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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
: :  
Broadview Networks Holdings, Inc., et al.,<sup>1</sup> : Case No. 12-\_\_\_\_\_ ( )  
: :  
Debtors. : (Joint Administration Pending)  
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**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 507(a)(8)  
AND 541 OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULE 6003 FOR INTERIM AND FINAL ORDERS AUTHORIZING  
PAYMENT OF SALES, USE AND OTHER TAXES AND REGULATORY FEES**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT JUDGE:

The debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") hereby move for entry of interim and final orders, pursuant to sections 105(a), 507(a)(8) and 541 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), authorizing, but not directing, the Debtors to pay prepetition amounts owing in respect of prepetition sales, use and

<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Broadview Networks Holdings, Inc. (0798); (ii) A.R.C. Networks, Inc. (0814); (iii) ARC Networks, Inc. (4934); (iv) ATX Communications, Inc. (2245); (v) ATX Licensing, Inc. (9838); (vi) ATX Telecommunications Services of Virginia, LLC (3888); (vii) BridgeCom Holdings, Inc. (2965); (viii) BridgeCom International, Inc. (3985); (ix) BridgeCom Solutions Group, Inc. (3989); (x) Broadview Networks, Inc. (1082); (xi) Broadview Networks of Massachusetts, Inc. (8054); (xii) Broadview Networks of Virginia, Inc. (6404); (xiii) Broadview NP Acquisition Corp. (2734); (xiv) BV-BC Acquisition Corporation (7846); (xv) CoreComm-ATX, Inc. (0529); (xvi) CoreComm Communications, LLC (2077); (xvii) Digicom, Inc. (0777); (xviii) Eureka Broadband Corporation (6004); (xix) Eureka Holdings, LLC (1318); (xx) Eureka Networks, LLC (1244); (xxi) Eureka Telecom, Inc. (3720); (xxii) Eureka Telecom of VA, Inc. (5508); (xxiii) InfoHighway Communications Corporation (0551); (xxiv) Info-Highway International, Inc. (8543); (xxv) InfoHighway of Virginia, Inc. (1600); (xxvi) nex-i.com, inc. (7035); (xxvii) Open Support Systems LLC (9972); and (xxviii) TruCom Corporation (0714). The Debtors' executive headquarters' address is 800 Westchester Avenue, Rye Brook, NY 10573.

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AFD \_\_\_\_\_  
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other taxes and regulatory fees (the "**Motion**"). In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Michael K. Robinson, President and Chief Executive Officer of Broadview Networks Holdings, Inc., in Support of Chapter 11 Petitions and First Day Pleadings (the "**Robinson Declaration**"), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

### **BACKGROUND**

1. On the date hereof (the "**Petition Date**"), Broadview Networks Holdings, Inc. ("**BVNH**") and each of the other Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors intend to continue in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no trustee, examiner or official committee has been appointed in any of the Debtors' cases.

2. Prior to the Petition Date, the Debtors solicited votes on the *Joint Prepackaged Plan of Reorganization for Broadview Networks Holdings, Inc. And Its Affiliated Debtors* (including all exhibits, schedules, appendices, and supplements thereto, and as amended, modified, or supplemented from time to time, the "**Prepackaged Plan**"), through their disclosure statement related to the Prepackaged Plan (the "**Disclosure Statement**"). On or around the date that solicitation commenced, holders of over two-thirds of the aggregate principal amount of the Debtors' 11 3/8% senior secured notes due 2012 (the "**Required Consenting Noteholders**") and holders of approximately 70% of the preferred equity interests in BVNH (the "**Consenting Equity Holders**") entered into a restructuring support agreement, dated July 13, 2012 (as amended, the "**Restructuring Support Agreement**") whereby such parties agreed to support the

Prepackaged Plan. The Prepackaged Plan has been accepted by all classes entitled to vote in excess of the statutory thresholds specified in section 1126(c) of the Bankruptcy Code. The Debtors have filed concurrently herewith a motion seeking, among other things, to schedule a combined hearing on the confirmation of the Prepackaged Plan and approval of the Disclosure Statement.

3. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Robinson Declaration.

### **JURISDICTION**

4. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 507(a)(8) and 541 of the Bankruptcy Code.

### **RELIEF REQUESTED**

5. As a telecommunications company, the Debtors are subject to a wide variety of federal, state and local taxes, regulatory fees and license fees. Some of these taxes, including a three percent federal excise tax, constitute sales and use taxes (collectively, the "**Trust Fund Taxes**"), which are collected or withheld by the Debtors and held in trust for the benefit of those third parties to whom payment is owed or on behalf of whom such payment is being made.

6. By this Motion, the Debtors hereby seek the entry of an interim order (the "**Interim Order**") and final order (the "**Final Order**"), pursuant to sections 105(a) and 541 of the Bankruptcy Code, authorizing, but not directing, them to pay the Trust Fund Taxes, other

taxes (the “**Other Taxes**”), and certain licensing, permitting and regulatory fees (the “**Regulatory Fees**” and together with the Trust Fund Taxes and the Other Taxes, the “**Taxes**”) as and when such obligations become due, including, but not limited to, the payment of Trust Fund Taxes or Other Taxes relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

A. Trust Fund Taxes

7. In the ordinary course of their businesses, the Debtors collect Trust Fund Taxes from customers and hold them for a period of time before remitting them to the appropriate taxing authorities (the “**Applicable Authorities**”). A non-exhaustive list of Applicable Authorities is set forth on Exhibit A hereto.<sup>2</sup> Specifically, the Debtors bill their customers on a monthly basis for monthly service charges as well as for amounts attributed to Trust Fund Taxes. Once the Debtors collect payment, they then send a schedule of the billings to their auditor. Once the auditor has reviewed the billing and payment schedules, the auditor calculates the amount of Trust Fund Taxes the Debtors owe to the Applicable Authorities and notifies the Debtors of such amounts. The Debtors then pay amounts owed to the Applicable Authorities twice a month through a third-party accounts payable service provider (the “**Third-Party Payor**”). The Debtors estimate that they collect approximately \$2 million in Trust Fund Taxes from their customers each month. The Debtors are current in their payments of Trust Fund Taxes to the Applicable Authorities, and estimate that the total amount of prepetition Trust Fund Taxes owing to the Applicable Authorities will not exceed \$1.4 million.

