

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: :
: **Chapter 11 Case No.**
:
FRONTIER AIRLINES : **08-11298 (RDD)**
HOLDINGS, INC., et al., :
: **(Jointly Administered)**
:
Debtors. :
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**FINAL ORDER AUTHORIZING DEBTORS TO OBTAIN
POST-PETITION CREDIT FACILITY**

Upon (i) the motion (the “**Motion**”)¹ of Frontier Airlines Holdings, Inc. (“**Frontier Holdings**”) and its two subsidiaries that are debtors and debtors in possession in these cases (collectively, the “**Debtors**”)² filed on July 25, 2008 and (ii) the Notice Regarding Modifications to the Debtors’ Proposed Post-Petition Credit Facility filed on August 4, 2008 (the “**Notice**”), each pursuant to sections 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”) and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and each seeking entry of orders authorizing the Debtors to:

- (a) obtain post-petition financing in an amount up to \$75 million (the “**DIP Credit Facility**”) pursuant to section 364 of the Bankruptcy Code by entering into that certain Secured Super-Priority Debtor-In-Possession Credit Agreement in substantially the form attached to the Notice, as the same may be amended,

¹ Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion or the Notice, as applicable.

² The Debtors are the following entities: Frontier Holdings; Frontier Airlines, Inc. (“**Frontier**”); and Lynx Aviation, Inc. (“**Lynx**”). The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

supplemented or otherwise modified from time to time (the “**DIP Credit Agreement**”) and all other documents, agreements and instruments to be executed, entered into or delivered in connection with the DIP Credit Agreement or the DIP Credit Facility (together with the DIP Credit Agreement, the “**DIP Loan Documents**”) among the Debtors, as borrowers, the lenders party thereto (the “**DIP Lenders**”) and Wells Fargo Bank Northwest, National Association acting as administrative agent and collateral agent (in such capacities, the “**Administrative Agent**”) for the lenders thereunder (the “**DIP Lenders**”) on the terms and subject to the conditions set forth therein;

(b) borrow up to \$30 million under the DIP Credit Facility on an interim basis;

(c) execute, deliver and enter into the DIP Loan Documents, comply with each of their obligations thereunder, and perform such other and further acts as may be necessary, required or desirable in connection therewith; and

(d) grant security interests, liens and superpriority claims to the Administrative Agent, acting on behalf of and for the benefit of itself and the DIP Lenders (including superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code and liens pursuant to sections 364(c)(2) and (3) of the Bankruptcy Code) to secure amounts owing under the DIP Loan Documents.

Requisite notice of the Motion and the Notice having been provided in accordance with the Case Management Order; and an interim hearing to consider the interim relief requested in the Motion and the Notice having been held by the Court on August 5, 2008 (the “**Interim Hearing**”); and the Court having entered an interim order dated August 5, 2008

(the “**Interim Order**”) (i) authorizing the Borrowers to borrow money pursuant to the DIP Credit Facility up to an aggregate principal or face amount of \$30 million (plus interest, fees and other expenses provided for in the DIP Loan Documents) and (ii) setting an objection deadline and scheduling a final hearing (the “**Final Hearing**”), in the event of an objection, to consider entry of a final order authorizing the borrowings under the DIP Loan Documents and certain other relief, all as set forth in the Motion, the Notice and the DIP Loan Documents; and upon consideration of the evidence presented or proffered at the Interim Hearing; and no objections to the final relief requested in the Motion having been received; and it appearing to the Court that granting the final relief requested is in the best interest of the estates of the Debtors and their creditors and is essential for the continued operation of the Debtors’ businesses; and after due deliberation and consideration and good and sufficient cause appearing therefore,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. On April 10, 2008 (the “**Petition Date**”), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York commencing these cases (the “**Cases**”).

B. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases. On April 24, 2008, the United States Trustee appointed a statutory committee of unsecured creditors (the “**Creditors’ Committee**”) in the Cases.

C. This Court has core jurisdiction over the Cases, this Motion and the parties and properties affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Under the circumstances, the notice given by the Debtors of the Motion, the Notice, the Interim Hearing and the Final Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001.

E. Good cause has been shown for the entry of this Order.

F. The Debtors need access to the DIP Credit Facility to satisfy working capital and operational needs and to ensure, commensurate with the size of their operations, an appropriate liquidity cushion. The access of the Debtors to sufficient working capital and liquidity is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors. If the Debtors do not obtain authorization to borrow under the DIP Loan Documents, the Debtors are at risk of irreparable harm.

G. The Debtors are unable to obtain adequate post-petition credit on more favorable terms from sources other than the DIP Lenders under the DIP Loan Documents, and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain adequate secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the Administrative Agent and the DIP Lenders (i) the Superpriority Claims (as defined below), subject to the Carve Out and the First Data Claim (which claim shall be pari passu to the Superpriority Claims) and (ii) the DIP Liens (as defined below), subject to the liens securing the obligations owed to First Data

as described in the First Data Order, the Carve Out (each to the extent provided in the DIP Credit Agreement) and the other exceptions expressly set forth in the DIP Loan Documents, in each case under the terms and conditions set forth in this Order and the DIP Loan Documents.

H. The terms of the DIP Credit Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

I. The DIP Credit Facility has been negotiated in good faith and at arm's length between the Debtors, the Administrative Agent and the DIP Lenders, as applicable, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Credit Facility and the DIP Loan Documents, including, without limitation, (i) all loans made to the Debtors pursuant to the DIP Credit Agreement and (ii) all other "**Obligations**" (as defined in the DIP Credit Agreement) (all of the foregoing, collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the Administrative Agent and the DIP Lenders and their affiliates, as applicable, in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

J. Absent granting the relief sought by this Order, the Debtors' estates could be immediately and irreparably harmed. Consummation of the DIP Credit Facility in accordance with this Order and the DIP Loan Documents is therefore in the best interest of the Debtors' estates.

Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Motion, as modified by the Notice, is granted, as set forth herein.

Authorization of the DIP Credit Facility and the DIP Loan Documents.

2. The Borrowers are hereby authorized to borrow money pursuant to the DIP Credit Facility in accordance with the terms of this Order and the DIP Loan Documents, which amounts may be used for all purposes permitted under such loan documents, including, without limitation, to provide working capital for the Debtors and to pay interest, fees and expenses in accordance with this Order and the DIP Loan Documents.

3. The terms, conditions and covenants of the DIP Credit Agreement and the other DIP Loan Documents are hereby approved.

4. In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements) and to pay all fees as required under the DIP Loan Documents, including, without limitation:

- (a) the execution, delivery and performance of the DIP Credit Agreement and the other DIP Loan Documents and any exhibits attached thereto, including, without limitation, the Collateral Documents;

- (b) subject to paragraph 23 hereof, the execution, delivery and performance of any nonmaterial amendments to the DIP Credit Agreement, in each case in such form as the Debtors and the Administrative Agent may agree;

(c) the payment, at closing, of all amounts then required to be paid to the Administrative Agent and the DIP Lenders under or in connection with the DIP Facility, including, without limitation, the Commitment Fee (as defined in the DIP Credit Agreement) in the amount of \$1,500,000, plus reasonable and documented expenses, which the Debtors shall pay to the Administrative Agent at closing, each to the extent provided for in the DIP Credit Agreement;

(d) the payment of the other fees referred to in the DIP Credit Agreement and reasonable, actual and documented costs and expenses as may be due under the DIP Loan Documents from time to time, including, without limitation, reasonable, actual and documented fees and expenses of the professionals retained as provided for in the DIP Loan Documents; and

(e) the performance of all other acts required under or in connection with or contemplated by the DIP Loan Documents.

5. Upon execution and delivery of each DIP Loan Document, each DIP Loan Document shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms. No obligation, payment, transfer or grant of security under the DIP Loan Documents or this Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code) or subject to any defense, reduction, setoff, recoupment or counterclaim.

Superpriority Claims.

6. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the Obligations shall constitute allowed claims against the Debtors with priority over any and all

administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the “**Superpriority Claims**”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, subject only to the payment of the Carve Out to the extent provided in the DIP Credit Agreement; *provided, however*, that the Superpriority Claims of the Administrative Agent and the DIP Lenders arising under the DIP Loan Documents shall be *pari passu* to the Superpriority Claims of First Data Merchant Services Corporation granted pursuant to the First Data Order.

7. For purposes hereof, the “**Carve Out**” shall have the meaning given to that term in the DIP Credit Agreement.

Grant of DIP Liens.

8. As security for the DIP Obligations, effective and perfected upon the date of the entry of the Interim Order and without the necessity of the execution, recordation or filing by the Debtors or the Administrative Agent or DIP Lenders of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents or taking control or possession of any collateral, or taking any other actions, the following security interests and liens were by the Interim Order and are hereby granted to the Administrative Agent for its own benefit and the benefit of the DIP Lenders subject to the Carve Out, the liens securing the obligations owed to First Data as described in the First Data

Order, and the other liens specifically permitted under the DIP Credit Agreement, in each case to the extent provided in the DIP Credit Agreement (all such liens and security interests granted to the Administrative Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to the Interim Order, this Order and the DIP Loan Documents, the “**DIP Liens**”):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon or pledge of (subject to the Carve Out to the extent provided in the DIP Credit Agreement) all Collateral (as such term is defined in the DIP Credit Agreement), including, without limitation, all of the following property, in each case to the extent not subject to valid, perfected, nonavoidable and enforceable liens in existence as of the date of closing of the DIP Credit Facility (the “**Closing Date**”) or valid liens in existence as of the Closing Date that are perfected subsequent to such date to the extent permitted by section 546(b) of the Bankruptcy Code: all of the Debtors’ existing and after-acquired notes and capital stock, accounts, deposit accounts, securities accounts, concentration accounts, disbursement accounts, and all other bank accounts and all deposits therein, goods, money, cash or cash equivalents, supporting obligations, general intangibles relating to the foregoing and other rights to payments not otherwise included in the foregoing, real and personal, tangible and intangible, assets, including, without limitation, chattel paper, documents, books and records, letter of credit rights, general intangibles (including payment intangibles), software, aircraft, instruments, investments, investment property, securities (whether or not marketable), leased and owned real property, inventory, fixtures, franchise rights, tradenames, trademarks, copyrights and

other intellectual property, routes, slots, spare parts, airport gate leaseholds and licenses related thereto, technology equipment, ground service equipment, other furniture and equipment, commercial tort claims as set forth in the DIP Credit Agreement, contract rights and all tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for each of the foregoing and all proceeds of the foregoing, in each case as specified in the DIP Credit Agreement and subject to the limitations specified in the DIP Credit Agreement, excluding the Excluded Collateral and any general intangibles or other rights arising under any contract, instrument, license or other document if the grant of a security interest therein would constitute a breach or violation of a valid and effective restriction in favor of a third party or give rise to any indemnification obligations or any right to terminate or commence the exercise of remedies under such restrictions, but only to the extent, and for so long as, such restriction is not terminated or rendered unenforceable or otherwise deemed ineffective by any applicable law (collectively, the “**DIP Collateral**”). “**Excluded Collateral**” shall have the meaning given to that term in the DIP Credit Agreement.

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and liens upon that portion of the DIP Collateral, whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Closing Date (or to valid liens in existence as of the Closing Date that are perfected subsequent to such date to the extent permitted by

section 546(b) of the Bankruptcy Code), subject to the exclusions expressly set forth in the DIP Loan Documents.

9. Liens Senior to Certain Other Liens. The DIP Liens shall not be subject or subordinate to (a) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (b) any liens arising after the Closing Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, except to the extent expressly permitted by the DIP Loan Documents.

10. All DIP Collateral will be free and clear of other liens, claims and encumbrances, except for those liens, claims and encumbrances expressly permitted under the DIP Loan Documents.

Section 1110 Issues.

11. No Waiver of Section 1110 Beneficiary Rights. Nothing in this Order (a) shall constitute a waiver, forbearance or adjudication of the rights of any secured party, lessor or vendor, or of any agent or controlling party for any such entity (including, without limitation, any servicer or beneficial owner of any lessor and including any secured party, lessor or vendor under any aircraft lease or mortgage) (in each case, an “**1110 Beneficiary**”) under section 1110 of the Bankruptcy Code; or (b) shall prejudice, limit, or otherwise affect any rights of any 1110 Beneficiary or other entity under section 1110 of the Bankruptcy Code, all of which rights are expressly preserved. To the extent that any liens are granted hereunder in any Section 1110 Assets (*i.e.*, in situations where such liens are permitted under the relevant Section 1110 Agreements), such liens in any Section 1110 Assets shall, to the

extent required by the Section 1110 Agreements, be “silent” liens, such that the Administrative Agent and the DIP Lenders shall not have the right to exercise any remedies with respect thereto until the obligations under the relevant Section 1110 Agreements have been satisfied and paid in full.

Protection of DIP Lenders’ Rights.

12. Neither the Administrative Agent nor the DIP Lenders shall be subject to (a) the equitable doctrine of “marshaling” or any other similar doctrine, (b) an “equities of the case” claim under section 552(b) of the Bankruptcy Code against any of the Administrative Agent or the DIP Lenders with respect to proceeds, product, offspring or profits of the DIP Collateral or (c) any other equitable doctrine that would deny to the Administrative Agent or the DIP Lenders any of the rights, benefits and protections afforded to them in this Order or in the DIP Loan Documents.

13. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Administrative Agent and the DIP Lenders, respectively, to exercise, (a) immediately upon the occurrence of an Event of Default (as defined in the DIP Credit Agreement), the right to accelerate all Obligations due under the DIP Loan Documents and (b) upon the occurrence and during the continuance of an Event of Default and after the giving of five days’ prior written notice to the United States Trustee, counsel to the Debtors, and counsel to the Creditors’ Committee, all other rights and remedies under the DIP Loan Documents, this Order, applicable law or in equity, including the rights and remedies against the DIP Collateral provided for in the DIP Loan Documents and this Order. In addition, as provided for in the DIP Credit Agreement, upon the occurrence of an Event of Default (and after the giving of notice to the extent required by the

DIP Credit Agreement), the Loans and all other Obligations under the DIP Facility shall bear interest at the Default Rate as of the date on which the Event of Default occurred (or such notice is given to the extent required by the DIP Credit Agreement), which interest shall be payable on the terms set forth in the DIP Credit Agreement. In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing. The Debtors, on behalf of themselves and their estates, hereby waive their right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Administrative Agent or the DIP Lenders set forth in this Order or the DIP Loan Documents, or otherwise available under applicable law or in equity.

Perfection of DIP Liens.

14. The Administrative Agent is hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the DIP Liens. Whether or not the Administrative Agent on behalf of the DIP Lenders shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise perfect or confirm perfection of the DIP Liens, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of the Interim Order and at all times thereafter. Upon the request of the Administrative Agent, without any further consent of any

party, the Debtors are authorized to take, execute and deliver such instruments to enable the Administrative Agent to further validate, perfect, preserve and enforce DIP Liens.

15. A certified copy of this Order may, in the discretion of the Administrative Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

16. Any provision of any lease, license, contract or other agreement that requires the consent or approval of one or more landlords or other parties or the payment of any fees or obligations to any governmental entity (the “**Restricted Agreements**”), in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such Restricted Agreement or leasehold interest or the proceeds thereof, or other post-petition collateral related thereto (except to the extent such leasehold interest or Restricted Agreement or other DIP Collateral related thereto is Excluded Collateral pursuant to the terms of the DIP Credit Agreement), is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the Administrative Agent and the DIP Lenders in accordance with the terms of the DIP Loan Documents or this Order.

Preservation of Rights Granted Under the Order.

17. No claim or lien having a priority superior to or *pari passu* with those granted by this Order shall be granted or allowed while any portion of the DIP Credit Facility or the DIP Obligations remain outstanding, except to the extent expressly permitted herein or by the DIP Loan Documents.

18. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims, liens, security interests and other rights granted to the Administrative Agent and the DIP Lenders pursuant to this Order shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations shall have been indefeasibly paid and satisfied in full (and that such Superpriority Claims, liens, security interests and rights shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims and security interests referred to in clause (i) above.

19. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (a) the validity of any DIP Obligations incurred prior to the actual receipt of written notice by the Administrative Agent and the DIP Lenders, of the effective date of such reversal, stay, modification or vacation or (b) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations. Notwithstanding any such reversal, stay, modification or vacation, all DIP Obligations incurred by the Debtors to the Administrative Agent or the DIP Lenders prior to the actual receipt of written notice by the Administrative Agent or the DIP Lenders of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Order, and the Administrative Agent and the DIP Lenders shall be entitled to all of the rights, remedies, privileges and benefits granted in section

364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Loan Documents with respect to such DIP Obligations.

20. The DIP Liens, the Superpriority Claims and all other rights and remedies of the Administrative Agent and the DIP Lenders granted by the provisions of this Order and the DIP Loan Documents shall survive, and shall not be modified, impaired or discharged by (a) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, or (b) the entry of an order confirming a plan of reorganization in any of the Cases. The terms and provisions of this Order and the DIP Loan Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies, of the Administrative Agent and the DIP Lenders granted by the provisions of this Order and the DIP Loan Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

21. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (a) any of the rights of the Administrative Agent or any of the DIP Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the Administrative Agent or any of the DIP Lenders to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans or (b) any other rights,

claims or privileges (whether legal, equitable or otherwise) of the Administrative Agent or any of the DIP Lenders.

22. The Administrative Agent or DIP Lenders' failure to seek relief or otherwise exercise their rights and remedies under the DIP Loan Documents or this Order shall not constitute a waiver of any of their rights hereunder, thereunder or otherwise.

23. Amendments to DIP Credit Facility. The DIP Credit Agreement or any other DIP Loan Documents may from time to time be amended by the parties thereto without further order of this Court, in each case, in such form as the Debtors, the Administrative Agent and the DIP Lenders (to the extent required) may agree; *provided, however* that (x) notice of any such modification or amendment (other than non-material amendments or waivers) shall be provided to the Creditors' Committee and the U.S. Trustee, each of which will have five days from the date of such notice within which to object in writing; and (y) notice of a modification or amendment that proposes any change to the definition or treatment of Excluded Collateral or proposes granting of security interests in additional property in which a party has an interest shall be provided to any party directly and adversely affected thereby, and such party shall have 10 days from the date of such notice within which to object in writing. If an objection is timely provided pursuant to section (x) or (y) of this paragraph and not resolved on a consensual basis, then the relevant modification or amendment shall be permitted only pursuant to an order of the Court.

24. Waiver of Section 506(c) Claims. Subject only to the Carve-Out (to the extent provided in the DIP Credit Agreement), no costs or expenses of administration that have or may be incurred prior to the Cases, in the Cases or in any conversion of any of Debtors' Cases to cases under chapter 7 of the Bankruptcy Code shall be charged against the

Administrative Agent or the DIP Lenders, their claims, or the Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the Administrative Agent, and no such consent shall be implied from any other action, inaction or acquiescence by the Administrative Agent or the DIP Lenders.

25. Order Governs. In the event of any inconsistency between the provisions of this Order and the DIP Loan Documents, the provisions of this Order shall govern, *provided*, however, that except to the extent that specific provisions of this Order expressly limit specific provisions of the DIP Loan Documents, nothing in this Order shall be construed as limiting any right or remedies of the Administrative Agent or DIP Lenders or obligations of the Debtors under the DIP Loan Documents. In the event of any inconsistency between the provisions of this Order and the Final Order Authorizing Debtors to (i) Continue to Use Existing Cash Management System and (ii) Maintain Existing Bank Accounts and Business Forms, entered May 2, 2008, the provisions of this Order shall govern.

26. Binding Effect; Successors and Assigns. The DIP Loan Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the Administrative Agent, the DIP Lenders, the Creditors' Committee, any other official committees appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the Administrative Agent, the DIP Lenders, and the Debtors and their respective successors and assigns; *provided, however*, that the Administrative Agent and the DIP Lenders shall have no obligation to extend any DIP Credit Facility to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

27. No Liability of Administrative Agent or DIP Lenders. Neither the Administrative Agent nor any of the DIP Lenders shall be deemed, as a result of having advanced credit to the Debtors pursuant to the DIP Loan Documents or having lawfully exercised any rights or remedies thereunder, (a) to be in control of the operations of the Debtors; (b) to be an “employer” of any of the Debtors’ employees; or (c) to be acting as “responsible person” or managing agent with respect to the operation or management of the Debtors.

28. No Discharge of DIP Loan. The obligations of the Debtors under the DIP Credit Facility and the DIP Loan Documents shall not be discharged by the entry of any order confirming a plan of reorganization in the Cases, and the Debtors, with approval of the Court, hereby waive any such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

29. Qwest Reclamation Claim. To the extent that any goods referenced in the “Demand for Reclamation of Goods Sold” dated April 21, 2008 delivered by Qwest Communications Corporation to the Debtors are subject to a valid reclamation claim pursuant to section 546(c) of the Bankruptcy Code, the proceeds from any sale of such goods shall be paid by the Debtors to Qwest Communications Corporation.

30. No Prejudice with Respect to Collective Bargaining Agreements. Nothing herein or in any DIP Loan Documents shall constitute an agreement, admission or acknowledgement by any union that any concessions with respect to, or any changes to, any collective bargaining agreement are necessary or appropriate, and all unions (and all other parties) reserve all rights with respect to all such issues, including without limitation with respect to any claim (or defense thereto) that the terms of the DIP Credit Facility do not

constitute a valid basis in support of relief under section 1113 of the Bankruptcy Code. Nothing in this Order relieves the Debtors of any obligation with respect to the requirements of section 1113 of the Bankruptcy Code, and this Court retains its full discretion with respect to consideration of any motion made by the Debtors pursuant to section 1113 of the Bankruptcy Code.

31. Order Effective Immediately. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof.

Dated: September 3, 2008
New York, New York

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE