HEARING DATE AND TIME: January 9, 2004 at 10:00 a.m.
OBJECTION DEADLINE: January 8, 2004 at 12:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., et al.,	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered

DEBTORS' MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a), 363, 365 AND 1146(c) OF THE BANKRUPTCY CODE: (A) (I) FIXING THE TIME, DATE AND PLACE FOR THE BIDDING PROCEDURES HEARING AND (II) APPROVING THE NO-SHOP PROVISIONS SET FORTH IN THE ASSET PURCHASE AGREEMENT WITH QWEST COMMUNICATIONS INTERNATIONAL INC.; (B) (I) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS, (II) APPROVING THE FORM AND MANNER OF NOTICES, (III) APPROVING THE ASSET PURCHASE AGREEMENT SUBJECT TO HIGHER AND BETTER OFFERS AND (IV) SETTING A SALE APPROVAL HEARING DATE; AND (C) (I) APPROVING THE SALE TO QWEST COMMUNICATIONS INTERNATIONAL INC. FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTIONAND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (III) GRANTING RELATED RELIEF

TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors" or "Allegiance"), respectfully represent as follows:

Introduction

1. On May 14, 2003 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

2. No trustee or examiner has been appointed in these chapter 11 cases. On May 28, 2003, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Creditors' Committee") in these chapter 11 cases.

Jurisdiction

3. This Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

An Overview of Allegiance's Business

4. Allegiance is a facilities-based national local exchange carrier that provides integrated telecommunications products and services to small and medium-sized business customers, large businesses (i.e., national customers with multiple locations), governmental entities, wholesale customers and other institutional users. Allegiance offers their customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;

- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and colocation services;

- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;

- wholesale services to other regional and national service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and

- customer premise equipment sales and maintenance services.

5. As of September 30, 2003, the Debtors served more than 100,000 business customers in major markets throughout the United States. As of September 30, 2003, the Debtors employed approximately 2,912 people, of which approximately 98 employees were covered by collective bargaining agreements.

6. As of September 30, 2003, the Debtors had approximately $284.1 million of unrestricted cash on hand. As of September 30, 2003, the Debtors' consolidated books and records reflected assets totaling approximately $1.226 billion and liabilities totaling approximately $1.455 billion. For the nine months ending September 30, 2003, the Debtors, on a consolidated basis, reported revenues of approximately $589.4 million and net losses of approximately $275.6 million.

Relief Requested

7. By this Motion, the Debtors seek the entry of three orders:

- An order pursuant to sections 105(a) and 363 of the Bankruptcy Code, substantially in the form attached hereto as Exhibit A (the "Lock-Up Order"), (a) fixing the time, date and place of hearing (the "Bid Procedures Hearing") on Debtors' motion for approval of bidding procedures and bid protections in connection with the sale of substantially all of the assets of the Debtors and (b) authorizing and approving Debtors' agreement to no-shop provisions set forth in Section 6.17(a) of the Purchase Agreement (as defined below) between the Debtors and Qwest Communications International Inc. ("Qwest" or "Buyer");

- An order pursuant to sections 105(a) and 363 of the Bankruptcy Code substantially in the form attached hereto as Exhibit B (the "Bidding Procedures Order"): (a) establishing bidding procedures and bid protections (the "Bidding Procedures") in connection with the sale of substantially all of the assets of the Debtors (the "Sale Assets"); (b) approving the form and manner of notices; (c) approving the Purchase Agreement; and (d) setting a hearing date to consider approval of the Sale Transaction (the "Sale Approval Hearing"); and

- An order pursuant to sections 105(a), 362, 363, 365 and 1146(c) of the Bankruptcy Code, substantially in the form attached hereto as Exhibit C (the "Sale Approval Order"): (a) approving the sale, free and clear of all liens, claims and encumbrances to the Successful Bidder (as defined below) and (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (c) granting related relief (the "Sale" or "Sale Transaction").

Negotiations Regarding a Stand-Alone Restructuring

8. Shortly after the Commencement Date, the Debtors commenced negotiations with their senior prepetition lenders (the "Prepetition Lenders") regarding a stand-alone restructuring of the Debtors' businesses. On May 22, 2003, the Debtors met with the Prepetition Lenders to discuss the terms of such stand-alone restructuring. Based on the meeting and the views and information exchanged in connection therewith, on June 11, 2003, the Debtors provided the Prepetition Lenders with a term sheet for a stand-alone restructuring, which was intended to act as the foundation for a chapter 11 plan of reorganization.

9. In connection with the discussions regarding a stand-alone restructuring plan, the Prepetition Lenders requested that the Debtors retain a chief restructuring officer to (a) assist the Debtors in the restructuring of their businesses operations and (b) prepare, together with the management team, a comprehensive business plan. After extensive discussions with the Prepetition Lenders and significant internal consideration, the Debtors determined to retain an operational restructuring firm. On June 16, 2003, the Debtors engaged Impala Partners, LLC ("Impala") as their chief restructuring officer. Impala, together with the Debtors' management team, began preparing the Debtors' strategic long term business plan. The Prepetition Lenders

were reluctant to engage in meaningful plan negotiations until after the Debtors business plan was substantially complete.

10. On July 30, 2003, the Debtors' management team and Impala met with the Prepetition Lenders and provided them with an update on the Debtors' progress with respect to the preparation of the business plan and the significant and beneficial operational changes and cost cutting measures that the Debtors had implemented. On July 31, 2003, the Debtors' management and Impala made a similar presentation to the Creditors' Committee.

11. On (a) September 19, 2003 and (b) September 22, 2003, the Debtors' management and Impala separately met with the Prepetition Lenders and the Creditors' Committee to provide both constituencies with the proposed business plan for a reorganized Allegiance. Thereafter, the Debtors and the Prepetition Lenders commenced meaningful negotiations over the terms of a stand-alone restructuring plan.

12. After extensive negotiations, the Debtors and the Prepetition Lenders agreed to the terms of a stand-alone restructuring plan. After obtaining the support of the Prepetition Lenders, the Debtors presented the plan to the Creditors' Committee to garner its support therefor. After extensive discussions, the Debtors, in consultation with Prepetition Lenders and the Creditors' Committee, determined that a sale transaction might provide greater value to the Debtors' creditors.

13. In an effort to find a plan alternative that might win the joint support of the Prepetition Lenders and the unsecured creditors, the Debtors investigated their options for selling their businesses.

Negotiations Regarding a Potential Sale of the Debtors' Businesses

14. During the course of their negotiations with the Prepetition Lenders regarding the stand-alone restructuring, the Debtors received varying degrees of interest from

third parties regarding a potential purchase of substantially all of their businesses. Two parties delivered letters of intent to the Debtors. Representatives of the Debtors met with these parties to gauge the level of their interest. Based on these meetings, the Debtors directed their management team and professionals to establish a process that would enable the two parties to conduct business and legal due diligence in connection with a potential sale transaction. At the same time, the Debtors met with other parties who expressed even an inkling of interest in acquiring the Debtors businesses and permitted them to conduct due diligence in a limited and less formal manner.

15. After consulting with the Prepetition Lenders and the Creditors' Committee and determining that the Debtors could realize greater value through a sale transaction, the Debtors determined it was in the best interests of their estates to authorize their management team and professionals to commence negotiations regarding a potential sale transaction (while finalizing the negotiations (which as described above were finalized) with the Prepetition Lenders regarding the stand-alone restructuring). On October 17, 2003, the Debtors' financial advisors, Greenhill & Co., LLC ("Greenhill"), sent a letter (the "Stalking Horse Letter") to each of the three most interested potential bidders (the two parties mentioned above and an additional party that demonstrated both a high level of interest and the financial wherewithal to close a sale transaction) inviting them to submit non-binding offers for the Debtors' businesses. In exchange for the receipt of such non-binding offers, the Debtors agreed to provide such interested parties with certain access to the Debtors' management, financial advisors and facilities to supplement their due diligence and evaluation of the Debtors' businesses.