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<sup>2</sup> While the Debtors have exercised their best efforts to list all of the Applicable Authorities on Exhibit A, it is possible that certain Applicable Authorities may have been inadvertently omitted from this list. The Debtors request that any order granting the relief requested herein apply to any Applicable Authorities that have been inadvertently omitted from Exhibit A.

B. Regulatory Fees and Other Taxes

8. In the ordinary course of business, the Debtors also pay certain Regulatory Fees to certain of the Applicable Authorities on a periodic basis, either directly or through the Third-Party Payor. Such Regulatory Fees include, but are not limited to, fees mandated by the Federal Communication Commission (the "FCC"), amounts owed to the Universal Service Fund and other funds, and fees mandated by various state public utility commissions. It is critical that the Debtors pay the Regulatory Fees as nonpayment could result in additional fees and penalties, and could slow or prohibit the Debtors' ability to obtain the requisite federal and state approval of the transactions embodied in the Prepackaged Plan. The Debtors estimate that they accrue an average of approximately \$100,000 in Regulatory Fees each month. The Debtors are current in their payments of Regulatory Fees to the Applicable Authorities and estimate that the total amount of prepetition Regulatory Fees owing to the Applicable Authorities will not exceed approximately \$106,000.

9. In addition, the Debtors are required to pay certain Other Taxes to certain Applicable Authorities on a periodic basis, either directly or through the Third-Party Payor. Such Other Taxes include, but are not limited to, franchise taxes in certain jurisdictions in which the Debtors conduct their businesses. By this Motion, the Debtors seek authority to pay any of the Other Taxes assessed against the Debtors after the Petition Date for prepetition periods. The Debtors estimate that they accrue an average of approximately \$842,000 in Other Taxes each month. The Debtors are current in their payments of Other Taxes to the Applicable Authorities and estimate that the total amount of prepetition Other Taxes owing to the Applicable Authorities will not exceed approximately \$662,000.

10. Payment of the Taxes are necessary for the Debtors to remain in good standing and operate in the various jurisdictions in which they do business. Certain Applicable

Authorities either have not been paid for prepetition amounts or may have been sent checks for Taxes that may or may not have been presented or cleared as of the Petition Date. Similarly, in other cases, obligations may have accrued or are accruing, or are subject to audit or review, but may not have become due and payable. Accordingly, the Debtors seek authorization for their banks to honor prepetition wire transfer requests and checks issued by the Debtors to both the Third-Party Payor and the Applicable Authorities (together, the "**Tax Payment Recipients**") for the payment of prepetition Taxes that, as of the Petition Date, have not cleared or been transferred.

11. In order to minimize confusion, the Debtors will provide their banks with a list of outstanding prepetition checks or wire transfers with respect to the Taxes within two (2) business days of the entry of the order authorizing such payments. The Debtors thus request that the Court authorize and direct the Debtors' banks to honor any prepetition checks or wire transfers to the Tax Payment Recipients with respect to Taxes.

12. In addition, to the extent the Debtors have not yet remitted payment to the Tax Payment Recipients with respect to Taxes, the Debtors seek authorization to issue checks or provide for other means of payment to the Tax Payment Recipients to the extent necessary to pay the prepetition Taxes.

### **BASIS FOR RELIEF**

#### **A. Certain of the Taxes Constitute Priority Claims**

13. Certain of the Taxes likely are afforded priority status under section 507(a)(8) of the Bankruptcy Code.<sup>3</sup> Section 507(a)(8)(C) of the Bankruptcy Code provides

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<sup>3</sup> Nothing contained herein shall be deemed an admission as to the appropriate classification of any Taxes and the Debtors reserve all rights to object to any claim, on any basis, with respect to the Taxes.

priority status to a “tax required to be collected or withheld and for which the debtor is liable in whatever capacity.” 11 U.S.C. § 507(a)(8)(C).

14. Furthermore, section 507(a)(8)(E) of the Bankruptcy Code provides priority status to an excise tax on a transaction that occurred within three years immediately preceding the bankruptcy petition. See 11 U.S.C. § 507(a)(8)(E). The Bankruptcy Code does not define “excise tax.” The legislative history of section 507(a)(8)(E) contains an explanation of “excise tax,” which provides that “[a]ll Federal, State or local taxes generally considered or expressly treated as excises are covered by this category, including *sales taxes*, estate and gift taxes . . . .” 124 Cong. Rec. H11113 (daily ed. Sept. 28, 1978); S17430 (daily ed. Oct. 6, 1978); remarks of Rep. Edwards and Sen. Deconcini (emphasis added).

15. An excise tax is commonly defined as “a tax imposed on the manufacture, sale, or use of goods . . . or on an occupation or activity . . . .” BLACK’S LAW DICTIONARY 585 (7th ed. 1999). Numerous courts have adopted the definition of excise tax found in Black’s Law Dictionary. See, e.g., In re Marcucci, 256 B.R. 685, 696 (D. N.J. 2000); In re Templar, 170 B.R. 562, 563 (Bankr. M.D. Pa. 1994); New Neighborhoods, Inc. v. W. Va. Workers’ Comp. Fund, 886 F.2d 714, 719 (4th Cir. 1989); In re Trism, Inc., 311 B.R. 509, 516 (8th Cir. B.A.P. 2004); In re Nat’l Steel Corp., 321 B.R. 901, 908 (Bankr. N.D. Ill. 2005); In re Voightman, 236 B.R. 878, 881-82 (Bankr. D. N.D. 1999); In re Chateaugay Corp., 153 B.R. 632, 638 (Bankr. S.D.N.Y. 1993).

16. Accordingly, it is likely that a significant portion of the Taxes that accrued or were incurred prior to the Petition Date are priority claims pursuant to section 507(a)(8) of the Bankruptcy Code. Taxes entitled to priority under the Bankruptcy Code must be paid in full under any plan of reorganization. See 11 U.S.C. § 1129(a)(9)(C)(i)-(iii). Hence, the payment of

Taxes at this time would affect only the timing of the payments and not prejudice the rights of other unsecured creditors.

