

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this "Agreement") is made and entered into this 14 day of September 2004, by and between Global Crossing Bandwidth, Inc. on behalf of itself and its affiliates, predecessors and successors ("GX") and Broadview Networks Holdings, Inc., ("BNHI") on behalf of itself and its affiliates including Broadview Networks, Inc. ("BNI") and Broadview NP Acquisition Corp. ("BVNPAC"), (collectively, BNHI, BNI and BVNPAC are referred to as "BN" and, together with GX, the "Parties").

WHEREAS, on January 28, 2002 (the "GX Petition Date"), GX filed a voluntary petition for relief in the United States Bankruptcy Court for the Southern District of New York (the "GX Bankruptcy Court") under Chapter 11 of the Bankruptcy Code; and,

WHEREAS, on February 4, 2002, Network Plus Corp. and Network Plus, Inc. (collectively, "NWP") filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "NWP Bankruptcy Court") under Chapter 11 of the Bankruptcy Code; and,

WHEREAS, subsequent to the NWP petition date, NWP filed a motion, pursuant to which NWP sought the NWP Bankruptcy Court's approval to sell substantially all of its assets including among other assets certain receivables and claims against GX. On March 20, 2002, the NWP Bankruptcy Court issued an order approving the sale of substantially all NWP's assets, including certain receivables and claims against GX, to BVNPAC pursuant to the terms of an Asset Purchase Agreement between NWP and BVNPAC (the "APA") and the closing with respect to said sale took place on March 22, 2002; and,

WHEREAS, pursuant to the APA, BN purchased the claims against GX totaling \$1,374,569.13 (the "Purchased Claims"); and,

WHEREAS, BN and NWP provided GX with telecommunications services both prior to the GX Petition Date (the "BN Pre-Petition Services") and subsequent to the GX Petition Date (the "BN Post-Petition Services," together with the BN Pre-Petition Services, the "BN Services"), including but not limited to granting GX access to BN's and NWP's telecommunications network; and,

WHEREAS, the New York Access Billing Pool ("NYAB"), on behalf of BN, invoiced GX for the BN Pre-Petition Services under multiple Carrier Access Bill ("CAB") account numbers and BN contends that as of January 31, 2004, the BN Pre-Petition Receivable equaled Eight Hundred Twenty Seven Thousand One Hundred Eighty Seven Dollars and Eighty Seven Cents (\$827,187.87)(the "BN Pre-Petition Receivable"); and,

WHEREAS, BN filed a Proof of Claim (Claim No. 6361) (the "Proof of Claim") in the amount of \$2,201,757.00 with the GX Bankruptcy Court on September 30, 2002 in connection with the BN Pre-Petition Receivable and the Purchased Claims (together, the "Broadview Pre-Petition Claims Against GX"); and,

WHEREAS, NWP on behalf of itself, BVNPAC on behalf of itself, and NYAB, on behalf of BN, invoiced GX for the BN Post-Petition Services under multiple CAB's account numbers and BN contends that as of January 31, 2004, the CAB's balance due equaled Five Hundred Fifty Five Thousand Nine Hundred Sixty Eight Dollars and Fourteen Cents (\$555,968.14) plus any additional amounts billed directly by NWP or BVNPAC related to the BN Post-Petition Services that remain unpaid (the "BN Post-Petition Receivable"); and,

WHEREAS, GX provided BN with telecommunications services prior to the GX Petition Date (the “GX Pre-Petition Services”) and subsequent to the GX Petition Date (the “GX Post-Petition Services” together with the GX Pre-Petition Services, the “GX Services”), including but not limited to providing BN with long distance telecommunications services; and,

WHEREAS, GX contends that the GX invoice to BN, dated 1-4-04 for the GX Services (the “GX 1-4-04 Invoice”) reflected a total amount due of Two Million One Hundred Seventy Two Thousand Two Hundred Twenty Two Dollars and Thirty Nine Cents (\$2,172,222.39); and,

WHEREAS, BN contends that of the GX 1-4-04 Invoice, only Four Hundred Ninety Seven Thousand Three Hundred Seventy Eight Dollars and Seventy Nine Cents (\$497,378.79) represented undisputed current charges that were due and payable (the “Undisputed January GX Amount”); and,

WHEREAS, on or about February 2, 2004, BN paid GX Five Hundred Eighty Six Thousand One Hundred Sixty One Dollars and Thirty Two Cents (\$586,161.32) toward the Undisputed January GX Amount, resulting in an overpayment with respect to the undisputed current charges to GX of Eighty Eight Thousand Seven Hundred Eighty Two Dollars and Fifty Three Cents (\$88,782.53)(the “BN Overpayment”); and,