16. On October 21, 2003, in response to the Stalking Horse Letter, two of the three parties (the "Potential Stalking Horse Bidders") submitted non-binding offers to purchase

substantially all of the Debtors' businesses. Based on a comparison of these non-binding bids to the negotiated stand-alone restructuring plan, the Debtors determined that it was in the best interests of their estates to attempt to negotiate a "stalking horse" asset purchase agreement with the Potential Stalking Horse Bidders. Accordingly, the Debtors and their professionals commenced negotiations with each of the Potential Stalking Horse Bidders.

17. The negotiations with each of the Potential Stalking Horse Bidders were extensive and conducted in good faith and at arm's-length. In addition, the Debtors communicated their progress and provided multiple drafts of the respective asset purchase agreements to the Prepetition Lenders and the Creditors' Committee to obtain their comments and views. At the conclusion of these negotiations with the Potential Stalking Horse Bidders,[1] the Debtors considered, among other things, the value of the offers, the financing of the offers and the conditionality of both agreements. In addition, the Debtors solicited the views of their advisors, their management team, the Prepetition Lenders and the Creditors' Committee (and their respective advisors). After extensive deliberation regarding the merits and risks of both asset purchase agreements, the Debtors determined that it was in the best interests of the estates to select Qwest as the stalking horse bidder. Specifically, the Debtors selected Qwest because, among other things, it did not require third party financing had completed extensive due diligence, devoted significant resources to the completion of a sale transaction, and demonstrated a compelling business strategy to incorporate the Debtors' business into a well established and

[1] The Debtors received two additional non-binding offers from third parties. The Debtors shared these offers with the Prepetition Lenders and the Creditors' Committee. The Debtors expended significant time and effort negotiating with these third parties; however, due to their late entry into the process and the structure of their bids (which were not optimal as compared with the structure of the bids received from the Potential Stalking Horse Bidders) the Debtors focused their efforts on the Potential Stalking Horse Bidders, but, nevertheless, continued to communicate and share information with the these third parties.

reputable nationwide communications enterprise, thereby offering a promising opportunity for the Debtors' customers, employees and stakeholders. Accordingly, the Debtors and Qwest have finalized a definitive asset purchase agreement to purchase the Sale Assets, dated as of December 18, 2003 (the "Purchase Agreement"). Qwest has agreed to execute the Purchase Agreement upon the entry of the Lock-Up Order by the Court. A copy of the Purchase Agreement is annexed hereto as Exhibit D.[2] The Purchase Agreement also contemplates the assumption and assignment of certain executory contracts and unexpired leases to Qwest. The Sale Transaction is subject to higher or better offers received in accordance with the Bidding Procedures and, currently, the Debtors intend, subject to their right to exercise the Early Closing Election (as defined below) in accordance with the Purchase Agreement, to implement the Sale Transaction pursuant to a plan of reorganization.

18. Notably, although the Sale Transaction is conditioned upon the confirmation of a chapter 11 plan in these cases, the Debtors have the sole and absolute right to waive this condition. In connection with such a waiver, the Debtors and Buyer, subject to certain notice provisions, may proceed to closing and any provisions in the Purchase Agreement related to the plan process would be inapplicable.

The Proposed Sale

19. The Purchase Agreement provides for the Sale Transaction, subject to higher or better offers, free and clear of liens, claims, interests and encumbrances. The following

[2] Certain annexes and schedules to the Purchase Agreement, as well as ancillary agreements related to the Purchase Agreement, are not annexed hereto because such documents contain confidential financial and/or competitive information. Parties interested in obtaining copies of such documents should contact the attorneys for the Debtors.

is a summary of certain salient provisions of the Purchase Agreement and is qualified entirely by reference to the Purchase Agreement itself:[3]

PROVISION	DESCRIPTION
Purchase of Sale Assets:	At Closing, the Debtors agree to sell to Buyer, free and clear of all Liens and Liabilities (other than Permitted Liens) and Buyer agrees to purchase from the Debtors the Sale Assets, which include, among other things, the following: (a) the Real Property Leases; (b) the Equipment; (c) the Personal Property Leases; (d) the Assumed Contracts; (e) the Claims; (f) any books, records files or papers of the Debtors; and (g) the Intellectual Property.
Excluded Assets:	The Purchase Agreement provides for Excluded Assets including, among others, Cash and Cash Equivalents, the Shared Hosting Business, the Owned Real Property and substantially all of the Debtors' managed modem business.
Liabilities Assumed by Qwest:	On the Closing Date, Buyer shall assume, among others, the following Liabilities of the Debtors: (a) certain Liabilities arising out of or relating to the ownership of the Acquired Assets and the operation of the Business by Buyer or any of its assignees; (b) certain Liabilities under the Assumed Contracts; (c) certain Liabilities under trade accounts payable arising in the Ordinary Course of Business; (d) Liabilities for fifty percent (50%) of any and all Transfer Taxes due as a result of the transactions contemplated by the Purchase Agreement, if any; (e) certain Liabilities for severance costs; and (f) certain Liabilities associated with customers of the Business.
Closing Date:	The Closing shall be held at the offices of Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York 10022, at 10:00 a.m., local time, unless the parties hereto otherwise agree. The Closing shall take place no later than the fifth (5th) Business Day following the date on which certain conditions of the Buyers and/or the Debtors have been satisfied or waived; provided, however, that if the Closing would be scheduled to occur less than two (2) Business Days after the receipt of the performance reports for the prior month referred to in section 6.5(d) of the Purchase Agreement, Buyer shall not be required to close until two (2) Business Days after its receipt of such performance reports.

[3] The following summary of the Purchase Agreement is provided for the convenience of the Court and parties in interest. To the extent that there are any discrepancies between this summary and the Purchase Agreement, the terms and language of the Purchase Agreement shall govern. Unless defined herein, capitalized terms defined in the Purchase Agreement shall have the meanings ascribed to them therein.

PROVISION	DESCRIPTION
Purchase Price:	In consideration for the Sale Assets, and subject to the terms and conditions of the Purchase Agreement, Buyer shall (a) pay to ATI (on behalf of the Debtors) in immediately available funds, by wire transfer to an account or accounts designated by ATI, an amount in cash equal to $300,000,000 and (b) deliver to ATI the Convertible Note in the principal amount of $90,000,000; subject to the applicable adjustments to the Purchase Price set forth in the Purchase Agreement.
Conditions to Obligations of Buyer and Debtors:	• No Injunction. No preliminary or permanent injunction or other order issued by, and no Litigation or Order by or before any Governmental Entity in the United States or by any United States Governmental Entity nor any Law or Order promulgated or enacted by any United States Governmental Entity shall be in effect or pending which materially delays, restrains, enjoins or otherwise prohibits or seeks to restrain, enjoin or otherwise prohibit the transactions contemplated hereby, provided that with respect to pending Litigation, such condition shall only apply to Litigation commenced by a Governmental Entity. • The Sale Order. The Bankruptcy Court shall have entered the Sale Order, which approves the Purchase Agreement and all of the terms and conditions of the Purchase Agreement, and authorizes the Debtors to consummate the transactions contemplated by the Purchase Agreement. • HSR Act. Any applicable waiting period under the HSR Act shall have expired or shall have been earlier terminated. • Approval of Plan. Unless the Debtors deliver the Early Closing Election, all conditions to the "Effective Date" set forth in the Bankruptcy Plan (including the entry of the Confirmation Order by the Bankruptcy Court) shall have been satisfied or duly waived, with the express written consent of Buyer, such consent not to be unreasonably withheld, in accordance with the applicable provisions of the Bankruptcy Plan and the transactions contemplated by the Bankruptcy Plan to occur on or prior to the Closing shall have been or shall be consummated simultaneously with the Closing in accordance with the Bankruptcy Plan. • Non-Transferred Assets. The Non-Transferred Assets shall have been retained by the Debtors. • Management Agreements. To the extent there are Non-Transferred Assets as of the Closing, the Debtors and Buyer shall have entered into the Management Agreements, and such agreements shall be in