B. Certain of the Taxes Are Not Property of the Estate

17. Further, the Debtors submit that the Trust Fund Taxes that have been collected or withheld by the Debtors are held in trust for the benefit of those third parties to whom payment is owed or on behalf of whom such payment is being made. Case law supports the proposition that such taxes and fees are not property of the Debtors' estates within the meaning of section 541 of the Bankruptcy Code. See Begier v. IRS, 496 U.S. 53, 65 (1990) (taxes such as excise taxes, FICA taxes and withholding taxes are property held by debtor in trust for another and, as such, do not constitute property of estate); In re Al Copeland Enters., Inc., 133 B.R. 837, 842 (Bankr. W.D. Tex. 1991) (debtor obligated to pay sales taxes plus interest, because such taxes were "trust fund" taxes), aff'd, 991 F.2d 233 (5th Cir. 1993); In re Am. Int'l Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (fund held in trust for federal excise and withholding taxes is not property of debtor's estate and, therefore, not available for distribution to creditors); Shipley Co., Inc. v. Darr (In re Tap, Inc.), 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (funds paid by employer to debtor for payment of employer's federal taxes were returnable to employer and not part of debtor's estate). Accordingly, no Court authority may be needed to make these payments, and this relief is requested out of an abundance of caution.

C. The Court May Authorize the Debtors to Pay the Taxes Under the Bankruptcy Code and Applicable Case Law

18. The Court may authorize the Debtors' payment of the Taxes under sections 105(a) and 363(b) of the Bankruptcy Code and the "necessity of payment" doctrine. Under section 363(b) of the Bankruptcy Code, a debtor in possession may, in the exercise of its business judgment, use property of the estate outside of the ordinary course of business. See 11



U.S.C. § 363(b). Further, section 105(a) of the Bankruptcy Code, which codifies the equitable powers of bankruptcy courts, authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

11 U.S.C. § 105(a). This Court may authorize the Debtors’ proposed payment of Taxes under sections 105(a) and 363(b)(1) of the Bankruptcy Code.

19. Specifically, section 363(b)(1) of the Bankruptcy Code authorizes this Court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” See 11 U.S.C. § 363(b)(1). Although stated various ways, courts generally hold that a debtor’s decision to enter into a transaction outside of the ordinary course of business is governed by the business judgment standard. See 3 Collier On Bankruptcy 363.02[1][f] (Lawrence P. King et al. 15th ed. 2007); In re U.S. Airways Group, Inc., 287 B.R. 643, 645 (Bankr. E.D. Va. 2002).

20. When applying the “business judgment” rule, courts show great deference to the debtor’s decision making. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Castre, Inc., 312 B.R. 426, 430-31 (Bankr. D. Colo. 2004); Murphy v. Howison (In re Murphy), 288 B.R. 1, 5 (D. Me. 2002); In re Bakalis, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998). The Debtors submit that, because payment of the Taxes is not only critical to minimizing disruptions to the Debtors’ operations, but also necessary to preventing the irreparable harm that would result from nonpayment (in the event the Debtors had to cease doing business in certain jurisdictions or to the extent nonpayment could slow or prohibit the Debtors’ ability to obtain the requisite federal and state approval of the transactions embodied in the Prepackaged Plan), it is in the best interest of the Debtors’ estates for the Debtors to have discretion to pay such claims.

21. Further, in case law construing sections 105(a) and 363(b) of the Bankruptcy Code, it is well-established that bankruptcy courts have the equitable power to authorize the payment of prepetition claims where such payments are necessary to preserve the going concern value of a debtor's business. See, e.g., In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981); see also N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) (allowing payment of prepetition claims pursuant to sections 105(a) and 363(b) of the Bankruptcy Code where payment was critical to preserve and protect debtor's business). To do so, "the debtor must articulate some business justification, other than the mere appeasement of major creditors." Ionosphere, 98 B.R. at 175. Here, the Debtors' failure to pay the Taxes could have a material adverse impact on their ability to operate their businesses or consummate their restructuring.

22. The relief requested is also supported by the "necessity of payment" doctrine. Numerous courts have used their section 105(a) powers under the "doctrine of necessity" to authorize payment of a debtor in possession's prepetition obligations where, as here, such payment is an essential element to the continuation of the debtors' business.<sup>4</sup> See, e.g., Lehigh & New England Ry. Co., 657 F.2d at 581 (noting that the "necessity of payment doctrine" provides that "if payment of a claim that arose prepetition is essential to the continued operation of the [debtor], payment may be authorized"); see also Michigan Bureau of Workers' Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279 (S.D.N.Y. 1987), appeal dismissed, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing

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<sup>4</sup> The "doctrine of necessity" is an outgrowth of the "necessity of payment rule," first articulated in Miltenberger v. Logansport Ry. Co., 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to completion of reorganization permitted to prevent "stoppage of . . . [crucial] business relations . . ."). While the "necessity of payment rule" was first applied to railroad reorganizations, the "doctrine of necessity" serves a similar function in chapter 11 cases. Each, however, recognizes the existence of judicial power to authorize a debtor in possession to pay prepetition claims if vital to its continued operations.

payment of prepetition wages, salaries, expenses and benefits); In re Penn Central Transp. Co., 467 F.2d 100, 102 n. 1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (noting that in the Third Circuit, debtors may pay prepetition claims that are essential to continued operations).

D. Failure to Pay Certain Taxes Could Cause a Significant Distraction to Directors and Officers

23. Moreover, many Applicable Authorities may seek to impose personal liability on the officers and directors of the Debtors for Taxes collected but not paid to such Applicable Authorities. Such proceedings would constitute a significant distraction for such officers and directors at a time when they should be focused on stabilizing postpetition business operations and developing and implementing a successful reorganization strategy. Authorizing, but not directing, the Debtors to pay the Taxes would eliminate any potential administrative claims for indemnification that officers would also assert against the Debtors if held personally liable for such Taxes (including penalties, interest and other related charges), as well as the time and expense of litigating such claims.