WHEREAS, GX contends that the GX invoice to BN, dated 2-4-04 for the GX Services (the “GX 2-4-04 Invoice”) reflected a total amount due of One Million Five Hundred Eighty Five Thousand Nine Hundred Nine Dollars and Forty Eight Cents (\$1,585,909.48)(the “GX Receivable”); and,

WHEREAS, BN contends that of theGX Receivable, only Five Hundred Seventy

Eight Thousand Four Hundred Seventy One Dollars and Ninety Two Cents (\$578,471.92) represents undisputed current charges (the "Undisputed February GX Amount")<sup>1</sup>; and,

WHEREAS, after accounting for the \$88,782.53 BN Overpayment, the amount of the Undisputed February GX Amount that is due and payable is reduced to Four Hundred Eighty Nine Thousand Six Hundred Eighty Nine Dollars and Thirty Nine Cents (\$489,689.39)(the "Outstanding Undisputed February GX Amount")

WHEREAS, the difference between the GX Receivable and the Outstanding Undisputed February GX Amount equals One Million Ninety Six Thousand Two Hundred Twenty Dollars and Nine Cents (\$1,096,220.09)(the "Disputed GX Receivable"). The Disputed GX Receivable includes, but is not limited to, BN's right to offset, an imputed balance related to the Broadview Pre-Petition Claims Against GX, disputed charges GX invoiced prior to and subsequent to the GX Petition Date and disputed late payment charges; and,

WHEREAS, GX may dispute certain charges contained in the BN Pre-Petition Receivable, GX does dispute BN's right to offset certain pre-petition amounts owed by GX to BN against the GX Pre-Petition Receivable (such disputes collectively being referred to as the "GX Pre-Petition Charge/Offset Disputes"); and,

WHEREAS GX may, in the future, dispute certain charges contained in the BN Post-Petition Receivable (the "GX Post-Petition Disputes"); and,

WHEREAS, if the Parties had executed this Agreement prior to the creation of the GX 1-4-04 Invoice, per the terms and conditions of Section 1.3 (a) of this Agreement, GX would have issued a 5% credit against:

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<sup>1</sup> The current charges section of the GX 2-4-04 Invoice equals \$586,009.73 (the "2-4-04 Current Charges"). BN disputes \$7,537.81 in late payment charges of the 2-4-04 Current Charges. Therefore, the Undisputed February GX Amount plus the disputed late payment charges equals the 2-4-04 Current Charges.

1. the Undisputed January GX Amount thereby reducing the amount due by Twenty Four Thousand Eight Hundred Sixty Eight Dollars and Ninety Four Cents (\$24,868.94)(the “1-4-04 Earned Credit”)<sup>2</sup>; and,
2. the Undisputed February GX Amount thereby reducing the amount due by Twenty Eight Thousand Nine Hundred Twenty Three Dollars and Sixty Cents (\$28,923.60)(the “2-4-04 Earned Credit”)<sup>3</sup>

WHEREAS, GX and BN wish to conclusively resolve the GX Receivable and the Broadview Pre-Petition Claims Against GX. Furthermore, GX and BN also wish to establish a path to conclusively resolve the BN Post-Petition Receivable and the GX Post-Petition Disputes subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

**1. Consideration**

1.1 Within fifteen (15) business days of the date of a final order of the GX Bankruptcy Court approving the terms of this Agreement (such order being referred to as the “BN-GX Agreement Order”), BN shall:

(a) pay GX Four Hundred Thirty Five Thousand Eight Hundred Ninety Six Dollars and Ninety One Cents (\$435,896.91) calculated as the Undisputed February GX Amount of Five Hundred Seventy Eight Thousand Four Hundred Seventy One Dollars and Ninety Eight Cents (\$578,471.98) , minus the BN Overpayment of Eighty Eight Thousand Seven Hundred Eighty Two Dollars and Fifty Three Cents (\$88,782.53), minus the 1-4-04 Earned Credit of

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<sup>2</sup> 5% of \$497,378.79 equals \$24,868.94.

<sup>3</sup> 5% of \$598,471.92 equals \$28,923.60.

Twenty Four Thousand Eight Hundred Sixty Eight Dollars and Ninety Four Cents (\$24,868.94), minus the 2-4-04 Earned Credit of Twenty Eight Thousand Nine Hundred Twenty Three Dollars and Sixty Cents (\$28,923.60) via wire transfer if BN has not already done so<sup>4</sup>; and,

(b) offset the Broadview Pre-Petition Claims Against GX against the GX Receivable and make a net payment to GX in the amount of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00) via wire transfer, it being understood that together with the Four Hundred Thirty Five Thousand Eight Hundred Ninety Six Dollars and Ninety One Cents (\$435,896.91) payment for the Undisputed February GX Amount net the aforementioned credits and overpayment, such two (2) payments represent full and final satisfaction of the GX Receivable and all amounts owed by BN to GX, whether billed or unbilled, known or unknown, from the beginning of time through and including the last day of the billing period covered by the GX 2-4-04 Invoice; and,

(c) credit, write-off or otherwise reduce to zero dollars (\$0.00) the BN Pre-Petition Receivable; and,

(d) immediately withdraw the Proof of Claim previously filed with the GX Bankruptcy Court.

1.2 Within fifteen (15) business days of the date of BN-GX Agreement Order, GX shall:

(a) complete an offset of the Broadview Pre-Petition Claims Against GX against the GX Receivable and accept payment of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00) plus the Four Hundred Thirty Five Thousand Eight Hundred Ninety Six Dollar and Ninety One Cent (\$435,896.91) payment for the Undisputed February GX Amount net the aforementioned credits and overpayment, whether made prior to or concurrent with the execution

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<sup>4</sup> BN paid GX Four Hundred Thirty Five Thousand Eight Hundred Ninety Six Dollars and Ninety One Cents (\$435,896.91) on or about March 2004.

of this Agreement, in full and final satisfaction of the GX Receivable and all amounts owed by BN to GX, whether billed or unbilled, known or unknown, from the beginning of time through and including the last day of the billing period covered by the GX 2-4-04 Invoice and credit, write-off or otherwise reduce to zero dollars (\$0.00) any remaining Open GX Receivable; and,

(b) send a written document to BN acknowledging and confirming the obligation of GX to issue certain credits against future invoices and charges incurred by BN with GX, such credits aggregating to a total of One Hundred Seventy Five Thousand Dollars and No Cents (\$175,000.00) (the "Settlement Credits"), less the 1-4-04 Earned Credit and less the 2-4-04 Earned Credit resulting in a remaining pool of available Settlement Credits to BN of One Hundred Twenty One Thousand Two Hundred Seven Dollars and Forty Six Cents (\$121,207.46).

(c) send a written document to BN acknowledging and confirming the obligation to waive and reduce to zero or credit any and all late payment charges invoiced before or after the GX 2-4-04 Invoice that relate to the balances resolved herein.

1.3 The Settlement Credits will be applied to future GX invoices to BN as follows:

GX shall issue and apply a credit against any GX invoice to BN dated after 12/31/03 where the "new charges" (as opposed to carried balance) on said invoices are equal to or greater than \$400,000 until GX has issued a total of \$175,000 of Settlement Credits. Said credit to be equal to the lesser of (i) five percent (5%) of the new charges on the invoice or (ii) the "Remaining Balance" of the Settlement Credits with the Remaining Balance calculated as \$175,000 less all Settlement Credits processed and applied to GX Invoices to BN prior to application of the credit in question. GX shall issue and apply any such credits with respect to each and every invoice generated after December 31, 2003 by the later to occur of (i) fifteen (15) business days after the date of the BN-GX Agreement Order or (ii) fifteen (15) business days after the date of any GX

invoice to BN dated post-12/31/03. During the period of time in which BN and GX have affixed their respective signatures to this Agreement but before the GX Bankruptcy Court has approved this Agreement, BN shall be permitted to reduce any cash payment made toward the undisputed portion of an invoice by the amount of a good faith estimate of the anticipated Settlement Credit to be applied to said invoice. GX shall waive any late payment charges in connection with such reduced cash payments.

1.4 Within sixty (60) calendar days of the date of BN-GX Agreement Order, GX shall: (i) pay in full all outstanding and undisputed amounts related to the BN Post-Petition Receivable and, (ii) if applicable, notify BN directly of any disputes related to the BN Post-Petition Receivable for any amount GX believes in good faith are disputable, (iii) and with respect to any dispute of which GX notifies BN related to the BN Post-Petition Receivable also file formal disputes with NYAB utilizing the existing dispute process. If no such disputes are received by BN and NYAB within sixty (60) calendar days of the BN-GX Agreement Order, then any outstanding amounts related to the BN Post-Petition Receivable will be deemed undisputed and immediately due and payable and BN shall have the right to immediately offset any unpaid and outstanding amounts related to the BN Post-Petition Receivable against any then outstanding invoices from GX to BN any such offset to be at BN's sole discretion.

## **2. Back Billing and Additional Disputes**

2.1 As additional consideration, other than GX's ability to dispute the BN Post Petition Receivable, GX and BN agree that neither Party will back-bill services for any period of time prior to February 5, 2004. GX and BN further agree that neither Party will file additional disputes with respect to services, billings or receivables which are closed and/or settled as of the date of this Agreement.



### **3.Releases**

3.1 Effective upon the execution and delivery of this Agreement by all of the parties hereto, GX, on behalf of itself, its successors, successors-in-interest, predecessors, predecessors-in-interest, affiliates and assigns, and all of its respective past and present members, shareholders, partners, officers, directors, managers, employees, subsidiaries, affiliates, insurers, trustees, agents and representatives (collectively, the "GX Releasers"), hereby irrevocably releases, acquits, exonerates and forever discharges BN, each of its predecessors, predecessors-in-interest, successors, successors-in-interest, affiliates and assigns, and all of their respective past or present members, shareholders, partners, officers, directors, managers, employees, subsidiaries, affiliates, insurers, trustees, agents and representatives (collectively, the "BN Released Parties"), from any and all claims, rights, demands, suits, actions, causes of action, costs, expenses (including, without limitation, attorneys' fees and expenses), obligations and liabilities, whether known or unknown, asserted or unasserted, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, reported or unreported, material or immaterial, arising from the beginning of the world through and including the date of this Agreement, which any of the GX Releasers ever had, now have or hereafter may have against any or all of the BN Released Parties, by reason of any matter, cause or thing, based on, relating to or arising out of the GX Services prior to February 5, 2004 and the GX Receivable and the GX Pre-Petition Charge/Offset Disputes.

3.2 BN on behalf of itself, successors, successors-in-interest, affiliates and assigns, and all of its respective past and present members, shareholders, partners, officers, directors, managers, employees, subsidiaries, affiliates, insurers, trustees, agents and representatives (collectively, the "BN Releasers"), hereby irrevocably releases, acquits, exonerates and forever discharges GX, each of its predecessors, predecessors-in-interest,

successors, successors-in-interest, affiliates and assigns, and all of their respective past or present members, shareholders, partners, officers, directors, managers, employees, subsidiaries, affiliates, insurers, trustees, agents and representatives (collectively, the “GX Released Parties”), from any and all claims, rights, demands, suits, actions, causes of action, costs, expenses (including, without limitation, attorneys’ fees and expenses), obligations and liabilities, whether known or unknown, asserted or unasserted, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, reported or unreported, material or immaterial, arising from the beginning of the world through and including the date of this Agreement, which any of the BN Releasors ever had, now have or hereafter may have against any or all of the GX Released Parties, by reason of any matter, cause or thing, based on, relating to or arising out of the BN Pre-Petition Services and the Broadview Pre-Petition Claims Against GX.

3.3 Expressly excluded from the releases contained herein shall be:

- (a) Any claim arising out of or relating to a breach of this Agreement; and,
- (b) Any claim arising out of or relating to BN’s right to file formal disputes in connection with invoices after the GX 2-4-04 Invoice, utilizing the existing dispute process for those amounts BN believes are good faith disputes; and,
- (c) Any claim arising out of or relating to GX’s right to file formal disputes in connection with any open and unpaid BN invoice for BN Post-Petition Services, utilizing the existing dispute process for those amounts GX believes are good faith disputes so long as GX files their good faith disputes within the timeframes identified in 1.4 above.

#### **4. General**

##### **4.1 Benefit of the Agreement**

This Agreement shall inure to the benefit of and be binding upon the parties hereto, the BN Released Parties, the GX Released Parties and all of their respective heirs, executors, administrators and successors.

##### **4.2 Further Assurances**

Each of the parties hereto shall take such further actions and execute and deliver such further and other documentation as may be necessary to effectuate the terms of this Agreement.

##### **4.3 Amendments and Waiver**

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the parties hereto, and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party hereto purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

##### **4.4 Assignment**


This Agreement may not be assigned by any party hereto without the prior written consent of the other parties hereto.

##### **4.5 Counterparts and Facsimile Signatures**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement. Facsimile signatures shall have the same force and effect as original signatures, provided, however, that any party hereto who provides a facsimile signature shall promptly provide an original signature.

IN WITNESS WHEREOF, and intending to be legally bound hereby, each of the parties hereto has caused this Agreement to be executed as of the day and year first set forth above.

**BROADVIEW NETWORKS HOLDINGS, INC.**  
on behalf of itself and its affiliates

By:   
Name: Terrence J. Anderson  
Title: Executive Vice President

**GLOBAL CROSSING BANDWIDTH, INC.**  
on behalf of itself and its affiliates

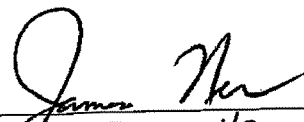
By: \_\_\_\_\_  
Name:  
Title:

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**BROADVIEW NETWORKS HOLDINGS, INC.**  
on behalf of itself and its affiliates

By: \_\_\_\_\_  
Name:  
Title:

**GLOBAL CROSSING BANDWIDTH, INC.**  
on behalf of itself and its affiliates

By:  \_\_\_\_\_  
Name: James NEU  
Title: V.P. Risk Management