 02110

Verizon Wireless
P.O. Box 489
Newark NJ 07101-0489

Vermont Secretary of State
Heritage 1 Bldg.
River Street Drawer 09
Montpelier VT 05609-1104

Video Security Specialists Inc.
632 N. Victory Blvd.
Burbank CA 91502

Viking Office Products
P.O. Box 30488
Los Angeles CA 90030-0488

Wellmark of South Dakota, Inc.
636 Grand Ave., Station 93
Des Moines, IO 50309

West Virginia State Tax Department
Internal Auditing Division
P.O. Box 3694
Charleston WV 25336-3694

William Donat
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hof
110 Whitney Avenue
New Haven, CT 06510-1230

Wise Carter Child and Caraway
P.O. Box 651
Jackson MS 39205

Rosetta Cheung
11429 Miro Cir
San Diego, CA 92131

Ying Cheung
Robert S. Evans, Esq.
Winnick, Ruben, Chambers, Evans & Hoffnu
110 Whitnety Avenue
New Haven, CT 06510-1238

Michael Heil
Eric S. Prezant, Esq.
Vedder, Price, Kaufman & Kammholz
222 N. LaSalle St., Suite 2600
Chicago, IL 60601-1003