E. The Equities Weigh in Favor of Payment of the Taxes

24. Payment of the Taxes is essential to the preservation of the Debtors’ businesses. The Debtors are required under federal and state law, and local ordinances to pay the Taxes in order to operate and to conduct business in certain jurisdictions. Failure to pay the Taxes could subject the Debtors to substantial penalties and could impact the Debtors’ existing permits and licenses, applications to renew such permits and licenses, or the Debtors’ applications to receive state and FCC approval for their restructuring, subject to the Debtors’

rights under section 525 of the Bankruptcy Code. If the relief sought herein is granted, the total amount that would be paid to the Applicable Authorities is modest compared with the size of the Debtors' estates. Because payment of the Taxes is essential to the Debtors' businesses and their restructuring efforts, the Debtors believe that it is in the best interests of the estates, creditors and all parties-in-interest to permit the Debtors to honor certain of their tax obligations.

25. Prior to the commencement of these cases, the Debtors diligently made every effort to pay the Taxes on a timely basis. As the Debtors pay certain of the Taxes in arrears, however, the Debtors currently owe prepetition, undisputed and unpaid Taxes. Accordingly, the Debtors submit that the equities weigh heavily in favor of authorizing the Debtors to pay the Taxes.

26. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003(b), to the extent it applies, does not prohibit the immediate entry of the proposed order.

27. In addition to the foregoing, importantly, the Prepackaged Plan, which has been overwhelmingly accepted by the classes entitled to vote thereon, contemplates the unimpairment of priority and general unsecured claims against the Debtors. Accordingly, if the Prepackaged Plan is confirmed, the relief requested herein shall only affect the timing of payment to certain holders of priority and general unsecured claims, and should have no effect on the recoveries of other creditors of the Debtors under the Prepackaged Plan.

28. Relief similar to that requested in this Motion has routinely been granted in other large chapter 11 cases in this district. See, e.g., In re Hostess Brands, Inc., Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012); In re AMR Corporation, Case No. 11-15463

(SHL) (Bankr. S.D.N.Y. Dec. 23, 2011); In re The Reader's Digest Assoc., Inc., Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Sept. 17, 2009); In re Lear Corp., Case No. 09-14326 (ALG) (Bankr. S.D.N.Y. July 31, 2009); In re ION Media Networks, Inc., Case No. 09-13125 (JMP) (Bankr. S.D.N.Y. May 21, 2009); In re General Growth Properties, Inc., Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 8, 2009); In re Charter Comms., Inc., Case No. 09-11435 (JMP) (Bankr. S.D.N.Y. Apr. 15, 2009); In re Journal Register Company, Case No. 09-10769 (ALG) (Bankr. S.D.N.Y. Mar. 17, 2009). The Debtors submit that the present circumstances warrant similar relief in these chapter 11 cases.

29. Bankruptcy Rule 6003(b) allows the use of property of the estate, or the payment of prepetition claims, within 21 days of the Petition Date if the relief would prevent "immediate and irreparable harm." For the reasons set forth above and in the Robinson Declaration, the Debtors submit that the payment of the Taxes is necessary to prevent immediate and irreparable harm to the Debtors and their estates. The Interim Order only seeks payment of amounts through the hearing on the Final Order.

30. To successfully implement the foregoing, the Debtors respectfully seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h).

#### **NOTICE**

31. Notice of this Motion will be given to: (a) the United States Trustee for the Southern District of New York; (b) counsel to the administrative agent under the Debtors' prepetition and postpetition revolving credit agreements; (c) counsel to the Required Consenting Noteholders; (d) the Applicable Authorities; and (e) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice is required.

32. No previous motion for the relief sought herein has been made to this or any other court.

33. Because the authority for the relief requested herein is set forth above, the Debtors respectfully submit that the Motion itself satisfies the requirements of Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York regarding the submission of a memorandum of law.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, substantially in the forms annexed hereto as Exhibit B and Exhibit C, granting the relief requested in the Motion and such other and further relief for the Debtors as may be just or proper.

Dated: August 22, 2012  
New York, New York

WILLKIE FARR & GALLAGHER LLP  
Proposed Attorneys for the Debtors and  
Debtors in Possession

By: /s/ Jennifer J. Hardy

Rachel C. Strickland  
Jennifer J. Hardy  
Anna C. Burns

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**EXHIBIT A**

**Applicable Authorities**

Authority	City	State
Alabama Department of Revenue	Montgomery	AL
Alabama Public Service Commission	Montgomery	AL
Albany County	Albany	NY
Allegheny County 911 Office	Pittsburg	PA
Annual Report to Wisconsin Public Service Commission		WI
Arizona Corporation Commission	Phoenix	AZ
Arizona Department of Administration	Phoenix	AZ
Arizona Department of Revenue	Phoenix	AZ
Arkansas Emergency Telephone Services Board		AR
Arkansas High Cost Fund		AR
Arkansas Intrastate Carrier Common Line Pool		AR
Arkansas Public Service Commission	Little Rock	AR
Arkansas Secretary of State	Little Rock	AR
Berks County 911 Office	Reading	PA
Bucks County Commissioner	Doylestown	PA
Budget & Fiscal Service Department Missouri Public Service Commission	Jefferson City	MO
Bureau of Corporation Taxes	Harrisburg	PA
California Public Utilities Commission	San Francisco	CA
California Secretary of State	Sacramento	CA
California Advanced Services Fund	San Francisco	CA
California High Cost Fund	San Francisco	CA
California Relay Service and Communications Device Fund	San Francisco	CA
California Teleconnect Fund	San Francisco	CA
Carbon County Communications Center	Nesquehoning	PA
Cattaraugus County Treasurer	Little Valley	NY
Cayuga County 911 Administration	Auburn	NY
Centre County 911	Bellefonte	PA
Chautauqua County	Mayville	NY
Chicago Department of Revenue	Chicago	IL
City Clerk	Beacon	NY
City Hall	Amsterdam	NY
City Hall	Dunkirk	NY
City of Akron	Akron	NY



City of Albany	Albany	NY
City of Alhambra	Alhambra	CA
City of Allentown	Allentown	PA
City of Batavia	Batavia	NY
City of Berkeley	Berkeley	CA
City of Bethlehem	Bethlehem	PA
City of Binghamton	Binghamton	NY
City of Burbank	Burbank	CA
City of Charleston	Charleston	WV
City of Compton	Compton	CA
City of Corning	Corning	NY
City of Courtland	Courtland	NY
City of Culver City	Culver City	CA
City of Dallas	Dallas	TX
City of Downy	Downy	CA
City of Fowler	Fowler	CA
City of Fredericksburg	Fredericksburg	VA
City of Geneva	Geneva	NY
City of Glens Falls	Glens Falls	NY
City of Glendale	Glendale	CA
City of Glenwood Springs	Glenwood Springs	CO
City of Greeley	Greeley	CO
City of Hawthorne	Hawthorne	CA
City of Hornell	Hornell	NY
City of Hudson	Hudson	NY
City of Huntington Beach	Huntington Beach	CA
City of Inglewood	Inglewood	CA
City of Irvine	Irvine	CA
City of Ithaca	Ithaca	NY
City of Kingston	Kingston	NY
City of Kirkland	Kirkland	WA
City of Kirkwood	Kirkwood	MO
City of Ladue	Ladue	MO
City of Las Vegas	Las Vegas	NV
City of Little Falls	Little Falls	NY
City of Lockport	Lockport	NY
City of Los Angeles	Los Angeles	CA
City of Lynchburg	Lynchburg	VA
City of Manassas	Manassas	VA

City of Mechanicville	Mechanicville	NY
City of Middletown	Middletown	NY
City of Moberly	Moberly	MO
City of New Rochelle	New Rochelle	NY
City of Newburgh	Newburgh	NY
City of Niagara Falls	Niagara Falls	NY
City of North Tonawanda	North Tonawanda	NY
City of Norwalk	Norwalk	CA
City of Oakland	Oakland	CA
City of Ogdensburg	Ogdensburg	NY
City of Olean	Olean	NY
City of Oneida	Oneida	NY
City of Oneonta	Oneonta	NY
City of Oroville	Oroville	CA
City of Oswego	Oswego	NY
City of Palm Springs	Palm Springs	CA
City of Palo Alto	Palo Alto	CA
City of Peekskill	Peekskill	NY
City of Philadelphia - Department of Public Property	Philadelphia	PA
City of Philadelphia - Department of Revenue	Philadelphia	PA
City of Placentia	Placentia	CA
City of Plattsburg	Plattsburg	NY
City of Portland - Office for Community Technology	Portland	OR
City of Poughkeepsie	Poughkeepsie	NY
City of Redwood City	Redwood City	CA
City of Reno	Reno	NV
City of Richmond	Richmond	CA
City of Richmond	Richmond	VA
City of Riverside	Riverside	CA
City of Roanoke - Treasurer	Roanoke	VA
City of Rochester	Rochester	NY
City of Rome	Rome	NY
City of Sacramento	Sacramento	CA
City of Salamanca	Salamanca	NY
City of San Bernardino	San Bernardino	CA
City of San Buenaventura	San Buenaventura	CA
City of Santa Ana	Santa Ana	CA
City of Santa Barbara	Santa Barbara	CA
City of Santa Cruz	Santa Cruz	CA

City of Santa Monica	Santa Monica	CA
City of Santa Rosa	Santa Rosa	CA
City of Saratoga Springs	Saratoga Springs	NY
City of St. Louis	St. Louis	MO
City of Tacoma	Tacoma	WA
City of Torrance	Torrance	CA
City of Troy	Troy	NY
City of Utica	Utica	NY
City of Watertown	Watertown	NY
City of White Plains	White Plains	NY
City of Whittier	Whittier	CA
City Treasury	Auburn	NY
Clinton County 911	Lock Haven	PA
Cobb County Finance Department	Marietta	GA
Colorado Department of Revenue	Denver	CO
Colorado Public Utilities Commission	Denver	CO
Colorado Secretary of State	Denver	CO
Commission of Finance	Pomona	NY
Commissioner of Finance	Syracuse	NY
Commissioner of Revenue Services	Hartford	CT
Comptroller of Maryland	Annapolis	MD
Comptroller of Public Accounts	Austin	TX
Comptroller of the Treasury	Baltimore	MD
Connecticut Department of Public Services	Middletown	CT
Connecticut Department of Public Utility Control	New Britain	CT
Connecticut Department of Revenue Services	Hartford	CT
Connecticut Secretary of State	Hartford	CT
Controller - Anne Arundel County	Annapolis	MD
Cook County Emergency Telephone Systems Board - 911	Des Plaines	IL
Corporation Income Tax Section	Little Rock	AR
County of Alameda	Hayward	CA
County of Chester	West Chester	PA
County of Cumberland	Carlisle	PA
County of Delaware	Media	PA
County of Lancaster	Manheim	PA
County of Lehigh 911	Allentown	PA
County of Montgomery	Eagleville	PA
County of Northampton	Easton	PA
County of Oswego Treasurer	Oswego	NY

Courtland County Treasurer	Courtland	NY
Dauphin County Emergency Management Agency	Steelton	PA
D.C. Office of the People's Counsel	Washington	DC
D.C. Office of Tax and Revenue	Washington	DC
D.C. Office of Unified Communications	Washington	DC
D.C. Public Service Commission	Washington	DC
D.C. Treasurer	Washington	DC
Delaware Division of Revenue	Wilmington	DE
Delaware Public Service Commission	Dover	DE
Delaware Secretary of State	Dover	DE
Department of Consumer and Regulatory Affairs	Washington	DC
Department of Health and Human Services - Relay North Carolina	Raleigh	NC
Department of Revenue	Jackson	MS
Department of the Treasury	Trenton	NJ
Emergency Services Communications Bureau	Augusta	ME
Erie County	Buffalo	NY
Federal Communications Commission		FEDERAL
Florida Department of Revenue	Tallahassee	FL
Florida Division of Corporations	Tallahassee	FL
Florida Public Service Commission	Tallahassee	FL
Florida Telecommunications Relay, Inc.	Tallahassee	FL
Franchise Tax Board	Sacramento	CA
Genesee County Treasurer	Batavia	NY
Georgia Department of Revenue	Atlanta	GA
Georgia Public Service Commission	Atlanta	GA
Georgia Secretary of State	Atlanta	GA
GVNW Consulting, Inc.	Springfield	IL
Hawaii Department of Taxation	Honolulu	HI
Idaho Public Utilities Commission	Boise	ID
Idaho Secretary of State	Boise	ID
Idaho State Tax Commission	Boise	ID
Idaho Telecommunications Service Assistance Program	Boise	ID
Idaho Universal Service Fund	Boise	ID
Illinois Commerce Commission	Springfield	IL
Illinois Department of Revenue	Springfield	IL
Illinois Secretary of State	Springfield	IL
Illinois Small Company Exchange Carrier Association Universal Service Fund Administrator	Springfield	IL
Illinois Telecommunications Access Corporation	Springfield	IL

Indiana Department of Revenue	Indianapolis	IN
Indiana Secretary of State	Indianapolis	IN
Indiana Telephone Relay Access Corporation	Indianapolis	IN
Indiana Utility Regulatory Commission	Indianapolis	IN
Iowa Department of Revenue	Des Moines	IA
Iowa Utilities Board	Des Moines	IA
Jefferson County	Watertown	NY
Johnson County Auditor - 911	Franklin	IN
Kansas Corporation Commission	Topeka	KS
Kansas Secretary of State	Topeka	KS
Kentucky Department of Revenue	Frankfort	KY
Kentucky Public Service Commission	Frankfort	KY
Kentucky Secretary of State	Frankfort	KY
Kentucky State Treasurer	Frankfort	KY
La Porte County	La Porte	IN
Lawrence County 911	New Castle	PA
Lebanon County Emergency Management Agency	Lebanon	PA
Los Angeles County Tax Collector	Los Angeles	CA
Louisiana Department of Revenue	Baton Rouge	LA
Louisiana Public Service Commission	Baton Rouge	LA
Louisiana Secretary of State	Baton Rouge	LA
Luzerne County 911	Hanover Twp.	PA
Lycoming County	Montoursville	PA
Madison County Treasurer	Wampsville	NY
Maine Public Utilities Commission	Augusta	ME
Maine Revenue Services	Augusta	ME
Maine Secretary of State	Augusta	ME
Maryland Public Service Commission	Baltimore	MD
Massachusetts Department of Revenue	Boston	MA
Massachusetts Department of Telecommunications and Energy	Boston	MA
Massachusetts Secretary of the Commonwealth	Boston	MA
Michigan Department of Treasury	Detroit	MI
Michigan Department of Labor & Economic Growth	Lansing	MI
Michigan Public Service Commission	Lansing	MI
Mifflin County Office of Public Safety 911	Lewiston	PA
Minnesota Department of Commerce	St. Paul	MN
Minnesota Public Utilities Commission	St. Paul	MN
Minnesota Department of Revenue	St. Paul	MN
Minnesota Secretary of State	St. Paul	MN

Village of Galway		Galway	NY
Village of Garden City		Garden City	NY
Village of Gouverneur		Gouverneur	NY
Village of Gowanda		Gowanda	NY
Village of Great Neck Plaza		Great Neck	NY
Village of Greenwich		Greenwich	NY
Village of Groton		Groton	NY
Village of Hamilton		Hamilton	NY
Village of Haverstraw		Haverstraw	NY
Village of Herkimer		Herkimer	NY
Village of Hewlett Bay Park		Hewlett Bay Park	NY
Village of Highland Falls		Highland Falls	NY
Village of Hoosick Falls		Hoosick Falls	NY
Village of Ilion		Ilion	NY
Village of Jordan		Jordon	NY
Village of Lake George		Lake George	NY
Village of Lancaster		Lancaster	NY
Village of Lewiston		Lewiston	NY
Village of Liberty		Liberty	NY
Village of Lindenhurst		Lindenhurst	NY
Village of Little Valley		Little Valley	NY
Village of Lyons		Lyons	NY
Village of Macedon		Macedon	NY
Village of Malone		Malone	NY
Village of Mamaroneck		Mamaroneck	NY
Village of Massena		Massena	NY
Village of McGraw		McGraw	NY
Village of Medina		Medina	NY
Village of Mexico		Mexico	NY
Village of Middleport		Middleport	NY
Village of Millbrook		Millbrook	NY
Village of Monticello		Monticello	NY
Village of Moravia		Moravia	NY
Village of New Paltz		New Paltz	NY
Village of Newark		Newark	NY
Village of North Collins		North Collins	NY
Village of Northport		Northport	NY
Village of Nyack		Nyack	NY
Village of Ocean Beach		Ocean Beach	NY

Village of Old Brookville	Old Brookville	NY
Village of Orchard Park	Orchard Park	NY
Village of Ossining	Ossining	NY
Village of Owego	Owego	NY
Village of Palmyra	Palmyra	NY
Village of Patchogue	Patchogue	NY
Village of Penn Yan	Penn Yan	NY
Village of Philmont	Philmont	NY
Village of Piermont	Piermont	NY
Village of Pleasantville	Pleasantville	NY
Village of Port Chester	Port Chester	NY
Village of Port Jefferson	Port Jefferson	NY
Village of Potsdam	Potsdam	NY
Village of Quogue	Quogue	NY
Village of Round Lake	Round Lake	NY
Village of Sackets Harbor	Sackets Harbor	NY
Village of Sag Harbor	Sag Harbor	NY
Village of Saranac Lake	Saranac Lake	NY
Village of Scarsdale	Scarsdale	NY
Village of Seneca Falls	Seneca Falls	NY
Village of Sharon Springs	Sharon Springs	NY
Village of Silver Creek	Silver Creek	NY
Village of Sloatsburg	Sloatsburg	NY
Village of Sodus	Sodus	NY
Village of Southampton	Southampton	NY
Village of Spring Valley	Spring Valley	NY
Village of Springville	Springville	NY
Village of Suffern	Suffern	NY
Village of Sylvan Beach	Sylvan Beach	NY
Village of Tannersville	Tannersville	NY
Village of The Branch	Smithtown	NY
Village of Tupper Lake	Tupper Lake	NY
Village of Union Springs	Union Springs	NY
Village of Valley Falls	Valley Falls	NY
Village of Voorheesville	Voorheesville	NY
Village of Wappingers Falls	Wappingers Falls	NY
Village of Waterloo	Waterloo	NY
Village of Watkins Glen	Watkins Glen	NY
Village of Waverly	Waverly	NY

Village of Weedsport		Weedsport	NY
Village of Wellsville		Wellsville	NY
Village of Westbury		Westbury	NY
Village of Westhampton Beach		Westhampton Beach	NY
Village of Williamsville		Williamsville	NY
Village of Wolcott		Wolcott	NY
Village Treasurer		Bath	NY
Virginia Department of Taxation		Richmond	VA
Virginia Department of Transportation		Richmond	VA
Virginia State Corporation Commission		Richmond	VA
Wachovia Bank, NA		Atlanta	GA
Washington Department of Licensing		Olympia	WA
Washington Secretary of State		Olympia	WA
Washington Utilities and Transportation Commission		Olympia	WA
Wayne County		Lyons	NY
West Virginia Public Service Commission		Charleston	WV
West Virginia Secretary of State		Charleston	WV
West Virginia State Tax Department, Tax Account Administration Division		Charleston	WV
Westchester County		White Plains	NY
Westmoreland County Department of Public Safety / 911		Greensburg	PA
Winchester City		Winchester	VA
Wisconsin Department of Financial Institutions		Madison	WI
Wisconsin Department of Revenue		Madison	WI
Wyoming County Treasurer		Warsaw	NY
Wyoming Department of Revenue		Cheyenne	WY
Wyoming Public Service Commission		Cheyenne	WY
York County Treasurer		York	PA



**EXHIBIT B**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
 In re : Chapter 11  
 :  
 Broadview Networks Holdings, Inc., et al.,<sup>1</sup> : Case No. 12-\_\_\_\_\_ ( )  
 :  
 Debtors. : (Joint Administration Pending)  
 -----X

**INTERIM ORDER AUTHORIZING PAYMENT OF SALES,  
USE AND OTHER TAXES AND REGULATORY FEES**

Upon the motion (the "**Motion**") of the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") for an interim order, pursuant to sections 105(a), 507(a)(8) and 541 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), authorizing, but not directing, the Debtors to pay prepetition amounts owing in respect of prepetition sales, use and other taxes and regulatory fees; and upon consideration of the Motion and all of the pleadings related thereto, including the Declaration of Michael K. Robinson, President and Chief Executive Officer of Broadview Networks Holdings, Inc., in Support of Chapter 11 Petitions and First Day Pleadings; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of these estates, their creditors and

<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Broadview Networks Holdings, Inc. (0798); (ii) A.R.C. Networks, Inc. (0814); (iii) ARC Networks, Inc. (4934); (iv) ATX Communications, Inc. (2245); (v) ATX Licensing, Inc. (9838); (vi) ATX Telecommunications Services of Virginia, LLC (3888); (vii) BridgeCom Holdings, Inc. (2965); (viii) BridgeCom International, Inc. (3985); (ix) BridgeCom Solutions Group, Inc. (3989); (x) Broadview Networks, Inc. (1082); (xi) Broadview Networks of Massachusetts, Inc. (8054); (xii) Broadview Networks of Virginia, Inc. (6404); (xiii) Broadview NP Acquisition Corp. (2734); (xiv) BV-BC Acquisition Corporation (7846); (xv) CoreComm-ATX, Inc. (0529); (xvi) CoreComm Communications, LLC (2077); (xvii) Digicom, Inc. (0777); (xviii) Eureka Broadband Corporation (6004); (xix) Eureka Holdings, LLC (1318); (xx) Eureka Networks, LLC (1244); (xxi) Eureka Telecom, Inc. (3720); (xxii) Eureka Telecom of VA, Inc. (5508); (xxiii) InfoHighway Communications Corporation (0551); (xxiv) Info-Highway International, Inc. (8543); (xxv) InfoHighway of Virginia, Inc. (1600); (xxvi) nex-i.com, inc. (7035); (xxvii) Open Support Systems LLC (9972); and (xxviii) TruCom Corporation (0714). The Debtors' executive headquarters' address is 800 Westchester Avenue, Rye Brook, NY 10573.

other parties-in-interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
3. The Debtors are authorized, but not directed, to remit all amounts owed for prepetition Trust Fund Taxes to the Applicable Authorities, in accordance with the Debtors' prepetition practice, including, but not limited to, the remittance of appropriate amounts to the Third-Party Payor.
4. The Debtors are authorized, but not directed, to pay the prepetition Regulatory Fees and Other Taxes, up to a maximum aggregate amount of \$768,000, in accordance with the Debtors' prepetition practice, including, but not limited to, the remittance of appropriate amounts to the Third-Party Payor.
5. The Debtors' banks are authorized and directed to honor prepetition wire transfer requests and checks issued by the Debtors to the Tax Payment Recipients in payment of prepetition Trust Fund Taxes, Regulatory Fees and Other Taxes that, as of the Petition Date, have not cleared or been transferred. The Debtors will provide the banks with a list of outstanding prepetition checks or wire transfers with respect to the Taxes within two (2) business days of the entry of the order authorizing such payments. To the extent the Debtors have not yet sought to remit payment to the Tax Payment Recipients, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment to the Tax Payment Recipients, to the extent necessary to pay the Trust Fund Taxes, Regulatory Fees and Other Taxes.

6. Nothing in this order or the Motion shall be construed as impairing or prejudicing the Debtors' rights to contest the amount, classification or allowability of any Trust Fund Taxes, Regulatory Fees or Other Taxes asserted in these cases.

7. Authorization to pay prepetition Trust Fund Taxes, Regulatory Fees and Other Taxes shall not create any additional obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay such Trust Fund Taxes, Regulatory Fees or Other Taxes, and nothing in this order shall be deemed to increase, reclassify, elevate to administrative expense status or otherwise affect the prepetition Trust Fund Taxes, Regulatory Fees or Other Taxes to the extent they are not paid.

8. Objections, if any, to the relief requested in the Motion on a final basis shall be set forth in a writing describing the particular basis therefor which shall be filed with the Court electronically in accordance with General Order M-242 by registered users of the Court's electronic case filing system and, by all other parties-in-interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-242 or otherwise so as to be actually received no later than 5:00 p.m. (Prevailing Eastern Time) on [\_\_\_\_\_] , 2012 (the "**Objection Deadline**") by (i) the Chambers of the Honorable [\_\_\_\_\_] , One Bowling Green, New York, New York, 10004, (ii) the Debtors' counsel, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019 (Attn: Rachel C. Strickland, Esq. and Jennifer J. Hardy, Esq.), (iii) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004 (Attn: Michael Driscoll, Esq. and Richard Morrissey, Esq.), (iv) counsel to the administrative agent under the Debtors' prepetition and postpetition revolving credit agreements, and (v) counsel to the Required

Consenting Noteholders.

9. In the event an objection is timely filed and served in accordance with this Interim Order, a hearing will be held on [\_\_\_\_\_, 2012] at 10:00 a.m., and pending entry of an order following the conclusion of said hearing, the relief granted herein shall remain in effect on an interim basis.

10. The relief requested in the Motion is necessary to avoid irreparable harm to the Debtors, and timely entry of this Order is not prohibited by Bankruptcy Rule 6003(b).

11. Bankruptcy Rule 6004(a) is waived for the purposes of the Motion, and notwithstanding any applicability of Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

12. This Court shall retain jurisdiction with respect to any and all matters arising from or relating to the implementation or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2012  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT C**

**Proposed Final Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re	: Chapter 11
	: :
Broadview Networks Holdings, Inc., <u>et al.</u> , <sup>1</sup>	: Case No. 12-_____ ( )
	: :
Debtors.	: (Joint Administration Pending)
-----X	

**FINAL ORDER AUTHORIZING PAYMENT OF SALES,  
USE AND OTHER TAXES AND REGULATORY FEES**

Upon the motion (the "**Motion**") of the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") for a final order, pursuant to sections 105(a), 507(a)(8) and 541 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), authorizing, but not directing, the Debtors to pay prepetition amounts owing in respect of prepetition sales, use and other taxes and regulatory fees; and upon consideration of the Motion and all of the pleadings related thereto, including the Declaration of Michael K. Robinson, President and Chief Executive Officer of Broadview Networks Holdings, Inc., in Support of Chapter 11 Petitions and First Day Pleadings; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the

<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Broadview Networks Holdings, Inc. (0798); (ii) A.R.C. Networks, Inc. (0814); (iii) ARC Networks, Inc. (4934); (iv) ATX Communications, Inc. (2245); (v) ATX Licensing, Inc. (9838); (vi) ATX Telecommunications Services of Virginia, LLC (3888); (vii) BridgeCom Holdings, Inc. (2965); (viii) BridgeCom International, Inc. (3985); (ix) BridgeCom Solutions Group, Inc. (3989); (x) Broadview Networks, Inc. (1082); (xi) Broadview Networks of Massachusetts, Inc. (8054); (xii) Broadview Networks of Virginia, Inc. (6404); (xiii) Broadview NP Acquisition Corp. (2734); (xiv) BV-BC Acquisition Corporation (7846); (xv) CoreComm-ATX, Inc. (0529); (xvi) CoreComm Communications, LLC (2077); (xvii) Digicom, Inc. (0777); (xviii) Eureka Broadband Corporation (6004); (xix) Eureka Holdings, LLC (1318); (xx) Eureka Networks, LLC (1244); (xxi) Eureka Telecom, Inc. (3720); (xxii) Eureka Telecom of VA, Inc. (5508); (xxiii) InfoHighway Communications Corporation (0551); (xxiv) Info-Highway International, Inc. (8543); (xxv) InfoHighway of Virginia, Inc. (1600); (xxvi) nex-i.com, inc. (7035); (xxvii) Open Support Systems LLC (9972); and (xxviii) TruCom Corporation (0714). The Debtors' executive headquarters' address is 800 Westchester Avenue, Rye Brook, NY 10573.

Motion is in the best interests of these estates, their creditors and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is granted on a final basis to the extent set forth herein.
2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
3. The Debtors are authorized, but not directed, to remit all amounts owed for prepetition Trust Fund Taxes to the Applicable Authorities, in accordance with the Debtors' prepetition practice, including, but not limited to, the remittance of appropriate amounts to the Third-Party Payor.
4. The Debtors are authorized, but not directed, to pay the prepetition Regulatory Fees and Other Taxes in accordance with the Debtors' prepetition practice, including, but not limited to, the remittance of appropriate amounts to the Third-Party Payor.
5. The Debtors' banks are authorized and directed to honor prepetition wire transfer requests and checks issued by the Debtors to the Tax Payment Recipients in payment of prepetition Trust Fund Taxes, Regulatory Fees and Other Taxes that, as of the Petition Date, have not cleared or been transferred. The Debtors will provide the banks with a list of outstanding prepetition checks or wire transfers with respect to the Taxes within two (2) business days of the entry of the order authorizing such payments. To the extent the Debtors have not yet sought to remit payment to the Tax Payment Recipients, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment to the Tax Payment Recipients, to the extent necessary to pay the Trust Fund Taxes, Regulatory Fees and Other Taxes.
6. Nothing in this order or the Motion shall be construed as impairing or



prejudicing the Debtors' rights to contest the amount, classification or allowability of any Trust Fund Taxes, Regulatory Fees or Other Taxes asserted in these cases.

7. Authorization to pay prepetition Trust Fund Taxes, Regulatory Fees and Other Taxes shall not create any additional obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay such Trust Fund Taxes, Regulatory Fees or Other Taxes, and nothing in this order shall be deemed to increase, reclassify, elevate to administrative expense status or otherwise affect the prepetition Trust Fund Taxes, Regulatory Fees or Other Taxes to the extent they are not paid.

8. Bankruptcy Rule 6004(a) is waived for the purposes of the Motion, and notwithstanding any applicability of Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction with respect to any and all matters arising from or relating to the implementation or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2012  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE