

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re
HAWAIIAN TELCOM
COMMUNICATIONS, INC., et al.¹
Debtors and
Debtors-in-Possession

Case No. 08-02005
(Chapter 11)
Jointly Administered
HEARING:
DATE: January 8, 2009
TIME: 10:00 a.m.
JUDGE: Honorable Lloyd King

**FINAL ORDER (I) AUTHORIZING USE OF CASH COLLATERAL
PURSUANT TO SECTION 363 OF BANKRUPTCY
CODE, AND (II) PROVIDING ADEQUATE PROTECTION TO
PREPETITION SECURED PARTIES PURSUANT
TO SECTIONS 361, 362, AND 363 OF BANKRUPTCY CODE**

Upon the motion (the “*Motion*”), dated December 1, 2008, of Hawaiian Telcom Holdco, Inc. (the “*Company*”) and its affiliated debtors, Hawaiian Telcom Communications, Inc. (“*HTC*”), Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., Hawaiian Telcom IP Video Investment, LLC, Hawaiian Telcom IP Video Research, LLC, Hawaiian Telcom IP Service Delivery Investment, LLC, Hawaiian Telcom IP Service Delivery Research, LLC, as debtors and debtors in possession (each, individually a “*Debtor*” and,

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Hawaiian Telcom Communications, Inc. (0376); Hawaiian Telcom Holdco, Inc. (9868); Hawaiian Telcom, Inc. (9500); Hawaiian Telcom Services Company, Inc. (5722); Hawaiian Telcom IP Service Delivery Investment, LLC (9685); Hawaiian Telcom IP Video Investment, LLC (9295); and Hawaiian Telcom IP Video Research, LLC (9471). The location of the Debtors' corporate headquarters and the service address for all Debtors is: 1177 Bishop Street, Honolulu, HI 96813.



collectively, the “*Debtors*”), for entry of (1) this order (the “*Order*”)² (a) authorizing the Debtors to use Cash Collateral (as hereinafter defined) pursuant to section 363 of title 11 of the United States Code (the “*Bankruptcy Code*”) on an interim basis pending a final hearing on the Motion (the “*Final Hearing*”), (b) granting adequate protection to the Prepetition Agent, the Prepetition Lenders and the Other Secured Parties (each as hereinafter defined) pursuant to sections 361, 362, and 363 of the Bankruptcy Code with respect to, *inter alia*, such use of Cash Collateral and any diminution in the value of the Prepetition Collateral (as hereinafter defined) granted under the Prepetition Credit Agreement (as hereinafter defined), and (c) in accordance with Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), requesting that this Court schedule the Final Hearing and approve notice with respect thereto and (2) an order granting the relief requested in the Motion on a final basis; and the Court having considered the Motion and the exhibits attached thereto, including, without limitation, the Budget; and a hearing to consider approval of the Motion on an interim basis having been held (the “*Interim Hearing*” and, with the Final Hearing, the “*Hearings*”); and the Delaware Bankruptcy Court, as defined below, having approved the interim relief requested in the Motion at the Interim Hearing

² As requested by the Court at the January 8, 2009 hearing, annexed hereto as Schedule 2 is a chart identifying the “Material Provisions” of the Order as set forth in Local Bankruptcy Rule 4001-2 for the Southern District of New York.

and issued an order, dated December 3, 2008 (Del. Dock. No. 41) (the “*Interim Order*”); and the Court having scheduled the Final Hearing for January 8, 2009 at 10:00 a.m.; and notice of the Final Hearing having been given pursuant to the terms and conditions of the Interim Order; and responses, objections, or joinders with respect to the relief requested in the Motion having been filed by (i) the Official Committee of Unsecured Creditors (the “*Committee*”), (ii) Pacific Investment Management Company LLC and Capital Research and Management Company (collectively, the “*Noteholders*”), (iii) HYP Media Finance LLC, (iv) Hewlett-Packard Company, and (v) Goldman Sachs Bank USA; and any such objections having been withdrawn, resolved, overruled, or otherwise addressed by the Court; and upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS:

A. On December 1, 2008 (the “*Petition Date*”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “*Delaware Bankruptcy Court*”). Each Debtor is continuing in the management and possession of its business and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. On December 12, 2008, the United States Trustee for the District of Delaware appointed the Committee to serve as the statutory committee of unsecured creditors in these chapter 11 cases (the “*Chapter 11 Cases*”). As of the date hereof, no request has been made for the appointment of a trustee or examiner.

C. On December 22, 2008, after consideration of an unopposed motion seeking to transfer venue to this Court pursuant to a stipulation between the Debtors and the Attorney General for the State of Hawaii, the Delaware Bankruptcy Court entered an order transferring venue of the Chapter 11 Cases to this Court.

D. Jurisdiction. Consideration of this Motion constitutes a “core proceeding” as defined in 28 U.S.C. §157(b)(2)(M). This Court has core jurisdiction over the Chapter 11 Cases, this proceeding, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. Notice. Notice of the relief sought by the Motion and the Final Hearing was provided in accordance with the terms of the Interim Order and such notice constitutes sufficient and adequate notice of the Motion and this Order pursuant to Bankruptcy Rules 2002, 4001(c) and (d), and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(c) of the

Bankruptcy Code, and no further notice of the Motion or this Order is necessary or required.

F. **Debtors' Stipulations.** Subject to the provisions of Paragraph 24 below, the Debtors acknowledge, admit, and confirm the following:

(a) Pursuant to that certain Amended and Restated Credit Agreement, dated as of June 1, 2007, among the Company, HTC, the lenders party thereto from time to time (each a "***Prepetition Lender***" and, collectively, the "***Prepetition Lenders***"), Lehman Commercial Paper Inc., as administrative agent and collateral agent for the Prepetition Lenders (in such capacity, together with any successors thereto in such capacity the "***Prepetition Agent***" and, together with the Prepetition Lenders and the counterparties to Swap Agreements (as such term is defined in the Prepetition Credit Agreement) with a Loan Party (as such term is defined in the Prepetition Credit Agreement) that constitute Obligations (as such term is defined in the Prepetition Credit Agreement) and the permitted successors and assigns of such counterparties (the "***Other Secured Parties***"), the "***Prepetition Secured Parties***" (as supplemented or otherwise modified from time to time prior to the Petition Date), and together with all schedules and exhibits thereto, and guarantees, subordination agreements, intercreditor agreements, indentures, contractor undertakings, notes, instruments, reaffirmations, certificates, and any other agreements and documents delivered pursuant thereto or in connection

therewith (collectively, the “*Prepetition Credit Agreement*”), the Prepetition Secured Parties made certain loans, advances, and other financial accommodations, and provided for the issuance of letters of credit, to the Debtors to fund, among other things, the operations of the Debtors.

(b) Pursuant to the Amended and Restated Guarantee and Collateral Agreement, dated as of June 1, 2007, as supplemented by Supplement No. 1, dated as of October 24, 2008, among the Debtors and the Prepetition Agent (as amended, restated, supplemented, reaffirmed, or otherwise modified from time to time prior to the Petition Date, the “*Guarantee and Collateral Agreement*” and together with all other pledge and security agreements, deposit and securities account control agreements, mortgages, intellectual property security agreements, landlord personal property collateral access agreements, assignments, financing statements, certificates, stock transfer powers, and other documents and agreements (all as amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date), the “*Prepetition Security Documents*” and, together with the Prepetition Credit Agreement and the Swap Agreements (as such term is defined in the Prepetition Credit Agreement) with a Loan Party (as such term is defined in the Prepetition Credit Agreement) that constitute Obligations (as such term is defined in the Prepetition Credit Agreement), the “*Prepetition Financing Documents*”), the Prepetition Agent was granted, for the benefit of the

Prepetition Secured Parties, a continuing lien on and security interest in substantial property of the Company, HTC, and all of the other Debtors.

(c) As of the Petition Date, (i) each of the Debtors jointly and severally were indebted and liable to the Prepetition Agent, the Prepetition Lenders and the Other Secured Parties, without defense, counterclaim, or offset of any kind, in respect of loans made, and other financial accommodations extended, by the Prepetition Secured Parties to the Debtors under the Prepetition Financing Documents in the aggregate principal amount of not less than (A) \$484.7 million (plus accrued and unpaid interest thereon) on account of the term loan facility portion of the Prepetition Credit Agreement, (B) \$89.8 million (plus accrued and unpaid interest thereon) on account of the revolving first lien credit facility portion of the Prepetition Credit Agreement, and (C) \$100,000 on account of outstanding Letters of Credit (as such term is defined in the Prepetition Credit Agreement, (ii) each of the Debtors were indebted and liable to the Prepetition Agent and the Prepetition Lenders for unpaid fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees that are chargeable or reimbursable under the Prepetition Financing Documents), make-whole amounts, charges and other obligations incurred in connection with such loans and letters of credit as provided in the Prepetition Financing Documents (items (i) and (ii), collectively, and all other Obligations are hereinafter referred to as the "*Prepetition*

Obligations”), and (iii) each party to a guarantee executed and delivered in respect of the Prepetition Obligations was liable to the Prepetition Secured Parties under such guarantee in the aggregate amount of not less than the aggregate amount of the Prepetition Obligations.

(d) Pursuant to the Prepetition Security Documents, each of the Debtors granted first priority liens (“***Liens***”) on, and continuing pledges and security interests in, the Collateral (as defined in the Guarantee and Collateral Agreement) to and/or for the benefit of the Prepetition Secured Parties to secure the Prepetition Obligations and any guarantees thereof (collectively, the “***Prepetition Liens***”).

(e) The Prepetition Liens are (i) valid, binding, perfected, enforceable first-priority prepetition liens on the Collateral (as defined in the Prepetition Credit Agreement) and the personal and real property described in the Prepetition Financing Documents and, subject to section 552 of the Bankruptcy Code, all postpetition proceeds, products, offspring, rents and profits thereof (collectively, the “***Prepetition Collateral***”), (ii) not subject to avoidance, recharacterization, reduction, disallowance, impairment, or subordination under the Bankruptcy Code or applicable non-bankruptcy law, and (iii) subject and subordinate only to (A) the Adequate Protection Liens (as defined below), (B) the Carve-Out (as defined below and to which the Adequate Protection Liens are

subject), and (C) valid, perfected, unavoidable liens under the Prepetition Credit Agreement only to the extent such liens are permitted to be senior to or *pari passu* with the liens of the Prepetition Agent on the Prepetition Collateral (the “**Permitted Liens**”). The Prepetition Financing Documents are valid and binding agreements and obligations of the Debtors.

(f) The Prepetition Obligations constitute legal, valid, and binding obligations of the Debtors, enforceable in accordance with their terms and no objection, offset, defense, or counterclaim of any kind or nature to the Prepetition Obligations exists. The Prepetition Obligations, and any amounts previously paid to the Prepetition Secured Parties on account thereof or with respect thereto, are not subject to avoidance, recharacterization, reduction, disallowance, impairment, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors do not have, hereby forever release, and are forever barred from bringing, any claims, counterclaims, causes of action, defenses, or setoff rights, whether arising under the Bankruptcy Code or otherwise, with respect to the Prepetition Obligations or against any of the Prepetition Secured Parties and their respective predecessors-in-interest, affiliates, subsidiaries, agents, officers, directors, employees, and attorneys, with respect to the Prepetition Obligations and the Prepetition Financing Documents.

(g) The Prepetition Agent (on its behalf and on behalf of the Prepetition Secured Parties) perfected its security interests and Liens in and on the domestic Prepetition Collateral by, among other methods, the filing of UCC-1 financing statements, instruments filed in federal, state, and county offices, mortgages, and other required documents against the Debtors and such collateral with the proper federal, state, and county offices for the perfection of such security interests and Liens.

G. **Cash Collateral.** For purposes of this Order, and subject to the provisions of Paragraph 24 below (including parties' rights to assert a Challenge, as defined below, with respect to the findings of Paragraph F above and this Paragraph G), the following constitute "***Cash Collateral***" of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code: (a) all funds of the Debtors (including any funds subject to a right of setoff in favor of any Prepetition Secured Party, any funds on deposit or maintained in any account subject to a control agreement with the Prepetition Agent, and any proceeds of the Prepetition Collateral) as of the Petition Date, and (b) all cash proceeds of Prepetition Collateral received after the Petition Date.

H. **Prepetition Secured Parties' Consent.** The Prepetition Secured Parties consent to the Debtors' use of the Prepetition Secured Parties' Cash Collateral and the priming of the Prepetition Liens by the Adequate Protection

Liens, solely on the terms and conditions set forth in this Order, and in accordance with the Budget (as hereinafter defined). The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent.

I. **Good Faith.** Based upon the record before the Court, the terms of the use of the Cash Collateral as provided in this Order have been negotiated at arms' length and in "good faith" and are in the best interests of the Debtors, their estates, and creditors. The Prepetition Secured Parties are permitting the use of their Cash Collateral and the priming of their liens on the Prepetition Collateral, in good faith, and the Prepetition Secured Parties are entitled to the benefits attendant to such finding.

J. **Findings Regarding the Use of Cash Collateral.** (a) Good cause has been shown for the entry of this Order. The Debtors have an immediate and critical need to use the Cash Collateral in order to continue to operate their businesses, and effectuate a reorganization of their businesses. The Debtors' use of Cash Collateral has been deemed sufficient to meet the Debtors' immediate postpetition liquidity needs, subject to the terms of this Order, and all other agreements, documents, notes, or instruments delivered pursuant hereto or thereto or in connection herewith or therewith, including, without limitation, the budget,

attached as Schedule 1 hereto (as such budget may be extended, varied, supplemented, or otherwise modified in accordance with the provisions of this Order, the “*Budget*”).

(b) The ability of the Debtors to have sufficient available sources of working capital to continue their businesses, effectuate a reorganization of their businesses, and maximize the value of their assets depends upon the Debtors’ use of Cash Collateral. The Debtors have requested that the Prepetition Secured Parties consent to (i) the use of their Cash Collateral, to be used by the Debtors solely in accordance with the terms of this Order and the Budget, and (ii) the priming of their liens on the Prepetition Collateral solely to the extent provided herein. The Prepetition Secured Parties are willing to provide such financial accommodations on a superpriority and first priority secured basis, as more particularly described herein.

(c) Based on the record presented to the Court at the Hearings, good, adequate and sufficient cause has been shown to justify the immediate grant of the relief requested in the Motion to avoid irreparable harm to the Debtors’ estates. The terms of the Debtors’ use of the Cash Collateral, as more fully set forth herein, are (i) fair and reasonable, (ii) reflect the Debtors’ prudent exercise of business judgment consistent with their fiduciary duties, (iii) constitute reasonably equivalent value and fair consideration for the Prepetition Secured Parties’ consent

thereto, and (iv) are essential and appropriate for the continued operation and management of the Debtors' businesses and the preservation of their assets and properties. Entry of this Order is in the best interests of the Debtors' estates and all parties in interest in these Chapter 11 Cases.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is granted on a final basis as provided herein. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits. This Order shall constitute findings of fact and conclusions of law, and shall become effective immediately upon its entry.

2. Termination Events. Subject to the terms and conditions set forth in this Order, including, without limitation, the Adequate Protection Obligations and the Adequate Protection Liens provided herein, the Debtors are authorized, pursuant to section 363(c)(2)(B) of the Bankruptcy Code, to use the Cash Collateral solely and exclusively for the disbursements set forth in the Budget for the period of time from the date hereof until the earliest to occur of (a) the date that this Order ceases to be in full force and effect or (b) the occurrence and

continuation of a “***Termination Event***.” A Termination Event shall constitute any of the following:³

- (i) February 28, 2009 (the “***Outside Date***”);
- (ii) any Debtor shall fail to comply with any of the terms or conditions of this Order;
- (iii) (a) any Debtor shall seek any modification or extension of this Order without the prior written consent of the Prepetition Agent, or (b) any order shall be entered, other than with the consent of the Prepetition Agent, reversing, amending, supplementing, staying, vacating, or otherwise modifying this Order in any material respect or terminating the use of Cash Collateral by the Debtors pursuant to this Order;
- (iv) the cumulative aggregate cash disbursements under the Budget line items “Purchases, excluding CAPEX” and “NonNGTV CAPEX” from any of the Debtors, from the beginning of the first week of the Budget through the last day of any week, beginning with the week ending January 2, 2009, exceeds the cumulative aggregate amount of cash disbursements measured from the week ending January 2, 2009 by the following percentages:

³ Unless otherwise defined herein, terms used in this Paragraph 2 shall have the same meaning(s) ascribed to them under the Prepetition Financing Documents and/or the Budget.

<u>Week Ending</u>	<u>Percentage</u>
January 2, 2009	140%
January 9, 2009	130%
January 16, 2009	125%
January 23, 2009	120%
January 30, 2009 and each week thereafter	115%

(v) the cumulative aggregate cash disbursements under the Budget, as defined below, line item “NGTV CAPEX” from any of the Debtors, from the beginning of the first week of the Budget through the last day of any week, beginning with the week ending January 2, 2009, exceeds the cumulative aggregate amount of cash disbursements measured from the week ending January 2, 2009 by the following percentages:

<u>Week Ending</u>	<u>Percentage</u>
January 2, 2009	140%
January 9, 2009	130%
January 16, 2009	125%
January 23, 2009	120%
January 30, 2009	115%
February 6, 2009	110%
February 13, 2009 and each week thereafter	105%

(vi) an application shall be filed by any Debtor for the approval of any Superpriority Claim (as defined below) or any lien in any of the Chapter 11 Cases which is *pari passu* with or senior to the Adequate Protection

Obligations or Adequate Protection Liens, or there shall be granted any such *pari passu* or senior Superpriority Claim or lien in each case, except any such Superpriority Claim or lien arising hereunder;

- (vii) the commencement of any action by any Debtor against any of the Prepetition Secured Parties with respect to the Prepetition Financing Documents, including, without limitation, any action to avoid or subordinate any Prepetition Obligations or any liens securing any Prepetition Obligations or, in the case of any such action commenced by any person other than a Debtor, the court enters an order granting any such relief and any such order is not subject to a stay;
- (viii) any order shall be entered granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to any individual holder of any security interest, lien or right of setoff to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like), possession, set-off or any similar remedy with respect to any assets of any Debtor that have a value in excess of \$1,000,000 in the aggregate;
- (ix) except as permitted by any “first day” order of this Court (as reviewed and approved by the Prepetition Agent and included in the Budget), any Debtor (including all present and future Debtors) shall make any payment in respect of a prepetition claim in excess of \$10,000 individually or \$100,000 in the aggregate;
- (x) (A) any of the Chapter 11 Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code or otherwise; or (B) a trustee under chapter 11 off the Bankruptcy Code, a responsible officer, or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section

1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed or elected in any of the Chapter 11 Cases;

- (xi) except to the extent limited or modified by the terms and provisions of this Order, the Debtors fail to furnish the Prepetition Agent with any of the Financial Statements and Other Information as required pursuant to Section 5.01 of the Prepetition Credit Agreement;
- (xii) the Debtors fail to furnish the Prepetition Agent prompt written notice of the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority (including, without limitation, the Federal Communications Commission, the Hawaii Public Utilities Commission and any successor agency thereto) against or affecting the Debtors that involves a reasonable possibility of an adverse determination and which, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;
- (xiii) the Debtors (A) fail to furnish to the Prepetition Agent prompt written notice of any change (x) in any Loan Party's legal name, as reflected in its organization documents, (y) in any Loan Party's jurisdiction of organization or corporate structure and (z) in any Loan Party's identity, Federal Taxpayer Identification Number or organization number, if any, assigned by the jurisdiction of its organization, (B) effect or permit any change referred to in clauses (x) through (z) of the preceding sentence unless all filings have been made, or will have been made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Prepetition Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Prepetition Collateral for the benefit of the Prepetition Secured Parties, (C) fail to provide prompt written notice to the Prepetition Agent in the event of any damage to or destruction of Prepetition Collateral that is uninsured and has a fair

market value exceeding \$1,000,000 occurs, or (D) fail to, upon the request of the Prepetition Agent, promptly deliver to the Prepetition Agent an updated Perfection Certificate certified by a Financial Officer of the Company reflecting all changes since the date of the Perfection Certificate delivered on the Effective Date or the date of the most recent certificate delivered under the Prepetition Credit Agreement;

- (xiv) except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, the Debtors fail, or fail to cause each of their respective Subsidiaries, to keep and maintain all property in good working order and condition, ordinary wear and tear excepted;
- (xv) the Debtors (A) fail, or fail to cause each of their respective Subsidiaries, to maintain, with financially sound and reputable insurance companies (x) insurance in such amounts and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (y) all insurance required to be maintained pursuant to the Security Documents, or (B) fail to furnish to the Prepetition Secured Lenders, upon the reasonable request of the Prepetition Agent, information in reasonable detail as to the insurance so maintained;
- (xvi) the Debtors fail, or fail to cause each of their respective Subsidiaries, to comply with all laws, rules, regulations, including the Communications Act, regulations of the Hawaii Public Utility Commission (“**HPUC**”), other communications laws and Environmental Laws, and orders of any Governmental Authority applicable to it, its operations or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

- (xvii) the Debtors fail to furnish the Prepetition Agent, at least fifteen (15) days prior to the submission thereof to any regulatory entity (including, but not limited to, the Federal Communications Commission, Department of Commerce and Consumer Affairs, HPUC), any material filings (including applications, reports, etc.) made and any amendments or modifications to any such pending filings;
- (xviii) in the event that (a) the Prepetition Lenders formulate the framework for a restructuring plan pursuant to which the Prepetition Lenders (or their successors in interest) shall become the majority equity holders of the Company, and (b) the Debtors determine to pursue confirmation of such proposed restructuring plan, in the absence of an objection from the applicable regulatory authority, the Company fails to invite the Steering Committee's regulatory counsel to jointly participate with the Company in any regulatory meetings at which such restructuring plan is discussed;
- (xix) any of the Debtors incur any success-based capital expenditures (including, but not limited to, commitments to pay for set-top boxes, residential gateways and filters, or installation expenses) prior to the performance/functionality of the Next Generation Television ("NGTV") infrastructure components (including, but not limited to, middleware, head end, OSS/BSS (Operating System Software/Billing System Software) integration) and such expenditures do not comply with the operational performance thresholds, to be mutually agreed upon between the Steering Committee and the Debtors; *provided, however,* that, notwithstanding this Termination Event, the Company shall be permitted to incur minor success-based capital expenditures for testing purposes.
- (xx) the Debtors incur any expenditures associated with Phase III of NGTV (including fiber build-out, success-based, fixed/infrastructure capital, and all other NGTV-specific

expenditures), unless the Debtors have achieved certain performance metrics (including, but not limited to, ARPU (Average Revenue Per User (on a monthly basis)), CPGA (Cost Per Gross Addition), and penetration rate) relating to the Phase I and II NGTV roll-out in consultation and agreement with the Prepetition Agent.

- (xxi) any material provision of this Order shall for any reason cease to be valid and binding or any Debtor shall so assert in any pleading filed in any court.

provided, however, that the Prepetition Agent may (with the written consent of the Required Prepetition Lenders) waive any Termination Event.

3. In addition, upon the occurrence of a Termination Event, all accrued interest and fees and all other Adequate Protection Obligations shall, in each instance, be immediately due and payable and the Prepetition Secured Parties shall have all other rights and remedies provided in this Order and under applicable law. The Debtors' authority to use the Cash Collateral shall automatically terminate upon the occurrence of a Termination Event, all without further order or relief from the Court. Notwithstanding anything herein or the occurrence of a Termination Event, all of the rights, remedies, benefits, and protections provided to the Prepetition Secured Parties under this Order (except for the ongoing payments of Adequate Protection Payments, as defined below) shall survive such Termination Event.

4. **Prepetition Letters of Credit.** In consideration of the benefits afforded pursuant to this Order, with respect to any prepetition Letters of Credit (as

such term is defined in the Prepetition Credit Agreement), (a) the Issuing Bank (as such term is defined in the Prepetition Credit Agreement) is hereby authorized and permitted to extend, renew, amend or replace any prepetition Letter of Credit (each a “*Prepetition L/C*”, as is set forth on Annex A hereto) with a new letter of credit issued to the same beneficiary, with an expiration date no later than the earlier of one year after the expiration date of such Prepetition L/C, the occurrence of a Termination Event, or the vacation of this Order and in no amount greater than the applicable Prepetition L/C as set forth on Annex A (such extended, renewed, amended or replacement Prepetition L/C, a “*New L/C*”) and such New L/C shall be deemed to constitute a Letter of Credit under the Prepetition Credit Agreement, with each Prepetition Lender holding the same participation in such New L/C as it had held in the applicable Prepetition L/C, (b) with the consent of each Prepetition Lender, such Prepetition Lender shall be obligated to reimburse the Issuing Bank for any payment made or any New L/C and any other amounts due in respect thereof under the Prepetition Credit Agreement on the same terms as contained in the Prepetition Credit Agreement for Prepetition L/Cs, and (c) any claims (as defined in the Bankruptcy Code) that the Issuing Bank or any Prepetition Lender may have against any of the Debtors in respect of any New L/C (including for the reimbursement of any payment made on such New L/C) shall constitute Prepetition Obligations, entitled to treatment as prepetition claims, *pari passu* with the loans

outstanding under the Prepetition Credit Agreement, and as such shall be entitled to the adequate protection as provided herein.

5. **Conditions to Use of Cash Collateral.** The Debtors may use Cash Collateral solely as provided in this Order (including the Budget). Without in any way limiting the foregoing, during the period in which the Debtors may use Cash Collateral, the Debtors shall not make any commitments relating to Phase III NGTV capital expenditures.

(a) From and after the Petition Date, and up to and including the later to occur of the Outside Date and the Extended Date (as defined below), as the case may be, all proceeds of Collateral, including, without limitation, all of the Debtors' existing or future Cash Collateral (collectively, "**Lender Funds**"), shall not, directly or indirectly, be used to pay expenses of the Debtors or to make debt payments (except as set forth in this Order) or be otherwise disbursed except for (A) those debt payments, expenses and/or disbursements that are expressly permitted under this Order and are consistent with the Budget approved by the Prepetition Agent (as such Budget may be extended, varied, supplemented, or otherwise modified with the consent of the Prepetition Agent) and (B) compensation and reimbursement of fees and expenses payable pursuant to sections 330 and 331 of the Bankruptcy Code and payable to attorneys, accountants, investment bankers, financial advisors, or other professional persons

retained by the Debtors or the Committee and awarded pursuant to an order of this Court, to the extent consistent with the Budget, as the case may be; *provided, however,* that the foregoing shall not be construed as consent to the allowance of any of the amounts referred to in the preceding clause (B) and shall not affect the right of any party in interest to object to the allowance and payment of any such amounts.

(b) During the period that the Debtors use Cash Collateral pursuant to the terms and provisions of this Order, as such period may be extended from time to time pursuant to the provisions hereof or further order of the Court, no administrative expense claims, including fees and expenses of professionals, shall be charged or assessed against or recovered from the Collateral or attributed to the Prepetition Secured Parties with respect to their interests in the Collateral pursuant to the provisions of section 506(c) of the Bankruptcy Code or otherwise by, through, or on behalf of the Debtors, without the prior written consent of the Prepetition Agent, and no such consent shall be implied from any action, inaction, or acquiescence by, either with or without notice to, the Prepetition Secured Parties. Except as set forth herein, the Prepetition Secured Parties have not consented or agreed to the use of Lender Funds.

(c) Notwithstanding anything herein to the contrary, up to and including the later to occur of the Outside Date and the Extended Date, as the case

may be, no Cash Collateral (including amounts subject to the Carve-Out (as hereinafter defined)) may be used directly or indirectly by any of the Debtors, the Committee, or any other person or entity to (A) object, contest, or raise any defense to the validity, perfection, priority, extent, or enforceability of the Prepetition Obligations or the Prepetition Liens, (B) assert or prosecute any Claims and Defenses (as defined below) against any of the Prepetition Secured Parties or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, (C) prevent, hinder, or otherwise delay the Prepetition Agent's assertion, enforcement, or realization on the Cash Collateral, the Adequate Protection Obligations, or the Adequate Protection Liens in accordance with this Order, (D) seek to modify any of the rights granted to the Prepetition Secured Parties hereunder, in each of the foregoing cases without such parties' prior written consent, or (E) obtain Liens that are senior to, or on parity with (x) the Liens of the Prepetition Secured Parties in the Prepetition Collateral or any portion thereof, unless all obligations pursuant to the Prepetition Financing Documents and this Order have been paid in full, and (y) the Adequate Protection Liens (as defined below), unless all obligations pursuant to the Prepetition Financing Documents and this Order have been paid in full; *provided* that up to Two Hundred Thousand Dollars (\$200,000.00) of Cash Collateral in the aggregate may be used to pay the allowed fees and expenses of professionals retained by the Committee and incurred

directly in connection with investigating, but not initiating or prosecuting, any Claims and Defenses (as defined below) against the Prepetition Agent or the Prepetition Lenders.

6. **Payment of Fees.** Any and all fees and expenses paid or required to be paid in connection with the use of Cash Collateral as provided in this Order (whether or not provided for in the Budget) are hereby authorized and shall be paid solely in accordance with the terms and provisions of this Order and the Budget (as hereinafter defined).

7. **Prohibitions against Disposal of Collateral.** The Debtors shall not sell the Collateral, transfer the Collateral, lease the Collateral, encumber the Collateral with liens senior to or *pari passu* with the liens of the Prepetition Secured Parties on the Prepetition Collateral, or otherwise dispose of any portion of the Collateral without the prior written consent of the Prepetition Agent (and no such consent shall be implied from any other action, inaction, or acquiescence by the Prepetition Agent) or an order of this Court, upon notice to the Prepetition Secured Parties, consistent with the requirements of section 363(f) or section 364(d) of the Bankruptcy Code, as applicable.

8. **Injunction.** Except as expressly provided in this Order, up to and including the later to occur of the Outside Date and the Extended Date, as the case may be, the Debtors shall be enjoined and prohibited from at any time during

the Chapter 11 Cases (a) using the Prepetition Collateral or Lender Funds except pursuant to the terms and conditions of this Order and the Budget, (b) applying to any court for an order authorizing the use of the Prepetition Collateral or Lender Funds except on the terms of this Order and the Budget, or (c) granting claims or liens in the Prepetition Collateral or any portion thereof to any other parties pursuant to sections 364(d), 503(b), or 507(b) of the Bankruptcy Code or otherwise.

9. **Adequate Protection.** The Prepetition Secured Parties are entitled, under section 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral, including any such diminution resulting from (a) the use of Cash Collateral, (b) the sale, lease, or use by the Debtors (or other decline in value) of the Prepetition Collateral, and (c) the imposition of the automatic stay under section 362 of the Bankruptcy Code (the aggregate amount of such diminution, the "***Adequate Protection Obligations***"). The Debtors shall each be jointly and severally liable for the Adequate Protection Obligations. The Prepetition Secured Parties are hereby provided with the following forms of adequate protection, which constitute part of the Debtors' Adequate Protection Obligations:

(a) **Adequate Protection Liens.** To secure the Adequate Protection Obligations, the Prepetition Agent, for its benefit and the benefit of the Prepetition Secured Parties, is hereby granted, effective and perfected as of the Petition Date and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, or other agreements, a valid and perfected replacement security interest in, and lien on, the Collateral (as defined in this paragraph) (the “**Adequate Protection Liens**”), which Adequate Protection Liens shall be senior to the Prepetition Liens and subject and subordinate only to the Carve-Out. For purposes of this Order, the term “**Collateral**” shall include, without limitation, all prepetition and postpetition assets and properties (tangible, intangible, real, personal, and mixed) of each of the Debtors of any kind or nature, whether now existing or newly acquired or arising, and wherever located, including, without limitation, all Prepetition Collateral, all accounts, accounts receivable, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights and licenses therefor, intellectual property, general intangibles, payment intangibles, letters of credit, letter-of-credit rights, supporting obligations, machinery and equipment,

vehicles, real property (including all facilities), fixtures, leases, all of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and all of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Subsidiary of the Company, all of the Capital Stock of all other Persons that are not Subsidiaries directly owned by the Company, money, investment property, deposit accounts, securities accounts, books and records, all commercial tort claims and all other causes of action (other than Avoidance Actions, as defined below, and proceeds of Avoidance Actions), all Cash Collateral (as defined in this Order), and all cash and non-cash proceeds, rents, products, substitutions, accessions and profits of all of the foregoing.

(b) **Superpriority Claim.** The Prepetition Secured Parties are hereby granted in each of the Debtors' Chapter 11 Cases an allowed, superpriority administrative expense claim (the "*Superpriority Claim*") under section 507(b) of the Bankruptcy Code with respect to all Adequate Protection Obligations. The Superpriority Claim and the Adequate Protection Obligations shall have priority over all administrative expenses of the kind specified in,

or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 503(b), 506(c), 507(a), 507(b), 546(c), 726, and 1114 of the Bankruptcy Code, or otherwise (whether incurred in any of the Chapter 11 Cases or any conversion thereof to a case under chapter 7 of the Bankruptcy Code or any other proceeding related hereto or thereto), which Adequate Protection Obligations and Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (other than the proceeds of Avoidance Actions). The Superpriority Claim shall be subject and subordinate only to the Carve-Out.

(c) **Adequate Protection Payments.** The Debtors shall pay to the Prepetition Agent on an ongoing basis (i) the current cash payment of interest at the non-default rates and at the times provided for in the Prepetition Credit Agreement (provided that, in the event the Outside Date is not extended pursuant to Paragraph 29, interest shall accrue and be paid up to and including the later of the Outside Date and the Extended Date (as defined below), as the case may be) on the Prepetition Obligations (whether or not such interest payments are

included in the Budget), (ii) immediately upon entry of this Order, cash payments equal to all accrued and unpaid non-default rate interest, fees and expenses (including, but not limited to, the documented fees and expenses of legal counsel and other professionals retained by the Prepetition Secured Parties (including the fees of Houlihan Lokey pursuant to the terms of its engagement letter, dated November 6, 2008, between Houlihan Lokey, the Company and Weil, Gotshal & Manges LLP, as counsel to the Prepetition Agent and Prepetition Lenders)) then owing with respect to the Prepetition Obligations or provided for in the Prepetition Financing Documents, and (iii) from time to time after the Petition Date, the current cash payment of documented fees and expenses as and when due and payable under the Prepetition Financing Documents, including, but not limited to, the documented fees and expenses of legal counsel and other professionals retained by the Prepetition Secured Parties (payments made pursuant to clauses (i), (ii) and (iii) above are hereinafter collectively referred to as "***Adequate Protection Payments***"); all of the amounts to be paid pursuant to the foregoing clauses (ii) and (iii) shall be paid regardless of whether such amounts accrued prior to or after the Petition Date,

and shall be paid without further motion, fee application, or order of the Court; *provided, however*, that the Debtors, the United States Trustee, the Committee and the Noteholders shall have the right to object to the payment of any such amounts in the manner provided in Paragraph 22 of this Order; and, *provided, further*, that, notwithstanding anything to the contrary in this Order, the Adequate Protection Payments shall be subject to any parties' rights to seek recharacterization (under section 506(b) of the Bankruptcy Code or otherwise) of such payments as payments in satisfaction of principal amounts due under the Prepetition Financing Documents; *provided, moreover*, that the Prepetition Agent shall distribute such monies to the Prepetition Secured Parties, including the Other Secured Parties, in accordance with the terms and provisions of the Prepetition Financing Documents.

10. Except for the Carve-Out, the Debtors shall be prohibited from incurring additional obligations having priority claims or Liens equal to or senior in priority to the Adequate Protection Obligations and Adequate Protection Liens.

11. **Budget Reconciliation.** The Debtors shall prepare and furnish to the Prepetition Agent, the Committee and, subject to provisions of confidentiality, counsel to the Noteholders, in form and substance reasonably

satisfactory to the Prepetition Agent, a weekly report of receipts, disbursements, and a reconciliation of actual expenditures and disbursements with those set forth in the Budget, on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget (the “*Budget Reconciliations*”). Such Budget Reconciliations shall be provided to the Prepetition Agent, the Committee and the Noteholders so as actually to be received within three (3) Business Days following the end of each prior week.

12. *Business Plan.* The Debtors shall provide the following information to the Prepetition Agent, Steering Committee for the Prepetition Lenders, the Committee and, subject to provisions of confidentiality, counsel to the Noteholders: (i) within four (4) business days after the end of each week, an updated rolling 13-week forecast of cash receipts and disbursements for the Debtors for the next succeeding 13 weeks, substantially in the form of the Budget; (ii) within four (4) business days after the end of each week, a certificate signed by the Company’s chief financial officer (the “*CFO*”) certifying that no Termination Event has occurred; (iii) by not later than January 31, 2009, an updated business plan through December 31, 2009, including a projected monthly balance sheet, income statement and statement of cash flows for the period from January 1, 2009 up to and including December 31, 2009 (the “*Business Plan*”); (iv) by no later than the end of each calendar month, a summary of the preceding month’s

operating results, including, without limitation, a schedule of capital expenditures (categorized by routine categorizations utilized by the Company including (1) Digital Subscriber Line and Growth Network; (2) Other Network; (3) REO; (4) Information Technology; (5) Force and Other; (6) NGTV; (7) New Business Products; and (8) other new products and projects); (v) a monthly report, dated as of the fifteenth (15th) of each calendar month, and provided on the first (1st) business day consistent with the reporting obligations set forth in clause (i) above, setting forth all accounts payable exceeding \$50,000; and (vi) as and when required under the Prepetition Financing Documents, all information that is required to be provided to the Prepetition Secured Parties pursuant to same.

13. Information Access. Upon reasonable notice and at such reasonable times during normal business hours and otherwise as may reasonably be requested, the Debtors shall permit any representatives designated by the Prepetition Secured Parties to visit and inspect any of their properties, to inspect, copy, and take extracts from their financial and accounting records, and to discuss their affairs, finances, and accounts with their officers, financial advisors, and independent public accountants. Such right to inspect the Debtors' books and records shall include the right of the Prepetition Secured Parties and their respective representatives to have reasonable access to all records and files of the Debtors pertaining to the Collateral.

14. **Reservation of Rights.** Under the circumstances and given that the adequate protection described in this Order is consistent with the Bankruptcy Code, including section 506(b), the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. Notwithstanding anything herein to the contrary, however, this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to seek additional adequate protection at any time, including prior to a Termination Event, and the rights of the Debtors and any other party in interest to oppose any such request.

15. **Carve-Out.** To the extent unencumbered funds are not available to pay administrative expenses in full, the Adequate Protection Obligations granted hereunder to the Prepetition Secured Parties shall be subject only to payment of the Carve-Out and the Permitted Liens. As used in this Order, the “Carve-Out” means (a) the unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a), and (b) the aggregate accrued and unpaid fees and expenses payable under sections 330 and 331 of the Bankruptcy Code to professional persons retained pursuant to an order of the Court by the Debtors and the Committee as of the occurrence of a Termination Event, not to exceed the amounts permitted therefor in the Budget, *provided* such fees and

expenses (in the aggregate) are ultimately allowed by the Bankruptcy Court, plus, following the occurrence of a Termination Event, the sum of \$3,500,000.00; *provided, however,* that the Carve-Out shall not include, apply to, or be available for (i) any success fee, transaction fee, deferred compensation fee or similar payment to any professionals or other persons payable in connection with a restructuring or asset disposition with respect to any of the Debtors or otherwise, or (ii) any fees or expenses incurred by any party, including any Debtor or the Committee, or its respective professionals, in connection with, or relating to, the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against any of the Prepetition Secured Parties, including, without limitation, challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim, or offset to, the Prepetition Obligations, the Prepetition Liens, the Adequate Protection Obligations, or the Adequate Protection Liens; and, *provided, further,* that, in the event that the amount allowed to the Committee pursuant to Paragraph 5(c) of this Order for the investigation of any Claims and Defenses against the Prepetition Secured Parties has not been utilized prior to a Termination Event, the Carve-Out shall include the allowed fees and expenses of professionals retained by the Committee incurred directly in connection with investigating, but not initiating or prosecuting, such Claims and Defenses to the limited extent not used prior to the Termination Event. So long as

no Termination Event shall have occurred and be continuing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable (subject to the Budget), and the same shall not reduce the Carve-Out. Nothing herein shall be construed to impair the ability of any party in interest to object to any fees, expenses, reimbursement, or compensation of any professionals.

16. **Enforceability and Survival.** (a) This Order and the Budget shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms. No obligation, payment, transfer, or grant of security under this Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable nonbankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

(b) The failure or delay by any Prepetition Secured Party to exercise its rights and remedies under this Order shall not constitute a waiver of any of such Prepetition Secured Party hereunder or otherwise, and any single or partial exercise of such rights and remedies against any of the Debtors or the Collateral shall not be construed to limit any further exercise of such rights and remedies against any or all of the other Debtors and/or Collateral.

(c) 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 (i) any of the rights of any of the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the Prepetition Secured Parties to (A) request modification of the automatic stay of section 362 of the Bankruptcy Code, (B) request dismissal of any of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner (including with expanded powers), or (C) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (ii) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the Prepetition Secured Parties, or (iii) the rights of the Debtors and other parties in interest to oppose any requests made in accordance with clauses (i)(A), (B) and (C) above.

(d) The provisions of this Order shall be binding upon and inure to the benefit of each of the Prepetition Secured Parties and the Debtors and their respective successors and assigns (including any estate representative, chapter 7 trustee, or other trustee or fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors).

(e) Subject to the Carve-Out and the Permitted Liens, the Adequate Protection Liens shall not be (i) subject or junior to any Lien that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code, or (ii) subordinated to or made *pari passu* with any other Lien, whether under section 364(d) of the Bankruptcy Code or otherwise. No claim or Lien having a priority superior to or *pari passu* with those granted by this Order with respect to the Adequate Protection Obligations shall be granted or allowed until the indefeasible payment in full in cash and satisfaction in the manner provided in this Order of the Adequate Protection Obligations.

17. **Modification of the Automatic Stay.** The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the Prepetition Secured Parties to exercise, upon the occurrence and during the continuation of a Termination Event, all rights and remedies provided for hereunder, and to take any or all of the following actions without further order of or application to this Court: (a) terminate the Debtors' use of Cash Collateral; (b) declare all Adequate Protection Obligations to be immediately due and payable; (c) set off and apply immediately any and all amounts in accounts maintained by the Debtors with any Prepetition Secured Parties against the Adequate Protection Obligations and otherwise enforce rights against the Collateral in the possession of any of the Prepetition Secured Parties for

application towards the Adequate Protection Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Order or applicable law to effect the repayment and satisfaction of the Adequate Protection Obligations; *provided, however,* that any Prepetition Secured Party, as applicable, shall provide five (5) business days written notice (by facsimile, telecopy, electronic mail, or otherwise) to the U.S. Trustee, counsel to the Debtors, counsel to the Prepetition Agent, counsel to the Committee, counsel to the Noteholders and counsel to the Other Secured Parties prior to exercising any enforcement rights or remedies in respect of the Collateral (other than the rights described in clauses (a) or (b) above (to the extent they might be deemed remedies in respect of the Collateral) and other than with respect to freezing any deposit accounts or securities accounts). The rights and remedies of the Prepetition Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that they may otherwise have.

18. **Reservation of Prepetition Secured Parties' Rights.** If the Prepetition Secured Parties shall at any time exercise any of their respective rights and remedies hereunder or under applicable law in order to effect payment or satisfaction of the Adequate Protection Obligations or to receive any amounts or remittances due hereunder, including, without limitation, foreclosing upon and selling all or a portion of the Collateral, the Prepetition Secured Parties shall have

the right without any further action or approval of this Court to exercise such rights and remedies as to all or such part of the Collateral as the Prepetition Secured Parties shall elect in their sole discretion, subject to the provision by the applicable parties of the written notice as provided in the preceding paragraph. Subject to the rights set forth in Paragraph 24 hereof, the Prepetition Secured Parties shall be entitled to apply the payments or proceeds of the Collateral in accordance with the provisions of this Order, and in no event shall any of such parties be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral or otherwise.

19. **Payment from Proceeds of the Collateral.** (a) On the date of any sale, lease, transfer, license, or other disposition of property outside the ordinary course of business of any Debtor that constitutes Collateral, the Debtors shall escrow and not be permitted to use one hundred percent (100%) of the gross proceeds resulting therefrom, subject to the entry of an order of the Bankruptcy Court authorizing and directing the payment thereof to the Prepetition Agent, for the benefit of the Prepetition Secured Parties.

(b) In the event of any casualty, condemnation, or similar event with respect to property that constitutes Collateral, the Debtors shall escrow and not be permitted to use one hundred percent (100%) of any insurance proceeds, condemnation award, or similar payment, subject to the entry of an order of the

Bankruptcy Court authorizing and directing the payment thereof to the Prepetition Agent, for the benefit of the Prepetition Secured Parties.

(c) Upon entry of this Order, in the event any Debtor receives any proceeds pursuant to a successful Avoidance Action, such Debtor shall escrow and not be permitted to use one hundred percent (100%) of such proceeds, subject to the entry of an order of the Bankruptcy Court authorizing and directing the payment thereof.

(d) All proceeds and payments delivered to the Prepetition Agent pursuant to this Paragraph 19 may be applied to the Prepetition Obligations or the Adequate Protection Obligations, as determined by the Prepetition Agent, in accordance with the terms of the Prepetition Financing Documents, and in no event shall the Prepetition Lenders or the Prepetition Agent be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any such collateral or otherwise.

20. **Deemed Perfection of Adequate Protection Liens.** Pursuant to this Order, the Adequate Protection Liens are, and are deemed to be, valid, enforceable, and perfected liens, effective as of the Petition Date, and (notwithstanding any provisions of any agreement, instrument, document, the Uniform Commercial Code, or any other relevant law or regulation of any jurisdiction) no further notice, filing, possession, control, or other act shall be

required to effect such perfection, and all liens on any deposit accounts or securities accounts shall, pursuant to this Order be, and they hereby are, deemed to confer "control" for purposes of sections 8-106, 9-104, and 9-106 of the New York Uniform Commercial Code as in effect as of the date hereof in favor of the Prepetition Secured Parties); *provided, however,* that the Prepetition Secured Parties are 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 possession of or control over, or take any other action in order to validate and perfect the liens granted to them hereunder. The Debtors shall execute and deliver to the Prepetition Agent all such agreements, financing statements, instruments, and other documents as the Prepetition Agent may reasonably request to evidence, confirm, validate, or perfect the Liens granted pursuant hereto (other than mortgages). If the Prepetition Agent shall, in its sole discretion, choose to require the execution of and/or file (as applicable) such financing statements, control agreements, notices of Liens, and other similar instruments and documents, all such financing statements, control agreements, notices of Liens, or other similar instruments and documents shall be deemed to have been executed, filed and/or recorded at the time and on the date of the Petition Date. A certified copy of this Order may, in the discretion of the Prepetition 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. Each and every federal, state, and local government agency or department may accept the entry by this Court of this Order as evidence of the validity, enforceability, and perfection on the Petition Date of the Liens granted herein to or for the benefit of the Prepetition Secured Parties.

21. **Effect of Appeal.** Based on the findings set forth in this Order, in the event that any or all of the provisions of this Order, are hereafter modified, amended, or vacated by a subsequent order of this or any other Court, no such modification, amendment, or vacation shall affect the validity, enforceability, or priority of any Lien or claim authorized or created hereby or thereby or any Adequate Protection Obligations incurred hereunder or thereunder.

22. **Authority to Act.** The Debtors are authorized and directed to do and perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, pledge agreements, control agreements, mortgages, and financing statements), and shall pay all fees and expenses provided for herein or that may be required or necessary for the Debtors' performance under this Order, including, without limitation, the payment of the fees, indemnification obligations, and other expenses described or provided hereunder, whether or not included in the Budget, as such become due, including, without limitation, agent fees, commitment fees,

letter of credit fees, and underwriting fees and reasonable attorneys', financial advisers', and accountants' fees and disbursements as provided for herein. None of such reasonably documented attorneys', financial advisers', and accountants' fees and disbursements shall be subject to the approval of this Court or the U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court.

Notwithstanding the foregoing, the Debtors shall promptly, after payment of invoices for any such fees, provide copies of same to the U.S. Trustee, counsel for the Committee, and counsel for the Noteholders, and the Debtors, the U.S. Trustee, the Committee and the Noteholders shall be entitled to challenge in the Court the reasonableness of such fees and expenses; *provided, however,* that the Debtors may not challenge the reasonableness of transaction fees previously agreed upon by the Debtors prior to the Petition Date, although the United States Trustee, the Committee and the Noteholders may challenge the reasonableness of such fees. In addition, subject to the limitations contained in the Prepetition Credit Agreement, the Debtors are hereby authorized and directed to indemnify the Prepetition Secured Parties against any liability arising in connection with this Order. All such fees, expenses and indemnities shall constitute Adequate Protection Obligations and shall be secured by the Adequate Protection Liens and afforded all of the

priorities and protections afforded to the Adequate Protection Obligations under this Order.

23. **Confirmation, Conversion, or Dismissal.** (a) The obligations of the Debtors in respect of the Adequate Protection Obligations, and the Adequate Protection Liens granted to or for the benefit of the Prepetition Secured Parties pursuant to this Order shall not be discharged by the entry of an order (i) confirming a chapter 11 plan in any of the Chapter 11 Cases (and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors hereby waive such discharge) or (ii) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code. Under no circumstances shall any chapter 11 plan in any of the Chapter 11 Cases be confirmed or become effective unless such chapter 11 plan provides that the Adequate Protection Obligations shall be paid in full in cash and satisfied in the manner provided for in this Order on or before the effective date of such chapter 11 plan.

(b) Until all of the Adequate Protection Obligations shall have been indefeasibly paid in full in cash and satisfied in the manner provided in this Order, no Debtor shall seek an order dismissing any of the Chapter 11 Cases. If an order dismissing any of the Chapter 11 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(b) of the Bankruptcy Code) that (i) the claims and Liens

granted pursuant to this Order and any subsequent order to or for the benefit of the Prepetition Secured Parties shall continue in full force and effect and shall maintain their perfection and priorities as provided in this Order and subsequent orders until all obligations in respect thereof shall have been indefeasibly paid in full in cash and satisfied in the manner provided in this Order (and that such claims and Liens shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) to the extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and Liens.

(c) The provisions of this Order, including the grant of claims and Liens to or for the benefit of the Prepetition Secured Parties, and any actions taken pursuant hereto shall survive the entry of any order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code.

24. **Preservation of Challenge Rights.** (a) With a full reservation and no release, waiver, or discharge of any rights of the Committee or any other party in interest as provided in the following subparagraph, each Debtor and each of its affiliates in its individual capacity hereby forever releases, waives, and discharges each Prepetition Secured Party (whether in its prepetition or postpetition capacity), together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors

(collectively, the “*Released Parties*”), from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, any of the Prepetition Financing Documents, any aspect of the prepetition relationship between any Debtor relating to any of the Prepetition Financing Documents or any transaction contemplated thereby, on the one hand, and any or all of the Released Parties, on the other hand, or any other acts or omissions by any or all of the Released Parties in connection with any of the Prepetition Financing Documents or their prepetition relationship with any Debtor or any affiliate thereof relating to any of the Prepetition Financing Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the amount, extent, validity, priority, or perfection of the Prepetition Liens or the Prepetition Obligations, “lender liability” claims and causes of action, any actions, claims, or defenses under chapter 5 of the Bankruptcy Code (“*Avoidance Actions*”), or any other claims and causes of action (all such claims, defenses, and other actions described in this Paragraph are collectively defined as the “*Claims and Defenses*”). Nothing contained in this subparagraph shall affect the rights of the Committee or any other party in interest to undertake any action with respect to, including, without limitation, any investigation or prosecution of, Claims and Defenses that is permitted in subparagraph (b) of this Paragraph 24.

(b) Notwithstanding anything contained herein to the contrary, the amount, extent, validity, priority, perfection, and enforceability of the Prepetition Obligations, the Prepetition Liens, and all acknowledgments, admissions, and confirmations of the Debtors and their affiliates above, are for all purposes subject to the rights of any party in interest (including any trustee elected or appointed), other than any Debtor or any of its respective affiliates, to file a contested matter, objection, and/or a complaint pursuant to applicable law (each a “*Challenge*”) seeking to invalidate, subordinate, or otherwise challenge the Prepetition Obligations or the Prepetition Liens or raising any other Claims and Defenses; *provided, however*, that, in order to obtain standing to prosecute a Challenge, the Committee or other party in interest must file a Motion (a “*Standing Motion*”) pursuant to which the Committee or such other party in interest must demonstrate that prosecution of such Challenge is in the best interests of the Debtors’ estates consistent with the applicable principles set forth in Unsecured Creditors Comm. of Debtor STN Enters., Inc. v. Noyes (In re STN Enters.), 779 F.2d 901 (2d Cir. 1985). The Standing Motion, together with a copy of the Committee’s or such party’s proposed complaint in connection with such Challenge, must be filed in this Court by no later than April 30, 2009. If no such Challenge is filed within such time period (or such Challenge does not result in a final and non-appealable order of this Court that is inconsistent with clauses (i)

through (iv) of subparagraph (c) of this Paragraph 24), then any and all Claims and Defenses against any of the Released Parties shall be, without further notice to or order of the Court, deemed to have been forever relinquished, released, and waived as to such Committee and other person or entity, and if such Challenge is timely filed on or before such date, any and all Claims and Defenses against any of the Released Parties shall be deemed, immediately and without further action, to have been forever relinquished, released, and waived as to such Committee and other person or entity, except with respect to Claims and Defenses that are expressly asserted in such Challenge.

(c) If no such Challenge as to the Prepetition Obligations (relating to Obligations subject to the Prepetition Liens), Prepetition Liens, or Released Parties is filed within such time period, or such timely Challenge does not result in a final and non-appealable order of this Court that is inconsistent with clauses (i) through (iv) of this subparagraph, then, without the requirement or need to file any proof of claim with respect thereto, (i) the Prepetition Obligations shall constitute allowed secured claims for all purposes in the Chapter 11 Cases and any subsequent cases or proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 proceedings if any Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code (each, a "*Successor Case*"), (ii) the Prepetition Liens shall be deemed legal, valid, binding, enforceable, perfected, first

priority liens not subject to recharacterization, subordination (except as expressly specified in this Order as to the Carve-Out and Adequate Protection Liens) or avoidance for all purposes in the Chapter 11 Cases and any Successor Case, (iii) the release of the Claims and Defenses against the Released Parties shall be binding on all parties in interest in the Chapter 11 Cases and any Successor Case, and (iv) the Prepetition Obligations, the Prepetition Liens, releases of the Claims and Defenses against the Released Parties, and prior payments on account of or with respect to the Prepetition Obligations shall not be subject to any other or further claims, cause of action, recharacterization, objection, contest, setoff, defense, or challenge by any party in interest for any reason, including, without limitation, by any successor to or estate representative of any Debtor. Except as set forth herein, nothing in this Order shall confer upon or limit the standing of the Committee or any other person or entity to bring, assert, commence, continue, prosecute, or litigate the Claims and Defenses against any Released Party.

25. The Prepetition Agent shall (to the extent necessary) be authorized (but not required) to file one master proof of claim against all of the Debtors (the "*Master Proof of Claim*") on behalf of itself and the applicable Prepetition Lenders on account of their respective prepetition claims arising under the Prepetition Financing Documents, and the Prepetition Agent shall not be required to file a verified statement pursuant to Bankruptcy Rule 2019. If the

Prepetition Agent so files a Master Proof of Claim against the Debtors, the Prepetition Agent and each Prepetition Lender (as applicable) and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in respect of its claims against each of the Debtors arising under the Prepetition Financing Documents, and such claims shall be allowed or disallowed as if such entity had filed a separate proof of claim in each Chapter 11 Case in the amount set forth in the applicable Master Proof of Claim. The Prepetition Agent shall further be authorized to amend its Master Proof of Claim from time to time.

26. The provisions of this Order, the Superpriority Claim, the Adequate Protection Liens, and any and all rights, remedies, privileges, and benefits in favor of the Prepetition Secured Parties provided or acknowledged in this Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Order pursuant to Bankruptcy Rule 6004(g).

27. Notwithstanding anything contained in the Interim Order or this order to the contrary, (a) the rights and remedies of HYP Media Finance LLC as alleged or set forth in or anticipated by the adversary proceeding styled HYP Media Finance LLC v. Hawaiian Telcom, Inc., pending in this Court as Adv. Proc. No. 08-90076 (filed Dec. 19, 2008 in the Delaware Bankruptcy Court), as the same may be amended, and (b) the rights of Debtors, the Prepetition Secured Lenders and other parties in interest to contest thereto, shall be preserved pending final

determination by this Court or other court of competent jurisdiction of such rights and remedies.

28. Solely for the purposes of this Order and the calculation of Adequate Protection Payments on account of Swap Agreements pursuant to this Order, the amounts owing under the Swap Agreements shall be deemed to be \$7,602,034 for JPMorgan Chase Bank, N.A. and \$7,665,935 for Goldman Sachs Bank USA. Nothing contained in this Order shall be construed as an admission with respect to any claims asserted in these cases with respect to the Swap Agreements and the Debtors and the respective Other Secured Parties reserve their rights to reconcile such amounts.

29. Notwithstanding anything contained herein to the contrary, the Debtors and the Prepetition Secured Parties may agree to extend the Outside Date (the “*Extended Date*”) and the period in which the Debtors may use Cash Collateral, upon five (5) business days’ prior written notice to the Committee and counsel to the Noteholders, and, in the event of such agreement, the effectiveness of this Order (to the extent certain provisions are limited in time) shall be deemed extended up to and including the Extended Date; *provided, however*, that, in the event that the Committee or the Noteholders (a) object to any such extension of the Outside Date, the Debtors shall request the Court to schedule a hearing with respect thereto as soon as practicable but in no event beyond the Outside Date or

the Extended Date, as the case may be or (b) do not object to any such extension of the Outside Date, the Debtors shall promptly file a notice with the Court of the applicable Extended Date.

30. As promptly as possible following the delivery thereof to the Prepetition Agent, the Debtors shall provide to the Committee and the Noteholders a copy of materials provided to the Prepetition Agent pursuant to Paragraph 2 (xvii) hereof; *provided, however,* that, under no circumstances shall the failure to deliver such materials to the Committee or the Noteholders constitute a Termination Event.



/s/ Lloyd King
United States Bankruptcy Judge
Dated: 01/15/2009

In re Hawaiian Telcom Communications, Inc., et al., Chapter 11, Case No. 08-02005; **FINAL ORDER (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF BANKRUPTCY CODE, AND (II) PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 361, 362, AND 363 OF BANKRUPTCY CODE**

APPROVED AS TO FORM:

/s/ Christopher J. Muzzi

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In re Hawaiian Telcom Communications, Inc., et al., Chapter 11, Case No.
08-02005; **FINAL ORDER (I) AUTHORIZING USE OF CASH
COLLATERAL PURSUANT TO SECTION 363 OF BANKRUPTCY CODE,
AND (II) PROVIDING ADEQUATE PROTECTION TO PREPETITION
SECURED PARTIES PURSUANT TO SECTIONS 361, 362, AND 363 OF
BANKRUPTCY CODE**

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In re Hawaiian Telcom Communications, Inc., et al., Chapter 11, Case No. 08-02005; **FINAL ORDER (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF BANKRUPTCY CODE, AND (II) PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 361, 362, AND 363 OF BANKRUPTCY CODE**

Schedule 1

The Budget

lmanageDB:997618.1

Hawaiian Telecom Communications, Inc. and Subsidiaries

13 Week Cashflow Projection

US\$

Week Ending	1	2	3	4	5	6	7	8	9
	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27
	Projected								
Beg Book Operating Cash Balance	\$90,295,868	\$85,547,233	\$85,385,818	\$81,011,469	\$78,904,398	\$76,072,651	\$76,820,091	\$76,252,377	\$78,180,917
Cash from Operating Activities	7,373,173	7,152,755	5,628,912	7,473,941	7,461,576	8,897,669	7,615,165	8,911,514	9,597,150
Cash Receipts net of PAR disbursements									
Disbursements									
Payroll	(1,350,000)	(3,330,000)	(2,750,000)	(3,130,000)	(1,500,000)	(3,230,000)	(2,600,000)	(3,030,000)	(1,350,000)
Purchases, excluding CAPEX	(3,966,930)	(2,290,280)	(3,752,930)	(4,182,930)	(3,882,930)	(3,177,128)	(3,839,778)	(2,469,778)	(6,019,778)
Non NGTV Capital Expenditures	(800,779)	(1,300,000)	(1,045,291)	(1,045,291)	(1,035,103)	(1,093,338)	(1,093,338)	(1,093,338)	(1,093,338)
NGTV capex	(200,000)	0	(1,458,374)	(316,125)	(316,125)	(649,763)	(649,763)	(389,858)	(389,858)
Total Disbursements	(6,317,699)	(6,920,280)	(9,046,594)	(8,674,345)	(6,734,157)	(8,150,229)	(8,182,879)	(6,982,974)	(8,852,974)
Non-Recurring / Other Items	0	(110,000)	(956,667)	(906,667)	(766,667)	0	0	0	0
Cash from Financing Activities									
SWAP Settlement / Interest / Adequate Protection	0	0	0	0	0	0	0	0	(171,010)
Revolver Interest / Adequate Protection	(184,200)	(33,900)	0	0	0	0	0	0	(645,148)
Term C Interest / Adequate Protection	(2,276,300)	0	0	0	0	0	0	0	(3,516,061)
Senior Notes Interest	0	0	0	0	0	0	0	0	0
Net Cash from Financing Activities	(2,460,500)	(33,900)	0	0	0	0	0	0	(4,332,219)
Restructuring	(3,343,608)	(250,000)	0	0	(2,792,500)	0	0	0	(2,415,000)
Net Cash Flow	(4,748,635)	(161,415)	(4,374,349)	(2,107,071)	(2,831,747)	747,440	(567,714)	1,928,540	(6,003,043)
Ending Book Operating Cash Balance	\$85,547,233	\$85,385,818	\$81,011,469	\$78,904,398	\$76,072,651	\$76,820,091	\$76,252,377	\$78,180,917	\$72,177,874
Float	800,000	1,000,000	1,200,000	1,400,000	1,500,000	1,600,000	1,700,000	1,800,000	1,900,000
Ending Bank Balance	\$86,347,233	\$86,385,818	\$82,211,469	\$80,304,398	\$77,572,651	\$78,420,091	\$77,982,377	\$79,980,917	\$74,077,874

Notes:

The cash receipts net of PAR disbursements do not include any amounts for an unfavorable outcome of the HYP Media Finance LLC complaint.

The payroll line does not include the yearly bonus payment which the Company intends to pay subject to Court approval.

Utility deposits have not been paid but are still held by HT. The company classifies the assets as non-current assets rather than cash.

Schedule 2**Material Provisions**

Paragraph	SDNY Local Rule Reference	Provision
Paragraph 2	LBR 4001-2(a)(10)	Termination Events
Paragraph 3	LBR 4001-2(a)(10)	Effect of Termination
Paragraph 5	LBR 4001-2(a)(9)	Phase III NGTV Capital Expenditures
Paragraph 5(a)	LBR 4001-2(a)(9)	Permitted Uses of Cash Collateral
Paragraph 5(b)	LBR 4001-2(a)(2)	Section 506(c) Waiver
Paragraph 5(c)	LBR 4001-2(a)(2)	Lien Investigation Rights
Paragraph 6	LBR 4001-2(a)(3)	Payment of Fees
Paragraph 9(a)	LBR 4001-2(a)(4)	Adequate Protection Liens
Paragraph 9(b)	LBR 4001-2(a)(4)	Superpriority Claim
Paragraph 9(c)	LBR 4001-2(a)(4)	Adequate Protection Payments
Paragraph 15	LBR 4001-2(a)(5)	Professional Fee Carve Out
Paragraph 17	LBR 4001-2(a)(10)	Modification of the Automatic Stay

HN044

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

Case No. 08-02005

Chapter 11

In re:

Hawaiian Telcom Communications, Inc.
1177 Bishop Street
Honolulu, HI 96813

Social Security No.:

Employer's Tax I.D. No.:
16-1710376

NOTICE OF ENTRY OF ORDER OR JUDGMENT

NOTICE IS HEREBY GIVEN that on the date indicated below this court entered on the docket of the above-entitled case the following order or judgment:

Final Order (I) Authorizing Use of Cash Collateral and (II) Providing Adequate Protection to Prepetition Secured Parties (Related Doc # [21]) . Date of Entry: 1/15/2009. (B, D)

The original order or judgment is on file at the Clerk's Office of this court. The document may be viewed at the bankruptcy court and is available for viewing on the Internet by using Pacer for a fee. Information on the PACER system can be found on the court's web page: www.hib.uscourts.gov

Date: January 15, 2009

Address of the Bankruptcy Clerk's Office:
1132 Bishop Street
Suite 250L
Honolulu, HI 96813

Telephone number: (808) 522-8100

Clerk of the Bankruptcy Court:

Michael B. Dowling