PROVISION	DESCRIPTION
	full force and effect. • Escrow Agreement. ATI, ATCW and Buyer shall have entered into the Closing Escrow Agreement, and such agreement shall be in full force and effect.
Representations and Warranties:	Customary for transactions of this type, including without limitation, authority, consents, approvals, compliance with laws, litigation, description of the assets and their location, insurance, intellectual property, and permits. The representations and warranties of the parties and the covenants to be performed on or prior to the Closing will not survive the Closing and no party to the Purchase Agreement shall be entitled to any indemnification with respect thereto.
Termination:	The Purchase Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing: By Buyer and the Debtors: • by mutual written consent. By Buyer or ATI: • if the Closing shall not have occurred on or before the eight month anniversary of the date of execution of the Purchase Agreement; provided, however, that if the Closing shall not have occurred on or before the eight month anniversary of the date of execution of the Purchase Agreement due to a breach of the Purchase Agreement by Buyer or any Debtor, Buyer or ATI (if a Debtor is the breaching party), as the case may be, may not terminate the Purchase Agreement pursuant to Section 8.1(b) of the Purchase Agreement. By Buyer: • if any Debtor (a) agrees in writing, (b) publicly announces its intention (including by selecting a competing bidder at the Bankruptcy Court's auction relating to the transactions contemplated therein), or (b) is authorized by its board of directors to proceed with a Competing Transaction, irrespective of whether such Competing Transaction is approved by the Bankruptcy Court and/or consummated; • if Prior to the Closing, any Debtor abandons or files a motion with the Bankruptcy Court to abandon all or any material

PROVISION	DESCRIPTION
	portion of the Sale Assets; • if prior to Closing, any Debtor files any plan of reorganization other than the Bankruptcy Plan, files any material amendment to the Bankruptcy Plan, withdraws the Bankruptcy Plan, or consents to the reduction of the Exclusivity Period or fails timely to file motions to obtain orders of the Bankruptcy Court extending the Exclusivity Period or the Bankruptcy Court denies the confirmation of the Bankruptcy Plan; • if the Bankruptcy Court terminates the Exclusivity Period or declines to extend the Exclusivity Period; • if the voluntary dismissal or conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code; • upon the appointment in the Cases of a trustee or examiner with managerial powers under section 1104 of the Bankruptcy Code; • if any Order is entered by the Bankruptcy Court which would result in the failure of any of the conditions to the obligations of Buyer set forth in Section 7.1 or 7.2 of the Purchase Agreement other than Section 7.1(d) if the Debtors shall have delivered the Early Closing Election; or • if there is a breach of any representation or warranty contained in Article IV of the Purchase Agreement (without regard to any qualifications concerning materiality or Material Adverse Effect contained in Article IV), which breach, in the aggregate with all other such breaches, if any, would give rise to a failure of the condition set forth in Section 7.2(a) of the Purchase Agreement (with the date of such termination being substituted for the references to Closing Date therein) and which breach could not reasonably be expected to be cured using reasonable efforts by the date set forth in Section 8.1(b) of the Purchase Agreement; • if there is a Sale Delay or Adverse Bankruptcy Event. By Debtors • if at any time on or after the Bidding Procedures Order Approval Date and prior to the Sale Order Approval Date immediately if Sellers have complied with Section 6.17 of the Purchase Agreement and agree to a Competing Transaction in accordance with the Bidding Procedures Order and simultaneously make the

PROVISION	DESCRIPTION
	payments required by Section 8.2 of the Purchase Agreement. By Buyer or the Debtors: • By Debtors, on the one hand, or Buyer, on the other, if Buyer or Debtors, as the case may be, materially breach any of its covenants under this Agreement, unless such breach shall be cured within ten (10) Business Days after such other party shall have received notice of such breach.
Liquidated Damages:	If, following the Sale Order Approval Date, (i) the Purchase Agreement is terminated by Buyer pursuant to Sections 8.1(b), (c), or (d) of the Purchase Agreement or by Debtors pursuant to Section 8.1(f) of the Purchase Agreement, or (ii) Buyer elects to terminate the Purchase Agreement pursuant to Section 8.1(e) of the Purchase Agreement or not to close, in each case because the condition set forth in Section 7.2(a) of the Purchase Agreement has not been satisfied, as a result of Debtors' gross negligence or intentional, wanton or reckless action or inaction, the Buyer shall be entitled to immediate payment (simultaneous payment in the case of a termination by Sellers pursuant to Section 8.1(f) of the Purchase Agreement), as liquidated damages and not as a penalty, of the amount of the (i) Expense Reimbursement (which Expense Reimbursement shall not exceed $10 million) and (ii) $30 million (the "Liquidated Damages"). In the event of an Adverse Bankruptcy Event (as such term is defined in the Purchase Agreement) that Buyer does not agree to waive or extend, the Debtors shall either (a) immediately terminate the Purchase Agreement and simultaneously pay to Buyer the Liquidated Damages or (b) immediately waive the condition set forth in Section 7.1(d) of the Purchase Agreement, send an election of early closing on the date of such Adverse Bankruptcy Event and promptly close the transactions contemplated by the Purchase Agreement. The Liquidated Damages, if required to be paid pursuant to the terms of the Purchase Agreement, shall receive superpriority administrative claim status and shall have priority over any and all administrative expenses of the kinds specified in sections 503(b), 506(c), 507(a), or 507(b) of the Bankruptcy Code, provided, however, that such amounts payable shall not prime the liens held by the Debtors' Prepetition Lenders and shall be subordinated to the carve out for professional fees and fees under 28 U.S.C. § 1930 as provided in the Bankruptcy Court's order authorizing Debtors to use cash collateral that was entered in these cases. Buyer's right to the Liquidated Damages and the superpriority administrative claim status of such claims shall survive rejection or breach of the Purchase Agreement, and shall be unaffected thereby.

PROVISION	DESCRIPTION
Non-solicitation:	Following the date of entry of the Lock-Up Order and until the Bidding Procedures Order Approval Date, and following the Sale Order Approval Date and until such time as the Purchase Agreement has been terminated (other than a termination by Sellers in violation of this Agreement), Sellers shall not, nor shall they authorize or permit any Representative of Sellers to, (a) directly or indirectly solicit, initiate or encourage the submission of any offer or proposal concerning any (x) sale, lease or other disposition directly or indirectly by merger, consolidation, business combination, share exchange, joint venture or otherwise, of any or all of the Acquired Assets, (y) issuance or sale of any equity interests in any Seller, or (z) transaction pursuant to which any Person will acquire beneficial ownership or the right to acquire beneficial ownership of equity interests in any Seller (any of the foregoing, a "Competing Transaction"), (b) directly or indirectly participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or take any other action to facilitate the making of, any proposal or expression of interest that constitutes or is reasonably likely to lead to a Competing Transaction, or (c) enter into any agreement with respect to any Competing Transaction; provided, however, that, prior to the Bidding Procedures Order Approval Date, Sellers may, in response to unsolicited bona fide inquiries from Persons indicating an interest in pursuing a Competing Transaction, and after giving Buyer written notice of such inquiries, enter into confidentiality agreements as provided in Section 6.17(b) of the Purchase Agreement and furnish publicly available information (including any information on Sellers' virtual data room) pursuant thereto. Following the Bidding Procedures Order Approval Date and until the Sale Order Approval Date, Sellers are permitted to cause their Representatives to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates, agents and Representatives) in connection with any Competing Transaction; provided, however, that any such contact, solicitation, or encouragement shall be undertaken in accordance with the terms of the Bidding Procedures Order. Sellers shall not furnish information concerning their business, properties or assets to any third party, except in the Ordinary Course of Business to potential and current vendors, customers and agents and except pursuant to a confidentiality agreement with terms and conditions no less restrictive than those contained in the Confidentiality Agreement as modified by Section 9.9 of the Purchase Agreement. Sellers shall not release any third party from, or waive any provision of, any such confidentiality agreement to which any Seller is a party other than to the extent a similar release or waiver was granted to Buyer.

PROVISION	DESCRIPTION
	Sellers shall use reasonable efforts to promptly provide, or identify and make available to Buyer any non-public information concerning Sellers, the Acquired Assets or the Business provided to any other Person which was not previously provided to Buyer.
Assumption and Assignment	Buyer and Sellers agree that there shall be excluded from the Acquired Assets any Assumed Contract that is not assignable or transferable pursuant to the Bankruptcy Code without the consent of any Person other than Sellers or any Affiliate of Sellers, to the extent that such consent shall not have been given on or prior to the Closing; provided, however, that Sellers shall use commercially reasonable efforts (including prosecution of appropriate motions pursuant to Section 365 of the Bankruptcy Code) to endeavor to obtain all necessary consents to the assignment thereof, and, upon obtaining the requisite consents thereto, such Acquired Asset shall be assigned to Buyer. Buyer and Sellers agree that all reasonable out-of-pocket costs and expenses (other than Cure Amounts) incurred relating to Sellers' assignment to Buyer of the Assumed Contracts set forth on Schedule 2.6 of the Disclosure Schedules shall be shared equally between Buyer and Sellers. Notwithstanding the foregoing, the Debtors are required to assume and assign the contracts set forth on Schedule 7.1 to the Purchase Agreement. In addition, the Buyer is not required to close if the Debtors' failure to assume and assign a contract or lease, that individually or in the aggregate, gives rise to a Material Adverse Effect. Prior to the date of the Bankruptcy Court's auction relating to the transactions contemplated hereby, Buyer shall designate the (a) Real Property Leases and (b) other Executory Contracts that are designated with an asterisk on Schedule 4.20 and all Real Estate Leases on Schedule 4.21 to be assumed by Sellers and not rejected pursuant to section 365 of the Bankruptcy Code and (2) at least (20) days prior to the date of the Bankruptcy Court's confirmation of the Bankruptcy Plan, Buyer shall designate other Executory Contracts that are to be assumed by Sellers and not rejected pursuant to section 365 of the Bankruptcy Code. Buyer and the Debtors shall keep confidential the Executory Contracts that are designated with an asterisk on Schedule 4.20 and 4.21 of the Purchase Agreement and as set forth in section 3.5(d) of the Purchase Agreement. In the event of any Early Closing Election, the provisions of Section 8.3 of the Purchase Agreement shall apply; provided, however, that Sellers shall serve, at least twenty (20) days prior to the Closing, the notice of

PROVISION	DESCRIPTION
	Sellers' intent to assume and assign the Assumed Contracts on all non-debtor parties to the Assumed Contracts, rather than at least twenty (20) days prior to the hearing to confirm the Bankruptcy Plan. With respect to the Assumed Contracts, Buyer shall cooperate with Sellers to provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.
Cure Price Adjustment	The Cure Amounts with respect to the Seller's interconnection agreements with ILECs shall be resolved in accordance with Section 3.5(a) of the Purchase Agreement. Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the ILEC Cure Amounts, it being understood that all pre-Petition accounts receivable of Sellers owed by ILECs shall be set off against the ILEC Cure Amounts and thereby used as currency to pay the ILEC Cure Amounts. Buyer and Sellers agree that given Section 3.5(a) of the Purchase Agreement, Buyer should have standing in the Cases with regard to ILEC Cure Amounts and the parties shall take such position in the Cases. The treatment of the ILEC Cure Amounts and all matters related thereto under the Bankruptcy Plan shall be reasonably acceptable to Buyer. Sellers shall pay all ILEC Cure Amounts (whether in cash or by application of the ILEC Set Off Amounts); provided that: (i) if the ILEC Cure Amounts are less than $40 million, the Cash Purchase Price shall be reduced by an amount equal to one-third (1/3) of the amount by which $40 million exceeds the ILEC Cure Amounts; (ii) if the ILEC Cure Amounts are greater than $40 million, the Cash Purchase Price shall be increased by an amount equal to the lesser of (A) two-thirds of the amount by which the ILEC Cure Amounts exceed $40 million and (B) $16.667 million. The Cure Amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults, if any, under the Assumed Contracts, other than the ILEC Cure Amounts shall be resolved in accordance with Section 3.5(d). Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the Non-ILEC Cure Amounts, it being understood that (i) all pre-Petition accounts receivable of Sellers owed by non-ILECs shall be set off against the Non-ILEC Cure Amounts and thereby used as currency to pay the Non-ILEC Cure Amounts and (ii) in no event shall any Cure Amounts in respect of the INSPA Contract or the KMC Contract constitute Non-ILEC Cure Amounts (and Buyer shall have no responsibility therefor).

Proposed Bidding Procedures, Auction and Auction Procedures

20. Consistent with the Purchase Agreement, the Debtors are proposing the Bidding Procedures, which are designed to maximize the value of the Sale Assets for the Debtors' estates, creditors, and other interested parties. Specifically, as discussed in more detail below, Qwest is serving as a "stalking horse" bidder for a higher or better offer. In that regard, Qwest has expended considerable time, effort and resources conducting due diligence and negotiating the Purchase Agreement. Accordingly, the Debtors seek – and Qwest requires – the immediate entry of the Bidding Procedures Order. The Bidding Procedures are summarized as follows:[4]

PROVISION	DESCRIPTION
The Stalking Horse Bid	Under the terms of the Purchase Agreement, the Buyer has agreed to purchase the Sale Assets for approximately $390 million, plus Assumed Liabilities (the "Stalking Horse Bid"), subject to the terms of the Purchase Agreement. Under the terms of the Purchase Agreement, beginning on the date the Bidding Procedures Order is entered by the Court and continuing until the conclusion of the Auction, the Debtors are entitled to, among other things, solicit and negotiate Competing Transactions.
Due Diligence	Unless otherwise determined by the Debtors, each potential bidder (a "Potential Bidder") must deliver (unless previously delivered) to the Debtors, c/o Jonathan S. Henes, Esq., Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611 and Michael A. Kramer, Greenhill & Co., LLC, 300 Park Avenue, 23rd Floor, New York, New York 10022, the following documents (the "Preliminary Bid Documents") in order to participate in the bidding process: a. an executed confidentiality agreement in form and substance

[4] The summary description of the Bidding Procedures provided herein is provided for the convenience of the Court and parties in interest. To the extent that there are any discrepancies between this summary and the Bidding Procedures Order, the terms and language of the Bidding Procedures Order shall govern. Unless otherwise defined herein, capitalized terms defined in the Bidding Procedures shall have the meaning ascribed to them therein.

PROVISION	DESCRIPTION
	satisfactory to the Debtors; and b. preliminary proof by the Potential Bidder of its financial capacity to close a proposed transaction, the adequacy of which the Debtors and their advisors will determine in their sole discretion. Within two (2) business days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtors shall determine, and shall notify the Potential Bidder, whether the Potential Bidder has submitted acceptable Preliminary Bid Documents so that such Potential Bidder may conduct due diligence with respect to the Sale Assets sought to be acquired. Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents may submit bids for the Sale Assets.
Bid Deadline	Bids for the Sale Assets must (a) be in writing; (b) at a minimum, exceed the Stalking Horse Bid by $40 million; (c) satisfy the Bid Requirements set forth herein and (d) be received by (i) the attorneys for the Debtors, Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022 (Attn: Matthew A. Cantor, Esq. and Jonathan S. Henes, Esq.), (ii) the financial advisors for the Debtors, Greenhill & Co., LLC, 300 Park Avenue, 23rd Floor, New York, New York 10022 (Attn: Michael A. Kramer), (iii) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 1004 (Attn: Pamela J. Lustrin, Esq.), (iv) the attorneys for the Prepetition Lenders, Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., 24th Floor, Atlanta, Georgia 30308 (Attn: Jesse Austin, III, Esq.), and (v) the attorneys for the statutory committee of unsecured creditors, Akin Gump Strauss Hauer Feld LLP, 590 Madison Avenue, New York, New York 10022 (Attn: Ira S. Dizengoff, Esq.), so as to be actually received no later than 5:00 p.m. (prevailing Eastern Time) on February 9, 2004 (the "Bid Deadline"). Such bids shall be deemed "Qualified Bids" and those parties submitting such Qualified Bids shall be "Qualified Bidders." One (1) Business Day after the Debtors receive such Qualified Bids, the Debtors shall provide copies of such bids to Buyer, provided, that Buyer shall keep the Qualified Bids confidential and shall not contact or communicate with any Qualified Bidder with respect to any such bids or discuss the Qualified Bids with any party, except as required by law. Parties that do not submit a Qualified Bid by the Bid Deadline will not be permitted to participate at the Auction.

PROVISION	DESCRIPTION
Bid Requirements	Qualified Bids must meet the following requirements (the "Bid Requirements"): a. Each Qualified Bid must be on the same or better terms and conditions as those terms set forth in the Purchase Agreement and the documents set forth as exhibits thereto. The Debtors shall not entertain bids for the individual assets comprising their businesses. b. Each Qualified Bid must constitute a good faith, bona fide offer to acquire the Sale Assets. c. Each Qualified Bid shall not be conditioned on obtaining any of the following: financing, regulatory approval, shareholder approval, environmental contingencies, and/or the outcome of due diligence by the bidder. d. Each Qualified Bid must remain irrevocable until the Closing. e. As a condition to making a Qualified Bid, any competing bidder must provide the Debtors on or before the Bid Deadline, with sufficient and adequate information to demonstrate, to the satisfaction of the Debtors, that such competing bidder (i) has the financial wherewithal and ability to consummate the acquisition of the their business, and (ii) can provide all nondebtor contracting parties to the Assumed Contracts with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code. f. In order for a bid to constitute a Qualified Bid, any bidder shall submit a deposit equal to the $35 million (the "Good Faith Deposit"). The bidder shall, in immediately available funds, by wire transfer to an account or accounts designated by the Debtors, pay such amount on the date such bid is submitted.
Auction and Overbids	If no Qualified Bid is received by the Bid Deadline, the Auction will not occur and the Debtors shall promptly pursue entry of an order by the Court authorizing the Sale to the Buyer. If the Debtors receive a Qualified Bid by the Bid Deadline, in addition to the Stalking Horse Bid, the Debtors shall conduct an auction (the "Auction") with respect to the Sale Assets. The Auction shall commence at 9:00 a.m. (prevailing Eastern Time) on February 12, 2004, at the offices of Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York 10022-4611, or such later time

PROVISION	DESCRIPTION
	or other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids. The Auction may be continued to a later date by the Debtors, with the reasonable consent of the Buyer, by making an announcement at the Auction. No further notice of any such continuance will be required to be provided to any party. Subsequent bids at the Auction shall be made in increments of at least $5 million. At the Auction, the Buyer shall have the right to bid all or part of the Break-Up Fee (as defined herein) and the Expense Reimbursement (as defined herein).
Winning Bid	Upon conclusion of the Auction, the Debtors, in the exercise of their business judgment and after consulting with their advisors, shall identify the highest and best offer for the Sale Assets (the "Winning Bid") (the bidder having submitted a Winning Bid is the "Successful Bidder").
Sale Approval Hearing	The Sale Approval Hearing is presently scheduled to take place on February 17, 2004 at 10:00 a.m. (prevailing Eastern Time), before the Hon. Robert D. Drain, United States Bankruptcy Judge, in Room 610 of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York, 10004-1408. The Sale Approval Hearing may be continued to a later date by the Debtors, with the reasonable consent of the Buyer, by making an announcement at the Sale Approval Hearing; provided, that any such continuance shall not be later than the deadline set forth in Schedule J of the Purchase Agreement. No further notice of any such continuance will be required to be provided to any party. At the Sale Approval Hearing, the Debtors shall present to the Bankruptcy Court for approval the Winning Bid for the Sale Assets.
Return of Good Faith Deposit	The Good Faith Deposit of the Successful Bidder shall be credited to the price paid for the Sale Assets. The Good Faith Deposit of any unsuccessful bidders will be returned within fifteen (15) days after consummation of the Sale Transaction or upon permanent withdrawal by the Debtors of the proposed sale of such assets. The deposit of the Buyer, if not chosen as the Winning Bid, shall be returned in accordance with the Purchase Agreement.
Reservation of Right	The Debtors reserve the right to reject any (other than the Buyer's offer pursuant to the Purchase Agreement) Qualified Bid (as defined below) if the Debtors determine that such Qualified Bid is

PROVISION	DESCRIPTION
	(i) inadequate or insufficient; (ii) not in conformity with the requirement of the Bankruptcy Code, any related rules or the terms set forth herein; or (iii) contrary to the best interests of the Debtors and their estates.
Break-Up Fee and Expense Reimbursement	In the event, among others set forth in the Purchase Agreement and as set forth below, that the Bankruptcy Court enters an order approving the Sale Transaction to a Successful Bidder other than Buyer, the Debtors shall pay to Buyer (i) a break-up fee in the amount of $12.8 million (the "Break-Up Fee) and (ii) a reimbursement of Buyer's expenses in connection with the transaction contemplated in the Purchase Agreement, not to exceed $5 million (the "Expense Reimbursement").

Bid Protections

21. The Break-Up Fee and the Expense Reimbursement constitute the "Bid Protections." The Bid Protections were a material inducement for, and a condition of, the Buyer's agreement to enter into the Purchase Agreement. The Debtors believe that the Bid Protections are fair and reasonable in view of, among other things, (a) the intensive analysis and negotiation undertaken by the Buyer in connection with the transactions contemplated by the Purchase Agreement and (b) the fact that the efforts of the Buyer have increased the chances that the Debtors will receive the highest or otherwise best offer for the Sale Assets by establishing a minimum bid for other bidders, subjecting the Sale Assets to an open auction and serving as a catalyst for other potential or actual bidders. Thus, the Bid Protections benefit the Debtors, their estates, their creditors and all other parties in interest.

22. The Buyer has proclaimed that it is unwilling to commit to hold open its offer to purchase the Sale Assets under the terms of the Purchase Agreement unless the Bid Protections are approved and payment of the Break-Up Fee and the Expense Reimbursement in accordance with the Purchase Agreement are authorized. Accordingly, the Debtors request that

the Court approve the Bid Protections and authorize payment of the Break-Up Fee and the Expense Reimbursement pursuant to the terms and conditions of the Purchase Agreement.

Liquidated Damages

23. The Liquidated Damages were a material inducement for, and express condition of, the Buyer's willingness to enter into the Purchase Agreement. The Buyer was unwilling to proceed with the purchase of the Sale Assets, which is conditioned upon, among other things, a plan of reorganization being confirmed by the Court (which such condition may be waived by the Debtors, in their sole and absolute discretion, at any time prior to the Closing (as described in the Purchase Agreement)) unless it was assured of the payment of the Liquidated Damages. The Buyer's expressed concern was that after the Sale Order was entered, but prior to the plan of reorganization being confirmed – and, thus, prior to the Closing – the Debtors would entertain, solicit or otherwise continue to market the Sale Assets and enter into an agreement to sell the Sale Assets to a third party. Accordingly, under the circumstances, the Debtors believe that the authorization of the payment of Liquidated Damages to Buyer is justified in the event, among others as set forth in the Purchase Agreement, that (a) the Purchase Agreement is terminated pursuant to Section 8.1(b), (c) or (d) of the Purchase Agreement following the entry of the Sale Order Approval Date, or (b) Buyer elects to terminate the Purchase Agreement pursuant to Section 8.1(e) of the Purchase Agreement or not to close, in each case because the condition set forth in Section 7.2(a) of the Purchase Agreement has not been satisfied as a result of a Seller's Intentional Breach following the Sale Order Approval Date. The Liquidated Damages are not a penalty, but rather, a reasonable estimate of the damages to be suffered by Buyer in the event the transactions contemplated by the Purchase Agreement are not consummated under the circumstances set forth therein.

Assumption and Assignment of Executory Contracts and Leases

24. In connection with the Sale Transaction, the Debtors seek authority under section 365 of the Bankruptcy Code to (I) assume and assign the Assumed Contracts, as that term is defined in Section 3.5(d) of the Purchase Agreement, effective as of (x) the later of (i) the Closing or (ii) State PUC Consent or FCC Consent or (y) a Closing pursuant to an Early Closing Election, and (II) execute and deliver to the Buyer or the Successful Bidder such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts thereto.

25. The Debtors believe it is necessary to establish a process by which the Debtors and the counterparties (the "Contract Parties") to the Assumed Contracts can establish the cure obligations (the "Cure Amounts"), if any, necessary to be paid in accordance with section 365 of the Bankruptcy Code for the assumption of the Assumed Contracts and for the Contract Parties to assert any objection they may have to such assumption and assignment of the Assumed Contracts.

26. To facilitate a resolution of disputes, if any, relating to the Cure Amounts, specifically, or to the assignment of the Assumed Contracts, in general, the Debtors propose the following procedures (the "Assumption and Assignment Procedures").

Procedure	Description
Notice of Assumption and Assignment Objection Deadline	At least 20 days prior to the hearing to confirm the Bankruptcy Plan (or, in the event of an Early Closing Notice, within four Business Days of such Early Closing Notice), the Debtors, or the Debtors' noticing agent, shall serve a copy of the Bidding Procedures Order together with the Notice of the Debtors' Intent to Assume and Assign Executory Contracts and Unexpired Leases (the "Contract Assignment Notice"), substantially in the form of Exhibit 2 attached to the Bidding Procedures Order, by first class mail to the Contract Parties notifying them of the Debtors' intent to assume and assign each agreement listed on Schedule (a) of the Disclosure Schedules (as it may be modified by that time) and of the Cure Amount determined by the Debtors for each such Assumed Contract to be necessary for such assumption and assignment on the Closing Date.
Assumption and	Any Contract Party seeking to (a) assert a Cure Amount based on

Procedure	Description
Assignment Objections	defaults, conditions or pecuniary losses under its Assumed Contract (collectively, the "Cure Obligation") different from that set forth on any of the Contract Assignment Notices or (b) object to the potential assumption and assignment of its Assumed Contract on any other grounds, shall be required to file and serve an objection (an "Assumption and Assignment Objection"), in writing, setting forth with specificity (i) any and all Cure Obligations that the Contract Party asserts must be cured or satisfied with respect to such Assumed Contract and/or (ii) if the objection to the potential assignment of such Assumed Contract is based on adequate assurance issues, the information required regarding the Buyer to satisfy the Contract Party's adequate assurance concerns.
Assumption and Assignment Objection Deadline	To be considered a timely Assumption and Assignment Objection, the Assumption and Assignment Objection must be filed with the Court and a copy delivered to (i) the attorneys for the Debtors, Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, NY 10022-4611, Attn: Michael J. Frishberg, Esq., (ii) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 1004 (Attn: Pamela J. Lustrin, Esq.), (iii) the attorneys for the Prepetition Lenders, Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., 24th Floor, Atlanta, Georgia 30308 (Attn: Jesse Austin, III, Esq.), (iv) the attorneys for the statutory committee of unsecured creditors, Akin Gump Strauss Hauer Feld LLP, 590 Madison Avenue, New York, New York 10022 (Attn: Ira S. Dizengoff, Esq.), (v) the attorneys for the Buyer, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Paul M. Basta, Esq.) and (vi) any other party or partner set forth in the Contract Assignment Notice so as to be received no later than **15** days after service of the Contract Assignment Notice (the "Assumption and Assignment Objection Deadline").
Failure to File Assumption and Assignment Objection	Unless an Assumption and Assignment Objection is timely filed and served by a Contract Party by the Assumption and Assignment Objection Deadline, the assumption and assignment of the applicable Assumed Contract at the Sale Approval Hearing may occur without regard to any objection such party may have or any provisions to the contrary in the applicable Assumed Contract.
Waiver of Assumption and Assignment Objection	Contract Parties that fail to file and serve Assumption and Assignment Objections as provided above shall be deemed to have waived and released any and all Cure Obligations and shall be forever barred and estopped from asserting or claiming against the Debtors, the Buyer or any other Successful Bidder of the relevant contract or lease that any additional amounts are due or defaults exist, or prohibitions or conditions to assignment exist or must be satisfied, under such Assumed Contract for the period prior to the closing date.

27. The Debtors believe that those procedures and deadlines are fair and reasonable, and will provide sufficient notice to the Contract Parties. These procedures are designed to provide certainty to the Debtors and the Contract Parties regarding their obligations and rights in respect of Cure Amounts. Accordingly, the Debtors request that the Court approve the Assumption and Assignment Procedures.

Notice Of Sale, Auction And Bidding Procedures

28. Substantially concurrently with filing this Motion, the Debtors will serve a copy of this Motion, the Purchase Agreement, the proposed Bidding Procedures Order, the proposed Sale Approval Order and all exhibits to such orders upon the following persons by first-class mail, postage prepaid: (i) the Office of the United States Trustee; (ii) the attorneys for Prepetition Lenders; (iii) the attorneys for the Creditors' Committee; (iv) all nondebtor contracting parties identified on Schedule 4.20 of the Disclosure Schedules, (v) all parties that provide telecom services to the Debtors pursuant to tariffs; (vi) the attorneys for the Buyer; (vii) all counterparties to the Assumed Contracts, (viii) all parties who have made written expressions of interest in acquiring the Sale Assets or the Business within two (2) months prior to the date of the Motion; (ix) all known persons holding a lien on any of the Sale Assets; (x) the Securities and Exchange Commission; (xi) all taxing authorities that have jurisdiction over the Sale Assets; (xii) all Governmental Agencies having jurisdiction over the Sale Assets with respect to Environmental Laws, (xiii) the attorneys general of all states in which the Sale Assets are located; (xiv) the Federal Communications Commission and applicable estate public utility commissions; and (xv) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date hereof (collectively, the "Bidding Procedures Parties").

29. Assuming the Court enters the proposed Bidding Procedures Orders, the Debtors, no later than five (5) business days after entry of the Bidding Procedures Order, shall cause the Notice of Auction and Sale approval hearing attached as Exhibit 1 to the Bidding Procedures Order to be (i) published in the national editions of The Wall Street Journal and The New York Times pursuant to Bankruptcy Rule 2002(l) and (ii) served upon all creditors and parties in interest in these chapter 11 cases, including (x) all creditors who have filed proofs of claim in these chapter 11 cases, and (y) all parties that have filed notices of appearance in these chapter 11 cases under Bankruptcy Rule 2002 as of the date hereof. The Debtors submit that such notice, together with the other notice described herein, is good, adequate, sufficient and proper notice to such interested parties.

30. Finally, in addition to the publication and service of the Notice of Auction and Sale Approval Hearing provided for in the preceding paragraph, no later than five (5) business days after entry of the Procedures Order, the Debtors shall cause a copy of the Notice of Auction and Sale Approval Hearing and the Procedures Order (in the form approved by the Court) to be served upon the following persons by first-class mail, postage prepaid: (i) the Bidding Procedures Parties; (ii) all counterparties to the Assumed Contracts; and (iii) all other parties that have filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date hereof (collectively, the "Auction Notice Parties").

31. The Debtors believe that the foregoing notice to the Bidding Procedures Parties and the Auction Notice Parties is sufficient to provide effective notice of the Bidding Procedures, the Auction and the proposed Sale to potentially interested parties in a manner designed to maximize the change of obtaining the broadest possible participation in the Sale process while minimizing costs to the estates. Accordingly, the Debtors request that the Court

find that notice in this manner is sufficient and that no further notice of the Auction, the Bidding Procedures or the proposed Sale is required.

Memorandum of Points and Authorities

A. The Proposed Sale Is Within the Debtors' Sound Business Judgment and Should Therefore Be Approved

32. The Debtors submit that ample authority exists for the approval of the Sale Transaction to the Buyer pursuant to the Purchase Agreement, or to such other purchaser submitting a higher or better offer for the Sale Assets. Section 363(b)(1) of the Bankruptcy Code, which authorizes a debtor to sell assets of the estate other than in the ordinary course of business free and clear or liens, claims, interests, and encumbrances, provides, in relevant part, as follows:

> (b)(1) The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.
>
> * * * *
>
> (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> * * * *
>
> (5) such entity could be compelled, in a legal or equitable proceeding to accept a money satisfaction of such interest.

33. This provision states the general principle that debtors in possession may sell property of the estate outside of the ordinary course of business; however, it does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets. Courts in the Second Circuit and elsewhere have required that the decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtor. See Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.) 722 F.2d 1063, 1071 (2d Cir. 1983) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992) (same); Stephens Indus. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (holding that a "bankruptcy court can authorize a sale of all of a chapter 11 debtor's assets under section 363(b)(1) when a sound business purpose dictates such action"); Official Committee of Unsecured Creditors v. Ravtech Corp. (In re Ravtech Corp.), 190 B.R. 149, 151 (Bankr. D. Conn. 1995); In re Ionosphere Clubs, Inc., 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is "good business reason"); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires that a good business reason exists for completing the sale).

34. As Judge Lifland stated in In re Johns-Manville Corp., "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." 60 RR. 612, 616 (Bankr. S.D.N.Y. 1986). When a valid business justification exists, the law vests the debtor's decision to use property out of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best

interests of the company." Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), appeal dismissed, 3 F.3d 49 (2d Cir. 1993).

35. The Debtors submit that adequate business reasons exist to justify the Sale to the Buyer (or another Successful Bidder, as the case may be). Based upon the results of their exhaustive analysis of the Debtors' ongoing and future business prospects, the Debtors, after consulting with their management team, advisors and major creditor constituencies, have concluded that the best means for maximizing the value of the Debtors' estates is to sell the Sale Assets. See Lionel, 722 F.2d at 1071 (the most important factor in approving a section 363 sale whether the asset is increasing or decreasing in value).

36. In determining to sell the Sale Assets, the Debtors relied on the following facts and circumstances. First, the Buyer has offered substantial value for the Sale Assets, which the Debtors believe is both fair and reasonable. To dispel any doubt, the Debtors are subjecting the Sale to competing bids at the Auction, thereby assuring that the Debtors will receive the highest and best value for the Sale Assets. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through an auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

37. Second, the Debtors compared the value and certainty of the Sale Transaction with that of a stand alone restructuring plan. Although, the Debtors and the Prepetition Lenders previously had reached an agreement with respect to the terms of a stand alone restructuring plan, the Debtors have determined that the Sale Transaction would maximize the value of their estates. Third, the Debtors engaged in extensive discussions with their major creditor constituencies and, as a consequence, obtained the support of these constituencies to

move forward with the Sale. Based on these considerations, the Debtors determined that the most reasonable means for maximizing value of the Debtors' estates is engaging in the process of selling the Sale Assets.

38. The Debtors decision, of course, is subject to review and objections by interested parties and court approval. In that regard, all creditors and parties in interest will receive adequate notice of the Bidding Procedures, the Auction and the sale. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major creditor constituencies, those parties potentially interested in bidding on the Assets and others whose interests are potentially implicated by the proposed sale. The Debtors submit that such notice is sufficient, under Bankruptcy Rules 2002 and 6004, for entry of the Sale Approval Order.

39. Under the circumstances, sound business reasons exist that justify the sale of the Assets outside of the ordinary course of business. Accordingly, the Debtors submit that the proposed Sale to the Buyer pursuant to section 363 of the Bankruptcy code pursuant to the terms of the Purchase Agreement, including, but not limited to, Section 8.2 of the Purchase Agreement providing for Liquidated Damages, should be approved.

B. The Buyer is a Good Faith Buyer and is Entitled to the Protections of Section 363(m) of the Bankruptcy Code

40. Section 363(m) of the Bankruptcy code provides:

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

11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith", the Second Circuit in In re Colony Hill Associates, 11 F.3d 269 (2d Cir. 1997) held that:

> The 'good faith' component of the test under §363(m) speaks to the equity of the [bidder's] conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at the judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

11 F.3d at 276.

41. As set forth above, the Buyer was selected by the Debtors after analyzing bids made by other potential purchasers, engaging in extensive negotiations and determining that the terms of the Buyer's bid were the most favorable submitted. The Purchase Agreement is a product of extensive arms-length negotiations and was not in any way tainted by fraud, collusion or bad faith. Accordingly, the Debtors request that the Court make a finding that the Buyer is entitled to the protections of section 363(m) of the Bankruptcy Code.

C. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, Encumbrances and Interests

42. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

a. applicable nonbankruptcy law permits sale of such property free and clear of such interest;

b. such entity consents;

c. such interest is a lien and the price at which such property is sold is greater than all liens on such property;

d. such interest is in bona fide dispute; or

e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

43. Notably, section 363(f) of the Bankruptcy Code is drafted in the disjunctive. Thus, satisfaction of any one of its five requirements will be sufficient to permit the

Sale Transaction free and clear of liens, claims, encumbrances, pledges, mortgages, security interests, charges, options, and other interests (collectively, the "Interests"). Specifically, the Debtors satisfy at least two of these requirements under section 363(f) of the Bankruptcy Code. First, the Prepetition Lenders that hold a lien on substantially all of the Sale Assets have consented to the Sale pursuant to the terms of the Purchase Agreement.

44. Second, all holders of interests in the Sale Assets could be compelled to accept a money satisfaction of their interests in legal or equitable proceedings in accordance with section 363(f)(5) of the Bankruptcy Code. Such legal or equitable proceedings include proceedings to confirm a plan of reorganization, under which the holder of a lien may be compelled to accept payment in satisfaction of its lien pursuant to section 1129(b)(2)(A) of the Bankruptcy Code. Accordingly, the Debtors submit that any existing interests in the Assets will attach to the net proceeds of the sale thereof.

45. Based upon the foregoing, the Sale free and clear of liens, claims, encumbrances and interests should be approved under section 363(f) of the Bankruptcy Code.

D. The Debtors' Request for Relief from Transfer Taxes Under Section 1146(c) of the Bankruptcy Code Should be Granted

46. Pursuant to section 1146(c) of the Bankruptcy Code, the "transfer . . . or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp or similar tax." This provisions has been broadly construed to include sales and transfers that occur outside a chapter 11 plan and before or after plan confirmation, provided that such sales and transfers enable the confirmation and consummation of a chapter 11 plan for the debtor. See e.g., City of New York v. Jacoby-Bender, Inc. (In re Jacoby-Bender, Inc.), 758 F.2d 840, 842 (2d Cir. 1985); City of New York v. Smoss Enterprises Corp. (In re Smoss Enterprises Corp.), 54 B.R. 950, 951 (E.D.N.Y. 1985)

(holding that section 1146(c) applied when "the transfer of property was essential to the confirmation of a plan"); In re United Press Int'l, Inc., Case No. 91-B-13955 (FSC) 1992 Bankr. LEXIS 842 at *4 (Bankr. S.D.N.Y. May 18, 1992) (finding that section 1146(c) exemption applied to section 363 sale where the value of the debtor's assets were likely to deteriorate over the time necessary to confirm a plan). In so holding, courts have focused upon whether the sale and transfer is "necessary to the consummation of a plan." Id. at 842. But see, In re Hechinger Inv. Co. of Delaware, Inc., 335 F.3d 243 , C.A.3 (Del.),2003.

47. In the instant case, the Sale Transaction is clearly necessary to the consummation of a plan, and therefore should be deemed to be "under a plan." As set forth above, the Sale Transaction is conditioned upon the confirmation of a plan of reorganization. If the sale is pursuant to a plan of reorganization, as currently structured, there is no doubt that the Debtors and the Buyer will be exempt from paying any transfer taxes. Moreover, to the extent the Debtors waive the "plan confirmation" condition, the Debtors and the Buyer should remain exempt from paying transfer taxes. In that regard, the Sale Transaction will provide the funds necessary for the Debtors to proceed toward confirmation and consummation of a plan on a rational basis. Accordingly, the Debtors submit that the Sale Transaction falls within the scope of the exemption provided for under section 1146(c) of the Bankruptcy Code. See In re Permar Provisions, Inc., 79 B.R. 530, 534 (Bankr. E.D.N.Y. 1987) (sale of property one year prior to plan confirmation was exempt under section 1146(c) of the Bankruptcy Code where sale proceeds were distributed to secured and unsecured creditors) See also In re Loral Space & Com. Ltd., et al., Case No. 03-41710 (RDD) (S.D.N.Y. October 30, 2003) (order exempting sale of assets from transfer taxes).

E. The Court Should Waive or Reduce the Ten Day Stay Periods Required By Rules 6004(g) and 6006(d) of the Federal Rules of Bankruptcy Procedure

48. Pursuant to Bankruptcy Rule 6004(g), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 10 days after entry of the order. Fed. R. Bankr. P. 6004(g). The purpose of Bankruptcy Rule 6004(g) is to provide sufficient time for an objecting party to appeal before the order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(g).

49. Although Bankruptcy Rule 6004(g) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the 10 day stay period, Collier suggests that the 10 day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." 10 Collier on Bankruptcy 15th Ed. Rev., 6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

50. Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for 10 days, unless the court orders otherwise.

51. To preserve the value of the Sale Assets and limit the costs of administering and preserving the Sale Assets, it is critical that the Debtors close the Sale Transaction as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors hereby request that the Court waive the 10-day stay periods under Bankruptcy Rules 6004(g) and 6006(d), or in the alternative, if an objection to the sale or to the

assignment of a contract or lease is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal to allow the sale to close as provided under the Purchase Agreement.

F. The Assumption and Assignment of Assigned Agreements Should Be Authorized

52. Section 365(f) of the Bankruptcy Code provides that a debtor in possession may assign an executory contract or unexpired lease of the debtor only if (a) the debtor in possession assumes such contract or lease in accordance with the provisions of section 365, and (b) adequate assurance of future performance by the assignee of such contract or lease is provided. 11 U.S.C. § 365(f)(2). Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a).

53. Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory lease or executory contract of a debtor. This subsection provides:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee —
>
> (A) cures or provides adequate assurance that the trustee will promptly cure, such default;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provide adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

54. The meaning of "adequate assurance of future payment" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." EBG Midtown South Corp. v. McLaren/Hart Envtl. Engineering Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), aff'd, 993 F.2d 300 (2d Cir. 1993).

55. When an executory contract or lease is to be assumed and assigned, adequate assurance may be provided by, among other things, demonstrating the financial health of the assignee and its experience and ability in managing the type of enterprise or property assigned. See e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when a prospective assignee of lease from debtor has financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of success).

56. To the extent that any defaults exist under any Assigned Agreements, the Debtors will cure such defaults pursuant to the procedures outlined herein and in accordance with the Purchase Agreement. Moreover, the Debtors will demonstrate facts at the Sale approval hearing that show the Buyer's (or the Successful Bidder's, as the case may be) financial credibility, experience in the industry, and willingness and ability to perform under the Assigned Agreements. Therefore, the Sale approval hearing will provide the Court and other interested parties with an opportunity to evaluate and, if necessary, challenge the ability of the Buyer (or the Successful Bidder, as the case may be) to provide adequate assurance of future performance under the Assigned Agreements. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Agreements as set forth herein should be approved.

G. Conducting an Auction Pursuant to the Bidding Procedures is in the Best Interests of the Debtors' Estates and Creditors

57. The Debtors believe that the Auction and proposed Bidding Procedures will promote active bidding from interested parties and, ultimately will realize the best or otherwise highest offer available for the Sale Assets. The proposed Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders that demonstrate the ability to close a transaction. The Debtors believe that the Bidding Procedures will encourage, rather than hinder, bidding for the Sale Assets, are consistent with other procedures previously approved by this Court, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. See, e.g., In re Kmart, Case No. 02-B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002); In re Global Crossing, Case No. 02-40188 (S.D.N.Y. March 25, 2002) (REG); In re Randall's Island Family Golf Center, Inc., 261 B.R. 96 (S.D.N.Y. 2001); In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992).

H. Bid Protections Are Warranted

58. To compensate the Buyer for serving as a "stalking horse," thereby subjecting its bid to better or higher offers, the Debtors and the Buyer seek authority for the Debtors to pay the Buyer the Break-Up Fee if the Buyer is not the Successful Bidder and the Expense Reimbursement in certain other circumstances and provide for the Bid Protections described herein. The Debtors and the Buyer believe that the Break-Up Fee and the Expense Reimbursement, and Bid Protections are (a) fair and reasonable, given the benefits to the estates of having a definitive Purchase Agreement and the risk to the Buyer that a third-party offer may ultimately be accepted and (b) are necessary to preserve the value of the Debtors' estates.

59. Bidding incentives such as the Break-Up Fee and Expense Reimbursement encourage a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor (or in this case a prospective debtor) despite the inherent risks and uncertainties of the chapter 11 process. See e.g., In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be "legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (citations omitted); In re Marrose Corp., Case Nos. 89 B 12171-12179 (B), 1992 WL 33848 at *5 (Bankr. S.D.N.Y. 1992) (stating that "[a]greements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers").

60. The Debtors submit that Bid Protections are a normal, and, oftentimes, necessary component of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. See e.g., In re Kmart, Case No. 02-B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002) (authorizing a termination fee and bid protections for potential bidders); In re Comdisco, Inc., Case No. 01-24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, *inter alia*, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate, and a necessary inducement for, and a condition to, the proposed purchaser's entry into the purchase agreement); In re Integrated Resources, Inc., 147 B.R. at 660 (noting that break-up fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs, and the risks such bidder faces by having its offer held open, subject to higher and better offers); In re Crowthers McCall Pattern, Inc., 114 B.R. 877, 880 (Bankr. S.D.N.Y. 1990)

(approving an overbid requirement in an amount equal to the approved break-up fee); In re Kupp Acquisition Corp., Case No. 96-1223 (PJW) (Bankr. D. Del. March 3, 1997).

61. Here, the proposed Break-Up Fee and Expense Reimbursement are of substantial benefit to the Debtors, their creditors and estates. See e.g., In re Integrated Resources Inc., 147 B.R. at 660; In re Kmart Corp., Case No. 02-B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002); In re Comdisco, Inc., Case No. 01-24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (finding proposed termination fee to be of substantial benefit to the debtor's estate). The Break-Up Fee is 2.8% of the purchase price (which is comprised of approximately $300 million in cash, a $90 million note and approximately $75 million of Assumed Liabilities) as provided for in the Purchase Agreement. The Expense Reimbursement, as noted above, shall not exceed $5 million. The Debtors submit that the Break-Up Fee and Expense Reimbursement are reasonable and appropriate in light of the size and nature of the Sale Transaction and the efforts that have been and will be expended by the Buyer. See Consumer News and Business Channel Partnership v. Dow Jones/Group W Television Company (In re Financial News Network, Inc.), 931 F.2d 217, 219 (2nd Cir. 1991) (breakup fee of 2.8% and bid protection of 9.5% approved); Doehring v. Crown Corporation (In re Crown Corp.), 679 F.2d 774 (9th Cir. 1982) (bid protection of 4.9% approved). Finally, the Bid Protections are necessary to ensure that the Buyer will continue to pursue its proposed acquisition of the Sale Assets. See 11 U.S.C. § 503(b) (defining actual and necessary costs and expenses of preserving a debtor's estate). Accordingly, the Debtors believe that the Bid Protections should be approved.

62. The Debtors request entry of the Lock-Up Order, (a) setting the time, date and place for the Bidding Procedures Hearing and (b) authorizing and approving the lock-up provisions contained in Section 6.17(a) of the Purchase Agreement. The Court's entry of the Lock-Up Order is a necessary condition for Qwest's execution of the Purchase Agreement. The

Debtors have given notice of the proposed Lock-Up Order to counsel for the Committee and counsel for the Prepetition Lenders and neither of these parties have expressed any objection to the entry of the Lock-Up Order. Accordingly, the Debtors believe that the Lock-Up Order should be entered.

Waiver of Memorandum of Law

63. This Motion does not raise any novel issues of law and the relevant legal authorities are noted herein. Thus, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1 (b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

Notice

64. Notice of this Motion has been given in accordance with the notice procedures set forth herein. The Debtors respectfully submit that such notice is sufficient and request that this Court find that no further notice of the relief requested herein is required.

No Prior Request

65. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry an order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
December 18, 2003

Respectfully submitted,

/S/ Matthew A. Cantor_____
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