

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

_____	)	
In re	)	Chapter 11
	)	
BROADBAND OFFICE, INC.,	)	Case No. 01-1720 (GMS)
	)	
Debtor.	)	<b>Objections due by: June 20, 2005, 4:00 p.m. EST</b>
_____	)	<b>Hearing date: July 27, 2005, 10:00 a.m. EST</b>

**JOINT MOTION FOR ORDER (A) ESTABLISHING  
A RECORD DATE, (B) ESTABLISHING PROCEDURES  
FOR CONFIRMATION OF THE CONSOLIDATED JOINT PLAN OF  
LIQUIDATION OF THE DEBTORS TOGETHER WITH THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS UNDER CHAPTER 11 OF THE  
BANKRUPTCY CODE, (C) APPROVING SOLICITATION PROCEDURES  
AND (D) APPROVING FORMS OF BALLOTS AND VOTING PROCEDURES**  
*(relates to Docket No. 1048 & 1049)*

The debtor in possession, BroadBand Office, Inc. (the “Debtor”), and the Official Committee of Unsecured Creditors (the “Committee”) (collectively, the “Plan Proponents”), by their respective undersigned attorneys, hereby jointly file this motion for entry of an order (i) establishing a record date for creditors entitled to vote to accept or reject the Joint Liquidating Plan of the Debtor and the Official Committee of Unsecured Creditors (Docket No. 1048) (as amended from time to time, the “Plan”), (ii) establishing procedures for confirmation of the Plan, (iii) approving solicitation procedures and notices, and (iv) approving forms of ballots and voting procedures pursuant to sections 105, 502, 1125, 1126 and 1128 of chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 3003, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Del. Bankr. L.R. 3017-1 and respectfully represent as follows:<sup>1</sup>

\_\_\_\_\_

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

## JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 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.

## BACKGROUND

2. On May 9, 2001 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has managed its affairs and remained in possession of its assets as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. Concurrently herewith, the Plan Proponents filed the Plan, along with a proposed disclosure statement prepared in accordance with 11 U.S.C. § 1125(a) (Docket No. 1049) (the “Disclosure Statement”). Del. Bankr. L.R. 3017-1(b) requires that a party filing a plan shall “file a motion, to be heard at the disclosure statement hearing, for approval of voting procedures, including the form of ballots, the voting agent and the time and manner of voting.” This motion is intended to comply with the foregoing rule.

## RELIEF REQUESTED

4. By this motion and pursuant to sections 105, 502, 1125, 1126 and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020 and Del. Bankr. L.R. 3017-1, the Plan Proponents request that this Court enter an order (i) establishing a record date for creditors entitled to vote to accept or reject the Plan, (ii) approving the balloting agent, (iii) establishing procedures for confirmation of the Plan, (iv) approving solicitation procedures, and (v) approving forms of ballots and voting procedures. The Plan Proponents propose that the following procedures and deadlines shall govern with respect to confirmation of the Plan:

- (A) **Retention Of Balloting Agent.** Bankruptcy Services, LLC (the “Balloting Agent”), appointed to serve as the claims agent in the above-captioned case, shall serve as balloting agent to assist the estate with various administrative functions associated with plan confirmation. The Balloting Agent will be deemed to be in constructive receipt of any ballot timely delivered to any address that the Balloting Agent designates for the receipt of ballots cast in connection with the Plan.
- (B) **Record Date.** The date of filing of the Motion shall serve as the record date (the “Record Date”) for purposes of Fed. R. Bankr. P. 3017 and 3018.
- (C) **Distribution of Solicitation Package.**
- (i) A “Solicitation Package” means a package (or multiple packages) of documents containing the following documents: (a) a copy of the Disclosure Statement; (b) a copy of the Plan; (c) a Ballot and voting instructions (as described below); (d) a copy of the Confirmation Hearing Notice (as defined below), and (e) a copy of the order approving the Disclosure Statement without exhibits.
- (ii) On or before the Deadline for Service of Solicitation Packages, the Balloting Agent or the Proponents shall cause a Solicitation Package to be sent by first-class mail to: (A) all persons or entities that, as of the Record Date, have timely filed proofs of claim in accordance with prior orders of the Court, (B) each person or entity listed in the Schedules as of the Record Date as holding a claim against the Debtor that is greater than zero dollars (\$0.00); (C) other known holders of liquidated, noncontingent and undisputed general unsecured claims against the Debtor, if any, as of the Record Date; (D) all parties in interest that have filed and served a request for notice in the Debtor’s Chapter 11 case on or before the Record Date (the “2002 Notice Parties”); and (E) the Office of United States Trustee; provided, however, that the Balloting Agent or the Proponents shall not be required to serve a Solicitation Package upon (W) holders of claims or interests that are in a class of the Plan that is deemed to accept the Plan under § 1126(f) of the Bankruptcy Code (i.e., Unclassified Claims and Classes 1 and 2) or to reject the Plan under § 1126(g) of the Bankruptcy Code (i.e., Classes 4 and 5); (X) holders of claims or interests that did not file a timely proof of claim and whose claims are listed in the Schedules as holding a claim against the Debtor that is equal to or below zero dollars (\$0.00) and/or is listed as contingent, disputed, and/or unliquidated; (Y) holders of claims or interests that, as of the Deadline for Service of Solicitation Packages, have been paid or otherwise satisfied, including but not limited to claimants that have elected to participate in the compromise approved in the Order Approving Compromise of

Priority Wage Claims (Docket No. 996), or (Z) persons or entities to whom service has previously been returned undeliverable in this case. To the extent any party asserts more than one claim in the same class, the Balloting Agent or Proponents shall serve upon such party one Ballot for each claim although such party shall receive only one Solicitation Package.

- (iii) The Balloting Agent shall mail to holders of claims or interests who are not entitled to vote: (A) a copy of the Confirmation Hearing Notice and (B) either (1) a Notice to Unimpaired Classes (as defined below) or (2) a Notice to Classes Deemed to Have Rejected the Plan (as defined below), as applicable. It shall not be necessary for the Balloting Agent or the Proponents to mail copies of the Plan or Disclosure Statement to holders of claims or interests who are not entitled to vote, provided that the Balloting Agent or the Proponents shall deliver copies by mail, electronic mail, or any other commercially acceptable means, in the sender's discretion, to any such holder(s) that contact the Balloting Agent and request(s) that copies be provided.
- (iv) The Balloting Agent or the Proponents shall mail the 2002 Notice (as defined below) to each of the 2002 Notice Parties, except to the extent any of the 2002 Notice Parties would have received a Solicitation Package or other notices in accordance with this order on account of any claims or interests asserted against the Debtor.
- (v) In the event any delivery is returned by the United States Postal Service as undeliverable, the Proponents or the Balloting Agent may, but are not required to, re-mail such delivery to the entity whose address in the database of the Balloting Agent as of the Record Date is incorrect or insufficient, so long as it is substantially the same as the address listed in the Debtor's books and records, such entity's most recently filed proof of claim as of the Record Date, or any more recent correspondence received from such entity on or before the Record Date. If an entity has changed its mailing address on or after the Petition Date, the burden shall be upon the creditor, not the Proponents, to advise the Balloting Agent of the new address.
- (v) The Proponents may, but shall not be required to, publish a copy of the Confirmation Hearing Notice (making appropriate modifications to maximize notice and conserve resources) in one or more regionally or nationally circulated publications.

(D) **Voting and Tabulation Procedures.**

- (i) The form of ballot attached hereto as **Exhibit A**, including but not limited to the accompanying voting instructions, is approved for

transmission to each holder of a claim entitled to vote in Class 3, General Unsecured Claims. The Proponents or the Balloting Agent has authority to prepare and distribute other or modified forms of ballots, substantially in conformance with the approved form as they find necessary due to further refinement of the balloting process or modifications to the Plan.

(ii) Specific Requirements of Ballots.

- (a) In order for a ballot to be counted in voting to accept or reject the Plan, the party submitting such ballot must comply with all of the voting instructions attached to each of the ballots. The voting instructions attached to the approved form of ballot is approved and incorporated into these procedures by reference.
- (b) In order for a ballot to be counted in voting to accept or reject the Plan, it must be properly executed and completed and delivered to the Balloting Agent (I) by first-class mail, postage prepaid, in the return envelope provided with each ballot (or to the exact address and named recipient listed on such envelope), (II) by overnight courier, or (III) by personal delivery.
- (c) In order for a ballot to be counted in voting to accept or reject the Plan, it must be **actually received** by the Balloting Agent not later than the Voting Deadline. Ballots not received in compliance with these procedures **will not be counted**, regardless of whether they were filed with or received by the Bankruptcy Court, the Clerk of the Bankruptcy Court, the United States District Court, the Clerk of the District Court, the Proponents, the Proponents' respective attorneys, the United States Trustee, or any person or entity other than the Balloting Agent's designated individual(s) listed on the return envelope.
- (d) The following types of ballots will not be counted in determining whether the Plan has been accepted or rejected:
  - (I) Any ballot received after the Voting Deadline unless the Proponents or the Court extends the Voting Deadline with respect to the person submitting such ballot;
  - (II) Any ballot that is illegible or contains insufficient information to permit the identification of the

voting party, the nature of such party's vote, or the identity of the individual executing the ballot on such party's behalf;

- (III) Any ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote on the Plan;
  - (IV) Any ballot cast for a claim scheduled as unliquidated, contingent, and/or disputed for which no proof of claim has been filed and which has not been temporarily allowed by the Court for voting purposes pursuant to Fed. R. Bankr. P. 3018(a);
  - (V) Any ballot that does not contain an original signature; and
  - (VI) Any ballot delivered by facsimile, e-mail, or any other means not otherwise described in the voting instructions; **provided that** the receipt of a copy of a ballot in the foregoing manner shall not otherwise affect the validity of the original to the extent that it is completed and filed in accordance with these procedures.
- (e) The following voting procedures and standard assumptions shall be used in tabulating ballots:
- (A) The method of delivery of ballots to be sent to the Balloting Agent is at the election and risk of each creditor. Ballots received late because of delays in delivery, whether or not such lateness is caused by acts or omissions of the creditor, the Balloting Agent, the Proponents, the Court, an act of God, or any other reason, shall not be counted except as otherwise provided herein. Creditors are encouraged to deliver ballots early in order to minimize the likelihood of invalidation of votes attributable to tardiness.
  - (B) If multiple ballots are received from an entity in connection with the same claims prior to the Voting Deadline, the last ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke all previously received ballots.
  - (C) The Proponents, in their sole discretion, may waive any defect in any ballot at any time, either before

or after the close of voting, and without notice, so long as the identity of the voting party and the intent of the voting party as to acceptance or rejection is apparent.

- (D) In the event a designation is requested under § 1126(e) of the Bankruptcy Code, any vote to accept or reject the plan cast with respect to such claim will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise.
  - (E) Unless otherwise ordered by the Court, the validity, form, eligibility (including time of receipt), and validity of any attempted revocation or withdrawal of ballots will be determined by the Proponents in their sole discretion, which determination shall be final and binding.
  - (F) Any defects or irregularities in connection with the delivery of a ballot must be cured within such time as the Proponents (or the Court) determine, and delivery of such ballots will not be deemed to have been made until such irregularities have been cured in advance of the Voting Deadline or waived.
  - (G) Neither the Proponents nor any other person or entity will be under any duty to provide notification of defects or irregularities with respect to delivery of Ballots, nor will any of them incur any liability for failure to provide, or any delay in providing, such notification. Ballots previously furnished (and as to which any irregularities have not theretofore been cured in advance of the Voting Deadline or waived) will not be counted.
- (iii) Subject to subparagraph (iv) of this paragraph, solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of or distribution on account of a claim, and without prejudice to the rights of the Proponents in any other context, each claim within a class of claims entitled to vote to accept or reject the Plan shall be temporarily allowed as follows:
- (a) In any amount allowed by Court order (either finally allowed or allowed temporarily for voting purposes pursuant to Fed. R. Bankr. P. 3018(a)) prior to the Voting Deadline;

- (b) If no amount can be determined pursuant to subparagraph (a), in any liquidated amount set forth in a timely filed proof of claim in connection with such claim (unless an objection was filed in connection with such claim and not withdrawn as of the Voting Deadline);
  - (c) If no amount can be determined pursuant to subparagraphs (a) and (b), the amount of such claim listed in the Schedules (as the same may be amended from time to time) as liquidated, not contingent, and not disputed;
  - (d) If such claim was disallowed or expunged by order of the Court, or fully paid or otherwise satisfied as of the Voting Deadline, then notwithstanding subparagraphs (a), (b), and (c), \$0.00;
  - (e) In the absence of any of the foregoing, \$0.00.
- (iv) Notwithstanding subparagraph (iii) of this paragraph:
- (a) If a timely-filed proof of claim is marked on the proof of claim as contingent or unliquidated or is designated as such by court order, such claim will be temporarily allowed for voting purposes only, and not for any other purpose, at \$1.00.
  - (b) If a claim is listed in the Schedules as contingent, unliquidated or disputed and a proof of claim was not filed before the applicable bar date for filing such proof of claim, such claim will be disallowed for voting purposes pursuant to Fed. R. Bankr. P. 3003(c), unless the Proponents consent to the allowance of such claim for voting purposes in a specific amount as of the date and time of the Confirmation Hearing (as defined below).
  - (c) If any party serves and files an objection to a claim prior to the Voting Deadline, such claim will be temporarily disallowed (for voting purposes only, and not for purposes of the allowance or distribution), except to the extent the Court temporarily allows such claim for voting purposes only pursuant to Fed. R. Bankr. P. 3018(a). The Proponents reserve the right to object to final allowance of any claim(s) for distribution purposes until any date set by the Court stating when objections are due.
  - (d) Any motion seeking temporary allowance of a claim for voting purposes pursuant to Fed. R. Bankr. P. 3018(a) and copies of all evidence which the claim intends to introduce in support thereof must be filed no later than 10 days prior



to the Voting Deadline (unless an objection to such claim is filed after that date, in which case such motion must be filed and served within 5 calendar days after service of such objection) and served on the same date by hand delivery, facsimile, electronic mail, or overnight delivery upon counsel for each of the Proponents. Any motion seeking temporary allowance of a claim for voting purposes filed after the foregoing deadline shall be stricken upon submission by counsel for the Debtor of an order by certification of counsel, and the Court shall not consider any oral motion seeking temporary allowance of a claim for voting purposes.

(v) Objections to confirmation of the Plan. Objections to confirmation of the Plan must be filed and served on or before the Voting Deadline. The Court shall consider only written objections that are timely filed and served, and only to the extent the objecting party states with particularity the grounds for objection. Objections not timely filed and served in accordance with the provisions of this subparagraph will be overruled. With regard to any timely-filed objection, the Proponents are authorized (but not required) to file a reply, if any, to any such objection by no later than three (3) days prior to the date of the Confirmation Hearing. In the alternative or in addition, the Proponents may (but are not required to) file a memorandum in support of confirmation of the Plan which may contain their reply to any objections filed to confirmation of the Plan.

(E) **Parties entitled to notice.** The “Parties Entitled To Notice” shall be the following:

David M. Fournier, Esquire  
Adam Hiller, Esquire  
PEPPER HAMILTON LLP  
Hercules Plaza, Suite 5100  
1313 North Market Street  
Wilmington, DE 19801

*Counsel to the Debtor*

Ethan D. Fogel, Esquire  
Craig Martin, Esquire  
Monica Lawrence, Esquire  
Dechert LLP  
1717 Arch Street, Suite 4000  
Philadelphia, Pennsylvania 19103

*Counsel to the Official  
Committee of Unsecured Creditors*

Richard Shepacarter, Esquire  
Office of the United States Trustee  
844 King Street, Suite 2207  
Wilmington, DE 19801

Thomas D. Walsh, Esquire  
McCarter & English, LLP  
P.O. Box 111  
919 North Market Street, Suite 950  
Wilmington, Delaware 19899

*Co-Counsel to the Official  
Committee of Unsecured Creditors*

(F) **The Confirmation Hearing and Plan-Related Deadlines.** The following dates and deadlines shall apply:

- (i) The deadline by which the Balloting Agent shall serve copies of the Solicitation Package upon all applicable parties: \_\_\_\_\_ (the “Deadline for Service of Solicitation Package”).
- (ii) Deadline by which ballots containing original signatures must be actually received by the Balloting Agent: \_\_\_\_\_ at 4:00 p.m. Eastern Time (the “Voting Deadline”); and
- (iii) The hearing to consider confirmation of the Plan (the “Confirmation Hearing”) shall commence on \_\_\_\_\_ at \_\_\_\_\_ .m. Eastern Time.

(G) **Approval of Forms.** Upon consideration of the Motion:

- (i) The form of Ballot attached hereto as **Exhibit A** is approved for voting by holders of claims classified in Class 3 of the Plan.
- (ii) The form of Confirmation Hearing Notice attached hereto as **Exhibit B** (the “Confirmation Hearing Notice”) is approved.
- (iii) The form of Notice of Non-Voting Status (Classes Not Impaired Under the Plan), attached hereto as **Exhibit C-1** (the “Notice to Unimpaired Classes”), is approved. The form of Notice of Non-Voting Status (Classes Deemed to Have Rejected the Plan), attached hereto as **Exhibit C-2** (the “Notice to Deemed Rejected Classes”), is approved.
- (iv) The form of the 2002 Notice attached hereto as **Exhibit D** (the “2002 Notice”) is approved.

5. The Plan Proponents submit that the foregoing procedures are customary in this district and reasonable under the circumstances for a case of this size and nature.

NOTICE

6. Notice of this motion has been given by first class mail to: (i) the Office of the United States Trustee; and (ii) all parties who have filed notices of appearance and request for notice in these proceedings. In light of the nature of the relief requested, the Plan Proponents submit that no further notice should be required.

WHEREFORE, the Plan Proponents respectfully request that this Court enter an order approving and implementing the above-described procedures and forms, and granting such further relief as this Court deems just and proper.

Respectfully submitted,

/s/  
David M. Fournier (DE No. 2812)  
Adam Hiller (DE No. 4105)  
PEPPER HAMILTON LLP  
Hercules Plaza, Suite 5100  
1313 North Market Street  
Wilmington, Delaware 19801  
Telephone (302) 777-6500  
Facsimile (302) 421-8390

*Attorneys for the Debtor  
BroadBand Office, Inc.*

Respectfully submitted,

/s/  
Thomas D. Walsh (DE No. 3783)  
MCCARTER & ENGLISH LLP  
P.O. Box 111  
919 North Market Street, Suite 950  
Wilmington, Delaware 19899

- and -

Ethan D. Fogel, Esquire  
Craig Martin, Esquire  
Monica Lawrence, Esquire  
Dechert LLP  
1717 Arch Street, Suite 4000  
Philadelphia, Pennsylvania 19103

*Co-Counsel to the Official Committee of  
Unsecured Creditors*