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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
NII Holdings, Inc., et al.,[1]	:	Case No. 14-12611 (SCC)
Debtors.	:	(Jointly Administered)

DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF FIRST AMENDED JOINT PLAN OF REORGANIZATION PROPOSED BY THE PLAN DEBTORS AND DEBTORS IN POSSESSION AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND (II) CONSOLIDATED REPLY TO OBJECTIONS TO CONFIRMATION OF FIRST AMENDED JOINT PLAN OF REORGANIZATION

[1] The Debtors in the jointly administered bankruptcy cases are comprised of the following thirteen entities (the last four digits of their respective U.S. taxpayer identification numbers follow in parentheses): NII Holdings, Inc. (1412); Nextel International (Services), Ltd. (6566); NII Capital Corp. (6843); NII Aviation, Inc. (6551); NII Funding Corp. (6265); NII Global Holdings, Inc. (1283); NII International Telecom S.C.A. (7498); NII International Holdings S.à r.l. (N/A); NII International Services S.à r.l. (6081); Airfone Holdings, LLC (1746); McCaw International (Brazil), LLC (1850); NII Mercosur, LLC (4079); and NIU Holdings LLC (5902). The location of the Debtors' corporate headquarters and the Debtors' service address is: 1875 Explorer Street, Suite 800, Reston, VA 20190.

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The above-captioned debtors and debtors in possession (collectively, the "Debtors")[2] submit this memorandum of law in support of confirmation of the First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors, dated April 20, 2015 (as it may be modified or amended, the "Plan"),[3] pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code").[4] In support of this memorandum of law and confirmation of the Plan, the Debtors rely upon and incorporate herein by reference (a) the declarations of Steven M. Shindler, Daniel E. Freiman, Homer Parkhill, J. Nicholas Melton, Byron Smyl, Jay Jubas, Andy Scruton, Scott W. Winn and the Declaration of Christina Pullo of Prime Clerk Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Plan, dated May 27, 2015 (the "Voting Declaration"[5] and, together with the preceding declarations, the "Declarations"), (b) designated excerpts of the deposition testimony of Messrs. Shindler, Freiman and Parkhill, David Daigle and Dan Gropper and (c) the chart attached hereto as Exhibit A summarizing the Plan's compliance with each of the confirmation requirements in section 1129 of the Bankruptcy Code (the "Confirmation Standards Exhibit"), and respectfully represent as follows:

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2 The term "Debtors" as used herein refers to the same thirteen entities that comprise the term "Plan Debtors" as used in the Plan. See Plan, Section I.A.129.

3 See Notice of Filing of Solicitation Version of Disclosure Statement and Joint Chapter 11 Plan [Docket No. 664], Tr. Ex. P004, Ex. A, Ex. 1. References herein to "Trial Exhibit P___" or "Tr. Ex. P___" are citations to the Plan Proponents' Exhibit List (as amended or supplemented from time to time), a copy of which will be provided to the Court prior to the Confirmation Hearing. References herein to "Tr. Ex. O___" are citations to the plan opponent's exhibit list.

4 Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan or the Disclosure Statement, as applicable.

5 See Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors [Docket No. 768], Tr. Ex. P181.

PRELIMINARY STATEMENT

I. THE PLAN SHOULD BE CONFIRMED AND THE SETTLEMENT APPROVED.

1. The Court should confirm the Plan and approve the integrated, global settlement (the "Settlement") incorporated therein because they are not only fair and reasonable, but also provide a clear path for the Debtors' expeditious emergence from chapter 11 in a manner that preserves the going concern viability of their Non-Debtor Affiliates, avoids the costly, protracted litigation of a morass of claims and maximizes value for all stakeholders.

2. The Plan would not be possible without its centerpiece: the integrated Settlement that resolves on nearly a fully consensual basis virtually every material Claim or issue in dispute affecting the Debtors' cases, including the Avoidance Claims, the Recharacterization Claims and the Transferred Guarantor Claims (collectively, the "Potential Litigation Claims") and disputes over total enterprise value of the Debtors (which, in turn, reflects a construct that resolved disputes over the relative value of NII Mexico and NII Brazil), the allocation of cash distributions to creditors and entitlements to postpetition interest (such disputes, together with the Potential Litigation Claims, the "Settled Claims and Disputes"). Failure to confirm the Plan or approve the Settlement risks jeopardizing the fragile consensus established to date and triggering the full scale litigation of all of the Settled Claims and Disputes. Such an outcome would result in the deterioration of the Debtors' enterprise value and possibly the liquidation of their businesses and the conversion of these cases to chapter 7[6] — a value-destructive state of affairs that is in no one's best interest, including the lone party seeking to scuttle the Debtors' bid to confirm the Plan against an overwhelming tide of creditor support (as explained in detail below). As Steve Shindler, the Chief Executive Officer of NII Holdings put it at his deposition,

[6] As discussed in greater detail below and in the Freiman Declaration, beginning in September, potential defaults under the Operating Company Credit Agreements (as defined below) will entitle the Operating Company Lenders (as defined below) to exercise remedies against NII Brazil's assets.

a rejection of the Plan "would be the worst possible outcome for not only the company but for every single creditor constituency[.]" Shindler Dep. at 213:25-214:3.

3. The Plan and the Settlement are the result of more than a year of hard-fought, good-faith negotiations among the Debtors, the Creditors' Committee and the Consenting Noteholders — creditors holding over 70%[7] of the Capco Notes and over 72% of the Luxco Notes — whose support for both the Plan and Settlement, as well as the Mexico Sale Transaction, has maximized the value of the Debtors' estates and offered the Debtors their best chance of successfully reorganizing.

4. Accordingly, the Debtors believe that the Plan and Settlement are in the best interest of their estates and are consistent with their fiduciary responsibility to maximize recoveries for all creditors. The Consenting Noteholders have come to that same conclusion, which is evidenced by their execution of the Plan Support Agreement and voting in favor of the Plan. That conclusion is further buttressed by the support of the Creditors' Committee and the Independent Manager (as defined below), who each, with the assistance of their sophisticated and competent counsel, performed an independent and extensive review of the Plan and the Settlement and found the Plan and Settlement to be in the best interests of their respective constituencies.

5. Further, if it were not enough that nearly every significant creditor constituency supports the Plan and Settlement, creditors have voted overwhelmingly in favor of the Plan and the Settlement contained therein. For example, Holders of General Unsecured Claims against each Debtor have unanimously voted to accept the Plan. The Plan Proponents' designation of Classes of Convenience Claims (made possible by the substantial concessions of

[7] All figures and percentages herein are approximated.

the Consenting Noteholders) will enable the vast majority of Holders of General Unsecured Claims against NII Holdings to obtain an average recovery rate of 94%, as opposed to the 5.64% rate for Claims against NII Holdings that would otherwise be available to the Claims classified as General Unsecured Claims. In addition, Holders representing more than 84% in number and 94% in amount of the Luxco Note Claims, more than 97% in number and 89% in amount of the Capco Note Claims and more than 99% in number and 99% in amount of the Transferred Guarantor Claims all voted in favor of the Plan.

6. Moreover, 95% in number of Holders of the Capco 7.625% Note Claims and 78% in amount of such Claims — the very constituency that the ad hoc group of Holders of the Capco 7.625% Notes (the "Capco 2021 Group"; such notes, alternatively, the "Capco 2021 Notes") purports to represent in opposing the Plan — voted to **accept** the Plan, thereby mooting the Capco 2021 Group's complaint that these Claims should have been separately classified.[8] Finally, absent the Plan and Settlement, the most likely scenarios result in no recoveries for the Holders of General Unsecured Claims (or even the Capco Note Claims, for that matter), because all of the Debtors' cash would be exhausted to satisfy Claims that are structurally senior in priority — i.e., the Transferred Guarantor Claims and the Luxco Note Claims — to most General Unsecured Claims, which are concentrated at structurally junior Debtors.

7. In sum, the outcome obtained by the Debtors' cases precisely fulfills the purposes and policy of the Bankruptcy Code: a largely consensual Plan, based on a fair and equitable Settlement that facilitates the optimal reorganization of a viable business and maximizes creditor recoveries for the benefit of all stakeholders. Moreover, other than the objection of the Capco 2021 Group (the "Capco 2021 Objection", which is discussed in greater

[8] See Voting Decl., Ex. B.

detail immediately below)[9] and the U.S. Trustee's objection regarding professional fees [Docket No. 743] (the "U.S. Trustee Objection"),[10] the Debtors have received no other objections targeted at the Plan or the Settlement. Instead, the few objections that were filed [Docket Nos. 723, 724, 726, 731 & 732] — an extremely small number considering the size and scope of these Chapter 11 Cases and the sheer number of interested parties — relate to items such as narrow preservation of rights, cure costs and assumption of Executory Contracts, which the Plan Proponents are hopeful will be resolved consensually.[11]

8. Accordingly, the Court should (a) confirm the Plan because it (1) implements the restructuring of the Prepetition Notes and the integrated Settlement, each of which is critical to the Debtors' emergence from chapter 11 as a viable and competitive going concern, (2) is supported by each of the Debtors' primary constituencies and has overwhelming support from all of its creditor classes as demonstrated by the voting results[12] and (3) fully complies with all requirements of the Bankruptcy Code; and (b) approve the integrated Settlement because it is fair and equitable, in the best interests of the Debtors, their estates and their stakeholders and does not fall below the lowest point in the range of reasonableness.

II. THE CAPCO 2021 OBJECTION SHOULD BE OVERRULED.

9. The lone creditor group contesting confirmation of the Plan and approval of the Settlement — the Capco 2021 Group — does so at great peril to these estates and their creditors, including the constituency the Capco 2021 Group purports to represent, holders of the

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9 See Revised Objection of the Ad Hoc Group of NII Capital 2021 Noteholders to Confirmation of the First Amended Plan of Reorganization, filed on May 22, 2015 [Docket No. 760].

10 See Objection of the United States Trustee to Plan Support Agreement and First Amended Joint Plan of Reorganization, filed on May 20, 2015 [Docket No. 743].

11 A chart summarizing the objections the Debtors have received to date, the resolutions reached to date by the Debtors and the objecting parties and the Debtors' position with respect to each objection to the extent an agreement has not been reached is attached hereto as Exhibit B.

12 See generally Voting Decl.

Capco 2021 Notes.[13] The Capco 2021 Objection is nothing more than a narrow, short-sighted pursuit of a greater recovery for themselves premised upon a misunderstanding of the integrated Settlement and Plan, the corporate separateness of the various Debtors under the Plan and a gross misinterpretation of well-established case law in this Circuit.

10. It is ironic that this group now objects to the Plan and the Settlement when Holders of the Capco 2021 Notes, and therefore the members of the Capco 2021 Group, had their recoveries improved by 63% under the revised versions of the Plan and Settlement now before the Court — an improvement better than any other creditor constituency, and a fact conveniently omitted from the Capco 2021 Objection.[14] Moreover, this minority group cries foul over the treatment of the Capco 2021 Notes, while over 95% of voting holders of Capco 2021 Notes voted to accept the Plan.[15] In other words, the Capco 2021 Group quite literally stands alone in challenging the Plan and the Settlement.

11. The Capco 2021 Objection boils down to three main points: (a) the Debtors should not have agreed to settle the Transferred Guarantor Claims as part of the global, integrated Settlement because there is a "silver bullet" legal argument to defeat such Claims in litigation; (b) Holders of the Capco 2021 Notes are not being treated with "equal dignity" because they do not recover any value from the Transferred Guarantors; and (c) the Capco 2021

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13 The members of the Capco 2021 Group hold 20.32% of the Capco 7.625% Note Claims and just 10.71% of all Capco Note Claims. See Third Verified Statement Pursuant to Rule 2019 of Federal Rules of Bankruptcy Procedure [Docket No. 721], Tr. Ex. P180 (the "2021 Group Rule 2019 Statement"). In comparison, the Consenting Noteholders hold 57% of Capco 7.625% Note Claims and 70% of all Capco Note Claims.

14 See Parkhill Decl.¶ 52 (detailing an increase of 63.3% (on a pre-rights offering basis, or 46.8% on a post-rights offering basis) in the recoveries of the Capco 7.625% Note Claims from the prior plan).

15 It appears that not even all of the members of the Capco 2021 Group voted against the Plan. As detailed in the Voting Declaration, Capco 7.625% Note Claims in the amount of approximately $265.8 million voted against the Plan, while the Capco 2021 Group collectively holds approximately $294.6 million of the Capco 7.625% Note Claims. Compare 2021 Group Rule 2019 Statement with Voting Decl., Ex. B. In addition, the voting results reflect that a substantial number and amount of the Capco 7.625% Note Claims which are not held by the Consenting Noteholders voted in favor of the Plan. See Voting Decl., Exs. A & B.

Notes should have been separately classified from the other Capco Notes. Each of these arguments should be overruled in their entirety.

12. As evidenced by both the Capco 2021 Objection and the depositions of certain Capco 2021 Group members, their opposition to the Plan is less about their objection to the Settlement than their desire to share in the recoveries of the Holders of timely filed Claims against the Transferred Guarantors. It was only when the Capco 2021 Group realized that they were not legally entitled to a Claim against these separate Debtors (i.e., the Transferred Guarantors) — and that they were barred from asserting any Claims against the Transferred Guarantors after failing to file any proofs of claim against these Debtors — that they pivoted to argue that the Transferred Guarantor Claims were not valid in the first place. Up until that point, the Capco 2021 Group's desire was to share equally in any recovery realized on account of the Transferred Guarantor Claims, and admittedly had an interest in an even higher settlement of those claims.

13. Not content with their recoveries under the Plan, the Capco 2021 Group seeks to scuttle it based largely on a manufactured objection to one element of the integrated Settlement — the 21% resolution of the Transferred Guarantor Claims.[16] Relying exclusively on misleadingly selective, out-of-context snippets of deposition testimony, the Capco 2021 Group contrives a laundry list of complaints about the Debtors' resolution of the Transferred Guarantor Claims. As demonstrated herein, and as will be conclusively shown during the Confirmation Hearing, every one of the Capco 2021 Group's complaints is utterly baseless. Among other things, the Debtors:

[16] See Shindler Decl. ¶ 30; Parkhill Decl. ¶¶ 22-23 (regarding that claims were analyzed as an integrated whole).

- were always an active participant in the negotiations of the Settlement and Plan, rejecting proposals that they deemed unreasonable and continually moving the parties' positions closer to a result that the Debtors considered fair and reasonable;[17]

- were never willing to accept just any plan and settlement merely for the sake of consensus;[18]

- had ample reason to conclude that the interests of the Holders of the Capco 2021 Notes were adequately represented by the parties at the negotiating table;[19]

- themselves pursued the interests of the Holders of the Capco 2021 Notes;[20]

- never suggested that they possessed any conflict with respect to the Transferred Guarantor Claims;[21]

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17 See, e.g., Shindler Dep. at 44:22-45:7 ("[W]e stepped back at each level of this in the negotiations with each of the different constituents and then as we reviewed it as a board. So, yeah, I think **if we were presented with a number on any one component or on the overall that we thought was unreasonable, we would have – you know, we would have stepped forward**. I think I was involved in the negotiations at various points in time, and I tried to encourage different folks to move in different directions to get to the best possible recovery for as many constituents as we could.") (emphasis added), 93:5-6 ("If you're implying [that the Debtors' role was] being passive [in negotiations], then I would say **no**.") (emphasis added), 93:18-20 ("We had plenty of exchanges with creditors as to their overall proposals that were being submitted and not being acceptable."), 93:24-94:3 ("But there were **numerous times where frameworks or outright bundled proposals were put in front of us where we would advise them that we would not be in support**.") (emphasis added), 94:15-20 ("[I]t would be any overall proposal that we would look at and evaluate and then advise that group that we couldn't support it. And it might have pertained to economic split, it might have pertained to other elements."), 148:17-21 ("I had personally had many discussions at many points in times with the principals of each of these institutions and tried to weigh in strongly with moving things to my own views of what I would deem to be reasonable.").

18 See, e.g., Shindler Dep. at 155:2-14 ("**I would not agree with the characterization of the pressure extended to the point to get any deal**. I don't think that was ever the stance that we took and was **never the position that I had in any discussion with any party**. We were well aware of the obligations that we had to all the constituents, and all I was trying to do here is act as a facilitator to get the folks to come together and find a reasonable way to agree on a structure and all the other components that would make sense.") (emphasis added), 156:25-157:7 ("I was **never** in a position where we were just going to accept [any deal]. **It was always going to be: Can we get our creditors to agree upon something and then have a careful evaluation and deliberation amongst our own board as to whether that was fair. And that's the process we followed**.") (emphasis added).

19 See, e.g., Shindler Dep. at 170:3-8 ("A. I felt that there was a very vocal spokesman on behalf of that [2021] group every step of the process based on the way the negotiations took place. Q. So that's Mr. Daegle [sic]? A. Yes."), 170:11-17 ("**[Mr. Daigle] also had several portfolio managers that were exclusively invested in the 2021s and always spoke loudly on their behalf, which was a factor in our decisions as a board to make sure we had representation from every creditor group at the table**.") (emphasis added), 181:16-23 ("A. . . . I felt that your clients were represented. The '21s were represented at the table and they had been from the beginning. Q. And they were represented by Mr. Daegle [sic]? A. Well, primarily, but there are other holders of the '21s that were also involved in the room.").

20 See, e.g., Shindler Dep. at 213:13-19 ("We pushed extremely hard to make sure there was a better recovery and able to -- the different constituent groups, **particularly the 2021s who had a 63 percent increase in recovery from the first PSA to the second. And no other group improved by anywhere close to that**.") (emphasis added).

21 See Gropper Dep. at 192:6-193:6 ("Q. Well, what is the potential conflict issues that you have in mind? A. These were claims that were being settled which, in some instances -- the fraudulent conveyance claims

- analyzed and considered every available defense and counter-argument with respect to the Transferred Guarantor Claims, as well as the consequences of litigating those Claims;[22]

- specifically considered potential arguments concerning the 2010 exchange offer with respect to the 2009 Capco Notes;[23]

- despite believing — and stating publicly — that the Transferred Guarantor Claims were without merit and, therefore, more likely than not to fail, always understood that there was a reasonable risk that a court might not agree, and that the Transferred Guarantor Claims therefore had settlement value;[24] and

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in particular -- were claims that one debtor would bring against another debtor. So if the debtors and Jones Day represented both entities, they were effectively on both sides of, for example, the fraudulent conveyance litigation; for another example, the intercompany claim litigation. **Q. Is it also true for the transferred guarantor claims?** MR. ZENSKY: Objection. **A. No.** Q. Transferred guarantor claims do have the effect of distributing value between the creditors to the two entities; right? MR. ZENSKY: Objection. A. Yes, but the transferred guarantor claims belong to the various indenture trustees of the particular bonds, they don't actually reside in a debtor, whereas the fraudulent conveyance and intercompany claims are actually claims of the debtor.") (emphasis added).

22 See, e.g., Shindler Dep. at 30:8-14 ("We certainly factored in the analysis of litigation on all aspects of the plan and how long that would take, how much it would cost relative to the situation that we find ourselves in that you asked earlier, what do we need to do to be successful to make this business move forward "), 31:17-20 ("We had discussion about **each of the components** and we had estimates provided to us of the length of time it might take to reach a conclusion in the litigation.") (emphasis added), 33:24-34:2 ("There were different claims that were brought forward. **We analyzed each one of the claims**[.]") (emphasis added), 38:11-14 ("I think we had advice from counsel looking at all of the claims that had been brought forth and **assessment of what the legal arguments would be from parties on both sides**.") (emphasis added), 63:20-24 ("Every step of the process we received input from our lawyers, from our financial advisors, and we would factor in what we'd heard from them into trying to find ways to move things along in the negotiations."), 197:19-198:5 ("And then we called this meeting [on the Second PSA], which was a full and extensive review of all the financial components, all of the elements of the plan itself; and **a separate session that was held without financial advisors but included advice from our counsel that went on on its own for several hours, a thorough review of all of the litigation claims, potential defenses against those claims, very interactive session with our board members with a lot of questions that were asked**. And all of that was then factored into the board moving to an executive session to make a determination as to whether or not to approve the PSA.") (emphasis added).

23 See Shindler Dep. at 70:15-21 ("Q. Did Jones Day give advice regarding a defense to the transferred guarantor claims **based on the exchange offer that occurred in 2010**? . . . A. **Yes**.").); Freiman Dep. at 155:25-156:9 ("Q. . . . Up until the time of the bankruptcy filing, **had you heard an argument that in the transmittal letters, the old noteholders transferred to CapCo any claims they may have including the transferred guarantor claims**? A. **I'm aware that was a topic that was considered**.") (emphasis added); id. at 168:15-23 ("I remember it came up in discussions that we had as to the merits of the claims, so it was identified as a potential defense I guess.").

24 See, e.g., Freiman Dep. at 211:10-13 ("So I think our belief is generally all of the claims from Aurelius don't have merit, **meaning we think we have a stronger argument and it's likely that we would win**.") (emphasis added); Shindler Dep. at 85:2-8 ("So the phrasing that's used here that you asked specifically about we put in there saying it was without merit was our company statement that **we believe that we're right on the issue**, that there was a claim that was filed against us, we've looked at it and we think that we were right.") (emphasis added), 87:4-8 ("Well, if you want to get into a matter of likelihood, you know, we have a view that we're right on the issue. **If it's brought to a Court to decide, I don't know where the Court's going to come out**.") (emphasis added), 216:15-217:2 ("**[F]rankly the reason for a settlement is we don't know what the ruling would be. It may -- the Court may rule, as a matter of law, that the claim is correct, in which case many other parties that are allocated a certain recovery would lose substantially all of it or a significant portion of what we've allocated to them**. That, in each one of the

- specifically evaluated the reasonableness of the 21% settlement of the Transferred Guarantor Claims.[25]

14. At bottom, the Capco 2021 Group's inappropriately selective and flawed attack on just one component of the Settled Claims and Disputes (a) ignores the substantial value created by the entirety of the Settlement and (b) proposes no viable alternative in place of the Settlement. While they do not like "this deal," the reality is that there is no other deal that they can point to that has the support of the Debtors, the Creditors' Committee and the requisite creditors under section 1126(c) of the Bankruptcy Code to confirm a plan, and the Capco 2021 Group has proposed no such alternatives. After more than a year of non-stop negotiations with its creditor body, the Plan Proponents can represent that there likely is no other such plan — the alternative is litigation of all of the Settled Claims and Disputes resolved by the Plan and Settlement, an outcome that is fraught with risk for the Debtors, their estates, their creditors and all other constituencies in these cases that a vast majority of the parties in interest in these cases has sought to avoid by supporting the Plan and Settlement.

15. Despite the fact that the Transferred Guarantor Claims are just one piece of the Settled Claims and Disputes, an individualized assessment of the Transferred Guarantor Claims nonetheless demonstrates the integrated Settlement outweighs the potential future benefits of litigating such claims. See infra ¶¶ 78-128. Moreover, a detailed canvassing of the

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claims, was one of the factors and a reason for us to be willing to settle claims.") (emphasis added); Freiman Dep. at 106:19-107:4 ("Q. And what were the factors that you considered when analyzing the transferred guarantor claims? A. **We looked obviously at the relative, you know, merits of the claims**; we looked at the settlement of the other claims in relation to this and considered whether the plan would have support from enough of the bondholders that could be approved. And that plan was confirmable.") (emphasis added).

25 See, e.g., Freiman Dep. at 103:12-19 ("So the way we approached it and looked at it was: **Is 21 percent as a recovery rate on that claim reasonable** given various factors -- the merits of the claims, the context that we're looking at it in terms of the overall settlement -- **and determined that it was within the realm of reasonableness given those different factors**.") (emphasis added), 105:7-13 ("Q. Did the debtors reach a judgment that 21 percent was a reasonable settlement for the transferred guarantor claims? A. Yes. In the context of the larger settlement, **we believed 21 percent was a reasonable settlement of the transferred guarantor claims**.") (emphasis added); Shindler Dep. at 43:6-8 ("We reached the conclusion that **it was fair at 21 percent** in the context of the overall settlement.") (emphasis added).

issues presented by the Transferred Guarantor Claims shows that the Settlement of those Claims at 21% is not below the lowest point in the range of reasonableness standing alone, and certainly not when the Court views the Settlement — as it should — as an integrated whole with the other Settled Claims and Disputes. See infra ¶¶ 20, 39, 43. Sustaining the Capco 2021 Group's objection would unnecessarily dismantle all that has been achieved in these cases to date, and would likely plunge these estates into unsustainable litigation.

16. The allegation that Holders of the Capco 2021 Notes are not being treated with "equal dignity" under the Plan is a red herring and ignores that the Plan is a separate chapter 11 plan for each Debtor entity. The Debtors have not sought, and do not believe cause exists, to substantively consolidate their estates. As set forth in greater detail below and in the Parkhill Declaration, Holders of the Capco 2021 Notes receive exactly the same recovery from NII Holdings, Capco and the Capco Guarantors as the Holders of the other Capco Notes (i.e., a 29.15% recovery).[26] Holders of the Capco 2021 Notes, however, do not have claims, and (as noted above) never filed proofs of claim against, the Transferred Guarantors. As a result, Holders of the Capco 2021 Notes do not recover any value from those particular Debtor entities under the Plan (which Debtor entities are structurally senior not only to Capco, but also to Luxco). See infra ¶ 179.

17. Similarly, the separate classification argument made by the Capco 2021 Group ignores the non-consolidated nature of the Plan. See infra ¶¶ 177-180. In any event, this argument, and the accompanying argument regarding the satisfaction of the "cram down" standards of section 1129(b) of the Bankruptcy Code, are now moot given the voting results,

[26] See Disclosure Statement, at 7.

since even if the Claims of the Holders of the Capco 2021 Notes had been separately classified, that class still would have voted in favor of the Plan. See infra ¶¶ 179-180.

18. For all these reasons, the Capco 2021 Objection should be overruled in its entirety.

STATEMENT OF FACTS

19. The facts relevant to Confirmation of the Plan and approval of the Settlement are set forth in the Disclosure Statement, the Plan, the Declarations and any evidence presented or testimony that may be adduced at the Confirmation Hearing, all of which are incorporated herein by reference.

ARGUMENT

I. THE INTEGRATED SETTLEMENT CONTAINED IN THE PLAN SHOULD BE APPROVED

A. Introduction

20. As permitted by section 1123(a)(5) of the Bankruptcy Code, the Plan includes the Settlement of the Settled Claims and Disputes, which represents a highly delicate balance of economic compromises reached after over a year of intense dispute, analysis and negotiations among the Debtors and their significant creditors. Each of the Settled Claims and Disputes are inextricably intertwined with one another as part of the global Settlement, and the failure to settle any one of the Settled Claims and Disputes in connection with confirmation of the Plan would jeopardize the Debtors' restructuring as a whole. The Debtors respectfully submit that the Court should approve the Settlement pursuant to the standards in this Circuit.

B. Events Leading to the Settlement

1. The Debtors Commence Restructuring Discussions and the Noteholder Groups Undertake Extensive Diligence

21. As set forth in more detail in the Disclosure Statement and the Declarations of Messrs. Freiman and Parkhill, in early 2014, the Debtors commenced processes to (a) explore strategic measures to improve liquidity and/or a potential sale of the Debtors or one or more of their businesses and (b) reformulate their business plan.[27] Also during this time, as part of their ordinary course monitoring of prospective covenant compliance under their debt instruments, the Debtors determined that there was a risk that NII Brazil and NII Mexico would fail to comply with certain of these covenants as of June 30, 2014, the next compliance calculation date under the Operating Company Credit Agreements.[28]

22. On February 28, 2014, NII Holdings filed its 10-K annual report for 2013 and reported that due to "recent results of operations, [NII Holdings] may not be able to continue as a going concern."[29] Around this time, groups of noteholders began organizing, retaining advisors and reaching out to the Debtors.[30] Specifically, in February 2014, entities managed by Capital Research and Management Company (collectively, "Capital Group") organized an ad hoc group of Holders of the Luxco Notes and the Capco Notes (the "Cross-Holder Group"), and retained advisors from Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss") and Houlihan Lokey Capital, Inc. ("Houlihan Lokey").[31] Due to Capital Group's sizeable holdings across the Debtors' capital structure, Capital Group possessed a "blocking position" across both

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27 See Freiman Decl. ¶¶ 9-10.

28 See id. ¶ 12.

29 NII Holdings, Inc., Annual Report (Form 10-K), December 31, 2014, Tr. Ex. P167, at 21.

30 See Parkhill Decl. ¶ 15.

31 See id.; Freiman Decl. ¶ 41.

the Capco Notes and the Luxco Notes, meaning that its support would be necessary for the Debtors to confirm a chapter 11 plan.

23. On March 4, 2014, Aurelius Capital Management, LP ("Aurelius") delivered a letter[32] to NII Holdings, Capco, NII Global Holdings, Inc. ("NII Global"), McCaw International (Brazil), LLC ("McCaw"), Airfone Holdings, LLC ("Airfone") and Nextel International (Uruguay), LLC ("NIU") (the latter three Debtors, collectively, the "Transferred Guarantors") outlining its allegations regarding the Transferred Guarantor Claims and the Avoidance Claims, which are described in greater detail in Part D.1 below.[33] Around this same time, Aurelius organized a group of Holders of the Capco Notes and retained advisors from Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") and Blackstone Advisory Partners, L.P. ("Blackstone").[34]

24. The advisors for these groups were provided with access to data rooms containing a voluminous body of information and documentation relating to the Debtors' and the Non-Debtor Affiliates' operations, including hundreds of documents on the Potential Litigation Claims.[35] Also, beginning in March of 2014, the Debtors' counsel commenced their own in-depth analysis of the Potential Litigation Claims

25. Beginning in late June 2014, after two months of data room access, in-depth diligence with respect to the Potential Litigation Claims and extensive dialogue with the Debtors and their professionals, the Cross-Holder Group submitted a proposal to the Debtors around a restructuring of their debt. That proposal was rejected by the Debtors for a host of

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32 See Letter from Aurelius Capital Management LP to NII Holdings Inc., dated March 4, 2014, Tr. Ex. P002 (the "Aurelius March 4 Letter"). On September 5, 2014, Aurelius sent an additional letter to Holders of Prepetition Notes outlining additional allegations and potential claims.

33 See Freiman Decl. ¶ 42.

34 See id.

35 See id. ¶ 43; Parkhill ¶ 17.

reasons.[36] Over the course of that summer, discussions continued with respect to various plan constructs and terms. All parties recognized that the Debtors likely could not survive a prolonged stay in chapter 11 due to liquidity concerns and the risks of further deterioration of their business and their customer base as well as the threat to the Non-Debtor Affiliates posed by a potential foreclosure by the Operating Company Lenders (discussed in greater detail below and in the Freiman Declaration).[37] Accordingly, the parties began exploring restructuring proposals that centered upon (a) a global settlement plan that fully and consensually resolved the Potential Litigation Claims or (b) a "full reserve" plan that would permit a near-term exit and preserve the resolution of the Potential Litigation Claims for the post-emergence period.[38]

26. Given the complexity and multitude of issues that could shift value throughout the Debtors' capital structure, and by definition affect their creditor groups differently, Rothschild Inc. ("Rothschild") worked with the Debtors and the other financial advisors to create a unified model (the "Waterfall Model") that all parties could agree upon for use in negotiations.[39] The Waterfall Model provided the analytical framework that allowed parties to understand the value impact of various litigation and economic drivers, based on intercompany and third party debt claims and cash balances as of specific dates.[40] The Waterfall Model emerged as a tool of considerable value because it streamlined and simplified the negotiation of otherwise complicated substantive and quantitative terms, and its validation and

36 See Shindler Decl.¶ 17; Parkhill Decl. ¶ 24.

37 See Parkhill Decl. ¶ 26.

38 See id.

39 See id. ¶¶ 21-23 (discussing the Waterfall Model).

40 See id. ¶ 23.

acceptance by adverse creditors allowed it to serve as a common platform for all sides to negotiate toward a consensus.[41]

27. Further term sheets were exchanged in late August and leading up to the Petition Date, but the proposals during this time evidenced a wide variance in positions on economic terms, parties' views as to the Potential Litigation Claims, the proper valuation of the Debtors and the appropriate division of equity between Holders of the Luxco Notes and Holders of the Capco Notes.[42]

28. On September 15, 2014, upon the expiration of the 30-day grace period triggered by NII Holdings' decision not to make an interest payment on certain notes, certain of the Debtors commenced these chapter 11 cases with no restructuring deal in place.[43]

2. Restructuring Discussions Continue Postpetition and a Deal is Reached

29. Following the Petition Date, the Debtors and their advisors continued their dialogue with the noteholder groups, which included a group of Holders of the Luxco Notes that had split from the Cross-Holder Group shortly before the Petition Date (the "Luxco Group") and retained Kirkland & Ellis LLP ("Kirkland") and Millstein & Co., L.P. ("Millstein") as advisors. Postpetition negotiations also included the Creditors' Committee and their advisors from Kramer Levin Naftalis & Frankel LLP ("Kramer Levin") and FTI Consulting, Inc. ("FTI").[44]

30. In early October 2014, the Creditors' Committee commenced an independent and comprehensive investigation into the merits of each of the Potential Litigation

41 See id.

42 See id. ¶ 27.

43 See Freiman Decl. ¶ 52.

44 See Parkhill Decl. ¶ 30.

Claims.[45] In the course of this review, which lasted approximately 45 days, professionals for the Creditors' Committee reviewed tens of thousands of documents and e-mails and conducted multiple meetings and calls with representatives of, and the advisors to, the Debtors, Aurelius, Capital Group and the Luxco Group. The role of the Creditors' Committee in assisting the Debtors with brokering a deal and facilitating parties' due diligence was particularly important given that the members of the Creditors' Committee represent a cross-section of Holders, the indenture trustees for each of the Capco 2021 Notes, the Capco 8.875% Notes, the Capco 10% Notes and the Luxco Notes, as well as other important unsecured creditor constituencies in the Debtors' bankruptcy cases, and is a representative of, and fiduciary for, all unsecured creditors.[46]

31. Postpetition negotiations continued with the exchange of multiple plan term sheets and settlement proposals.[47] After several months of extensive negotiations following the Petition Date, an agreement in principle was reached after a meeting of principals from NII Holdings, Capital Group and Aurelius at the Debtors' headquarters in Reston, Virginia.[48] This agreement in principle led to the Plan Support Agreement (including the plan term sheet attached thereto (the "Initial PSA" and "Initial Plan Term Sheet", respectively)) executed by the Debtors, Aurelius, Capital Group, the Creditors' Committee and certain other parties on November 24, 2014, which was further documented in the chapter 11 plan filed by the Debtors and the Creditors' Committee on December 22, 2014 (the "Initial Plan").[49]

32. As contemplated in the Initial Plan Term Sheet, pursuant to the Initial PSA, Scott W. Winn was appointed as Class C Manager (the "Independent Manager") to the

45 See id. ¶ 33.

46 See id.

47 See id. ¶¶ 34-35.

48 See id. ¶ 39; Shindler Decl. ¶ 22.

49 See Parkhill Decl. ¶ 39; Shindler Decl. ¶ 22.

board of managers (the "Board of Managers") of NII International Holdings S.à r.l. ("International Holdings ") the sole manager of Luxco. The Independent Manager was tasked with reviewing the settlement embodied in the Initial Plan, and, on behalf of Luxco, either (a) confirming the reasonableness of, and recommending to the Board of Managers that it cause Luxco to join in, the proposed Settlement or (b) stating his recommendation to the Board of Managers that Luxco not join in the proposed Settlement.[50] The terms of the Independent Manager's appointment were actively negotiated by the Debtors and the Luxco Group, who was not party to the Initial PSA and who had begun taken certain actions to oppose confirmation of the Initial Plan.

3. The Mexico Sale Transaction Creates Opportunity for the Debtors to Renegotiate the Settlement and Initial Plan Support Agreement With Additional Creditor Support

33. While plan negotiations were ongoing pre- and postpetition, the Debtors continued to pursue a potential sale of some or all of their assets. In early January 2015, the Debtors and their advisors resumed discussions with AT&T for the sale of the Debtors' operations in Mexico ("NII Mexico").[51] Ultimately, these discussions resulted in a stalking horse bid by New Cingular Wireless Services, Inc., an affiliate of AT&T (the "Purchaser"), to purchase NII Mexico for $1.875 billion, which represented an approximately 25% premium over the value ascribed to that business under the Initial Plan. When the Debtors accepted the Purchaser's stalking horse bid, certain parties to the Initial PSA — Aurelius, Capital Group and the Creditors' Committee — executed a stipulation to support the sale.[52] The Initial PSA was instrumental in

50 See So-Ordered Stipulation Regarding the Appointment and Scope of the Independent Manager for NII International Telecom S.C.A. [Docket No. 293], Tr. Ex. P157.

51 See Parkhill Decl. ¶ 43.

52 See id. ¶ 44; see also Notice of Support Stipulation [Docket No. 398], Tr. Ex. P171 (the "Sale Support Stipulation").

easing potential bidders' concerns that by entering into the Debtors' sales process they were going to be drawn into an intercreditor war, given creditors' widely differing positions regarding the alleged Potential Litigation Claims and the public nature of these disputes. As a signal to third-party bidders that the Debtors had a path for near-term emergence from these cases, the Initial PSA catalyzed the Debtors' ability to consummate the Mexico Sale Transaction and obtain an additional $392 million of value for their estates.[53] In the absence of the Initial PSA, it is likely that any sale of NII Mexico would have been done at a substantially reduced price (if at all), thereby reducing recoveries for all creditors.[54]

34. After entering into the stalking horse purchase agreement, the Debtors exercised their right to terminate the Initial PSA. Thereafter, the Debtors continued negotiations with Aurelius, Capital Group and the Creditors' Committee, as well as the Luxco Group, regarding a revised plan support agreement, term sheet and chapter 11 plan that would account for the proceeds of the Mexico Sale Transaction. In mid-February, the Debtors reached an agreement in principle with Aurelius, Capital Group and the Luxco Group (collectively, the "Consenting Noteholders") and the Creditors' Committee with respect to the terms of the revised plan support agreement and the plan term sheet attached thereto (the "Plan Support Agreement" and "Plan Term Sheet", respectively), that reflected, among other things, the resolution of the Settled Claims and Disputes pursuant to the Settlement. The Plan Support Agreement also included the Consenting Noteholders' commitment to provide the Debtors with $350 million of postpetition financing on the best terms available after an extensive marketing process led by Rothschild in order to allow the Debtors to fulfill their obligations until the

53 See Parkhill Decl. ¶ 45.

54 See id.

consummation of the Mexico Sale Transaction and to hedge against the risk of any delay in the closing of the Mexico Sale Transaction.

4. The Boards Approved the Debtors' Entry into the Settlement and the Independent Manager Recommended that Luxco Join the Settlement

35. On February 25, 2015 the Board of Managers convened a meeting of its managers in Luxembourg. At that meeting, the Independent Manager and his counsel Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") respectively communicated to the Board of Managers their informed analysis of the Settlement, and the Independent Manager recommended to the Board of Managers to cause Luxco to enter into the Settlement that is embodied in the Plan Support Agreement and Plan Term Sheet.[55] Additionally, Rothschild and Jones Day made a detailed presentation on the other aspects embodied in the Plan Support Agreement, including valuation, impact on the relative equity splits, allocation of the cash proceeds to be derived from the Mexico Sale Transaction and the timeline for executing the Plan, and answered numerous questions from the Board of Managers.[56] On February 25, 2015, the Board of Managers approved the Settlement and the Plan Support Agreement and authorized Luxco to file and prosecute the Plan.[57]

36. On February 27, 2015, advisors from Rothschild and Jones Day met with the boards of directors of each of NII Holdings (the "Holdings Board") and, separately, Capco (the "Capco Board") to explain and advise on the terms of the Plan Support Agreement and Settlement, the process in reaching these agreements and the alternatives to not proceeding as set

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55 See id. ¶¶ 65-66.

56 See id. ¶ 65; Freiman Decl. ¶ 61.

57 See Minutes of the Meeting of the Board of Managers of NII International Holdings S.à r.l., Acting in its Capacity as Sole Manager of the Company, Held in Luxembourg on 25 February 2015 at 1:00 p.m. CST, Tr. Ex. P042.

forth therein.[58] In a separate session, a group of professionals from Jones Day made a lengthy and detailed presentation to each of the Holdings Board and the Capco Board regarding the underlying claims being settled, the strengths and weaknesses of the claims and the timing implications with respect to the various litigations that were otherwise being settled.[59] These presentations lasted several hours and invited many questions from various members of the respective Boards.[60] Afterwards, the respective boards deliberated and each concluded, in the exercise of their reasonable business judgment, that the Plan Support Agreement, the Plan Term Sheet and the Settlement set forth therein were fair, reasonable and in the best interests of the Debtors, their estates and their creditors.[61] On February 27, 2015, the Capco Board and the Holdings Board authorized Capco and NII Holdings, respectively, to enter into the Plan Support Agreement and Settlement and authorized them to file and prosecute the Plan.[62]

37. Following entry into the Plan Support Agreement and Plan Term Sheet, the Debtors and the Creditors' Committee, as Plan Proponents, drafted and negotiated the Plan and Disclosure Statement, which embodied the compromises set forth in the Plan Support Agreement and Settlement.

C. Brief Summary of the Integrated Settlement

38. Set forth below is a brief summary of the Settled Claims and Disputes resolved pursuant to the Settlement in the Plan:[63]

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58 See Parkhill Decl. ¶ 67; Shindler Decl. ¶¶ 34-35.

59 See Parkhill Decl. ¶ 67; Shindler Decl ¶ 36.

60 See Shindler Decl. ¶ 37.

61 See id. ¶ 38.

62 See id. ¶ 39; Parkhill Decl. ¶ 68; see also Minutes of Meeting of the Board of NII Capital Corp., dated February 27, 2015, Tr. Ex. P044.

63 This description of the Plan is qualified entirely by the Plan. To the extent there is any inconsistency between this description and the Plan, the Plan governs.

- *Settlement of the Avoidance Claims*. As a compromise of all Avoidance Claims, creditors' recoveries under the Plan are calculated as if 25% of the Identified Avoidance Claims were avoided. See Plan, Section III.H.2; Disclosure Statement at 32.

- *Settlement of the Recharacterization Claims*. As a compromise of all Recharacterization Claims, creditors' recoveries under the Plan are calculated as if 25% of the Recharacterization Claims (except the Capco Intercompany Note) are recharacterized as equity, with the remaining 75% of such obligations treated as unsecured debts against the obligors. In addition, the Peru Transfers and the McCaw Transfers (each as defined below), which are included as Avoidance Claims, are subject to a compounding effect under the Settlement. Finally, the Capco Intercompany Note is treated entirely as debt, but the claim to avoid the Capco/Luxco Subordination (as defined below) is resolved as an Avoidance Claim. See Plan, Section III.H.2; Disclosure Statement at 32.

- *Settlement of the Transferred Guarantor Claims*. As a compromise of the Transferred Guarantor Claims asserted against the Transferred Guarantors, recoveries to Holders of Prepetition Notes under the Plan are calculated as if a gross percentage of 21% of each of the guarantees of the Transferred Guarantors remained in place, leading to a net recovery of 11%, or $150 million, to Holders of the Transferred Guarantor Claims to be distributed from the Transferred Guarantors. This net calculation is the result of Holders of Transferred Guarantor Claims receiving $135 million less in value on account of their Capco Note Claims against Capco and the Capco Guarantors as a result of the settlement of the Transferred Guarantor Claims against the Transferred Guarantors. See Plan, Section III.H.2; Disclosure Statement at 32.[64]

- *Resolution of Disputes Over Valuation*. The Settlement reflects agreement on Plan Distributable Value in the amount of $2.813 billion and avoids a costly and protracted dispute with respect to valuation. There was also a dispute over the relative value of NII Brazil and NII Mexico before the Mexico Sale Transaction was announced. See Plan, Section I.A.130; Disclosure Statement at 5.

- *Resolution of Allocation of Cash Distributions to Creditors and the Form Thereof*. The Settlement provides that Holders of the Prepetition Notes will receive an agreed-upon combination of Cash and Reorganized NII Common Stock on account of their Allowed Claims instead of distributing Cash recoveries solely to the structurally senior-most Claims, here the Transferred Guarantor Claims, which would have resulted in diminished recoveries in the form of Cash to Holders of the Luxco Note Claims, and little to no recoveries in the form of Cash to Holders of Capco Note Claims. Further, the Settlement allows the Debtors to retain up to $515 million of Cash to fund their operations and to fund payments required pursuant to the Plan. See Plan, Section II.C; Disclosure Statement at 3-4.

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64 Formerly, under the Initial Plan, the Transferred Guarantor Claims were settled at 27.5% of their face amount. The reduction to 21% under the current Settlement is a change that inures solely to the benefit of the Holders of the Capco 7.625% Note Claims (i.e., the Capco 2021 Group who now oppose the Settlement) and accounts for $46.3 million of the $169.4 million of increased recovery that Holders of the Capco 7.625% Note Claims are receiving over the recovery provided for under the prior Settlement (on a pre-rights offering basis). See Parkhill Decl. ¶ 52.

- *Resolution of Entitlements to Postpetition Interest*. The Settlement includes a waiver by the Luxco Group of their potential entitlement to receive postpetition interest on account of the Luxco Note Claims, thereby eliminating a dispute as to such entitlements and the applicable interest rate, a dispute that resolves over $110 million in value. Resolving this dispute ensures such value is available to Holders of Allowed Claims asserted against structurally junior Debtors such as Capco and NII Holdings. See Plan, Section II.F; Disclosure Statement at 32.

39. Each of the Settled Claims and Disputes described above, as well as others, is a necessary component of the overall Settlement and none of the parties would have reached agreement on a resolution of their Claims against the Debtors absent the other settlements embodied in the Plan and Settlement. Accordingly, as discussed below, while the settlement of each of the Settled Claims and Disputes satisfies the standards for approval under applicable bankruptcy law individually, the Settlement must be viewed as a whole, as disapproval of any individual settlement would upset the entire Settlement and, consequently, prevent consummation of the Plan.

D. The Legal Standards for Approval of Plan Settlements

40. Section 1123 of the Bankruptcy Code states that a chapter 11 plan may (a) provide for the settlement of any claim belonging to the debtor or to its estate and (b) include any other appropriate provision not inconsistent with the Bankruptcy Code. 11 U.S.C. § 1123(b)(3)(A) & (b)(6). When evaluating plan settlements under section 1123(b) of the Bankruptcy Code, courts consider the standards used to evaluate settlements under Bankruptcy Rule 9019. See, e.g., Resolution Trust Corp. v. Best Prods. Co. (In re Best Prods. Co.), 177 B.R. 791, 794 n.4 (S.D.N.Y. 1995).

41. Bankruptcy Rule 9019 empowers bankruptcy courts to approve a settlement where "it is supported by adequate consideration, is 'fair and equitable,' and is in the best interests of the estate." Air Line Pilots Ass'n, Int'l v. Am. Nat'l Bank & Trust Co. (In re Ionosphere Clubs, Inc.), 156 B.R. 414, 426 (S.D.N.Y. 1993) (citation omitted), aff'd, 17 F.3d 600

(2d Cir. 1994); see also In re Dewey & LeBoeuf LLP, 478 B.R. 627, 640 (Bankr. S.D.N.Y. 2012). The decision to approve a particular settlement lies within the "sound discretion" of the bankruptcy court. In re Adelphia Commc'ns Corp., 368 B.R. 140, 241-42 (Bankr. S.D.N.Y. 2007) (citation omitted), aff'd, 544 F.3d 420 (2d Cir. 2008). Bankruptcy courts, however, should consider and factor in the debtor's exercise of its business judgment when reviewing a proposed settlement and may rely on the opinion of the debtor, parties to the settlement and professionals. Dewey, 478 B.R. at 644.

42. It is black letter law that a court's evaluation of a proposed settlement should not involve a "mini-trial on the merits." Adelphia, 368 B.R. at 240 ("It is not necessary for the court to conduct a 'mini-trial' of the facts or the merits underlying the dispute. Rather, the court only need be apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement. In doing so, the court is permitted to rely upon opinions of the trustee, the parties, and their attorneys."); see Newman v. Stein, 464 F.2d 689, 692 (2d Cir. 1972) ("[S]ince the very purpose of a compromise is to avoid the trial of sharply disputed issues and to dispense with wasteful litigation, the court must not turn the settlement hearing into a trial or a rehearsal of the trial."); Dewey, 478 B.R. at 640-41 (internal quotations omitted). In addition, the bankruptcy court should consider and factor in the debtor's exercise of its business judgment when reviewing a proposed settlement. See Dewey, 478 B.R. at 641.

43. Because the Settlement is an integrated whole and would be impossible without any one of its pieces, the Court should review the entirety of the Settlement and not consider its individual pieces in isolation. See In re Enron Corp., No. 02 Civ. 8489 (AKH), 2003 WL 230838, *3 (S.D.N.Y. Jan. 31, 2003) (affirming bankruptcy court's decision that a settlement

"as a whole was fair and equitable"); In re Washington Mutual, Inc., 442 B.R. 314, 329 (Bankr. D. Del. 2011 (considering each of the claims resolved by the settlement but noting that the Court is "to determine whether the settlement as a whole is reasonable"). As one court explained, in assessing a global settlement of claims, "[t]he appropriate inquiry is whether the Settlement Agreement in **its entirety** is appropriate for the . . . estate." Ionosphere Clubs, 156 B.R. at 430 (S.D.N.Y. 1993) (emphasis added) (approving global settlement of claims, intercorporate transactions and ordinary course transactions); see e.g., In re Heritage Organization, L.L.C., 375 B.R. 230, 239 (Bankr. N.D. Tex. 2007) (finding that settlement embodied in a plan, when evaluated as a whole, was fair and equitable and in the best interests of the estates); In re Telesphere Commc'ns, Inc., 179 B.R. 544, 564 (Bankr. N.D. Ill. 1994) (approving settlement because as a whole it was beneficial for creditors' recoveries).

44. When considering whether to approve a settlement, courts in this jurisdiction generally "canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." Adelphia, 368 B.R. at 239 (citation omitted); see also In re SageCrest II, LLC, No. 08-50754 (LEAD), 2010 WL 1981041, at *4 (Bankr. D. Conn. May 18, 2010) ("[T]he Circuit Court has repeatedly instructed that a bankruptcy court is not to decide the numerous questions of law and fact raised by [objectors] but rather to canvass the issues and see whether the settlement fall[s] below the lowest point in the range to reasonableness.") (quotation marks omitted) (citing Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983)), aff'd sub nom. Topwater Exclusive Fund III v. SageCrest II, LLC (In re SageCrest LLC), No. 3:10CV978 (SRU), 2011 WL 134893 (D. Conn. Jan. 14, 2011).

45. In deciding whether a particular settlement falls within the "range of reasonableness," courts consider the following factors: (1) the balance between the litigation's

possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, "with its attendant expense, inconvenience, and delay"; (3) the paramount interests of creditors; (4) whether other parties in interest support the settlement; (5) the nature and breadth of releases to be obtained by officers and directors; (6) the "competency and experience of counsel" supporting, and "[t]he experience and knowledge of the bankruptcy court judge" reviewing, the settlement; and (7) "the extent to which the settlement is the product of arm's-length bargaining." Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (internal citations and quotations omitted) (hereafter "Iridium").

46. In addition, a bankruptcy court should evaluate a settlement "in light of the general public policy favoring settlements." In re Hibbard Brown & Co., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). "As a general matter, settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate." Dewey, 478 B.R. at 640 (internal citations and quotations omitted); see also Conn. R. & L. Co. v. N.Y., N.H. & H.R. Co., 190 F.2d 305, 307 (2d Cir. 1951) ("The very purpose of a compromise is to avoid the determination of sharply contested and dubious issues.") (citation omitted). Settlements in bankruptcy do not require unanimous or even widespread creditor consent or approval. Cf. In re Chemtura Corp., 439 B.R. 561, 591 (Bankr. S.D.N.Y. 2010) (noting that it is "typical" and "to be expected" that settlements in large chapter 11 cases will not be entirely consensual).

47. As set forth below and in the Declarations and as will be amply demonstrated at the Confirmation Hearing, each of the Iridium factors weighs heavily in favor of approval of the Settlement.

1. The Balance Between the Litigation's Possibility of Success and the Settlement's Future Benefits Weighs in Favor of the Settlement[65]

48. The Settlement represents an integrated set of compromises of numerous disputes and issues that were each subject to widely differing views held among the settling parties. None of the Settled Claims and Disputes can be viewed in isolation because the Debtors' and Consenting Noteholders' agreement to settle any one of them depended on the terms of the settlement of the other Settled Claims and Disputes.[66] To make it abundantly clear for the Court, the Settlement is a fully integrated, complex package. Regardless, whether considered individually or globally, an analysis of the possibility of success on the merits versus the benefits of the Settlement weighs in favor of the Court's approval of the Settlement under Iridium.

49. The Debtors have previously stated in SEC filings that certain of the Settled Claims and Disputes are "without merit". The Capco 2021 Group now tries to twist those statements — again, selectively — to prove that the Debtors concluded that the Transferred Guarantor Claims have absolutely no value and cannot be settled under any circumstance – even one that leads to the preservation of over $2.8 billion of equity value for all creditors. See Capco 2021 Obj. ¶¶ 26-27. The uniform — and unrebutted — testimony of the Debtors' witnesses, however, is that the belief they were attempting to convey in their SEC filings was that the Debtors were more likely than not to win if claims were litigated, but that there would be risk inherent in such litigation. NII Holdings' CEO, Steve Shindler, testified, for example, that the company believed it was right, but that it could not predict how a court would rule:

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65 While this Memorandum presents the arguments made, or that could be anticipated to be made, by the litigants with respect to the Settled Claims and Disputes, the Debtors have not adopted any particular arguments, and nothing herein should be construed as an admission or a position on the merits of any of the Settled Claims and Disputes by the Debtors.

66 See Findings of Fact, In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. Dec. 11, 2013) at ¶ 181 (approving global settlement that resolved intercompany balances for zero consideration because of "all of the benefits inuring to the Debtors' Estates as a result of those settlements").

- "So **the phrasing that's used here** that you asked specifically about we put in there **saying it was without merit was our company statement that we believe that we're right on the issue, that there was a claim that was filed against us, we've looked at it and we think that we were right**." Shindler Dep. at 85:2-8 (emphasis added).

- "Well, if you want to get into a matter of likelihood, you know, **we have a view that we're right on the issue. If it's brought to a Court to decide, I don't know where the Court's going to come out**." Id. at 87:4-8 (emphasis added).

- "[F]rankly the reason for a settlement is we don't know what the ruling would be. It may -- **the Court may rule, as a matter of law, that the claim is correct, in which case many other parties that are allocated a certain recovery would lose substantially all of it or a significant portion of what we've allocated to them**. That, in each one of the claims, was one of the factors and a reason for us to be willing to settle claims." Id. at 216:15-217:2 (emphasis added).

The company's Vice President and Treasurer, Daniel Freiman, testified similarly:

- "So I think our belief is generally all of the claims from Aurelius don't have merit, **meaning we think we have a stronger argument and it's likely that we would win**."

Freiman Dep. at 211:10-13 (emphasis added).

50. Moreover, although the Capco 2021 Group now insists that the words "without merit" must necessarily mean that claims have no value whatsoever, it is notable that in depositions, the Capco 2021 Group's counsel defined those words in **exactly the same way** that the Debtors had intended them:

> Q [MR. HARRIS]. Do you recall anyone reacting that they believed the transferred guarantor claims were meritorious?
>
> . . .
>
> A. **"Meritorious" meaning?**
>
> Q [MR. HARRIS]. **Likely to succeed**.

Id. at 132:23-133:5 (emphasis added).

51. The Capco 2021 Group's attempt to rely on the Debtors' belief that the Transferred Guarantor Claims are "without merit" in order to argue that any settlement of those claims must be unreasonable, is, put simply, specious.

52. In any event, even if the Debtors' belief were ultimately found to be correct, which would be subject to a court's interpretation of disputed facts and undeveloped areas of law after protracted and expensive litigation, the fact that certain of the Settled Claims and Disputes, when considered in isolation, might be without merit cannot form a basis to deny approval of the Settlement. Courts have recognized, and indeed routinely approve, settlements of claims that are perceived to be lacking in merit, including claims settled in isolation, unlike here where the resolution of the Transferred Guarantor Claims is part of the multi-faceted, integrated Settlement. See, e.g., Official Comm. of Unsecured Creditors v. CIT Grp./Bus. Credit Inc. (In re Jevic Holding Corp.), No. 14-01465, 2015 WL 2403443, at *4 (3d Cir. May 21, 2015) (affirming bankruptcy court's approval of a settlement pursuant to Bankruptcy Rule 9019 even though one of the claims resolved as part of the settlement was "far from compelling"); In re Am. Int'l Grp. Sec. Litig., 689 F.3d 229, 243-44 (2d Cir. 2012) ("Defendants in class action suits are entitled to settle claims pending against them on a class-wide basis even if a court believes that those claims may be meritless" provided that the other requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied); In re Telik, Inc. Sec. Litig., 576 F. Supp. 2d 570, 593 (S.D.N.Y. 2008) (analyzing an award of attorney's fees and refusing to "gainsay [the] hard-headed business decision" of defendants to settle a claim on which they knew "they were almost certain to prevail"); see also Davis v. Cent. Vt. Pub. Serv. Corp., No. 5:11-cv-181, 2012 WL 4471226, at *8 (D. Vt. Sept. 27, 2012) ("Although the [defendants] note that they share the objectors' concerns about the "lack of merit of this litigation," and characterize Plaintiff's claims

as "extremely weak," they maintain that the Settlement Agreement remains fair, reasonable, and adequate because through it they have been spared the unrecoverable costs of further litigation and have been permitted to settle the litigation on terms acceptable to them.") (internal citations omitted). Thus, the Debtors submit that this Iridium factor weighs in favor of approving the Settlement.

a. The Avoidance Claims

53. The first category of Settled Claims and Disputes resolved by the Settlement are any and all claims and causes of action that could be asserted (a) against any of the Debtors by any other Debtor and (b) against any Non-Debtor affiliate by any of the Debtors, including, without limitation, claims and causes of action pursuant to chapter 5 of the Bankruptcy Code (defined in the Plan as the "Avoidance Claims"). As a compromise of any and all Avoidance Claims, the Settlement will result in the recoveries to creditors of the various Debtors being calculated as if 25% of the transfers underlying the Luxco Notes Guaranties, the Capco/Luxco Subordination, the Brazil Note Transfer, the McCaw Transfers and the Nextel Peru Claims (each as defined below, and, collectively, the "Indentified Avoidance Claims") were avoided.

54. Jones Day undertook an extensive analysis of the facts underlying the Avoidance Claims as well as an in-depth legal analysis of such Claims and the Settlement thereof. The Debtors submit that the benefits to the estates of resolving the Avoidance Claims pursuant to the Settlement significantly outweigh the benefits that would inure to either the proponents or opponents of the Claims were they to be litigated.

i. Facts Giving Rise to the Avoidance Claims

55. Through their analysis of the Debtors' prepetition activities, the parties have identified a number of transfers or transactions that could be subject to avoidance, described in pertinent part herein.

56. *Capco Intercompany Note.* In 2009 and 2010, Capco sold its direct and indirect equity interests in certain foreign subsidiaries, including operating subsidiaries in Argentina, Peru and Chile, to Luxco.[67] In connection with these transactions, Luxco issued a $644 million note (the "Capco Intercompany Note") to Capco in exchange for Capco's sale of its interests in NII Mercosur to Luxco.[68] The face amount of the Capco Intercompany Note was based on a fair market value assessment of NII Mercosur (e.g., the value of its foreign subsidiaries).

57. *Luxco Transactions.* In February and May 2013, Luxco issued the Luxco Notes in the aggregate outstanding principal amount of $1.6 billion. Around the time of, and in part in connection with the issuance of the Luxco Notes, NII Holdings and Capco undertook the following three transactions: (a) NII Holdings entered into guaranties of Luxco's obligations to repay the Luxco Notes (the "Luxco Notes Guaranties"), (b) Capco agreed to subordinate its right to payment under the Capco Intercompany Note to Luxco's repayment of the Luxco Notes (the "Capco/Luxco Subordination") and (c) NII Holdings released or transferred of $900 million in intercompany obligations owing primarily to NII Holdings by certain of Luxco's subsidiaries (the "First Release"). The First Release consisted primarily of (a) 16 transactions by NII Holdings and other entities on February 7, 2013, whereby NII Holdings and such entities

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67 See Index I (2009 Corporate Restructuring), Tr. Ex. P059; Index II (2009 Corporate Restructuring), Tr. Ex. P060 (together, the "Restructuring Indices").

68 See Restructuring Indices.

released, transferred or forgave approximately $178 million in intercompany obligations and/or receivables owing to them and (b) NII Holdings' transfer of $614 million in obligations owed to NII Holdings by NII Brazil to Luxco in exchange for an intercompany note from Luxco (the "Brazil Note"), which was subsequently transferred through the corporate chain of ownership back to Luxco and cancelled (the "Brazil Note Transfer").

58. *Peru Transfers.* In April 2013, in connection with the sale of NII Peru (as defined in the Disclosure Statement), NII Holdings contributed intercompany receivables and royalties owing to it to (a) NII Peru of $93 million (the "Peru Transfer") (which included a portion of the Upstream Transfers, discussed in greater detail below) and (b) the parent of NII Argentina of $20.2 million in 2013 and $24.3 million in 2014 (the "Argentina Transfer").

59. *McCaw Transfers.* Also in 2013, NII Holdings, Nextel International (Services), Ltd. ("NIS") and NII Funding Corp. forgave $48 million owed to them by McCaw (the "McCaw Transfers").

60. *Upstream Transfers.* There were also upstream transfers of intercompany receivables related to services provided by NIS to the Non-Debtor Affiliates from NIS to NII Holdings of $103 million in 2013 (consisting of $15.8 million owing from NII Argentina and $86.6 million owing by NII Peru) and $18.9 million owing by NII Argentina in 2014 (collectively, the "Upstream Transfers").

ii. Canvassing the Issues With Respect to the Avoidance Claims and the Settlement Thereof

61. As discussed in the Disclosure Statement, the adjudication of the Avoidance Claims would have been a highly fact-intensive undertaking, requiring a trial on the merits examining the circumstances of every one of the transactions underlying these claims. An analysis and litigation of the Avoidance Claims would have necessarily involved an analysis of

the solvency and/or capitalization of the transferors (namely, NII Holdings, NIS and Capco, as applicable) and all of the transferees, as well as of the value, if any, transferred to or otherwise received by the transferors in the applicable transactions.

62. The solvency prong of this analysis would have required significant discovery into the Debtors' businesses at the time of each of the transactions, and would have necessarily involved the use of experts by both those prosecuting and defending the Avoidance Claims to testify regarding the solvency or insolvency of the applicable Debtor and non-Debtor entities. Because it likely would have been so fact-dependent, solvency litigation in connection with the Avoidance Claims likely would have been hotly contested, as the litigants could have opted to employ different tests to establish their position regarding the solvency of the relevant Debtors, including (a) the balance sheet test, analyzing whether an entities' liabilities exceed the market value of its assets, (b) the cash flow test, analyzing whether an entity is paying its debts as they become due, and (c) the capital adequacy test, analyzing whether the entity has adequate capital to operate its business. In addition, even within the balance sheet test, the litigants' experts could have employed different methodologies for establishing solvency, including, among others, the "income approach," or a discounted cash flow analysis, a "market approach" using data available from the market, or an "asset-based" approach. Competing approaches would have had to be reconciled by the Court to determine whether an entity was solvent or insolvent at the time of the applicable transfer. Accordingly, the solvency analysis would have been complex, involved dueling experts and likely would have resulted in prolonged and expensive litigation.

63. If the Court ultimately found that the applicable transferor was insolvent or undercapitalized at the time of the relevant transaction, the party pursuing the Avoidance

Claims would have also been required to establish that no reasonably equivalent value was given in exchange for the transfer. Because the majority of the Avoidance Claims are inter-debtor in nature and involve "downstream" transfers or guarantees (i.e., a transfer or guarantee from a parent entity to its subsidiary), the Avoidance Claims would have become increasingly complex in part because the court may have applied a rebuttable "presumption" that a transfer to a solvent subsidiary is made for reasonably equivalent value. See, e.g., Tourtellot v. Huntington Nat'l Bank (In re Renegade Holdings, Inc.), 457 B.R. 441, 444 (Bankr. M.D.N.C. 2011) ("With a downstream guarantee, courts presume that the parent corporation received a benefit in the form of increased stock value resulting from the increased strength and value of its subsidiary receiving the proceeds of the loan guaranteed by the parent."). In that event, the solvency of Luxco and/or any other transferees would necessarily have become an issue in any litigation of the Avoidance Claims.

64. Adding yet another layer of complexity would have been the existence of any "intermediate" subsidiaries between the transferor and the transferee. Parties pursuing the Avoidance Claims could have claimed that, if such intermediate subsidiaries were insolvent, this would have rebutted or rendered inapplicable any presumption of reasonably equivalent value. In such a scenario, the defendants in the Avoidance Claims litigation may have attempted to establish that reasonably equivalent value was nevertheless received as a result of the applicable transfer, and the plaintiffs likely would have argued that it was not, all of which likely would have required expert testimony. For these reasons, the analysis as to whether reasonably equivalent value was received in each transaction would have been highly fact-based and complicated.

65. Assuming that a prima facie case could be made that a transaction should be avoided as a fraudulent transfer, affirmative defenses may exist that would protect such transactions from avoidance. For example, to the extent avoidable as a constructively fraudulent transfer, certain of the above-described transactions, including portions of the First Release and the Capco/Luxco Subordination, may be protected by the safe harbor provisions of section 546(e) of the Bankruptcy Code. Generally, section 546(e) of the Bankruptcy Code provides that a transfer cannot be avoided if such transfer is "made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract" or a "settlement payment." 11 U.S.C. § 546(e). Because of the lack of case law directly addressing these issues and the division among the Circuits where case law does exist, the resolution of these would involve expensive litigation, including likely appeals, the outcome of which is highly uncertain.

66. In addition, all of the Avoidance Claims would be mooted by the substantive consolidation of the Debtors' estates, an argument likely to be made by parties that would be adversely affected by victories with respect to the Avoidance Claims. It is fundamental that, whether constructive or intentional, a fraudulent transfer can only occur if the transferor and the transferee are treated as distinct parties. In the Second Circuit, courts apply the two-prong test from Union Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), 860 F.2d 515 (2d Cir. 1988), which examines (a) "whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit" and (b) "whether the affairs of the debtors are so entangled that consolidation will benefit all creditors." Id. at 518 (citations and quotation marks omitted). This inquiry is also intensely fact-

sensitive and, as with the Settled Claims and Disputes, the issue of substantive consolidation, if raised, likely would be hotly contested. The Debtors submit that the benefits to the estates of resolving the Avoidance Claims pursuant to the Settlement significantly outweigh the benefits that would inure to either the proponents or opponents of the Claims were they to be litigated.

b. The Recharacterization Claims

67. The second category of Settled Claims and Disputes resolved by the Settlement are claims seeking to recharacterize as equity the intercompany obligations existing between a Debtor and another Debtor or between a non-Debtor subsidiary of NII Holdings and a Debtor outstanding as of the Petition Date (defined in the Plan as the "Recharacterization Claims"). As a compromise of any and all Recharacterization Claims, the Settlement will result in the recoveries to creditors of the various Debtors being calculated as if 25% of the Recharacterization Claims (except the Capco Intercompany Note) are recharacterized as equity, with the remaining 75% of such obligations treated as unsecured debts against the obligors. In addition, the Peru Transfers and the McCaw Transfers, which are included as Avoidance Claims, are subject to a compounding effect under the Settlement that accounts for their recharacterization. Finally, the Capco Intercompany Note will be treated entirely as debt, but the claim to avoid the Capco/Luxco Subordination will be resolved as an Avoidance Claim.

68. Jones Day undertook an extensive analysis of the facts underlying the Recharacterization Claims as well as an in-depth legal analysis of such Claims and the Settlement thereof. The Debtors submit that the benefits to the estates of resolving the Recharacterization Claims pursuant to the Settlement significantly outweigh the benefits that would inure to either the proponents or the opponents of the Claims were they to be litigated.

i. Facts Giving Rise to the Recharacterization Claims

69. Over the course of the years preceding these Chapter 11 Cases, in the ordinary course of their business, the Debtors entered into various transactions with other Debtors and with the Non-Debtor Affiliates, which led to the accrual of certain intercompany receivables and payables on the Debtors' books and records. In addition, intercompany obligations arose in connection with the Debtors' capital-raising and intercompany funding activities.

70. As of the Petition Date, NII Holdings owed approximately $3.06 billion in unsecured intercompany debt to Capco (the "Holdings Obligations"). The Holdings Obligations are evidenced by four intercompany notes issued by NII Holdings to Capco. The Holdings Obligations arose in connection with Capco's issuance of the Capco Notes. Each time Capco issued a series of notes, Capco subsequently transferred the note proceeds to NII Holdings, which in turn issued an intercompany note to Capco in exchange for the funds. All of the Holdings Obligations are set forth in documented promissory notes.

71. As of the Petition Date, NII Brazil owed more than $1.38 billion in unsecured obligations to Luxco (including the Brazil Note) (the "Brazil Obligations"). The Brazil Obligations are evidenced by more than 40 intercompany notes, which generally arose in connection with loans extended by Luxco to NII Brazil. Some of the Brazil Obligations relate to loans made by McCaw, but were transferred eventually to Luxco pursuant to the Brazil Note Transfer. The Brazil Obligations and related receivables were treated as debt from an accounting perspective, though in a 2013 letter to the IRS, NII Holdings stated that it considered the Brazil Obligations to be in the nature of equity contributions rather than debt. Despite the expectation that the Brazil Obligations would be paid on fixed maturity dates, in most instances, the Brazil Obligations were extended rather than paid on the maturity dates. To obtain credit from lenders

at the local level in Brazil, the Brazil Obligations were subordinated to other debt issued by NII Brazil.

72. Also as of the Petition Date, (a) NIS owed $788 million to NII Holdings (the "NIS Obligations") and (b) NII Funding owed $214 million to NII Holdings (the "Funding Obligations"). The NIS Obligations and Funding Obligations arose pursuant to obligations that existed between affiliated parties (e.g., subsidiary to parent); however, the precise genesis of certain of these obligations is unknown and there is little or no supporting documentation. Further, it is unknown whether any repayments were made or contemplated with respect to the NIS Obligations and no payments were made with respect to the Funding Obligations. In addition, while both the NIS Obligations and the Funding Obligations were recorded as debt obligations on the respective entity's balance sheet, at least the Funding Obligations were not treated as debt for tax purposes.

73. Finally, NII Mexico and NII Argentina owe approximately $168 million as of the Petition Date to NII Holdings and Capco pursuant to intercompany agreements relating to service fees and royalties (the "Mexico and Argentina Obligations"). These agreements have been modified as the business changed, and some obligations have been suspended or forgiven, before the closing of the Mexico Sale Transaction. Moreover, repayment of the Mexico and Argentina Obligations relating to Mexico had been subordinated to its local debt obligations. Some payments have been made with respect to the Mexico and Argentina Obligations and obligations continued to accrue postpetition.

ii. Canvassing the Issues With Respect to the Recharacterization Claims and the Settlement Thereof

74. Consistent with the case law on the enforceability of intercompany claims, the Debtors' analysis of the Recharacterization Claims focused on the intent associated with each

Recharacterization Claim, including, but not limited to, consideration of the following factors: (a) the names given to the instruments, if any, evidencing the indebtedness, (b) the presence or absence of a fixed maturity date and schedule of payments, (c) the presence or absence of a fixed rate of interest and interest payments, (d) the source of repayments, (e) the identity of interest between the creditor and the stockholder, (f) the inadequacy or adequacy of capitalization, (g) the security, if any, for the advances, (h) the entity's ability to obtain financing from outside lending institutions, (i) the extent to which the advances were contractually subordinated to the claims of outside creditors, (j) the extent to which advances were used to acquire capital assets and (k) the presence or absence of a sinking fund to provide repayments. See Bayer Corp. v. MascoTech, Inc. (In re Autostyle Plastics, Inc.), 269 F.3d 726, 749-50 (6th Cir. 2001). The Debtors also reviewed historical practices and other evidence as to whether there was any intent that the Recharacterization Claims would be enforced or repaid.

75. To assist in this review and analysis of the Recharacterization Claims, Jones Day (a) reviewed each of the underlying documents supporting various Recharacterization Claims, (b) met with many of the Debtors' employees to discuss the history and nature of various Recharacterization Claims and (c) undertook an assessment of the Debtors' historical practices and policies related to the underlying obligations.

76. The Debtors determined[69] that the Recharacterization Claims could be subject to a wide range of colorable views as to each underlying transaction and that the costs associated with litigating the validity of each of the Recharacterization Claims would have a detrimental impact on all creditor recoveries. Beyond the threshold costs of reviewing, analyzing and taking discovery with respect to hundreds of transactions, the ensuing litigation

[69] After multiple meetings between the Debtors and various parties, including the Creditors' Committee and the Independent Manager, among others, it was clear that these parties shared the view that there was substantial risk in litigating the Recharacterization Claims.

would be extremely time-consuming and expensive. Because of the factors analyzed by courts, claims to recharacterize debt as equity are highly complex and fact-intensive, requiring extensive discovery and expert testimony addressing solvency, valuation, contemporaneous exchange of value, arm's-length terms, accounting practices, allocation issues and other issues. Absent consensual resolution, fully litigating these issues likely would cost the Debtors' estates millions of dollars and substantially delay their ability to confirm a chapter 11 plan or, worse, force these cases into chapter 7.[70]

77. In light of these concerns, the Debtors, the Creditors' Committee and the Consenting Noteholders agreed to settle the Recharacterization Claims as part of the overall Settlement. The parties determined that all constituents, including holders of the Capco 2021 Notes, would receive a higher recovery under the Settlement with the Recharacterization Claims settled than in the alternative scenario in which the Debtors would be mired in extensive litigation over numerous inter-creditor and inter-Debtor disputes. Thus, the Debtors submit that the benefits of resolving the Recharacterization Claims pursuant to the Settlement outweigh the possibility of successfully defending such claims.

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[70] Courts have recognized the substantial benefits of resolving intercompany claims pursuant to plans of reorganization. See In re WorldCom, Inc., No. 02-13533 (AJG), 2003 WL 23861928, at *32 (Bankr. S.D.N.Y. Oct. 31, 2003) ("[R]esolution of these disputes [regarding intercompany claims] by virtue of the differing treatment of differently situation classes of unsecured creditors, as provided in the Plan, avoids potentially massive and protracted litigation over the following issues: the precise allocation of assets and liabilities among entities; the enforcement or validity of different types of intercompany claims; [and] the amount of intercompany claims . . . ."); Findings of Fact and Conclusions of Law Confirming Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, and Related Relief, In re Enron Corp., No. 01-16034 (AJG) (Bankr. S.D.N.Y. July 15, 2004) (approving settlement as part of a plan because "[t]he global compromise benefits all creditors by, *inter alia*, reducing the potential costs of litigation including the costs of performing diligence regarding a multitude of underlying facts and transactions, the professional fees associated with the litigation, the delays and uncertainty associated with litigation, the prolonged costs of administering the estates, the resulting depletion of the estate's assets, as well as Creditors' lost time value of money resulting from later distributions.").

c. The Transferred Guarantor Claims

78. A third category of Settled Claims and Disputes is the Transferred Guarantor Claims. Despite the integrated nature of the overall Settlement, this category is the crux of the Capco 2021 Group's confirmation objection.

79. The Transferred Guarantor Claims include Claims alleging (a) that particular aspects of the inter-company transfers of equity interests of the Transferred Guarantors in 2009 (the "2009 Transfers") violated the terms of the indentures governing the 2009 Capco Notes (as defined below) (the "2009 Capco Notes Indentures", Trial Exhibits P135 & P139)[71]; and (b) that the purported releases of the Transferred Guarantors in 2009 from their guarantees of the 2009 Capco Notes were ineffective and such guarantees remain in full force and effect or, alternatively, should be reinstated. As a compromise of the Transferred Guarantor Claims, the Settlement will result in the recoveries to creditors of the various Debtors being calculated as if a gross percentage of 21% of the face amount of the guarantees of the Transferred Guarantors remained in full force and effect.[72] Jones Day undertook an extensive analysis of the facts underlying the Transferred Guarantor Claims as well as an in-depth legal analysis of such Claims and the Settlement thereof. The Debtors submit that the benefits to the Transferred Guarantors and other Debtor entities of resolving the Transferred Guarantor Claims pursuant to the Settlement significantly outweigh the benefits of litigating such Claims.

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[71] Citations and references herein to the 2009 Capco Notes Indentures are to sections of both the indenture governing the 8.875% Notes and the indenture governing the 10% Notes. The 2009 Capco Notes Indentures are substantially similar for all relevant purposes of this Memorandum. See Indenture for 10% Senior Notes due 2016 – dated August 18, 2009, Tr. Ex. P135; Indenture for 8.875% Senior Notes due 2019 – dated December 15, 2009, Tr. Ex. P139.

[72] Under the Initial Plan, the Transferred Guarantor Claims were settled at 27.5% of their face amount. The reduction to 21% under the current Settlement is a change that inures largely to the benefit of the Holders of the Capco 7.625% Note Claims (i.e., the Capco 2021 Group who now oppose the Settlement) and accounts for $46.3 million of the $169.4 million of increased recovery that such claims are receiving over the recovery provided for under the prior Settlement (on a pre-rights offering basis).

i. Facts Giving Rise to the Transferred Guarantor Claims

80. In 2009, Capco issued two series of senior unsecured notes: the Capco 8.875% Notes and the Capco 10% Notes (together, the "2009 Capco Notes"). Capco's payment under the 2009 Capco Notes was guaranteed by its direct parent, NII Holdings, as well as by NII Holdings' domestic subsidiaries, which included, among others, McCaw, McCaw's direct wholly owned subsidiary Airfone and NIU.[73] The 2009 Capco Notes Indentures refer to the guarantees as the "Note Guarantees."[74] The direct and indirect subsidiaries of NII Holdings that guaranteed Capco's obligations were signatories to the Indentures and are referred to in the Indentures as "Subsidiary Guarantors."[75]

81. Also in 2009, the Debtors began exploring a comprehensive, multi-step corporate restructuring.[76] The objective of the restructuring was to move all of the Debtors' operating companies under a newly created upper tier holding company organized in Luxembourg.[77] In doing so, the Debtors expected to achieve certain tax and other efficiencies, improving its financial flexibility.[78] To accomplish that objective, and with the assistance of consultants and legal and financial advisors, the Debtors developed a prearranged series of transaction steps involving multiple internal transfers of equity interests among NII Holdings' subsidiaries.[79]

82. Before the corporate reorganization, the organizational chart of the Debtors and the Non-Debtor Affiliates appeared as follows:

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73 See 2009 Capco Notes Indenture §§ 4.18(a), 10.01(a).

74 See id.

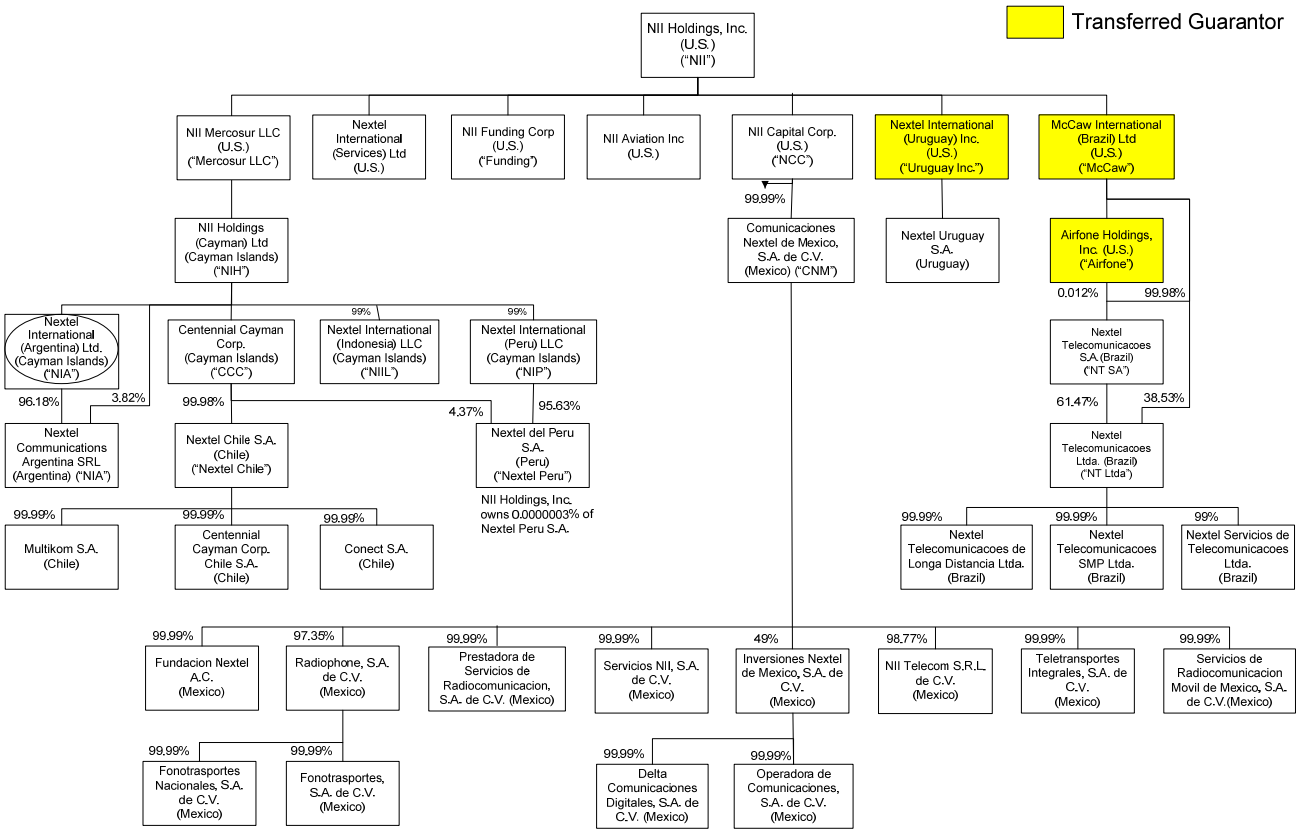
75 See id.

76 See Restructuring Indices.

77 Id.

78 See Freiman Dep. at 139:17-25.

79 See Restructuring Indices.



83. As part of the corporate reorganization, the Debtors created NII Global Holdings, Inc. ("NII Global") in November 2009 as a direct, wholly owned subsidiary of Capco. As a domestic subsidiary of NII Holdings, NII Global became a Subsidiary Guarantor. The Debtors then engaged in a series of transaction steps to accomplish its corporate restructuring, the end result of which was, among other things, that the ownership of McCaw and NIU was transferred to downstream, indirect foreign subsidiaries of NII Holdings. More specifically:

a. NII Holdings transferred its equity interest in McCaw (along with its subsidiary Airfone) and NIU to its direct, wholly owned subsidiary, Capco;

b. Capco, in turn, transferred those equity interests to its own direct, wholly owned subsidiary, NII Global;

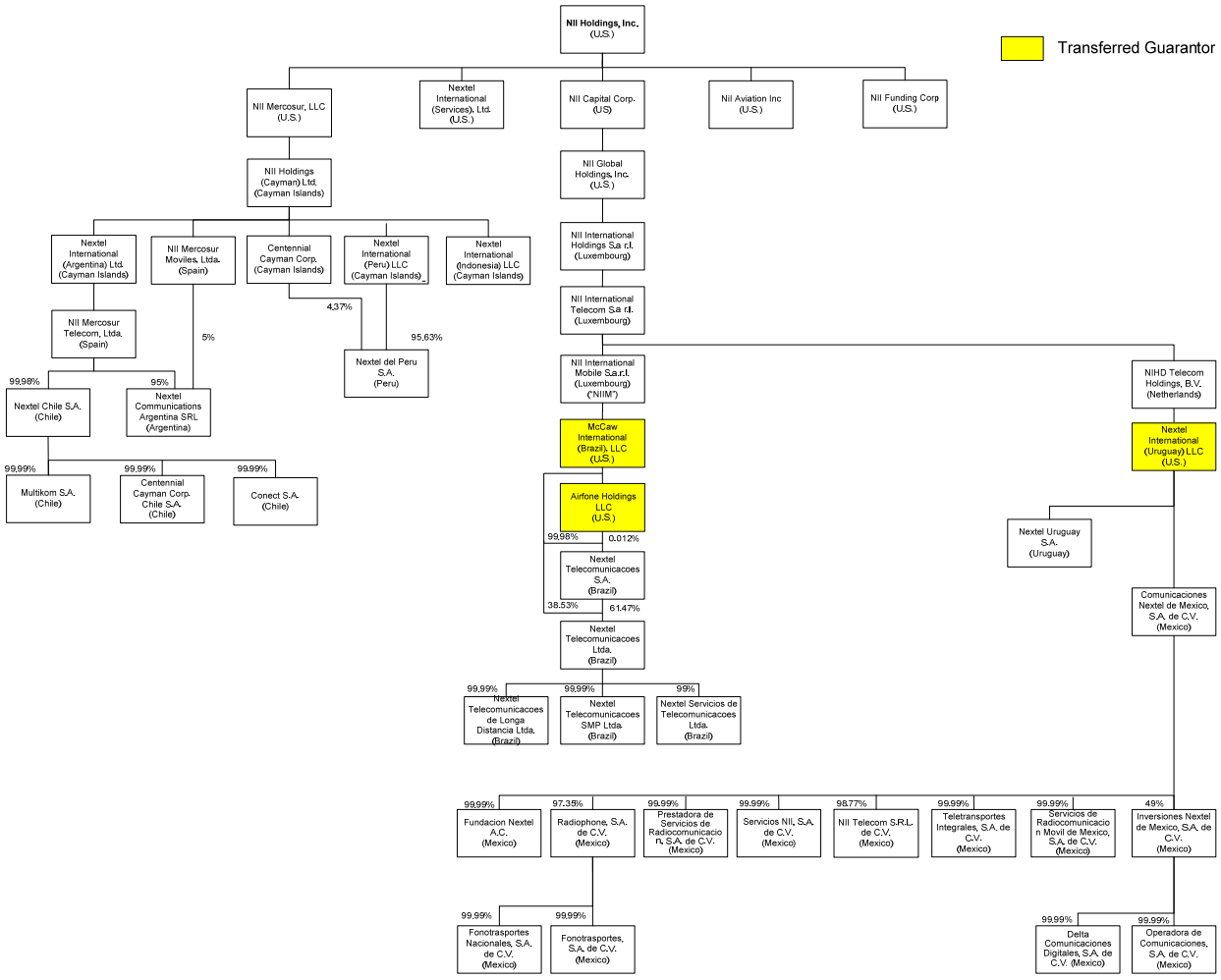
c. NII Global next transferred those equity interests to a newly created, wholly owned subsidiary based in Luxembourg, NII International Holdings S.à r.l.;

d. NII International Holdings S.à r.l. then transferred the equity interests to its newly created, wholly owned subsidiary, NII International Telecom S.à r.l. (now known as NII International Telecom S.C.A., or Luxco); and

e. NII International Telecom S.à r.l. then separately transferred McCaw and NIU to its own newly created wholly owned subsidiaries.

See NII Holdings Inc. Officer's Certificate, dated March 8, 2010, Trial Exhibit O010; see also Restructuring Indices.

84. Following all of the steps comprising the reorganization in 2009 and 2010, the organizational chart of the Debtors and the Non-Debtor Affiliates appeared as follows:



85. Upon the completion of those transfers, the Note Guarantees of McCaw, Airfone, and NIU were purportedly released under Section 10.05(a)(v) of the 2009 Indentures,

which provides that "[a]ny Subsidiary Guarantor shall be released and relieved of any obligations under its Note Guarantee" if, among other things, "such Subsidiary Guarantor becomes a Foreign Restricted Subsidiary by merger, consolidation or otherwise, unless such Foreign Restricted Subsidiary" has certain other obligations that are not at issue here.[80]

86. In March 2010, Capco and the then-existing Indenture Trustee entered into Supplemental Indentures to the 2009 Capco Notes Indentures that were required, under Section 10.05(b), to "evidence" the purported releases of the Note Guarantees by the Transferred Guarantors. In the Supplemental Indentures, the Indenture Trustee acknowledged receiving from the Debtors an Officer's Certificate that represented, warranted, and certified that the transfers of McCaw, Airfone, and NIU "complied with all applicable provisions and conditions of Sections 4.10, 10.04(a)(i) and 10.04(a)(ii)(B) of the [2009 Capco Notes] Indenture[s]."[81] The Indenture Trustee also acknowledged receipt of an Opinion of Counsel from the Debtors "expressing the legal opinion . . . that, pursuant to Section 10.05(a)(v) of the [2009 Capco Notes] Indenture[s], all of the conditions precedent to the release of the obligations of each Released Guarantor from its respective obligations under its respective Note Guarantee have been complied with."[82] The Supplemental Indentures were not publicly filed contemporaneously with

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80 See 2009 Capco Notes Indenture § 10.05(a)(v).

81 Supplemental Indenture No. 2 to 10.0% Senior Notes due 2016 – dated March 8, 2010, Tr. Ex. P132, at ¶ 2 Supplemental Indenture No. 1 to 8.875% Senior Notes due 2019 – dated March 8, 2010, Tr. Ex. P133 (together, the "Supplemental Indentures"), at ¶ 2.

82 Id. ¶ 3. Under Section 10.05(b) of the 2009 Capco Notes Indentures, the Indenture Trustee was required to sign the Supplemental Indentures upon Capco's presentation of the Officers' Certificate and Opinion of Counsel:

> Upon delivery by [Capco] to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that one of the foregoing requirements [of Section 10.05(a)] has been satisfied and the conditions to the release of a Guarantor under this Section 10.05 have been met, the Trustee shall execute any documents reasonably required in order to evidence the release of such Subsidiary Guarantor from its obligations under its Note Guarantee.

2009 Capco Notes Indenture § 10.05(b). Per Section 7.02(a), the Indenture Trustee was permitted to rely on Capco's Officers' Certificate and Opinion of Counsel, without undertaking any analysis or investigation of its own: "The Trustee may conclusively rely upon any document believed by it to be genuine and to

their execution; they were filed with the U.S. Securities & Exchange Commission (the "SEC") in March 2014.

87. Also in 2010, Capco engaged in an exchange offer with respect to the 2009 Capco Notes. As part of Capco's original offerings of those Notes, Capco and the Subsidiary Guarantors, including McCaw, Airfone and NIU had entered into Registration Rights Agreements (defined below) under which it agreed, among other things, to use commercially reasonable efforts to complete an exchange offer that would have the effect of removing the transfer restrictions on those Notes by effectively converting them into Notes that had been registered under the Securities Act of 1933, as amended (the "Securities Act").[83] This process is used widely in the market and is consistent with the rulings of the SEC.

88. Thus, in early 2010, pursuant to the Registration Rights Agreements, Capco filed an S-4 Registration Statement and prospectus with the SEC, offering to exchange the restricted 2009 Capco Notes for an equal amount of registered and unrestricted exchange notes.[84] The letters of transmittal effecting holders' agreement to this exchange (the "Letters of Transmittal") stated that such holders were transferring their "right, title and interest" in the restricted 2009 Capco Notes to Capco.[85] As noted in the prospectus, however, "[t]he Exchange Notes will evidence the same debt as the Old Notes, including principal and interest, and **will be**

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have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document." Id. § 7.02(a). Section 7.02(b) similarly provides that "[t]he Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel." Id. § 7.02(b).

83 Registration Rights Agreement for 10.0% Senior Notes due 2016 – dated August 18, 2009, Tr. Ex. P136; Registration Rights Agreement for 8.875% Senior Notes due 2019 – dated December 15, 2009, Tr. Ex. P139 (together, the "Registration Rights Agreements").

84 Form S-4 for 10% senior notes due 2016 and 8.875% senior notes due 2019 – March 8, 2010, Tr. Ex. P143 ("Form S-4").

85 See Letter of Transmittal with respect to the Capco 2019 Notes, filed on March 8, 2010; Letter of Transmittal with respect to the Capco 2016 Notes, filed on March 8, 2010. Copies of the Letters of Transmittal are attached as Exhibit Q-1 and Exhibit Q-2 to the Revised Declaration of Adam J. Goldberg in Support of Objection to Confirmation of the Plan [Docket No. 761].

issued under and be entitled to the benefits of the same indentures that govern the Old Notes." (emphasis added).[86] The prospectus further noted that "[t]he terms of the Exchange Notes are substantially identical to those of the Old Notes, except that the Exchange Notes will be registered under the Securities Act, and the transfer restrictions and registration rights relating to the Old Notes will not apply to the Exchange Notes."[87] The Registration Rights Agreements likewise noted that the exchange notes would be identical to the old notes in all material respects except for the elimination of the transfer restrictions, defining the new notes as "debt securities of [Capco] and the related guarantees of the Guarantors as provided for in the Indenture identical in all material respects to the [old notes] (except that the Additional Interest provisions and transfer restrictions shall be eliminated) to be issued under the Indenture."[88]

ii. Aurelius's Asserted Claims Regarding the Transferred Guarantors

89. Several years after the transfers of McCaw, Airfone, and NIU, Aurelius began purchasing 2009 Capco Notes and apparently learned of the 2009 Transfers of McCaw and NIU. As stated above, Aurelius sent certain of the Debtors a letter on March 4, 2014 asserting that one of the many steps that the Debtors undertook in its corporate reorganization in 2009 violated Section 10.04 of the 2009 Capco Notes Indentures, which governs the disposition of all or substantially all of the assets of Subsidiary Guarantors.[89] According to Aurelius, the transfer of McCaw (along with its direct subsidiary Airfone) and NIU from NII Global to

86 Form S-4.

87 Prospectus for 10% senior notes due 2016 and 8.875% senior notes due 2019 – March 8, 2010, Tr. Ex. P143.

88 Registration Rights Agreements.

89 See Aurelius March 4 Letter.

NII International Holdings S.à r.l constituted a sale of all or substantially all of the assets of NII Global, which was a Subsidiary Guarantor.[90]

90. Section 10.04 of the 2009 Capco Notes Indentures provides, in relevant part, that "[a] Subsidiary Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into . . . , another Person, other than [NII Holdings], [Capco] or another Subsidiary Guarantor, unless," among other things, "such sale or other disposition or consolidation or merger **complies with Section 4.10** hereof,"[91] Section 4.10, in turn, governs transactions that constitute "Asset Sales."[92] That section provides, in relevant part, that "[NII Holdings] shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless" certain requirements are satisfied.[93] There is no dispute that none of the transfers of McCaw or NIU were Asset Sales. That is because the 2009 Capco Notes Indentures' definition of "Asset Sale" provides that "a transfer of assets or Equity Interests between or among [NII Holdings] and its Restricted Subsidiaries" "shall be deemed not to be Asset Sales."[94]

91. According to Aurelius, when NII Global transferred its ownership of McCaw and NIU to its direct subsidiary, International Holdings, it had disposed of all or substantially all of the assets of NII Global without satisfying Section 10.04(a)(ii)'s requirement that such a transaction must "compl[y] with Section 4.10."[95] Aurelius's argument was that,

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90 Id.

91 2009 Capco Notes Indenture § 10.04 (emphasis added).

92 Id. § 4.10.

93 Id.

94 Id. "Restricted Subsidiary" refers to any Subsidiary that is not an "Unrestricted Subsidiary" which, in turn, is defined as any "Subsidiary of the Parent (other than the Company) that is designated by the Board of Directors of the Parent as an Unrestricted Subsidiary pursuant to a Board Resolution in compliance with Section 4.16 hereof and any Subsidiary of such Subsidiary." Id. at 25.

95 Aurelius March 4 Letter.

because the transfer of McCaw and NIU by NII Global did not constitute an Asset Sale, it was impossible for that transfer to have "complie[d] with Section 4.10."[96] Alternatively, Aurelius argued that Section 10.04(a)(ii)'s requirement that the transfer must "compl[y] with Section 4.10" meant that the transfer must have satisfied the requirements of Section 4.10 as if it **were** an Asset Sale.[97] According to Aurelius, the requirements of Section 4.10 were not satisfied because the consideration for the transfers of McCaw and NIU was not "Fair Market Value" (as required by Section 4.10(a)(i)), and none of that consideration was in the form of cash, Cash Equivalents, or Replacement Assets (as required by Section 4.10(a)(ii)).[98] Because, Aurelius asserted, the requirements of Section 4.10 had not been satisfied, the transfer of McCaw and NIU had failed to satisfy Section 10.04.

92. Finally, Aurelius asserted that, because the transfers by which McCaw, Airfone, and NIU had become Foreign Restricted Subsidiaries purportedly violated Section 10.04, the release of the Note Guarantees of McCaw, Airfone, and NIU were ineffective. Aurelius claimed that those Note Guarantees either should be deemed to still be in place or should be reinstated.

iii. Canvassing the Issues With Respect to the Transferred Guarantor Claims and the Settlement Thereof

93. The Transferred Guarantor Claims raise a host of complex issues that necessarily would have required intensive discovery efforts and factual development. Further, because there is a limited amount of case law directly on point, a court tasked with resolving those claims would essentially be writing on a blank slate, [redacted]

96 Id.

97 Id.

98 Id.

[redacted].[99] While the Debtors have always believed that they are more likely than not to prevail on these claims were they to be litigated — and have said so publicly — the complexity of the issues and the dearth of apposite case law would render the outcome of such litigation inherently uncertain.[100] Moreover, contrary to the self-serving arguments of the Capco 2021 Group, there does not appear to be any "silver bullet" defense to the Transferred Guarantor Claims that would be guaranteed to dispense with them without the need for substantial, lengthy efforts. Rather, as discussed below, the issues raised by the Transferred Guarantor Claims are subject to numerous, colorable arguments and counter-arguments, all of which would require factual development, and would be intensely disputed.

i) *Did the transfers of McCaw and NIU trigger Section 10.04 in the first place?*

94. Aurelius's claim that the Debtors violated Section 10.04 necessarily assumes that provision applies in the first instance. If the Transferred Guarantor Claims were actually litigated, however, the Debtors would argue that, by application of the step-transaction doctrine, Section 10.04 was never triggered. Aurelius's claim is based on one step of the Debtors' comprehensive multi-step corporate restructuring in 2009 and 2010. One could argue, however, that the entire series of transaction steps were prearranged parts of a single transaction, the purpose of which was, among other things, to transfer McCaw and NIU from NII Holdings to a subsidiary of Luxco. There is case law to support the position that under the so-called step-transaction doctrine, all of those interrelated steps arguably should be treated as a single integrated transaction. If the transaction were viewed as a single transfer of McCaw and NIU

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99 See, e.g., [redacted]

100 Of course, the outcome of litigation is inherently uncertain even when the issues are simple. As Judge Pollack aptly noted many years ago, "this Court recognizes that litigation of any kind **always** involves risks and that **litigants can never be sure what a jury will do**." In re Prudential Secs. Ltd. P'ships Litig., No. M-21-67 (MP), 1995 WL 798907, at *14 (S.D.N.Y. Nov. 20, 1995) (emphasis added).

from NII Holdings, Section 10.04 likely would not be implicated because the transfer of those entities from NII Global would be ignored. See, e.g., Orr v. Kinderhill Corp., 991 F.2d 31, 35 (2d Cir. 1993) ("We will not turn a blind eye to the reality that the transfer of the New York Property and the spin-off of KIC shares constituted a single, integrated transaction . . . . In equity, 'substance will not give way to form, [and] technical considerations will not prevent substantial justice from being done.'") (citations omitted).

95. There are several potential responses and counter-arguments to this point. First, it might be argued that the step-transaction doctrine is typically utilized by the party challenging a series of corporate events, and is not available to the party that undertook the series of transactions in a particular manner, especially when those transactions were intended to generate a benefit.

96. Second, it might also be argued that the equitable step-transaction doctrine is inapplicable where its application would lead to inequitable results. On this point, Aurelius would likely argue that the 2009 Capco Note Indentures as a whole appear intended to protect holders' interest in maintaining the Note Guarantees. For example, under Section 5.01(a)(iv), NII Holdings may not dispose of all or substantially all of its assets unless, among other things, each Subsidiary Guarantor confirms that its Note Guarantee continues to apply.[101] Likewise, Sections 5.01(d)(ii) and 10.04(a)(ii)(A) prohibit various transactions unless, among other things, the Note Guarantees are preserved.[102] Accordingly, Aurelius would argue that a court in equity should decline the application of the step-transaction doctrine where there are several provisions of the Indentures that are designed to preserve the Note Guarantees.

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101 See 2009 Capco Notes Indenture § 5.01(a)(iv).

102 Id. §§ 5.01(d)(ii) & 10.04(a)(ii)(A).

97. In addition, Aurelius would likely inquire whether Capco disclosed to parties involved in the negotiations of the 2009 Capco Note Indentures, including the underwriters, that Capco was considering a restructuring and that the restructuring could potentially result in the release of Note Guarantees. Here, at the time that Capco issued the Capco 8.875% Notes, it also began transferring the equity interests of NIU down its corporate chain. Aurelius may argue that the Debtors cannot avail themselves of an equitable doctrine if, at the time the Capco 2009 Notes were being issued with Note Guarantees, Capco was planning to eliminate some of those Note Guarantees without disclosing that fact.[103]

98. Moreover, a successful application of the step-transaction doctrine here depends upon a showing that, when viewed as an integrated series of transaction steps in 2009, a direct transfer of the Equity Interests of McCaw and NIU from NII Holdings to the subsidiaries of International Holdings would not have otherwise violated the 2009 Capco Note Indentures. It has been posited that, if the step-transaction doctrine were applied, then such a transfer may have violated Section 5.01 of the 2009 Capco Notes Indentures, which sets forth the circumstances and conditions under which NII Holdings may transfer all or substantially all of its and its Restricted Subsidiaries' assets.[104] The question whether McCaw and NIU constituted all or substantially all of NII Holdings' assets would require a complex factual analysis. See Roseton OL, LLC v. Dynegy Holdings, Inc., No. 6689-VCP, 2011 WL 3275965, at *13 (Del. Ch. July 29, 2011) ("In determining whether a company has sold substantially all of its assets, New York courts . . . look to both qualitative and quantitative factors.") (footnotes omitted).

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103 The Capco 2021 Group points out that Capco was aware at the time it negotiated the 2009 Capco Note Indentures that it was planning a corporate restructuring. Capco 2021 Obj. ¶¶ 10, 34 & n.33. Other parties may inquire about whether Capco ever told any of the other parties to the Indentures what it had been planning.

104 See 2009 Capco Notes Indenture § 5.01.

99. As the discussion above suggests, the Debtors' ability to avail themselves of the step-transaction doctrine to defend against the claims made by Aurelius is inherently factual. The Debtors would be required to provide evidence showing that the necessary elements for applying the step transaction doctrine are satisfied.[105] And Aurelius would likely seek substantial discovery regarding the Debtors' 2009 corporate restructuring, including the Debtors' reasoning and decision-making with respect to that restructuring, as well as the extent to which the other parties to the 2009 Capco Note Indentures knew about the restructuring and its potential consequences.

ii) *If the transfers of McCaw and NIU triggered Section 10.04, did those transfers constitute all or substantially all of NII Global's assets?*

100. By its terms, Section 10.04 applies only to the disposition of all or substantially all of a Subsidiary Guarantor's assets. Thus, a question that arises is whether the transfer of McCaw and NIU from NII Global to International Holdings was a disposition of all or substantially all of NII Global's assets. As noted above, that analysis depends on an assessment

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[105] Courts have developed three tests for determining when the step-transaction doctrine should apply:

> The end result test combines into a single transaction separate events which appear to be component parts of something undertaken to reach a particular result. If a series of closely related steps in a transaction are merely the means to reach a particular result, the court will not separate those steps, but instead treat them as a single transaction.
>
> Under the interdependence test, the court disregards the effects of individual transactional steps if it is unlikely that any one step would have been undertaken except in contemplation of the other integrating acts. Thus, the interdependence test relies to a lesser degree on subjective intent than the end result test. It focuses not on a particular result, but on the relationship between the individual steps and whether under a reasonably objective view the steps were so interdependent that the legal relations created by one of the transactions seem fruitless without completion of the series.
>
> Finally, the most restrictive alternative is the binding commitment test. Here a series of transactions may be integrated if, at the time the first step is entered into, there is a binding legal commitment to undertake the later step or steps. A court must make an objective determination as to whether the parties were bound to effect later steps when the first step was taken.

Big V Supermarkets Inc. v. Wakefern Food Corp. (In re Big V Holding Corp.), 267 B.R. 71, 92-93 (Bankr. D. Del. 2001).

of both qualitative and quantitative factors. At least one decision has suggested that where a company transfers directly held assets to a wholly owned subsidiary, and those assets remain within the company's corporate umbrella, such transfer does not violate a successor-obligor clause similar to Section 10.04. See Dynegy Holdings, 2011 WL 3275965, at *12. Aurelius, however, would likely attempt to distinguish that decision based on its facts and the language of Section 10.04 and other provisions of the 2009 Notes Indentures, and point to other New York decisions suggesting that even transfers of assets that remain within the corporate umbrella can constitute a disposition of all or substantially all assets. See, e.g., Resnick v. Karmax Camp Corp., 149 A.D.2d 709, 710, 540 N.Y.S.2d 503, 504 (2d Dep't 1989) (a corporation's transfer of its camping operations and buses to two wholly owned subsidiaries would have been a disposition of "all or substantially all" of its assets, under N.Y. Business Corporation Law §§ 909 and 910, had the corporation not retained ownership of its corporate land and buildings); cf. Prospect Dairy, Inc. v. Tully, 53 A.D.2d 755, 755-56, 384 N.Y.S.2d 264, 265 (3d Dep't 1976) (holding that a sale of assets by a parent corporation cannot be ignored merely by virtue of the fact that the sale was to its wholly owned subsidiary).

101. Aurelius likewise may argue that the language of Section 10.04, when compared to Sections 5.01(a) and (d), suggests that Section 10.04 was intended to proscribe a Subsidiary Guarantor's disposition of directly-held assets, even to its own wholly owned subsidiaries. Sections 5.01(a) and (d), which provide for certain limitations on NII Holdings' and Capco's ability to dispose of all or substantially all of their assets, refer to the assets of NII Holdings and Capco and their "Restricted Subsidiaries, **taken as a whole**" (emphasis added). Section 10.04, however, does not contain the "taken as a whole" language.

102. A resolution of these issues would likely require parol evidence regarding the intent of Section 10.04 and a qualitative and qualitative analysis of the impact of NII Global's transfer of McCaw and NIU, which would likely not be a simple or quick inquiry.

iii) *If the transfers of McCaw and NIU triggered Section 10.04 and constituted a disposition of all or substantially all of NII Global's assets, then did those transfers "compl[y] with Section 4.10?"*

103. The central thesis of Aurelius's arguments with respect to the Transferred Guarantor Claims is that the 2009 Transfers of McCaw and NIU violated Section 10.04 because those transfers did not, as required by Section 10.04(a)(ii)(B), "compl[y] with Section 4.10." To support its argument, Aurelius has asserted two competing interpretations of the phrase "complies with Section 4.10." First, Aurelius has argued that Section 4.10 applies only to Asset Sales, and because the transfers of McCaw and NIU were, by definition, not Asset Sales, those transfers necessarily could not have "complie[d] with Section 4.10" and thus could not have satisfied Section 10.04(a)(ii)(B). Second, and alternatively, Aurelius argues that the phrase "complies with Section 4.10," as used in Section 10.04, should be interpreted to mean that a non-Asset Sale can satisfy Section 10.04(a)(ii)(B) only if it meets the requirements of Section 4.10 as if it **were** an Asset Sale. Aurelius argues that the transfers of McCaw and NIU did not satisfy those requirements, and thus the transfers failed to satisfy Section 10.04(a)(ii)(B).

104. The Debtors, for their part, would argue, among other things, that because Section 4.10 is drafted as a negative covenant, and prohibits the Debtors from consummating any Asset Sale unless certain requirements are satisfied, a transaction that is **not** an Asset Sale necessarily would "compl[y] with Section 4.10." Thus, the Debtors would argue that the transfers of McCaw and NIU necessarily "complie[d] with Section 4.10" by virtue of the fact that those transfers were not Asset Sales. See also Capco 2021 Obj. ¶¶ 59-61.

105. These competing interpretations of Section 10.04(a)(ii)(B) would be the subject of substantial and prolonged dispute. The Debtors would argue that Aurelius's first proffered interpretation — that only an Asset Sale can satisfy Section 10.04(a)(ii)(B) — is inconsistent with the language of that provision, which suggests that the types of transactions that can "compl[y] with Section 4.10" are not just Asset Sales, but include any "sale or other disposition or consolidation or merger" by a Subsidiary Guarantor. Aurelius would argue that the Debtors' interpretation cannot be correct because it would mean that any non-Asset Sale would always automatically satisfy Section 10.04(a)(ii)(B). Such an interpretation, Aurelius would argue, is flawed because Section 10.04 is itself drafted as a negative covenant, prohibiting the sale of all or substantially all of the assets of a Subsidiary Guarantor to any person (other than NII Holdings, Capco, or another Subsidiary Guarantor), unless one of two substantive conditions is satisfied: (1) the transferee is a U.S. entity that assumes the Subsidiary Guarantor's Note Guarantee or (2) the transaction "complies with Section 4.10." Aurelius would argue that, if the prohibition of Section 10.04 could be overcome merely by disposing of the assets of a Subsidiary Guarantor in a transaction that is not an "Asset Sale," then a transaction among Restricted Subsidiaries would never need to satisfy condition (1), and would **always** satisfy condition (2), making it so easy to overcome Section 10.04's basic prohibition that it would seem illusory.

106. Indeed, Aurelius would argue that the plain language of Section 10.04 actually precludes an interpretation that a transfer of assets from a Subsidiary Guarantor to any other Restricted Subsidiary would satisfy Section 10.04(a)(ii)(B). The introductory language to Section 10.04 expressly excludes from its prohibition any transfer of assets to "the Parent [i.e., NII Holdings], the Company [i.e., Capco] or another Subsidiary Guarantor." According to

Aurelius, the fact that Section 10.04 explicitly identifies only those three entities, rather than any Restricted Subsidiary, evidences a deliberate and affirmative intention **not** to exclude from the prohibition an asset transfer to any Restricted Subsidiary.

107. Aurelius would also argue that its second interpretation of Section 10.04(a)(ii)(B) — that the phrase "complies with Section 4.10" means that the transfers had to satisfy the requirements of Section 4.10 as if they were Asset Sales — finds support in Section 5.01(d)(iii)(B). Section 5.01(d)(iii)(B) uses the same "complies with Section 4.10" language as Section 10.04(a)(ii)(B).[106] Section 5.01(d)(iii) prohibits Capco from disposing of all or substantially all of its assets and its Restricted Subsidiaries' assets, taken as a whole, unless one of the following conditions is satisfied: (1) the transferee is a U.S. entity that assumes all of Capco's obligations under the bonds and Indenture, and each Guarantor confirms that its Guarantee still applies to Capco, or (2) the transaction "complies with Section 4.10."[107] Because all transactions governed by Section 5.01 are carved out of the definition of Asset Sale, an interpretation of the phrase "complies with Section 4.10" as meaning that non-Asset Sales always comply with Section 4.10 would result in condition (2) always being satisfied in any Section 5.01(d)(iii) transfer. As a result, according to Aurelius, the exception would arguably swallow the prohibition, and Capco would have carte blanche to sell off all of its assets and the assets of its Restricted Subsidiaries, taken as a whole, without restriction. Aurelius therefore would argue that the only reasonable interpretation of the phrase "complies with Section 4.10," as used in Section 5.01(d)(iii)(B), is that the transaction must satisfy the requirements of Section 4.10 as if it were an Asset Sale. And Aurelius would further argue that, under ordinary canons of contract construction, that same interpretation should be applied to

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106 Compare 2009 Capco Notes Indenture § 5.01(d)(iii)(B) with id. § 10.04(a)(ii)(B).

107 Id. § 5.01(d)(iii).

Section 10.04(a)(ii)(B).[108] On the other hand, one could argue in defending against the Transferred Guarantor Claims that Section 5.01(d)(iii) serves a different purpose than Section 10.04 and that other factors suggest that there are valid reasons for interpreting the words "complies with Section 4.10" in Section 5.01(d)(iii)(B) differently from those same words in Section 10.04(a)(ii)(B).[109]

108. Aurelius is also likely to take note that, when counsel for the then-Indenture Trustee for the 2009 Capco Notes, Covington & Burling ("Covington"), first learned about the 2009 Transfers in early 2010, it raised concerns that those transfers may have violated Section 10.04.[110] Aurelius would almost certainly pursue extensive discovery regarding the discussions between Capco and Covington regarding that subject, as well as how Covington's concerns were addressed.

109. There is limited case law directly on point that provides guidance regarding the competing interpretations of Section 10.04(a)(ii)(B). But the fact that the Debtors and Aurelius can offer reasonable competing interpretations of that provision suggests that an ambiguity exists that would need to be resolved through parol evidence and possibly even expert testimony regarding industry usage. See Seiden Assoc. v. ANC Holdings, Inc., 959 F.2d 425, 428 (2d Cir. 1992) (contract language is ambiguous when it is "capable of more than one

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108 The Capco 2021 Group's objection never addresses this second interpretation of Section 10.04(a)(ii)(B) proffered by Aurelius, and instead addresses only Aurelius's first interpretation of that section. See Capco 2021 Obj. ¶¶ 62-65.

109 If Aurelius's second interpretation of Section 10.04(a)(ii)(B) were adopted, there would be substantial dispute over whether the transfers of McCaw and NIU would have satisfied the requirements of Section 4.10 as if they were Asset Sales. Section 4.10 requires that (1) the consideration for the transfer was "at least equal to the Fair Market Value of the assets or Equity Interests"; and (2) "at least 75% of the consideration . . . is in the form of cash, Cash Equivalents or Replacement Assets or a combination thereof." Aurelius would argue that the definitions of "Fair Market Value" and "Replacement Assets" make clear that the requirements of Section 4.10 were not satisfied here. The Debtors would argue otherwise, and a court would have to examine the facts and circumstances of the transfers of McCaw and NIU in order to resolve the issue. Evidently recognizing the complexity of that analysis, the Capco 2021 Group nowhere addresses this issue.

110 See Freiman Dep. at 10:13-13:17.

meaning when viewed, objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business."); Schering Corp. v. Home Ins. Co., 712 F.2d 4, 9 (2d Cir. 1983) ("where contract language is susceptible of at least two fairly reasonable meanings, the parties have a right to present extrinsic evidence of their intent at the time of contracting.").

iv) *If the transfers of McCaw and NIU violated Section 10.04, does that mean that the Note Guarantees were not validly released under Section 10.05?*

110. The Capco 2021 Group argues, as would one opposing the Transferred Guarantor Claims, that Section 10.05(a)(v) permitted the release of the Note Guarantees of McCaw, Airfone, and NIU when those entities became Foreign Restricted Subsidiaries. The Capco 2021 Group also argues that it is "logical" and "reasonable" to interpret Section 10.05(a)(v) to allow the release of those Note Guarantees regardless of whether Section 10.04 was complied with. Capco 2021 Obj. ¶¶ 55-58. The question, however, is not whether the Debtors or the Capco 2021 Group can offer a reasonable interpretation of Section 10.05(a)(v), but whether Aurelius can offer a competing reasonable interpretation that would require discovery and analysis of parol evidence, and possibly expert testimony, to resolve.

111. Section 10.05(a)(v) provides that "[a]ny Subsidiary Guarantor shall be released and relieved of any obligations under its Note Guarantee . . . if such Subsidiary Guarantor becomes a Foreign Restricted Subsidiary by merger, consolidation or otherwise, unless" certain other circumstances exist.[111] Aurelius would argue that, for Section 10.05(a)(v) to apply, the "merger, consolidation, or otherwise" by which a "Subsidiary Guarantor becomes a

[111] 2009 Capco Notes Indenture § 10.05(a)(v).

Foreign Restricted Subsidiary" necessarily must also be permissible under the same Indenture. According to Aurelius, the parties could not have intended Section 10.05(a)(v) to allow a transaction otherwise prohibited by the Indenture — for example, one that fails to satisfy Section 10.04 — to effectuate the release of a Note Guarantee. To hold otherwise would be to conclude that the parties were content to allow Capco to release Note Guarantees by engaging in transactions that other provisions of the Indenture prohibit. There is a risk that a court hearing this argument could recognize that the 2009 Capco Notes Indentures are reasonably susceptible to that interpretation.[112]

112. Moreover, the argument that entry into the Supplemental Indentures under Section 10.05(b) cured an alleged violation of Section 10.04 is unlikely to prevail. As noted, under the terms of Section 10.05(b), the purpose of the Supplemental Indentures was to "evidence" the release of the Note Guarantees. Further, the Indenture Trustee was required under Section 10.05(b) to execute Supplemental Indentures upon Capco's delivery of its Officers' Certificate and Opinion of Counsel, even if Capco's representations in those documents were inaccurate. Thus, there is a potential that the Indenture Trustee will not be deemed to have waived the Transferred Guarantor Claims by signing the Supplemental Indentures.

v) *Do holders of the exchange notes have a right to assert the Transferred Guarantor Claims?*

113. Another argument available in defense of the Transferred Guarantor Claims is that the April 2010 exchange that removed the transfer restrictions from the 2009

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112 The Capco 2021 Group notes that the phrase "complies with Section 4.10" is present in Section 10.05(a)(i) but absent from 10.05(a)(v), somehow suggesting that the parties intended that any "merger, consolidation or otherwise" under Section 10.05(a)(v) need not "compl[y] with Section 4.10." Capco 2021 Obj. ¶¶ 5-58. That argument is not convincing. The type of transaction described in Section 10.05(a)(i) falls within the definition of an Asset Sale, and thus it is not surprising that Section 10.05(a)(i) would note that such a transaction must comply with Section 4.10. But nothing in Section 10.05 or anywhere else in the Indentures suggests that the parties would have been content to allow a Subsidiary Guarantor, under Section 10.05(a)(v), to engage in any transaction whatsoever in order to become a Foreign Restricted Subsidiary and release its Note Guarantee, even if that transaction otherwise violated the Indentures.

Capco Notes also resulted in the 2009 Holders' loss of their right to assert the Transferred Guarantor Claims. The Capco 2021 Group, which apparently believes this to be a "silver bullet" argument, insists that, by participating in the exchange, holders "transferred any claims that existed at the time of the Exchange Offers to Capco." Capco 2021 Obj. ¶ 43. Contrary to the Capco 2021 Group's contention, the Debtors considered this argument after receiving Aurelius's letter in March 2014. See Shindler Dep. at 70:15-21 ("Q. Did Jones Day give advice regarding a defense to the transferred guarantor claims **based on the exchange offer that occurred in 2010**? . . . A. **Yes**.") (emphasis added); accord Freiman Dep. at 155:25-156:9 ("Q. . . . Up until the time of the bankruptcy filing, **had you heard an argument that in the transmittal letters, the old noteholders transferred to CapCo any claims they may have including the transferred guarantor claims**? A. **I'm aware that was a topic that was considered**.") (emphasis added); id. at 168:15-23.[113] The argument is not close to a "silver bullet."

114. This issue has already been subject of motion practice before the Court, with Aurelius making clear its position that the Capco 2021 Group's argument ignores the language of the prospectus for the exchange notes, ignores the Registration Rights Agreements that were entered into when the old notes were issued, and ignores the very purpose of the exchange offer in the first place.[114] Specifically, the prospectus stated that "[t]he Exchange Notes will evidence **the same debt as the Old Notes**, including principal and interest, and will be issued under **and be entitled to the benefits of the same indentures that govern the Old**

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113 Faced with unequivocal testimony that the Debtors actually considered this issue, the Capco 2021 Group absurdly resorts to arguing that the Debtors' analysis must have been deficient because some of the Debtors' witnesses do not recall whether the **precise words** "Letters of Transmittal" were used. See Capco 2021 Obj. ¶ 87. There is, of course, no rule — and the Capco 2021 Group does not cite any — requiring recollections to such a level of granularity for a party to defend the exercise its reasonable business judgment, especially where such details were considered by lawyers as opposed to business people.

114 See Joinder of Aurelius Capital Management to (I) Emergency Motion of the Debtors and Debtors in Possession to Strike and (II) Statement of the Official Committee of Unsecured Creditors in Support of the Emergency Motion [Docket No. 709], Tr. Ex. P175 ("Aurelius Joinder"), at ¶¶ 2-3.

Notes." (emphasis added).[115] The Registration Rights Agreements stated even more emphatically that, except for the removal of the transfer restrictions, the exchange notes would be "identical in all material respects" to the old notes.[116] And it is beyond dispute that the sole purpose of the exchange offer — and certainly the sole disclosed purpose — was to remove the transfer restrictions from the old notes.[117] The Capco 2021 Group points to no facts suggesting that any holders were ever told, or ever even suspected, that by participating in the exchange offer they might be giving up claims they possessed based on the old notes. Nor has the Capco 2021 Group pointed to any case law holding that participants in an exchange offer are deemed to give up all claims they might possess under the pre-exchanged notes.

115. Simply put, the argument raised by the Capco 2021 Group — that the Letters of Transmittal resulted in a transfer of the old notes to Capco, which can be decided quickly as a matter of law — is incomplete. Even assuming that Holders might have turned over their Transferred Guarantor Claims to Capco when they turned in their old notes, the Capco 2021 Group ignores an argument that those claims were returned to the Holders in receiving their exchange notes. Put another way, a court could find in favor of Aurelius that the Transferred Guarantor Claims continued to live on in the exchange notes. At the very least, as Aurelius has explained, this issue would be subject to substantial dispute, and would require a detailed inquiry into the expectations, understandings, and intentions of those Holders who participated in the exchange offer.[118]

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115 See Form S-4.

116 Registration Rights Agreements.

117 See Freiman Dep. at 154:5-12.

118 See, e.g., Aurelius Joinder, Tr. Ex. P175, at ¶¶ 2-3. The Capco 2021 Group's naked supposition that the Debtors did not actually consider the Letters of Transmittal and New York General Obligation Law § 13-107 is not just baseless, but wrong. During the course of their evaluation of the Transferred Guarantor Claims, the Debtors' counsel considered, and incorporated into their legal advice, every issue that has now been raised by the Capco 2021 Group, as well as many more. We particularly considered all documents

vi) *Are the Transferred Guarantor Claims barred under the doctrine of laches?*

116. The Debtors also have arguments that the affirmative equitable defense of laches could be applicable, given the lapse of time since the 2009 Transfers and the numerous activities undertaken by the Debtors since then in reliance on the absence of any asserted claims with respect thereto. In response to such an argument, however, Aurelius would argue that the facts regarding the 2009 Transfers were effectively concealed because, among other things, the Supplemental Indentures that evidenced the 2009 Transfers had not been in the public record until 2014, and holders otherwise did not know about the 2009 Transfers or have any reason to ask the Indenture Trustee for copies of the Supplemental Indentures.

117. The presence of laches is inherently factual. De Weerth v. Baldinger, 836 F.2d 103, 110 (2d Cir. 1987) (the "existence of laches is a question of fact") (citation omitted); accord Jeffries v. Chicago Transit Authority, 770 F.2d 676, 679 (7th Cir. Ill. 1985) ("Laches is generally a factual question not subject to summary judgment."); Capano v. Capano, NO. 8721-VCN, 2014 WL 2964071, at *7 (Del. Ch. June 30, 2014) ("Inquiries into whether an unreasonable delay occurred or whether the defendant was prejudiced are inherently factual in nature and depend on a totality of the circumstances."). Resolving a laches defense therefore would likely require discovery and factual analysis regarding the information available to Holders about the 2009 Transfers.

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relating to the 2010 exchange, including the Registration Rights Agreements, the S-4 Registration Statement, the prospectus, and the Letters of Transmittal. We also considered all applicable federal and state law, including New York General Obligation Law § 13-107.

vii) *What should be the impact of the Transferred Guarantor Claims on Capco 2021 Note Holders?*

118. Following Aurelius's assertion of its claims against the Transferred Guarantors in March 2014, [redacted][119] In particular, [redacted].[120] In fact, [redacted]:

[redacted]

See [redacted];

see also Taub Dep. at 64:17-21 ("A. I believe that our analysis at the time was that if there was a transferred guarantee claim, . . . that that claim would be applicable to the 2021s as well.").

119. [redacted]

[redacted]

119 [redacted]

120 [redacted]

120. The problem, however, is that Section 4.18 does not in fact require equal treatment, under these circumstances, with respect to the Transferred Guarantor Claims. Section 4.18 provides, in relevant part, that

> [NII Holdings] shall not permit any of its Restricted Subsidiaries, directly or indirectly, to Guarantee or pledge any assets to secure the payment of any other Indebtedness of the Parent, the Company, or any Subsidiary Guarantor unless such Restricted Subsidiary is the Company or a Subsidiary Guarantor or simultaneously executes and delivers to the Trustee an Opinion of Counsel and a supplemental indenture in the form attached hereto as Exhibit F providing for the Guarantee of the payment of the Notes by such Restricted Subsidiary, which Note Guarantee shall be pari passu with or, if such other Indebtedness is subordinated to the Notes or any Note Guarantees, senior to such Subsidiary's Guarantee of such other Indebtedness.

Indenture for 7.625% Senior Notes due 2021 – dated March 29, 2011, Trial Exhibit P145, at § 4.18. By its own terms, the Debtors' obligation to offer the Capco 2021 Notes *pari passu* treatment under Section 4.18 would arise only upon a "Guarantee or pledge of any assets" by a Restricted Subsidiary.[121] By contrast, a court's declaration that a previously released guarantee remains in place, or a settlement providing that some or all of such a guarantee remains in place, is not a new Guarantee or pledge of assets, and therefore would not trigger Section 4.18.

121. Here, the Settlement does not contemplate, and never contemplated, issuing any new Guarantee or pledge of assets to resolve the Transferred Guarantor Claims. Instead, the Settlement provides for recoveries as if 21% of the Note Guarantees of McCaw,

[121] Id.

Airfone, and NIU had remained in place. Thus, the Capco 2021 Group was never entitled to *pari passu* treatment with respect to those claims.

122. In any event, however, the impact of Section 4.18 on the Transferred Guarantor Claims is purely academic because no Proofs of Claim were ever filed by or on behalf of Holders of Capco 2021 Notes against any of the Transferred Guarantors. After the Petition Date and prior to the deadline established by the Court for filing Claims in these cases (the "Bar Date"), the Indenture Trustees under the Capco 8.875% Note Indenture and the Capco 10% Note Indenture timely filed Proofs of Claim against each of the Transferred Guarantors, asserting the Transferred Guarantor Claims.[122] See Proofs of Claim Nos. 139, 144, 157, 195, 203 and 245. But the Indenture Trustee under the Capco 7.625% Note Indenture has never filed a Proof of Claim against the Transferred Guarantors. Likewise, no Holder of the Capco 7.625% Notes ever filed a Proof of Claim against any of the Transferred Guarantors.

123. Sometime between February and late March 2015, the Capco 2021 Group evidently realized that neither its members nor the Indenture Trustee for the 7.625% Notes, had ever filed a Proof of Claim against any of the Transferred Guarantors seeking to enforce a purported right to *pari passu* treatment with the Transferred Guarantor Claims.[123] At that point,

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122 See Proof of Claim No. 245, U.S. Bankruptcy Court, S.D.N.Y., with annex, dated December 22, 2014, Tr. Ex. P008; Proof of Claim No. 157, U.S. Bank National Association, in its capacity as trustee under the Capco 8.875% Note Indenture, against NIU Holdings, LLC (as assignee of Nextel (International) Uruguay, LLC), dated December 19, 2014, Tr. Ex. P067; Proof of Claim No. 195 filed by Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Capco 10% Note Indenture, against NIU Holdings, LLC (as assignee of Nextel (International) Uruguay, LLC), dated December 22, 2014, Tr. Ex. P068; Proof of Claim No. 144, U.S. Bank National Association, in its capacity as trustee under the Capco 8.875% Note Indenture, against McCaw International (Brazil), LLC, dated December 19, 2014, Tr. Ex. P069; Proof of Claim No. 139, U.S. Bank National Association, in its capacity as trustee under the Capco 8.875% Note Indenture, against Airfone Holdings, LLC, dated December 19, 2014, Tr. Ex. P071; Proof of Claim No. 203, Wilmington Savings Fund Society, FSB, in its capacity as trustee under the Capco 10% Note Indenture, against Airfone Holdings, LLC, dated December 22, 2014, Tr. Ex. P072.

123 It actually might have been the Debtors, in their brief in opposition to the Capco 2021 Group's motion to compel mediation, who first alerted the Capco 2021 Group to the fact that no such Proofs of Claim had been filed. See Objection of Debtors and Debtors in Possession to Motion of the Ad Hoc Group of NII Capital 2021 Noteholders for an Order Directing the Debtors to Participate in Mediation [Docket No. 584], Tr. Ex. P177, at ¶ 37.

the Capco 2021 Group abruptly changed course. Once it realized that no Proofs of Claim had been filed against any of the Transferred Guarantors that would support an argument for equal recovery alongside the Transferred Guarantor Claims, the Capco 2021 Group apparently decided that it would have to come up with a different objection.

124. The objection it has now decided to pursue is that the Transferred Guarantor Claims have zero value, and any settlement of those claims must necessarily be unreasonable. The Court can decide for itself whether that objection is merely a pretext for accomplishing the Capco 2021 Group's original goal of an equal recovery. But the depositions of several members of the group shed light on the subject:

- "Q. And do you see where you say next, 'I am not taking a position against the actual settlement of the claims. **The settlement is good for CapCo**, as long as each of the bonds are treated the same.' Do you see that? A. I see that statement. Q. And that was consistent — that statement was consistent with your position as of December 1, 2014? MR. HARRIS: Objection, vague. A. That statement was consistent with my position as — based on the existing — based on the existing settlement that was made." Taub Dep. at 141:5-19 (emphasis added).

- Q. Your argument is that if the '16s and '19s are getting a settlement of the transferred guarantor claims at 21 percent, that the 2021s should also be a part of that at 21 percent. Right? MR. HARRIS: Objection. Mischaracterizes testimony. You can answer, but don't reveal any analysis of counsel. A. Yeah. I -- I would discuss with counsel and internally as to what a fair settlement is. But based on our investment thesis that the '21s should be treated equally with the '16s and '19s, that sounds correct. Q. From a mathematical perspective, if the 2021s were being treated pari passu with the '16s and '19s in connection with the settlement of the transferred guarantor claims, increasing that settlement above 21 percent would mathematically [i]nure to the benefit of the 2021s. Right? MR. HARRIS: Objection. Calls for a legal conclusion and improper hypothetical.
A. Mathematically speaking, that is greater value, yes. Duch Dep. at 63:25-64:14, 65:9-20.

- "Q. Have you taken a position one way or another as to whether the 21 percent settlement of the transferred guarantor claims is too high or too low? A. I don't think so. I'm not sure. Q. Okay. Sitting here today as the person directing AQR's involvement in this proceeding, do you have an objection to the settlement of the transferred guarantor claims at 21 percent? MR. HARRIS: Objection. Vague, but you can answer. A. I'm not sure. I don't really have an opinion on a percentage[.] Q. Does AQR have an opinion on a percentage? A. I don't believe so. Q. Okay.

> In fact, if the 2021s were being treated pari passu with the 2016s and 2019s, you would want the recovery on the transferred guarantor claims to be above 21 percent; isn't that right? MR. HARRIS: Objection. Improper hypothetical and I instruct the witness not to reveal any attorney-client advice or communications. A. I'm not casting a view on the number above or below, but we do believe the 21s should be treated equally with the other bonds. Q. I understand that, and if they were treated equally, AQR would recover more on the transfer guarantor claims if the settlement of those claims was higher than 21 percent; isn't that right? MR. HARRIS: Objection. Improper hypothetical. Instruct the witness not to reveal any attorney client communications or counsel, but you can answer. A. It seems to me mathematically that that would be true." Eckert Dep. at 64:11-65:25.

125. Simply put, the Capco 2021 Group would actually be content with a settlement of the Transferred Guarantor Claims at 21%, if they were being treated *pari passu* with respect to those claims. Indeed, were they being treated *pari passu*, the Capco 2021 Group would want an even higher settlement of those claims. On this record, it is difficult to avoid the conclusion that the true reason the Capco 2021 Group is now asserting that the Transferred Guarantor Claims have no value is that they now realize that, by failing to file Proofs of Claim, they have waived their right to argue that they are entitled to any distribution on account of those claims.

iv. Given the Issues Presented By the Transferred Guarantor Claims, the Debtors' Resolution of Those Claims as Part of a Global, Integrated Settlement is Unquestionably Reasonable

126. As this overview of potential arguments demonstrates, litigation of the Transferred Guarantor Claims would be protracted and consume substantial time, energy and resources. Such Claims involve multiple layers of argument involving contract interpretation, parol evidence, inquiries into the parties' intent when entering into specific indenture provisions, the corporate transactions giving rise to the Claims, and the parties' intentions with respect to them, and may even require expert testimony. Such litigation would undoubtedly require substantial time, money, and resources to fully and finally resolve.

127. Moreover, the issues summarized above illustrate that the outcome of litigation over the Transferred Guarantor Claims would be inherently uncertain and would be extraordinarily costly, and could involve an overwhelming value shift[124] if those claims are found to be meritorious.[125] The investigation and discovery undertaken to date by the parties was in the context of settling the Transferred Guarantor Claims pursuant to Bankruptcy Rule 9019, a considerably lower standard than that which would need to be proven pursuant to a full trial (and through appeals). As the Court will hear at the Confirmation Hearing, the Debtors decided, in the exercise of their business judgment (which decision is supported by the Creditors' Committee and the Independent Manager) that the settlement of such Claims as part of the integrated Settlement and Plan and at the amounts set forth therein (i.e., a net value transfer of 11% of the Claims, or $150 million) was reasonable, when considered as one of the many economic resolutions of the Settled Claims and Disputes embodied in the Settlement. Accordingly, the benefits of the settlement of the Transferred Guarantor Claims outweigh their likelihood of success after costly, time-consuming litigation.

128. As noted above, the resolution of the Transferred Guarantor Claims is just one element of a larger integrated settlement. But even if the Court were viewing the 21% settlement of the Transferred Guarantor Claims in isolation, it should find, based on the foregoing discussion, that this resolution falls not merely above the lowest point in the range of reasonableness, but is well within that range.

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124 See Parkhill Decl. ¶ 62.

125 The Settlement also avoids the need to resolve the question of whether the Capco 2021 Group has standing to object to the Transferred Guarantor Claims, which is an issue that would have to be litigated in the event the Court denies approval of the Plan and Settlement.

d. The Other Settled Claims and Disputes

129. In addition to resolving the Potential Litigation Claims, as discussed above, the Settlement resolves a host of other issues and disputes. The future benefits of each of the other Settled Claims and Disputes that could be obtained pursuant to litigation is greatly outweighed by the benefits afforded pursuant to the Settlement. Below is a sample of some of the other key disputes that were resolved by the Settlement

i. Postpetition Interest

130. The Consenting Noteholders relinquished their right to receive postpetition interest on account of their Luxco Note Claims. The Luxco Group, represented by Kirkland and Millstein, in entering discussions after the termination of the Initial PSA, and before entry into the current Plan Support Agreement, advocated that with the Mexico Sale Transaction, there was a strong argument that Luxco was solvent, and therefore, the Luxco Note Claims were entitled to receive postpetition interest. The argument that Luxco was solvent was enhanced by the possibility that at the time of entry into the current Plan Support Agreement, the Purchaser's stalking horse bid was still subject to higher and better offers, thereby producing a realistic possibility that recoveries could have been improved beyond the $392 million of incremental value resulting from such bid relative to the Initial Plan's valuation.

131. If resolved against the Debtors and in favor of the Holders of the Luxco Note Claims, Luxco could have been potentially liable for over $110 million in postpetition interest due at the contractual rate under the Luxco Notes. By foregoing the right to receive such amounts, and locking in to a "capped" recovery in the face of the stalking horse bid and potentially even greater bids at the time, junior creditors of the Debtors will receive far greater recoveries and will avoid having to litigate whether such entitlements are appropriate and, if so,

the appropriate interest rate that should be applied. This was a material concession by the Luxco Group that helped forge a consensus around the current Plan Support Agreement.

ii. Total Enterprise Value (Valuation)

132. Throughout the course of these cases, the competing views regarding valuation of creditors holding Claims against the different Debtors — namely the Luxco Group (primarily against Luxco) and Aurelius and Capital Group (primarily against Capco) — had been a matter of ongoing and vigorous dispute. Generally, on the one hand, the Luxco Group has argued for a lower valuation of the Debtors, which would entitle them to a greater amount of equity in the Reorganized Debtors. On the other hand, the Capco creditors have argued for a higher valuation of the Debtors, which would entitle them to more of the equity of the Reorganized Debtors. Adding to the challenge of resolving the valuation dispute, the Debtors' business plan was revised during the negotiations, and this further elicited differing views among the parties regarding the proper valuation of the Debtors and their Non-Debtor Affiliates.[126] This added layer of complexity with respect to the business plan compounded the already challenging task of reaching agreement on myriad other claims and issues, including valuation.[127]

133. Litigating the proper valuation of the Debtors and their Non-Debtor Affiliates would have been time-consuming and extraordinarily costly, as such disputes often involve testimony and reports of several different competing experts by the parties. By resolving a potential dispute as to valuation — an issue that greatly impacts distributions to creditors and which can have a wide range of outcomes — the Debtors and Consenting Noteholders were able to reach agreement on a number of other issues in these cases. Thus, resolving the valuation issue was a critical piece of the Settlement embodied in the Plan.

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126 See Parkhill Decl. ¶ 35.

127 Id.

iii. Allocation of Cash Among Debtor-Entities

134. Pursuant to the Debtors' corporate structure in which all of the Debtors are holding companies whose value depends upon the value of the equity held in their subsidiaries, value flows up the corporate structure. Because of this structure, there is an argument that Claims that are structurally senior (due to their position in the capital structure) are entitled to receive payment of their Claims in Cash in full (with the balance, if any, satisfied with equity in the Reorganized Debtors). This was precisely the argument put forth by the Holders of the Transferred Guarantor Claims and the Holders of the Luxco Note Claims: each argued that they should recover their Claims in full in Cash before any other creditors would receive a distribution. Under such a scenario, all of the Debtors' Cash would be exhausted satisfying the Transferred Guarantor Claims against the Transferred Guarantors and the Luxco Note Claims against Luxco, such that Claims against Capco and the Capco Guarantors likely could only be satisfied with equity in the Reorganized Debtors (if at all) and the Reorganized Debtors would have limited liquidity to operate their businesses post-emergence.

135. Here, certain of the Consenting Noteholders with structurally senior Claims agreed, as part of the global Settlement, not to monopolize the Debtors' Cash, even though arguably they had a right to do so. Their concession of this potential right is reflected in the combination of Cash and equity distributions to creditors under the Plan, in which the Capco Note Claims (against Capco and the Capco Guarantors), Luxco Note Claims (against Luxco) and Transferred Guarantor Claims (against the Transferred Guarantors) each receive an agreed-upon combination of Cash and equity and the Reorganized Debtors are allowed to retain a significant portion of the cash proceeds from the Mexico Sale Transction. By satisfying these Claims with a combination of Cash and stock pursuant to agreed-upon amounts that reflects the relative value of their respective Claims, the Plan Proponents are able to provide for a greater distribution in

the form of Cash to Holders of General Unsecured Claims. Thus, the benefits of resolving this issue regarding the proper allocation of Cash and equity among creditors vastly outweighs the potential benefits of litigating this dispute, and enables the Plan Proponents to maximize Cash distributions to creditors.

2. Absent the Settlement, There is a Substantial Likelihood of Complex and Protracted Litigation, with its Attendant Significant Expense, Inconvenience and Delay, All of Which Threaten the Going Concern Viability of the Debtors and their Businesses

136. In addition to the legal risks associated with the Settled Claims and Disputes resolved pursuant to the Settlement, it is without question that, if the Settled Claims and Disputes were not resolved under the Plan, the Debtors' estates would incur significant delay and expense engaging in what would certainly be lengthy and protracted litigation of the Settled Claims and Disputes. For example, as described in greater detail above, the Potential Litigation Claims involve hotly contested questions of law and fact that would require substantial and prolonged discovery with respect to hundreds of transactions. Further, it is likely that parties would pursue and exhaust all appeals, resulting in further and considerable delay and expense.

a. Protracted Litigation is Not Feasible Due to the Impact Upon the Debtors' Businesses

137. The Debtors and their estates, however, do not have unlimited time and resources to pursue such lengthy and protracted litigation. A critical component of the Settlement is that it allows the Debtors and their Non-Debtor Affiliates to obtain substantial and necessary relief from the Operating Company Lenders.[128] As a prerequisite to granting this relief, the Operating Company Lenders have required that the Debtors emerge from their chapter 11 cases by September 15 and 30, 2015.[129] The failure of the Debtors to do so likely will cause

[128] See Freiman Decl. ¶ 60.

[129] Id. ¶¶ 28 & 39.

NII Brazil to default under its agreements with the Operating Company Lenders by these dates, and such defaults would permit the Operating Company Lenders to commence the exercise of remedies against NII Brazil.[130] The exercise of remedies by the Operating Company Lenders could not be forestalled by NII Brazil's commencement of bankruptcy proceedings in Brazil because applicable Brazilian law does not provide for a stay of remedy enforcement by holders of fiduciary assignment liens.[131] Neither NII Brazil nor the Debtors have sufficient resources to both (a) pay the Operating Company Lenders to prevent such remedy enforcement and (b) continue to implement the Business Plan (as defined in the Freiman Declaration).[132] Thus, any delay in the Debtors' emergence from these bankruptcy cases associated with litigating any of the Settled Claims and Disputes would dangerously increase the risk of liquidation of NII Brazil.[133] In the event that the Debtors lose their businesses in Brazil due to foreclosure or other remedy enforcement by the local lenders, the Debtors' chapter 11 cases likely would be converted to chapter 7 and their remaining assets liquidated.[134] In such a scenario, it is estimated that the Capco 2021 Notes would recover just 1.99% on account of their Claims, regardless of whether the Transferred Guarantor Claims are successful.[135]

138. In the face of these serious and tangible risks, the Capco 2021 Group blithely suggests that these risks are "overblown", self-created and "[q]uite simply . . . not a real emergency that would dictate accepting a flawed plan." Capco 2021 Obj. ¶ 97. The Capco 2021 Group's solution is for the Debtors to withdraw this Plan and come back to their lenders yet again

130 Id. ¶ 57

131 Id. ¶ 16.

132 Id. ¶ 59.

133 Id. ¶ 60.

134 See Parkhill Decl. ¶ 37.

135 See Disclosure Statement, at 11-12.

(which would be the third time in less than two years in the case of China Development Bank Corp. ("CDB")) to request extensions of their September 2015 emergence deadlines or simply pay them off in an amount of over $670 million.[136] Such a suggestion is naive and grossly uninformed. The Non-Debtor Affiliates have been operating under significantly impaired conditions as a result of these cases and would continue to do so, even with the full repayment of this debt.[137] They have experienced, among other things, worsening credit terms, [redacted] and difficulties in hiring and retaining competent personnel to help grow the business, all of which leaves the Non-Debtor Affiliates in less than an ideal posture to compete against their larger competitors.[138] Furthermore, the Non-Debtor Affiliates have exhausted substantial negotiating capital with the Operating Company Lenders in the last year and do not believe further relief, temporal or otherwise, is possible.[139] Following negotiations that were tinged at times with expressions of distrust and lack of confidence in the Non-Debtor Affiliates, but which resulted in sufficient relief to enable them to prosecute their business plan, the Debtors believe it is highly unlikely they can obtain further relief with respect to the emergence deadlines, which each of the Operating Company Lenders fiercely advocated for in prior negotiations.[140] The Debtors' business plan also cannot tolerate in the near-term a $670 million expenditure for repayment of debt.[141] Setting aside the tidal wave of creditor opposition the Debtors would face if they were to

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136 See Freiman Decl. ¶ 18.

137 See id. ¶ 55.

138 See id.

139 See e.g., id. ¶ 58.

140 Id. ¶ 56.

141 Id. ¶ 59.

request such a use of funds from this Court, such a large payment would leave the Debtors and the Non-Debtor Affiliates unable to perform under their business plan in the near-term.[142]

b. A Reserve of Distributions Pending Completion of Litigation in the Post-Emergence Period Was Rejected by the Debtors and their Creditors

139. Due to the deadlines for relief imposed by the Operating Company Lenders (discussed in greater detail above and in the Freiman Declaration) and the irreparable damage that would result if such lenders began exercising remedies against the Non-Debtor Affiliates, the Debtors and the creditor groups recognized that absent a settlement it likely would not be feasible to litigate all of the Potential Litigation Claims to conclusion during the pendency of the bankruptcy proceedings.[143] Thus, beginning in the summer of 2014, the Debtors and the noteholder groups explored potential plan constructs that would create a "reserve" structure in which a plan of reorganization would be confirmed, but provide for the withholding of a portion of a plan distributions while some or all of the Potential Litigation Claims were litigated to a final resolution during the post-emergence period.[144]

140. Under a reserve structure, equity in the Reorganized Debtors that would otherwise be distributed to creditors would be held back in reserve while Claims were litigated.[145] Depending upon the total enterprise value for the Debtors (which itself is a litigable issue resolved by the Settlement, as discussed in greater detail above), the amount of equity held

142 Id.

143 See Parkhill Decl. ¶ 26.

144 See id.

145 See id.

in reserve could be substantial.[146] Ultimately, however, a "full reserve" plan was rejected by the Debtors and certain of their creditors for several reasons:

- creditors were not in favor of having a substantial amount of their recoveries in the form of stock withheld pending the outcome of the various litigations;
- a litigation reserve would negatively impact the Debtors' ability to reorganize effectively by expending liquidity necessary to fund the Non-Debtor Affiliates on litigation costs and by distracting the Debtors' management personnel from running the business as their time and energy are focused on litigation;
- the overhang of litigation would create uncertainty for the Debtors' businesses, erode confidence in the viability of the Debtors as a long-term business, and thereby potentially significantly damage relationships with customers, employees, vendors, regulators and lenders alike;
- the large amount of equity held in reserve would create significant corporate governance issues in light of undetermined ownership stakes (e.g., who is entitled to vote the shares that are held in reserve) and, moreover, the Debtors' future ownership could change dramatically as litigation was concluded and shares were issued from the reserve; and
- all of these issues would adversely impact the Debtors' share price, which would further result in a drain on their liquidity and limit their capital raising capabilities.

See Parkhill Decl. ¶ 27. Thus, for the foregoing reasons, as well as others, while the Debtors and their creditors considered creating a reserve structure that would reserve distributions with respect to some or all of the Potential Litigation Claims pending the conclusion of the litigation of those claims after the Debtors' emergence from bankruptcy, it was ultimately determined that such a construct was infeasible and inferior to the Settlement.

141. After nearly nine months in bankruptcy (and many more in restructuring negotiations prior to that), the Settlement will provide the Debtors and their estates with timely,

146 See Discussion Materials – Overview of Waterfall Model and Settlement Implications, dated December 15, 2014, Tr. Ex. P039, at 11 (explaining amount of Reorganized NII Common Stock that would be required to be held in reserve pending the outcome of litigation across various valuation scenarios).

decisive relief that enables the Debtors to restructure effectively, emerge from bankruptcy and maximize creditor recoveries. On the other hand, litigating and defending each of the Settled Claims and Disputes — all of which would require substantial resources to put before a trier of fact — would consume time and diminish value. These are precisely the concerns echoed by Judge Gerber when approving the settlement of inter-debtor issues in Adelphia. See Adelphia, 368 B.R. at 241-43 (approving plan settlement of inter-debtor issues where litigation would be "extremely complex and expensive to litigate").

142. For these reasons, this Iridium factor tips decidedly in favor of approving the Settlement.

3. The Settlement is in the Paramount Interests of Creditors

143. The Settlement is in the best interests of creditors because it maximizes creditors' recoveries under the Plan and collectively resolves virtually every significant claim against the Debtors' estates as well as significant inter-creditor disputes that jeopardized the Debtors' businesses and reorganization prospects.

144. *First*, the Settlement maximizes creditors' recoveries under the Plan because it resolves the Settled Claims and Disputes without litigation that would have otherwise plagued the Debtors' cases. Litigation of any or all of the Settled Claims and Disputes would reduce the Debtors' enterprise value as liquidity was allocated away from the Debtors' operations and to litigation and related administrative costs. In addition, the overhang of ongoing litigation would create uncertainty for the Debtors and their businesses, customers, vendors, employees and lenders alike.[147] Similarly, the time, energy and focus of the Debtors' key management personnel would be diverted away from operating the businesses and towards wasteful and

147 See Freiman Decl. ¶ 55.

distracting litigation. Collectively, this uncertainty, depletion of liquidity and siphoning of resources threaten to further erode enterprise value. In addition to avoiding this decrease in value, the Settlement allows for certainty of creditor recoveries **today** rather than highly uncertain recoveries **in the future** (if any).

145. Moreover, arriving at a litigated resolution of some or all of the Settled Claims and Disputes would not necessarily place the Debtors in a superior position to propose a confirmable plan. The Capco Note Claims, the Luxco Note Claims and the Transferred Guarantor Claims can be asserted at differing points in the Debtors' capital structure. In addition, these Claims are diffusely held by a number of competing groups. Absent the global resolution embodied in the Settlement, the crystallization of litigated outcomes with respect to certain of the Settled Claims and Disputes could lead to an intractable situation where opposing creditors become fixed in a permanent state of disagreement, leaving the Debtors' with slim or no prospects for proposing a confirmable plan.

146. *Second*, as described in greater detail above, the Settlement enables the Debtors to secure critical relief from the Operating Company Lenders as part of the holistic restructuring of their businesses and capital structure, which is vital to the Debtors' and the Non-Debtor Affiliates' ability to continue as going concerns.[148] No party disputes that the Debtors' and Non-Debtors Affiliates' continued viability as going concerns is in the best interests of all of their stakeholders. In addition, the Settlement ensures that the Reorganized Debtors will have sufficient Cash to fund their businesses by providing that the Debtors will retain up to $515 million pursuant to the Plan.[149]

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148 See e.g., id. ¶¶ 60 & 62.

149 See Plan, Tr. Ex. P004, Section I.A. 162 ("Retained Cash Amount").

147. *Third*, as described in Part I.D.1.d above, the Settlement contains a number of key concessions by the Consenting Noteholders that maximizes value for creditors not party to the Settlement, including by (a) allowing distributions of Cash to certain structurally subordinated claims, (b) providing significant Cash payments to holders of General Unsecured Claims and (c) eliminating potential postpetition interest payments on the Luxco Notes.

148. *Fourth*, the Settlement provided a number of benefits for the Debtors' cases while the cases were ongoing. For example, certain of the Consenting Noteholders agreed to execute a support stipulation with respect to the Mexico Sale Transaction [Docket No. 398].[150] Though not a party to such stipulation, the Luxco Group similarly agreed not to object to the Mexico Sale Transaction at a time when discussions regarding the global resolution embodied in the Plan were ongoing and uncertain to result in any agreement. Absent the support of the Consenting Noteholders, these estates may not have been able to enter into the Mexico Sale Transaction due to the expressed reluctance of New Cingular Wireless Services, Inc. in moving forward in an environment of creditor discord, an event that all parties can agree was in their best interests and that yielded the estates over $400 million in incremental value.[151]

149. Thus, the Settlement is in the paramount interests of creditors because it maximizes creditors' recoveries and will allow the Debtors to successfully reorganize.

4. The Settlement is Supported by Other Parties in Interest

150. The Settlement enjoys the support of nearly every major creditor constituency and has been independently reviewed by, and has the support of, the Creditors' Committee and the Independent Manager. The Debtors and the Consenting Noteholders engaged with the Creditors' Committee, the estate representative on behalf of all unsecured

150 See Sale Support Stipulation.

151 See e.g., Parkhill Decl. ¶ 44.

creditors, from the outset of these cases, and actively included them in the negotiations.[152] The Creditors' Committee's support for the Settlement is based upon its own independent review and assessment of the Settlement's benefits.[153] Similarly, the Independent Manager has been actively engaged by the parties in furtherance of his review of the Settlement with respect to Luxco and consideration of the Capco estate as one of the largest creditors of Luxco.[154] After his independent review and assessment, and based in part upon the counsel of Quinn Emanuel, the Independent Manager recommended that Luxco join the Settlement and found that the Settlement was in the best interests of Luxco and its creditors, including Capco.[155]

151. In addition to the Creditors' Committee and the Independent Manager, the Settlement has the support of every major creditor constituency (other than the Capco 2021 Group).[156] Creditors in every single voting class voted overwhelmingly to accept the Plan and the Settlement embodied therein. Of the Holders in Claims in voting Classes, approximately 91.91% in amount of such Claims and 95.35% in number of such voting Holders voted to accept the Plan, including, if the Capco 2021 Notes over 78% in amount and 95% in number of the Capco 2021 Notes, which, therefore, would have accepted the Plan had they been separately classified as advocated by the Capco 2021 Group.[157]

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152 See Parkhill Decl. ¶¶ 15-18, 29, 32-33 & 44; see also Scruton Decl.

153 See Scruton Decl.

154 See Winn Decl.

155 See id.; see also Parkhill Decl. ¶ 42.

156 As described in greater detail in footnote 15 above, based on the voting results it appears that even some members of the Capco 2021 Group voted in favor of the Plan.

157 See Voting Decl., Exs. A & B.

Creditors Voting in Favor of the Plan

Claims	Number	Amount
Sale-Leaseback Guaranty Claims	100%	100%
Luxco Note Claims	84.05%	94.28%
Capco Note Claims	97.20%	89.29%
Transferred Guarantor Claims	99.59%	99.91%
CDB Documents Claims	100%	100%
General Unsecured Claims	100%	100%
Capco 2021 Notes	95.46%	78.64%

Based on these results, the Court can easily conclude that the Settlement is supported not just by "significant creditors," but by an overwhelming consensus of the vast and diverse constituencies making up these estates.

152. Notably, the Settlement before the Court represents a significant improvement for the Debtors' estates and their creditors over the recoveries under the Initial Plan and Settlement. First, the Plan and Settlement now enjoy the support of the Luxco Group and the corresponding benefit of the Luxco Group's concessions — namely, the relinquishment of their claims for postpetition interest and of the right to receive a greater proportion of their recoveries from the cash proceeds of the Mexico Sale Transaction and of receiving any additional recovery in the event of an overbid in connection with such sale (which was ongoing during the negotiation of the Settlement). All of this was highly beneficial to these cases,

including by allowing for the uncontested Mexico Sale Transaction, DIP financing on the best terms available after a thorough market test and a value-maximizing chapter 11 Plan and Settlement. Second, the reduction in the Settlement amount of the Transferred Guarantor Claims from a gross percentage of 27.5% under the Initial Plan to 21% **inures solely to the benefit of the Holders of the Capco 7.625% Note Claims** — i.e., the Capco 2021 Group — in the amount of $46.3 million, a result that is directly at odds with their allegation that no one was advocating for Holders of the Capco 2021 Notes.[158]

153. Thus, there is no question that the Settlement has the support of critical parties in interest in the Debtors' cases.

5. The Nature and Breadth of Releases Are Appropriate

154. The Plan contains various estate and third party releases that were integral parts of the Plan and Settlement. As set forth in Part III below and as will be demonstrated at the Confirmation Hearing, those releases are consensual, appropriate and consistent with the Second Circuit's standards for approving those types of releases.

6. The Settling Parties Were Counseled by Experienced and Skilled Legal and Professional Advisors

155. All of the negotiating parties have been represented by skilled and experienced bankruptcy practitioners during these Chapter 11 Cases, which further supports approval of the Settlement. The Settlement was negotiated, reviewed and recommended by experienced professionals from: (a) Jones Day; (b) Rothschild; (c) Kramer Levin; (d) FTI; (e) Quinn Emanuel; (f) Zolfo Cooper Management, LLC; (g) Akin Gump; (h) Paul Weiss; (i) Blackstone; (j) Houlihan Lokey; (k) Robbins, Russell, Englert, Orseck, Untereiner & Sauber

158 See Parkhill Decl. ¶¶ 52-53.

LLP; (l) Kirkland; and (m) Millstein. Even members of the Capco 2021 Group recognize that the legal advisors in these cases are experienced and competent bankruptcy counsel.[159]

156. Courts have previously given this factor considerable weight. See In re Adelphia Commc'ns Corp., 327 B.R. 143, 164 (Bankr. S.D.N.Y. 2005) (approving settlement pursuant to Bankruptcy Rule 9019 and noting that the court gives the Iridium factor regarding competency counsel "considerable weight"); see also Chemtura, 439 B.R. at 608 (holding that settlement easily satisfied the Iridium requirements, in part because "[n]o argument has been made, nor could any argument be made, that counsel who put the Settlement together were anything less than highly skilled in their craft, and knowledgeable in the considerations underlying a settlement of this character.").

157. The Capco 2021 Group asserts that the competency of the Debtors' counsel is not relevant here because the Debtors did not participate in the negotiations over the terms of the Settlement with respect to the Transferred Guarantor Claims and, in any event, the Debtors concluded that the Transferred Guarantor Claims are without merit, so their counsel's competency would support that this settlement is unreasonable. See Capco 2021 Obj. ¶¶ 107-08. As discussed above, the Capco 2021 Group's attempt to exploit the Debtors' stated belief that the Transferred Guarantor Claims are "without merit" is greatly exaggerated. Likewise, the baseless accusation that Jones Day and the Debtors did not participate in the negotiations over the terms of the Settlement is without any evidentiary support and is belied by the facts and the testimony.

158. Quite to the contrary, Jones Day was intimately involved in the negotiations of the Potential Litigation Claims from the outset of restructuring discussions, and in the midst of those discussions, Jones Day performed its own extensive and thorough analysis

[159] See e.g., Taub Dep. at 156:21-158:19.

of the merits of all of the Potential Litigation Claims, including the Transferred Guarantor Claims, by reviewing tens of thousands of documents and e-mails and conducting interviews with numerous employees of the Debtors. Further, Jones Day led the dual negotiations that took place after the Petition Date with the Luxco Group and Capital Group that resulted in the selection of the Initial Plan that did not have the same level of creditor support enjoyed today and was faced with opposition. Thereafter, around the time that the Mexico Sale Transaction was being announced, Jones Day gathered all of the parties — Aurelius, Capital Group, the Luxco Group and the Creditors' Committee — for all-hands' meetings at the Jones Day offices in New York, which resulted in the framework for a near fully consensual deal that is now before the Court for approval.[160] In sum, while Jones Day believes this accusation barely warrants a response, we believe that the Court is fully aware that Jones Day and the Debtors have been at the center of the negotiations from day one.

159. In asserting that the Debtors believed that they had a conflict with respect to the Transferred Guarantor Claims, the Capco 2021 Group relies heavily upon the unsubstantiated hearsay of non-Debtor third parties — an objection filed by the Luxco Group in these cases, the deposition testimony of a principal for Capital Group and the handwritten notes of an Aurelius employee. See Capco 2021 Obj. ¶ 2 n.10. The one piece of "evidence" directly from the Debtors is a mis-quote of Debtors' counsel from a hearing held during these cases and taken out of context. See Capco 2021 Obj. ¶ 67 n. 37 (citing to Debtors' counsel's statement that "we're fiduciaries to all of the estate, so it puts the Debtors and our advisors in an awkward position", which actually referred to inter-debtor claims resolved by the Settlement and not the Transferred Guarantor Claims). The fact is that there is no conflict. The Transferred Guarantor

[160] See Shindler Decl. ¶ 31.

Claims are not inter-debtor in nature, and the Debtors have never viewed them as such. If the Plan and Settlement are not approved and the Transferred Guarantor Claims are litigated, Jones Day intends to represent the Debtors in defending against such Claims and has always been prepared to take such action in the event necessary.

160. With respect to the Avoidance Claims and the Recharacterization Claims, some of which are potentially inter-Debtor in nature, Jones Day has made very clear that it would seek additional counsel only in the event of **litigation** of inter-debtor disputes (an entirely different species of claim), and that it could and should continue to evaluate and discuss the merits of the positions taken by various interested parties with respect to the Settled Claims and Disputes.[161] Specifically, in connection with its retention by the Debtors, Jones Day stated:

> Jones Day recognizes and wishes to disclose to the Court and the stakeholders in these chapter 11 cases that, absent a global settlement of the interdebtor disputes that is supported by all of the key creditor groups, including those groups identified above, the interests of creditors of LuxCo may be adverse to the interests of the creditors of NII Holdings and/or NII Capital Corp.
>
> **To the extent that the adversity develops into litigation** between or among creditors relating to interdebtor issues, Jones Day recognizes **that it cannot play a role in such interdebtor litigation** and that one or more of the Debtors may need to engage conflicts counsel to represent its interests in any such litigation. In the meantime, as counsel to the Debtors in these chapter 11 cases, as well as restructuring counsel to the Debtors for a significant period prior to the commencement of these cases, **Jones Day believes that it can and should continue its efforts to facilitate a settlement of the interdebtor issues, including by (a) evaluating and discussing with the parties the merits of the parties' respective positions on the interdebtor disputes and proposing alternative options and proposals with respect to such disputes and (b) working closely with the Committee in a collaborative effort to lead the parties to common ground that will resolve the interdebtor claims and related issues and maximize the**

[161] In the event that inter-Debtor claims did rise to the level of litigation, Jones Day explained on the record that a potential solution could be to establish a process for litigating such claims along the lines of the protocol established in the Adelphia case. See Tr. of Hr'g, November 24, 2014 at 14:17-16:11.

> **value of the Debtors' operations for the benefit of all creditors. In doing so, Jones Day will not act adversely to the interests of any individual Debtor.**

Supplemental Declaration of Carl E. Black in Support of Application of Debtors and Debtors in Possession, Pursuant to Sections 327(a) and 329(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016(b) and Local Bankruptcy Rules 2014-1 and 2016-1, for an Order Authorizing Them to Retain and Employ Jones Day as Counsel, Nunc Pro Tunc to the Petition Date [Docket No. 74], Trial Exhibit P168 at ¶¶ 8-9 (emphasis added). This is exactly the role that Jones Day has played throughout these proceedings — evaluating the merits of various legal and factual arguments made by parties in interest and providing unbiased legal advice to the Debtors.

7. The Settlement is the Product of Arm's-Length Bargaining

161. The Settlement is indisputably the product of good-faith, arm's-length negotiations. Both the identity of the negotiating parties and the process employed prior to and during these cases emphasizes the arm's-length nature of the negotiations that led to the Settlement.[162] Further, the Settlement has the added benefit of the oversight of the Creditors' Committee and Independent Manager.

162. *First*, the Consenting Noteholders hold Claims across the Debtors' capital structure, including 70% of the Capco Notes — which includes the Capco 2021 Notes — and 72% of the Luxco Notes. Because they are Holders of the Capco 2021 Notes, the Consenting Noteholders' recoveries with respect to such notes are impacted by a change in the Allowed

[162] Following the Petition Date, the Debtors and their advisors, with the assistance of the advisors to the Luxco Group, made an earnest and concerted effort to solicit the interest of numerous Holders of the Capco 2021 Notes to engage in the negotiations and sign non-disclosure agreements to facilitate those negotiations. One Holder who signed such a non-disclosure agreement and reviewed a Luxco Group term sheet was Calvert Investment Management, Inc., now a member of the Capco 2021 Group. Other members of the Capco 2021 Group declined to sign non-disclosure agreements at that time, preferring to remain "unrestricted" from continuing to buy and sell the Debtors' securities. See Parkhill Decl. ¶ 31.

amount of the Transferred Guarantor Claims. Indeed, the reduction in the Allowed amount of the Transferred Guarantor Claims from a gross percentage of 27.5% under the Initial Plan to 21% benefitted solely Holders of the Capco 2021 Notes. This adjustment alone resulted in $46.3 million of value that flowed away from the Capco 10% Note Claims and the Capco 8.875% Note Claims and directly to the Capco 7.625% Note Claims.[163]

163. *Second*, the Creditors' Committee's decision to support the Settlement and serve as a co-proponent of the Plan with the Debtors is further evidence that the Settlement is the result of arm's-length negotiations. Since the Creditors' Committee's formation at the outset of these cases, the Debtors actively engaged with their professionals and provided them access with documents and information relating to the Potential Litigation Claims to facilitate their independent and thorough review and assessment of the underlying Settled Claims and Disputes. All of this was for good reason: the Creditors' Committee is the estate representative for, and acts on behalf of, all unsecured creditors — which includes Holders of the Capco 2021 Notes — and its members represent a cross-section of Holders of Claims (including every series of Prepetition Notes and each of the relevant Indenture Trustees, including the indenture trustee for the Capco 2021 Notes), as well as other important unsecured creditor constituencies in the Debtors' cases. The professionals representing the Creditors' Committee performed a thorough and independent review and assessment of the underlying Settled Claims and Disputes resolved by the Settlement.[164]

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163 See Parkhill Decl. ¶ 52.

164 In addition, the U.S. Trustee determined that the Creditors' Committee adequately represented the interests of all unsecured creditors (i.e., including Holders of the Capco 2021 Notes) in response to a request from one of the members of the Capco 2021 Group for the appointment of a separate statutory committee to represent Holders of the Capco 2021 Notes. See United States Trustee Declination of Formation of 2021 CapCo Noteholder Committee – dated March 19, 2015, Tr. Ex. P131.

164. *Third*, the Court-appointed Independent Manager's recommendation that Luxco join in the Plan Support Agreement and the Settlement is further evidence that the Settlement is the result of arm's-length negotiations. After his appointment, the Independent Manager conducted several in-person meetings with the Debtors and certain of their advisors and employees and discussed the Settlement with principals or advisors for each of the Creditors' Committee, Aurelius, Capital Group and the Luxco Group. The Independent Manager was given access to hundreds of documents to facilitate his review, and Rothschild educated the Independent Manager with respect to the Waterfall Model and its implications for creditor recoveries.

165. Ultimately, the Independent Manager concluded that Luxco should join the Settlement because the Settlement is fair and equitable and in the best interests of Luxco and its estate.[165] Importantly, a significant creditor of Luxco's estate is Capco pursuant to the $644 million Capco Intercompany Note. The Independent Manager understood his fiduciary obligation to Capco as a significant creditor of Luxco and considered this when recommending Luxco's entry into the settlement.[166]

166. *Fourth*, the Debtors concluded, in the exercise of their reasonable business judgment, after considering all of the relevant factors and the advice of their professional advisors, to enter into the Settlement. In doing so, they relied upon advice of their legal counsel as to the merits of the underlying Claims. Despite the Capco 2021 Group's incorrect assertion to the contrary, demonstration of the reasonableness of a settlement does not require a debtor to reveal, through the disclosure of privileged information, the precise details of its communications with counsel regarding claims subject to potential settlement and the decision to settle them.

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165 See Winn Decl.

166 Id.

See Washington Mutual, 442 B.R. at 330 ("It is not necessary for the Debtors to waive the attorney/client privilege by presenting testimony regarding what counsel felt was the likelihood they would win on the claims being settled. . . . It is sufficient to present the Court with the facts relevant to those issues. The Court itself can then evaluate the likelihood of the parties' prevailing in that litigation to determine whether the settlement is reasonable."). Accordingly, the Court's independent assessment of the Settlement will confirm the Debtors' conclusion that the Settlement is reasonable.

167. Therefore, the Settlement represents the product of numerous concessions by multiple parties, is the result of extensive negotiation by parties with differing economic interests and was not the result of fraud or collusion. See Chemtura, 439 B.R. at 608 ("Finally, I find that the Settlement was truly the product of arm's-length bargaining, and not fraud or collusion."). The arm's-length nature of the negotiations are underscored by the agreement among parties with differing fiduciary obligations to enter into the Settlement, which was independently reviewed at multiple points. The independent review and assessment by these fiduciaries and the conclusions by each of them that the Settlement is fair and equitable and in the best interests of their respective constituents underscores arm's-length nature of the bargaining that took place during these cases.

* * *

168. For the foregoing reasons, the Debtors submit that an analysis of the Iridium factors demonstrates that the Settlement falls well within the range of reasonableness, is fair, equitable and in the best interests of the estates, and should be approved by the Court.

II. THE PLAN MEETS EACH OF THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE

169. To obtain confirmation of a chapter 11 plan, the proponent must demonstrate that the plan satisfies each of the requirements set forth in section 1129 of the Bankruptcy Code. Through evidence to be presented at the Confirmation Hearing, as set forth in the Declarations and as demonstrated herein, the Plan Proponents will demonstrate (by a preponderance of the evidence) that the Plan satisfies such requirements and should be confirmed.[167]

A. Section 1129(a)(1) — The Plan Complies with the Applicable Provisions of Title 11

170. Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the plan "complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) of the Bankruptcy Code indicates that the primary focus of this requirement is to ensure that the form of the plan complies with the provisions of sections 1122 (classification of claims and interests) and section 1123 (contents of a plan) of the Bankruptcy Code. See S. Rep. No. 95-989, 95th Cong. 2nd Sess. 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986) (stating that "[o]bjections to confirmation raised under § 1129(a)(1) generally involve the failure of a plan to conform to the requirements of § 1122(a) or § 1123."), aff'd in part, rev'd in part on other grounds, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom., Kane v. Johns-Manville Corp., 843 F.2d 636 (2d Cir. 1988); In re Texaco, Inc., 84 B.R. 893, 905 (Bankr. S.D.N.Y. 1988) ("In determining whether a plan

[167] The Confirmation Standards Exhibit is attached hereto as Exhibit A.

complies with section 1129(a)(1), reference must be made to Code §§ 1122 and 1123 with respect to the classification of claims and the contents of a plan of reorganization.") (citing In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984), appeal dismissed, 92 B.R. 38 (S.D.N.Y. 1988). As demonstrated below, the Plan fully complies with all of the applicable provisions of the Bankruptcy Code (as required by section 1129(a)(1) of the Bankruptcy Code), including, without limitation, sections 1122 and 1123 of the Bankruptcy Code.

1. Classification of Claims and Interests

171. Section 1122 of the Bankruptcy Code sets forth the basic rule governing the classification of claims and interests: with the exception of "convenience classes" of unsecured claims, the claims or interests within a given class must be "substantially similar" to the other claims or interests in that class. 11 U.S.C. § 1122(a); Windels Marx Lane & Mittendorf, LLP v. Source Enters., Inc. (In re Source Enters., Inc.), 392 B.R. 541, 556 (S.D.N.Y. 2008) ("[A] plan proponent is afforded significant flexibility in classifying claims under § 1122(a) if there is a reasonable basis for the classification scheme and if all claims within a particular class are substantially similar.") (internal quotation marks omitted)).

172. In the Second Circuit, under section 1122 of the Bankruptcy Code, plan proponents have significant flexibility to place similar claims into different classes, provided there is a reasonable or rational basis for doing so. See In re Lightsquared Inc., 513 B.R. 56, 82-83 (Bankr. S.D.N.Y. 2014) ("Courts that have considered the issue [of classification], including the Court of Appeals for the Second Circuit as well as numerous courts in this District, have concluded that the separate classification of otherwise substantially similar claims and interests is appropriate so long as the plan proponent can articulate a 'reasonable' (or 'rational') justification for separate classification.") (collecting cases); WorldCom, 2003 WL 23861928, at *47 (stating

that "[a] debtor need not place all substantially similar claims in the same class as long as the debtor has a reasonable basis for the separate classification.") (citation omitted). Recognizing this flexibility, courts have long held that "the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan." Heritage, 375 B.R. at 303; see also Boston Post Rd. Ltd. P'ship v. FDIC (In re Boston Post Rd. Ltd. P'ship), 21 F.3d 477, 481 (2d Cir. 1994) (holding that similar claims may be separately classified unless the sole purpose is to engineer an assenting impaired class).

173. The Plan follows a non-consolidated structure, respecting the corporate separateness of each of the Debtors.[168] Thus, classification of Claims and Interests must be analyzed on a Debtor-by-Debtor basis, just as this Plan is a plan for each of the Debtors and must be confirmed as to each of them. See In re Tribune Co., 464 B.R. 126, 183 (Bankr. D. Del. 2011) (holding that section 1129(a)(10) of the Bankruptcy Code "must be satisfied by each debtor in a joint plan"). Section II of the Plan reasonably provides for the separate classification of Claims against and Interests in the 13 Debtors into 13 distinct Classes based upon (a) their security position, if any, (b) their legal priority against the applicable Debtor's assets and (c) other relevant criteria.[169]

174. The 13 Classes of Claims and Interests are as follows:

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168 The grouping system employed by the Plan that assigns the Plan Debtors into one of five groups (e.g., the Holdings Debtor Group, the Capco Debtor Group, the Capco Guarantors Debtor Group, the Luxco Holdings Debtor Group, and the Transferred Guarantors Debtor Group) is for administrative convenience only and does not affect claimant's voting or distribution rights against the applicable Plan Debtor. See Disclosure Statement at 45.

169 In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified.

- Priority Claims against each Debtor (Class 1A, 1B, 1C, 1D & 1E Claims);
- Secured Claims against each Debtor (Class 2A, 2B, 2C, 2D & 2E Claims);
- Sale-Leaseback Guaranty Claims against NII Holdings and Luxco (Class 3A & 3D Claims);
- Luxco Note Claims against NII Holdings and Luxco (Class 4A & 4D Claims);
- Capco Note Claims against NII Holdings, Capco and each of the Debtors in the Capco Guarantor Debtor Group (Class 5A, 5B & 5C Claims);
- Transferred Guarantor Claims against McCaw, Airfone and NIU Holdings, LLC (as transferee of Claims asserted against NIU) (Class 6E Claims);
- CDB Documents Claims against NII Holdings (Class 7A Claims);
- General Unsecured Claims against each Debtor (Class 8A, 8B, 8C, 8D & 8E Claims)
- Convenience Claims against NII Holdings, Capco and each Debtor in the Capco Guarantors Debtor Group (Class 9A, 9B & 9C Claims);
- Section 510 Claims against each Debtor (Class 10A, 10B, 10C, 10D & 10E Claims);
- Non-Debtor Affiliate Claims against each Debtor (Class 11A, 11B, 11C, 11D & 11E Claims);
- NII Interests in NII Holdings (Class 12A Interests); and
- Subsidiary Debtor Equity Interests in each Debtor other than NII Holdings (Class 13B, 13C, 13D & 13E Interests).

175. The legal rights under the Bankruptcy Code of each of the Holders of Claims or Interests within a particular Class are substantially similar to other Holders of Claims or Interests within that Class. The Plan Proponents' classification of Claims and Interests under the Plan does not discriminate unfairly between or among Holders of Claims or Interests. Specifically, Holders of Claims of like priority (e.g., General Unsecured Claims, Luxco Note Claims, Capco Note Claims and Transferred Guarantor Claims) will recover the exact same

percentage of Plan Distributable Value from each applicable Debtor against which the Holders have valid claims.

176. Valid business, factual and legal reasons exist for the Plan's separate classification of Claims or Interests in connection with a particular Debtor. At a threshold level, the Plan separates Claims from Interests, Priority Claims from General Unsecured Claims and Secured Claims from both Priority and General Unsecured Claims. More particularly, due to their unique and different rights:

- Convenience Claims against NII Holdings, Capco and each of the Capco Guarantors (Class 9A, 9B & 9C Claims) are classified separately from other General Unsecured Claims pursuant to section 1122(b) of the Bankruptcy Code;[170]

- Sale-Leaseback Claims (Class 3A), Luxco Note Claims (Class 4A), Capco Note Claims (Class 5A), CDB Document Claims (Class 7A) and General Unsecured Claims (Class 8A), in each case, against NII Holdings are classified separately because:

    - The Luxco Note Claims (Class 4A) and the Capco Note Claims (Class 5A) arise pursuant to different Indentures under which different Debtors serve as obligors (i.e., Capco and the Capco Guarantors in the case of Holders of Capco Note Claims and Luxco in the case of Holders of Luxco Note Claims), thereby providing Holders of such respective notes with differing rights as against such Debtors. Furthermore, classifying the Luxco Note Claims together with the Capco Note Claims solely against NII Holdings could potentially have created confusion among creditors with respect to such Holders' differing recoveries against the remaining, disparate obligors under the respective notes;

    - The Sale-Leaseback Guaranty Claims (Class 3A) and the CDB Documents Claims (Class 7A) arise pursuant to different contracts — namely, the guarantees between ATC and NII Holdings and Luxco and the CDB Documents, respectively — under which different Debtors serve as obligors and which could similarly create confusion among creditors had such claims been classified together. In addition, valid business justifications exist for their separate classification because the Debtors wish to preserve their ongoing business relationships with CDB and ATC.[171] CDB has historically been a major lender to the Non-Debtor Affiliates and remains the primary

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[170] Section 1122(b) of the Bankruptcy Code provides that "[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." 11 U.S.C. § 1122(b).

[171] See e.g., Freiman Decl. ¶¶ 18 & 56.

lender to NII Brazil.[172] ATC is vital to NII Brazil's operations, functioning as the leading lessor of telecommunication towers on which NII Brazil's network depends.[173] Further, the recovery provided to each of ATC and CDB is unique to these relationships and could not have been readily offered if these claims were combined with General Unsecured Claims, the Holders of which are receiving only Cash;

- Holders of General Unsecured Claims (Class 8A) likely would prefer to receive recoveries in Cash, which is distinct from the distributions to the other Classes of Claims against NII Holdings of similar priority. In addition, valid business justifications exist to classify General Unsecured Claims separately because the Holders of most of these Claims are vendors and other counterparties with whom the Debtors wish to preserve ongoing business relationships, many of which are vital to the operations of the Non-Debtor Affiliates;[174]

- Capco Note Claims (Classes 5B and 5C) and General Unsecured Claims (Classes 8B and 8C), in each case, against Capco and each of the Capco Guarantors are classified separately because the Claims arise pursuant to distinct underlying agreements or transactions (e.g., the Capco Indentures and generally trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against Capco, and these Claims are subject to differing forms of recoveries that may not be well-suited to all Holders of these Claims; and

- Sale-Leaseback Claims (Class 3D), Luxco Note Claims (Class 4D) and General Unsecured Claims (Class 8D), in each case, against Luxco are classified separately because the Claims arise pursuant to distinct agreements or transactions (e.g., the Luxco Indentures and generally trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against Luxco, and these Claims are subject to differing forms of recoveries that may not be well-suited to all Holders of these Claims; and

- The Transferred Guarantor Claims (Class 6E) and General Unsecured Claims (Class 6E), in each case, against McCaw International (Brazil), LLC, Airfone Holdings, LLC and NIU Holdings, LLC (as transferee of Claims asserted against NIU) are separately classified because the Transferred Guarantor Claims are being settled on the basis of an aggregate net settlement of $150 million and, thus, allowed at differing recovery rates and in differing forms of recovery than would be applicable to the General Unsecured Claims (which, for example, will receive a 100% recovery in Cash at NIU Holdings LLC). Furthermore, the Transferred Guarantor Claims are litigation claims that give their

172 Id. ¶¶ 14 & 30 n.9.

173 Id. ¶ 18.

174 Id. ¶ 56.

Holders distinct rights as against the applicable Debtors, when compared to ordinary trade claimants;

- Section 510 Claims (Class 10) are properly subordinated to General Unsecured Claims pursuant to section 510(b) of the Bankruptcy Code. There are no other subordinated General Unsecured Claims that are separately classified from the Section 510 Claims;

- NII Interests (Class 12A) are Interests in NII Holdings, and Subsidiary Debtor Equity Interests (Class 13) are the respective Interests held by subsidiaries of NII Holdings in their own subsidiaries (e.g., NII Holdings' Interests in Capco, Aviation, Funding, and NIS; Capco's Interests in NII Global; NII Global's Interests in Nextel International Holdings S.à r.l.; Nextel International Holdings S.à r.l.'s and Nextel International Services S.à r.l.'s Interests in Luxco; and Luxco's Interests in NIU Holdings LLC). Not more than one of the foregoing Classes of Interests exist at any Debtor, and, thus, these Classes of Interests are not separately classified; and

- Because these are insider claims asserted by non-debtor affiliates, Non-Debtor Affiliate Claims (Class 11) have been separately classified in Class 11.

177. The Capco 2021 Group asserts that the Claims of holders of Capco 2021 Notes should be separately classified because the Transferred Guarantor Claims asserted against entirely different Debtors are somehow disenfranchising them. Such a separate classification argument with respect to Transferred Guarantor Claims does not account for the non-consolidated structure of the Plan. The Transferred Guarantor Claims are only asserted against McCaw, Airfone and NIU Holdings, LLC (as transferee of Claims asserted against NIU) (Class 6E). The Capco Note Claims (of which the Capco 2021 Notes are a part), on the other hand, are asserted against Capco and each of the Debtors in the Capco Guarantors Debtor Group (Classes 5A, 5B and 5C) — different Debtors than the Transferred Guarantor Claims.

178. Even assuming that the Plan consolidated the various Debtors, rendering the foregoing distinction inapplicable, the Transferred Guarantor Claims are nevertheless distinct from the Capco Note Claims because the former arise from the assertion (through the filing of Proofs of Claims) of disputed litigation claims asserted on behalf of Holders of the Capco 8.875% Notes and the Capco 10% Notes in connection with conduct that is alleged to have

triggered breaches of the 2009 Capco Notes Indentures (and not the Capco 7.625% Notes Indenture), as opposed to the latter, which are simply fixed claims for money borrowed evidenced by beneficial ownership of the underlying debt securities. Moreover, the disputed litigation claims are proposed to be settled under the Plan for less than the asserted amount of such claims for discrete consideration as part of the integrated Settlement, which is fundamentally different than the consideration to be distributed with respect to the Capco Note Claims, which is based on the distribution of Plan Distributable Value on account of the full face amount of such Claims.

179. The Claims of Holders of the Capco 2021 Notes against Holdings, Capco and each of the Debtors in the Capco Guarantor Debtor Group are otherwise properly classified within the Class of Capco Notes Claims against Holdings, Capco and each of the Debtors in the Capco Guarantor Debtor Group. Holders of all of the Capco Notes have identical rights against each of these Debtors pursuant to substantially similar documents, and will receive identical recoveries on account of their claims against each of those Debtors.[175] Moreover, courts in this District routinely approve chapter 11 plans that place in the same class bonds or notes issued pursuant to different indentures.[176]

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175 See Simplified Total Plan Distributable Value Illustration, Tr. Ex. P058 (demonstrating debtor-by-debtor recovery of holders of each series of Capco Notes).

176 See JPMorgan Chase Bank N.A. v. Charter Commc'ns, LLC (In re Charter Commc'ns), 419 B.R. 221, 264-65 (Bankr. S.D.N.Y 2009) (overruling objection to confirmation of plan and approving of classification of several series of notes in the same class separate from general unsecured claims because of the substantial difference that existed between the creditor groups, including the fact that general unsecured creditors' claims arose from litigation while noteholders' claims arose pursuant to their notes), appeal dismissed 449 B.R. 14 (S.D.N.Y.), aff'd, 691 F.3d 476 (2d Cir. 2012); Adelphia, 368 B.R. at 246-47 (holding that bondholders' claims arising pursuant to more than a dozen different indentures were properly classified together in the same class separately from general unsecured claims, which were primarily unliquidated litigation and rejection damages claims); see e.g., In re AMR Corp., No. 11-15463 (SHL) (Bankr. S.D.N.Y. Oct. 22, 2013) [Docket No. 10367] (confirming plan that classified multiple series of notes in the same class); In re Eastman Kodak Co., No. 12-10202 (ALG) (Bankr. S.D.N.Y. Aug. 23, 2013) [Docket No. 4966] (same); In re The Great Atlantic & Pac. Tea Co., No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2012) [Docket No. 3477] (same).

180. Finally, the Plan's classification scheme is not an attempt to manufacture an impaired class that will vote in favor of the Plan. The Plan Proponents have obtained the accepting votes of at least one Impaired Class of Claims against each Debtor that has Impaired Classes of Claims (discussed in Part II.H below).[177] Indeed, any argument that the Capco 2021 Notes should have been separately classified from the other Capco Notes is mooted by the fact that even if they had been separately classified, that class voted in favor of the Plan (by over 95% in number and 78% in amount).[178] Likewise, to the extent the Capco 2021 Group would have preferred the opportunity to trigger the requirements of section 1129(b) of the Bankruptcy Code as a putative separate class of claims against Capco and the Capco Guarantors arising from the Capco 2021 Notes, such an argument likewise fails given that the alternative vote calculation of the votes of Holders the Capco 2021 Notes performed by the Voting Agent demonstrates that such a putative class would have accepted the Plan, thereby mooting this issue entirely.[179]

181. Accordingly, for the foregoing reasons, the classification of Claims and Interests set forth in the Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code.

2. Mandatory Contents of a Plan

182. Section 1123(a) of the Bankruptcy Code identifies seven requirements for the contents of a plan of reorganization filed by a corporate debtor.[180] As demonstrated herein, the Plan fully complies with each such requirement for each Debtor.

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177 See generally Voting Decl.

178 Id., at Ex. B.

179 Id.

180 Section 1123(a)(8) of the Bankruptcy Code applies only in cases "in which the debtor is an individual" and is thus inapplicable to the Chapter 11 Cases. 11 U.S.C. § 1123(a)(8).

183. Specifically, section 1123(a) of the Bankruptcy Code requires that the Plan:

(a) designate Classes of Claims and Interests;

(b) specify unimpaired Classes of Claims and Interests;

(c) specify treatment of impaired Classes of Claims and Interests;

(d) provide for equality of treatment within each Class;

(e) provide adequate means for the Plan's implementation;

(f) prohibit the issuance of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and

(g) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of the Reorganized Debtors' officers and directors.

See 11 U.S.C. § 1123(a).

184. The Plan fully complies with each requirement of section 1123(a) of the Bankruptcy Code for each Debtor as described above.

a. Section 1123(a)(1) — Designation of Classes of Claims and Interests

185. As previously noted with respect to the Plan's compliance with section 1122, Section II.B of the Plan designates Classes of Claims and Interests (other than Administrative Claims and Priority Tax Claims) for each Debtor, as required by section 1123(a)(1) of the Bankruptcy Code.

b. Section 1123(a)(2) — Identification of Impaired Classes of Claims and Interests

186. Section II.B of the Plan further specifies for every Debtor each Class of Claims or Interests that is not Impaired under the Plan (i.e., Classes 1A through 1E, 2A through 2E, 9A through 9C, 11A through 11E and 13B through 13E), in accordance with section 1123(a)(2) of the Bankruptcy Code.

c. Section 1123(a)(3) — Disclosure of Treatment of Claims and Interests

187. The Plan specifies the treatment at every Debtor of each Class of Claims and Interests that is Impaired under the Plan (i.e., Classes 3A, 3D, 4A, 4D, 5A, 5B, 5C, 6E, 7A and 8A through 8E), and thus satisfies the requirement of section 1123(a)(3) of the Bankruptcy Code.

d. Section 1123(a)(4) — Identical Treatment of Claims in the Same Class

188. The Plan provides the same treatment for each Claim or Interest of a particular Class against each applicable Debtor unless the holder of a Claim or Interest agrees to less favorable treatment on account of its Claim or Interest, as required by section 1123(a)(4) of the Bankruptcy Code. In the case of every Class of Claims that is receiving property under the Plan, the Plan Proponents have proposed to distribute such property equally to every Holder of an Allowed Claim in such Class at each Debtor.[181]

189. The Capco 2021 Group is wrong to assert that Claims against each applicable Debtor are not treated the same. See Capco 2021 Obj. ¶ 119. To the contrary, the reason that Holders of the Capco 2021 Notes are *overall* receiving less value than Holders of the Capco 8.875% Notes and the Capco 10% Notes is because the Holders of the Capco 8.875% Notes and the Capco 10% Notes have separate Claims against each of the Transferred Guarantors — separate and distinct Debtor entities — while the Holders of the Capco 2021 Notes do not have, and never filed proofs of claim asserting, Claims against the Transferred Guarantors. The Capco 2021 Group overlooks the fact that the Plan treats all Capco Note Claims *pari passu* and with "equal dignity": each Holder of the Capco Note Claims — whether such Claims arise from the Capco 8.875% Notes, the Capco 10% Notes or the Capco 7.625%

[181] See e.g., Plan, Section II.C.

Notes — is receiving the exact same recovery **on account of such Claims** against Capco and each of the Capco Guarantors.[182] Thus, all Capco Note Claims in Classes 5A, 5B and 5C are afforded the same treatment in accordance with section 1123(a)(4) of the Bankruptcy Code. That the Holders of the Capco 8.875% Notes and the Capco 10% Notes are also receiving recoveries with respect to the settlement of their separate litigation claims against the Transferred Guarantors (Class 6E) does not change that conclusion.

e. Section 1123(a)(5) — Adequate Means of Implementation

190. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Section III of the Plan ("Means for Implementation of the Plan") as well as various other provisions thereof provide adequate means for the Plan's implementation. These provisions relate to, among other things: (a) the continued corporate existence of the Debtors (subject to the Restructuring Transactions) and the vesting of the Debtors' assets in the Reorganized Debtors; (b) the consummation of the Restructuring Transactions; (c) the obligations of successors to the Reorganized Debtors created pursuant to the Restructuring Transactions; (d) the adoption of the corporate constituent documents that will govern Reorganized NII and the other Reorganized Debtors; (e) the identities of, and/or method for appointing, the directors and officers of Reorganized NII and the other Reorganized Debtors; (f) the issuance, distribution and listing of Reorganized NII Common Stock; (g) the treatment of certain employment, retirement and workers' compensation benefits, including the Management Incentive Plan and the Severance Plan; (h) the authorization for the Reorganized Debtors to consummate the New NII Exit Financing Facility (if obtained);[183] (i) the preservation of rights of

182 See Plan, Section II.C.5.

183 Currently, the Debtors do not anticipate seeking financing pursuant to the New NII Exit Financing Facility.

action by the Reorganized Debtors (other than claims settled or released pursuant to the Plan); (j) the general releases by (1) the Debtors and Reorganized Debtors, (2) Holders of Claims or Interests voting in favor of the Plan and (3) the Released Parties, as well as the other releases to be effectuated pursuant to the Settlement contained in the Plan and the injunctions and exculpations relating to the foregoing; (k) the cancellation and surrender of instruments, securities and other documentation; (*l*) the release of liens; (m) the mechanism for distributions of Reorganized NII Common Stock and/or Cash pursuant to the Plan; (n) the assumption or rejection of Executory Contracts and Unexpired Leases; and (o) the adoption, execution, delivery and implementation of all contracts, instruments, releases and other agreements or documents related to the foregoing. Moreover, the Debtors expect to have approximately $1.344 billion of unrestricted Cash to make all payments required to be made on the Effective Date pursuant to the terms of the Plan.

f. Section 1123(a)(6) — Prohibition Against Non-Voting Equity Securities

191. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. In accordance with this requirement, Section III.F.1 of the Plan provides that the certificates of incorporation and bylaws (or comparable constituent documents) of Reorganized NII and the other Reorganized Debtors, among other things, will prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code. Exhibits B and C to the Plan, which are the forms of certificate of incorporation, by-laws and certificate of designations (or comparable constituent documents) of Reorganized NII, include provisions prohibiting the issuance of nonvoting equity securities and implementing the appropriate distribution of voting power among the classes of securities possessing voting power.

g. Section 1123(a)(7) — Director and Officer Selection Provisions Consistent with Public Policy

192. Section 1123(a)(7) of the Bankruptcy Code requires that a plan of reorganization "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director or trustee." 11 U.S.C. § 1123(a)(7). The Plan complies with section 1123(a)(7) and ensures that the selection of the officers and directors of Reorganized NII and the other Reorganized Debtors is consistent with the interests of creditors and equity security holders and with public policy. In particular, the New Board of Reorganized NII consists of seven directors (identified on Exhibit D to the Plan as disclosed in the Plan Supplement), as follows: (a) Kevin L. Beebe, (b) James V. Continenza, (c) Howard Hoffmann, (d) Ricardo Knoepfelmacher, (e) Christopher T. Rogers and (f) Steven M. Shindler (chief executive officer of Reorganized NII).[184] As described in greater detail below in Part II.E, to the extent the seventh director becomes known prior to the Confirmation Hearing, the Plan Proponents will file a supplemental disclosure with the Bankruptcy Court. The directors for the boards of directors of the direct and indirect subsidiaries of Reorganized NII will be identified and selected by the New Board.[185] In light of the foregoing, the manner of selection of the initial officers and directors of Reorganized NII and the other Reorganized Debtors as provided for in the Plan Support Agreement and Plan Term Sheet is consistent with the interests of creditors and equity security holders and with public policy in accordance with section 1123(a)(7) of the Bankruptcy Code.

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184 See Notice of Filing of Plan Supplement Relating to the First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors [Docket No. 704], Tr. Ex. P094, Ex. D.

185 See Plan, Section III.F.2.

3. Permitted Contents of a Plan

193. Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization, provided they are "not inconsistent with" applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6).

194. As permitted under section 1123(b) of the Bankruptcy Code, the Plan provides for (a) the impairment or unimpairment of Classes of Claims (Plan, Section II.B); (b) the assumption or rejection of certain Executory Contracts or Unexpired Leases not previously rejected (or for which motions for assumption or rejection are pending) under section 365 of the Bankruptcy Code[186]; (c) the retention and enforcement of certain claims, demands, rights, defenses and causes of action by the Reorganized Debtors, except the Avoidance Claims, the Recharacterization Claims and the Transferred Guarantor Claims[187]; and (d) the settlement of certain disputes[188] between and among the Debtors and other parties in interest, including the implementation of the Settlement.[189]

195. The Plan contains other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code, including, but not limited to, provisions: (a) governing distributions on account of Allowed Claims[190]; (b) establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims once resolved[191]; (c) regarding the discharge, release and injunction against the pursuit of Claims and

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186 Plan, Section IV.A.

187 Plan, Section III.H.1.

188 The Plan provides that as of the Effective Date, the Plan Debtors shall waive and release all Recovery Actions. Plan, Section III.H.2.

189 Plan, Section III.H.2; discussed at length in Part I above.

190 Plan, Section V.

191 Plan, Section VI.

termination of Interests[192]; and (d) regarding the retention of jurisdiction by the Court over certain matters after the Effective Date.[193]

196. Accordingly, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code (as well as with the other applicable provisions of the Bankruptcy Code) and thus satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

B. Section 1129(a)(2) — The Plan Proponents Have Complied With Applicable Provisions of Title 11

197. While section 1129(a)(1) focuses on a plan's compliance with the Bankruptcy Code, section 1129(a)(2) focuses on the proponent's compliance with the Bankruptcy Code. See 11 U.S.C. § 1129(a)(2). The legislative history of this provision indicates that its principal purpose is to ensure that the proponent complies with the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code. See S. Rep. No. 95-989, at 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5912 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); H.R. Rep. No. 95-595, at 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6368; see also WorldCom, 2003 WL 23861928, at *49 (stating that "[t]he legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code."); Johns-Manville, 68 B.R. at 630 ("Objections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the Code.") (citation omitted). The Plan

192 Plan, Section IX.

193 Plan, Section X.

Proponents have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and solicitation of the Plan.

1. Compliance with Section 1125 of the Bankruptcy Code

198. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan of reorganization from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b). In these cases, after a hearing held on April 20, 2015, the Court approved the Disclosure Statement by an order entered the same day (the "Disclosure Statement Order").[194] The Disclosure Statement Order specifically found, among other things, that the Disclosure Statement contained "adequate information" within the meaning of section 1125 of the Bankruptcy Code.[195]

199. In addition, the Court considered and, in the Disclosure Statement Order, approved, among other things: (a) all materials to be transmitted to creditors entitled to vote on the Plan (collectively, the "Solicitation Materials"), including (i) the Plan and the Disclosure Statement (together with certain exhibits thereto), (ii) a notice of the Confirmation Hearing (the "Confirmation Hearing Notice") and related matters and (iii) an appropriate Ballot; (b) certain materials to be transmitted to creditors not entitled to vote on the Plan (i.e., the Confirmation Hearing Notice and a notice of non-voting status); (c) the procedures for the solicitation and tabulation of votes to accept or reject the Plan, including approval of (i) the deadline for creditors' submission of Ballots, (ii) the rules for tabulating votes to accept or reject

194 Order Approving Disclosure Statement [Docket No. 655], Tr. Ex. P173.

195 Id. at D.

the Plan and (iii) the proposed record date for Plan voting; and (d) the proposed date for the Confirmation Hearing and certain related notice procedures.[196] Thereafter, the Plan Proponents (through the Voting Agent) transmitted the approved Solicitation Materials in accordance with the instructions of the Court in the Disclosure Statement Order.[197] The Prime Clerk Service Affidavits demonstrates that (a) the Solicitation Materials were served in accordance with the requirements of the Disclosure Statement Order and (b) the Plan Proponents did not solicit acceptance of the Plan from any creditor or equity security holder prior to the transmission of the approved Disclosure Statement.

2. Compliance with Section 1126 of the Bankruptcy Code

200. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.

201. As set forth in the Disclosure Statement and the Voting Declaration, in accordance with section 1126 of the Bankruptcy Code, the Plan Proponents solicited acceptances from the Holders of all Allowed Claims in each Class of Impaired Claims entitled to receive distributions under the Plan. Claims in Classes 3A, 3D, 4A, 4D, 5A through 5C, 6E, 7A and 8A through 8E are designated as Impaired under the Plan, and Holders of such Claims are entitled to receive distributions on account of such Claims against the applicable Debtors under the Plan. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in those

196 See generally id.

197 See Affidavit of Service [Docket No. 676], Tr. Ex. P092; Affidavit of Service of Solicitation Materials [Docket No. 695], Tr. Ex. P174 (together with Tr. Ex. P174, the "Prime Clerk Service Affidavits"); Notice of Certification of Publication [Docket No. 697], Tr. Ex. P093.

Classes were entitled to vote to accept or reject the Plan.[198] Holders of Claims or Interests in Classes 1A through 1E, 2A through 2E, 9A through 9C, 11A through 11E, and 13B through 13E are designated under the Plan as Unimpaired. Accordingly, pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims or Interests in those Classes are conclusively presumed to have accepted the Plan.[199]

202. Votes to accept or reject the Plan have not been solicited from the Holders of Claims and/or Interests in Classes 10A through 10E (subordinated Section 510 Claims, which were only asserted against NII Holdings) and Class 12A (NII Interests) under the Plan because such Holders are not entitled to receive or retain any property under the Plan on account of such Claims and/or Interests unless and until Holders of Allowed Claims in Classes senior in priority to them have been paid in full, plus interest, which is not expected to occur.[200] Thus, Holders of Claims in Classes 10A through 10E and Interests in Class 12A have been deemed to reject the Plan, consistent with section 1126(g) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.[201]

203. Based upon the foregoing, the Plan Proponents' solicitation of votes with respect to the Plan was undertaken in conformity with sections 1125 and 1126 of the Bankruptcy Code and the Disclosure Statement Order, and the Plan Proponents acted in good faith at all times with respect to the solicitation of votes on the Plan. The Plan Proponents, therefore, have

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198 Section 1126(a) of the Bankruptcy Code provides that "[t]he holder of a claim or interest allowed under section 502 of this title may accept or reject a plan." 11 U.S.C. § 1126(a).

199 Section 1126(f) of the Bankruptcy Code provides that "a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required." 11 U.S.C. § 1126(f).

200 See Disclosure Statement, at 9 (estimating the percentage recovery for Class 8 Claimants within a range of .18% to 20.18%).

201 Section 1126(g) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of [section 1126 of the Bankruptcy Code], a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests." 11 U.S.C. § 1126(g).

complied with applicable provisions of the Bankruptcy Code and have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. Section 1129(a)(3) — The Plan Has Been Proposed in Good Faith

204. Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Second Circuit has indicated that a plan of reorganization is proposed in good faith when "the plan [was] proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.'" Kane v. Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988) (citing Koelbl v. Glessing (In re Koelbl), 751 F.2d 137, 139 (2d Cir. 1984)); In re Granite Broadcasting Corp., 369 B.R. 120, 128 (Bankr. S.D.N.Y. 2007) (adopting the Kane standard and adding that "the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.") (citation omitted); see also In re Leslie Fay Cos., 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) (stating that "a plan is proposed in good faith if there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the Code.") (internal quotations omitted). Good faith should be evaluated "in light of the totality of the circumstances surrounding confirmation." In re Oneida Ltd., 351 B.R. 79, 85 (Bankr. S.D.N.Y. 2006) (quotation omitted) (citing In re Cellular Info Sys., Inc., 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994)); In re Spiegel, Inc., No. 03-11540 (BRL) , 2005 WL 1278094, at *6 (Bankr. S.D.N.Y. May 25, 2005) (stating that determination of "good faith" under section 1129(a)(3) of the Bankruptcy Code made after "examin[ing] the totality of the circumstances surrounding the filing of the Chapter 11 Cases and the formulation of the Plan.").

205. Good faith for purposes of section 1129(a)(3) of the Bankruptcy Code also may be found where the plan is supported by key creditor constituencies, or was the result of

extensive arm's-length negotiations with creditors. See Leslie Fay, 207 B.R. at 781 ("The fact that the plan is proposed by the committee as well as the debtors is strong evidence that the plan is proposed in good faith.") (citation omitted); In re Eagle-Picher Indus., Inc., 203 B.R. 256, 274 (Bankr. S.D. Ohio 1996) (finding that plan of reorganization was proposed in good faith when, among other things, it was based on extensive arm's-length negotiations among plan proponents and other parties in interest).

206. The primary goal of chapter 11 is to promote the restructuring of a debtor's debt obligations and other liabilities to enable the continued existence of a corporate entity that provides, among other things, jobs to its employees, a tax base to the communities in which it operates, goods and services to its customers and the other economic benefits to vendors, suppliers and other parties engaged in commerce with the debtor. Congress thus has recognized that the continuation of businesses as viable entities benefits the national economy. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."); In re Drexel Burnham Lambert Grp., 138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992) (same; quoting Bildisco).

207. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by enabling the Reorganized Debtors to continue to operate as viable businesses through means consistent with the objectives and purposes of the Bankruptcy Code. As described in the Disclosure Statement, the Plan proposes to implement both (1) the Debtors' restructuring as a sustainable, viable business (a) by removing more than $4.35 billion of liabilities from the Debtors' balance sheet and (b) through several initiatives that were undertaken during the Chapter 11 Cases, relating to, inter alia, customers and suppliers, workforce salary and

benefit changes, and other administrative costs; and (2) the integrated Settlement of the numerous Settled Claims and Disputes among the Debtors, the Creditors' Committee and the Consenting Noteholders on terms that provide significant value to the Debtors, their creditors and other stakeholders and will enable the Debtors to consummate their proposed restructuring pursuant to the Plan and effect the complete and final settlement of the Settled Claims and Disputes.

208. The Plan (and the Settlement implemented thereby) is the result of extensive good-faith, arm's-length negotiations among the Debtors, the Creditors' Committee and its various creditor constituencies. The Plan (and the integrated Settlement implemented thereby) was proposed by the Debtors after more than a year of intense, hard-fought negotiations with their major creditor constituencies and is supported by the Creditors' Committee who is also a co-proponent of the Plan with the Debtors. In addition, the Creditors' Committee and the Independent Manager each performed an extensive independent review and analysis of the Plan, the Settlement and the Settled Claims and Disputes resolved thereby, and concluded that the Plan is in the best interests of each of their respective constituencies. Finally, events in the Chapter 11 Cases, including the Debtors' decision to enter into the Mexico Sale Transaction, and the related negotiations with respect to the Plan that ensued, resulted in the Plan now before the Court that enjoys even greater creditor support, is more favorable to the Debtors and their estates, and affords the Capco 7.625% Note Claims with substantially increased recoveries.

209. Moreover, the Plan is overwhelmingly supported by Holders of General Unsecured Claims against each Debtor (i.e., 100% in number and 100% in amount), Holders of Capco Note Claims (i.e., 97.20% in number and 89.29% in amount) and Luxco Note Claims (i.e., 84.05% in number and 94.28% in amount), as well as by the Creditors' Committee, which

includes members representing creditors with Claims in all relevant parts of the Debtors' capital structure.[202] The support for the Plan from each of the Debtors' primary stakeholder constituencies evidences the Plan Proponents' honesty and good faith in proposing the Plan, and the totality of the circumstances surrounding its formulation clearly promotes the rehabilitative objectives and purposes of the Bankruptcy Code.

210. Accordingly, for the foregoing reasons, the Plan Proponents have satisfied the requirements of section 1129(a)(3) of the Bankruptcy Code.

D. Section 1129(a)(4) — All Payments to Be Made By the Debtors in Connection With These Cases Are Subject to the Approval of the Court

211. Section 1129(a)(4) of the Bankruptcy Code requires that all payments made by the debtor, the plan proponent or by a person issuing securities or acquiring property under a plan for services or for costs and expenses incurred in connection with the case or the plan, be approved by the Court as reasonable. See 11 U.S.C. § 1129(a)(4).

212. Pursuant to the Court's Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a) and Local Bankruptcy Rule 2016-1, Establishing Procedures for Interim Monthly Compensation for Professionals, entered on October 14, 2014 [Docket No. 100], Trial Exhibit P169, this Court has authorized and approved on an interim basis the payment of certain fees and expenses of Professionals retained in these Chapter 11 Cases. All such fees and expenses, as well as all other accrued fees and expenses of Professionals through the Effective Date, remain subject to final review for reasonableness by the Court. Section II.A.1 of the Plan provides for the payment only of Allowed Administrative Claims, and makes all payments for Professionals' Fee Claims for services rendered prior to the Effective Date subject to Court approval under the standards established by the Bankruptcy Code,

202 See Voting Decl., Ex. B.

including the requirements of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code, as applicable, by requiring Professionals to file final fee applications with the Court. In addition, Section X of the Plan provides that the Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan. Finally, the fees and expenses payable to the Voting Agent for its services as the Debtors' voting and solicitation agent are set by the parties' contract, which previously was approved by the Court.

213. The foregoing procedures for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors for Professionals retained in these chapter 11 cases satisfy the objectives of section 1129(a)(4) of the Bankruptcy Code. See WorldCom, 2003 WL 23861928, at *54 (finding the "requirements of section 1129(a)(4) satisfied where plan provided for payment of only 'allowed' administrative expenses") (quoting In re Elsinore Shore Assocs., 91 B.R. 238, 268 (Bankr. D.N.J. 1988)). Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

214. The U.S. Trustee has objected to the Debtors' payment of the Requisite Consenting Noteholders Professionals Fees/Expenses pursuant to either the Plan Support Agreement or the Plan. See U.S. Trustee Obj. at 6-10. First, the Debtors believe that the Court should authorize the payment of the Requisite Consenting Noteholders Professionals Fees/Expenses pursuant to, and in connection with, the Court's approval of the Plan Support Agreement. See Reply of Debtors and Debtors in Possession to: (I) Objections of the U.S. Trustee to the Debtors' PSA Motion and Chapter 11 Plan; and (II) Reservation of Rights of the Capco 2021 Group to the Debtors' PSA Motion, filed contemporaneously herewith. However, to the extent the Requisite Consenting Noteholders Professionals Fees/Expenses are not paid in full

in Cash pursuant to the Plan Support Agreement Order, the Debtors' payment of the Requisite Consenting Noteholders Professionals Fees/Expenses as a bargained for term of the global Settlement integrated into the Plan is reasonable, appropriate and consistent with the relevant precedent in this jurisdiction. See id. In the event the Court determines that a showing of a substantial contribution to the Chapter 11 Cases also is required, the Debtors respectfully submit that such a showing has been made by the Requisite Consenting Noteholders' efforts in these Chapter 11 Cases to date.[203]

215. Accordingly, the Debtors believe that all payments to be made in connection with these cases are appropriate and should be authorized.

E. Section 1129(a)(5) — The Plan Discloses All Required Information Regarding Postconfirmation Management and Insiders

216. Section 1129(a)(5) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the proponent discloses the identity and affiliations of the proposed officers and directors of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the nature of any compensation proposed to be paid to such insider. See 11 U.S.C. § 1129(a)(5). In addition, under section 1129(a)(5)(A)(ii) of the Bankruptcy Code, the appointment or continuation in office of such officers and directors must be consistent with the interests of creditors, equity security holders and public policy. See id § 1129(a)(5); see also Texaco, 84 B.R. at 908 (section 1129(a)(5) of the Bankruptcy Code is satisfied when the plan discloses the debtor's existing officers and directors who will continue to serve in office after plan confirmation); Toy & Sports Warehouse, 37 B.R. at 149-50 (continuation of existing, experienced management is consistent with section 1129(a)(5) of the Bankruptcy Code).

[203] See Plan, Section VI.A.1.d; Disclosure Statement, Section VI.A.1.d.

217. The Plan Proponents have previously disclosed the identities and the affiliations of six of the seven prospective members of the New Board of Reorganized NII, and the New Board will select the directors of the other Reorganized Debtors.[204] See Plan, Section III.F.2 & Exhibit D. Two of these directors currently serve as non-executive members of NII Holdings' existing board of directors and will continue to serve as directors on the New Board of Reorganized NII. The seventh director of Reorganized NII is unknown at this time. To the extent that seventh director becomes known to the start of the Confirmation Hearing, the Plan Proponents will file a supplemental disclosure with the Bankruptcy Court setting forth his or her name and affiliations. The Plan Proponents submit that these disclosures satisfy the requirements of section 1129(a)(5) of the Bankruptcy Code because they have disclosed the identities of all known directors. See Charter, 419 B.R. at 260 n.30 (stating that section 1129(a)(5) of the Bankruptcy Code "is satisfied by the Debtors' disclosure . . . of the **known** directors.") (emphasis in original) (citing In re Am. Solar King, Corp., 90 B.R. 808, 815 (Bankr. W.D. Tex. 1988) ("The debtor's inability to specifically identity future board members does not mean that the debtor has fallen short of the requirement imposed by [1129(a)(5)] because the debtor **at this point** disclosed all known directors.") (emphasis and alteration in original).

218. As of the date of this Memorandum of law, the Plan Proponents anticipate that certain existing officers of NII Holdings (who are "insiders" as such term is defined in section 101(31) of the Bankruptcy Code) will continue to serve as the officers of Reorganized NII (collectively, the "Existing Officers"), but it cannot be assured with certainty which of the Existing Officers will elect to remain employed by Reorganized NII on the Effective Date. The

[204] See Plan, Section III.F.2 & Plan Supplement, Tr. Ex. P094, Ex. D.

prior compensation of such management, as well as that of the Debtors' current directors, has been disclosed by the Debtors in their previous filings with the SEC (including NII Holdings' most recent Form 10-K filed March 10, 2015) as well as within the various pleadings and at the various hearings preceding the Court's entry of the Order Approving (I) the Debtors' Key Employee Incentive Plan, (II) Cash Bonus Incentive Payments for Certain Employees and (III) Potential Severance Payments to Certain Employees, entered on December 23, 2014 [Docket No. 328], Trial Exhibits P170, P178 & P179, thereby satisfying the compensation disclosure requirements of section 1129(a)(5) of the Bankruptcy Code.

219. The appointment to or continuance in office of the officers and directors provided for under the Plan or disclosed herein is consistent with the interests of creditors and interest holders and with public policy. First, as established pursuant to the above-described disclosures, the prospective officers and directors of Reorganized NII are qualified and experienced. Second, such directors and officers have been chosen or have had their continued employment consented to by a majority of Reorganized NII's future stockholders (i.e., the Consenting Noteholders), and this selection is supported by the Creditors' Committee (the representative of the Debtors' largest creditor constituency). Finally, no party in interest has objected to the manner of selection of the board of directors or the officers of the Reorganized Debtors.

220. Based upon the foregoing, the Plan Proponents have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval

221. Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the

rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). In these cases, section 1129(a)(6) of the Bankruptcy Code is inapplicable because the Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation.

G. Section 1129(a)(7) — The Plan Is In the Best Interests of Creditors

222. Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests under a plan of reorganization, each holder of a claim or interest (1) has accepted the plan or (2) will receive or retain property of a value, as of the effective date of the plan, not less than what such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on that date. See 11 U.S.C. § 1129(a)(7). Referred to as the "best interests of creditors" test, section 1129(a)(7) of the Bankruptcy Code focuses on individual dissenting creditors rather than classes of claims. See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship, 526 U.S. 434, 442 n.13 (1999) (stating that the "'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.").

223. Under the best interests test, the court "must find that each [non-accepting] creditor will receive or retain value that is not less than the amount he would receive if the debtor were liquidated." Drexel, 138 B.R. at 761 (citations omitted). In considering whether a plan is in the "best interests" of creditors, a court need not consider any alternative to the plan other than the dividend projected in a liquidation of all the debtor's assets under chapter 7 of the Bankruptcy Code. See, e.g., In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 297 (Bankr. S.D.N.Y. 1990). Under the Plan, Classes 3A, 3D, 4A, 4D, 5A, 5B, 5C, 6E, 7A and 8A through 8E are Impaired; consequently, the "best interests" test is applicable only Holders of Claims and

Interests in those Classes that do not vote to accept the Plan. The test requires that each holder of a Claim or Interest in these Classes must either accept the Plan or receive or retain under the Plan property having a present value, as of the Effective Date, not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

224. As set forth in the Disclosure Statement (including the Liquidation Analysis attached as Exhibit 2 thereto (the "Liquidation Analysis"), Trial Exhibit P004, Ex. A, at Ex. 2), the declaration of Byron Smyl and as will be demonstrated at the Confirmation Hearing, the "best interests" test is satisfied in these Chapter 11 Cases with respect to each non-accepting, Impaired Claim or Interest.

225. The Liquidation Analysis demonstrates that a chapter 7 liquidation of the Debtors' Estates would result in (1) a substantial diminution in the value of relative recoveries to be realized by holders of Claims in Classes 3A, 3D, 4A, 4D, 5A through 5C, 6E, 7A and 8A through 8E and (2) no greater value to be received by the Holders of statutorily subordinated Claims in Classes 10A through 10E or NII Interests in Class 12A,[205] as compared to the proposed distributions under the Plan.[206] In particular, Holders of the Capco Notes, including Holders of the Capco 2021 Notes, would see substantially reduced recoveries of less than 2% in a liquidation scenario.[207]

226. Moreover, the liquidation value of the Debtors' assets under chapter 7 of the Bankruptcy Code would be reduced substantially by, among other things: (1) the increased

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205 As set forth in the Liquidation Analysis, upon a liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code, because the liquidation value of the Debtors' assets would be insufficient to satisfy unsecured Claims, there would be no value remaining to be distributed to Classes of Claims and Interests structurally subordinated to such Claims. See Liquidation Analysis at 11-12.

206 See Liquidation Analysis, at 9-16.

207 Id.

costs and expenses arising from fees payable to a chapter 7 trustee and professional advisors to the trustee; (2) the erosion in value of assets in a chapter 7 case in the context of the rapid liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail; (3) the adverse effects on the Debtors' businesses as a result of the likely departure of key employees; (4) the reduction of value associated with a chapter 7 trustee's administration of the Debtors' businesses (including, but not limited to, asset disposition expenses, applicable taxes, litigation costs and Claims arising from the operation of the Debtors during the pendency of the chapter 7 cases); (5) the likely delay in distributions to Holders of Claims and Interests in a liquidation scenario; (6) certain Priority Claims triggered by the liquidation itself, such as Claims for severance pay and accelerated Priority Tax Claims that otherwise would be paid in the ordinary course of business; and (7) a significant increase in unsecured Claims, such as rejection damage Claims, potential litigation claims, and tax and other governmental Claims.

227. Based on the foregoing analysis, no dissenting Holder of a Claim or Interest in an Impaired Class will receive less under the Plan than it would receive in a liquidation of the Debtors' assets. As a result, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

H. Section 1129(a)(8) — The Plan Has Been Accepted By the Requisite Classes of Creditors and Interest Holders

228. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests under a plan has either accepted the plan or is not impaired under the plan. See 11 U.S.C. § 1129(a)(8). All Unimpaired Classes of Claims and Interests under the Plan (i.e., Classes 1A through 1E, 2A through 2E, 9A through 9C, 11A through 11E and 13B through 13E) are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the

Bankruptcy Code[208] and, thus, have not voted on the Plan. As set forth in the Voting Declaration, Classes 3A, 3D, 4A, 4D, 5A, 5B, 5C, 6E, 7A, 8A, 8B, 8C and 8D have overwhelmingly accepted the Plan.[209] See Voting Decl. at Ex. A. In addition, if ultimately no votes are cast by any Holders of Claims within an Impaired Class who are entitled to vote, then the "cramdown" provisions of section 1129(b) of the Bankruptcy Code (discussed in greater detail in Part II.Q below) are inapplicable to such Impaired Class. As set forth in the Voting Declaration, though entitled to vote and the recipients of Solicitation Packages with Ballots were instructed to do so, no votes were received by Holders of Impaired Claims in Class 8E against Airfone, Class 8E against McCaw and Class 8E against NIU Holdings LLC (collectively, the "Non-Voting Classes").[210] Accordingly, with respect to the Classes of Claims and Interests described above, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied.

229. However, because the Plan Proponents do not currently anticipate that Holders of Impaired Claims and/or Interests in Classes 10A through 10E and 12A (collectively, the "Deemed Rejecting Classes") will receive any distribution pursuant to the Plan, such Holders have been deemed to reject the Plan, consistent with section 1126(g) of the Bankruptcy Code. See Plan, Section II.B. Accordingly, the requirements of section 1129(a)(8) of the Bankruptcy Code are not met with respect to the Deemed Rejecting Classes.

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208 See Heins v. Ruti-Sweetwater, Inc. (In re Ruti-Sweetwater, Inc.), 836 F.2d 1263, 1267-68 (10th Cir. 1988) (deemed acceptance is permissible for non-voting classes); In re Northwest Airlines Corp., No. 05-17930 (ALG) (Bankr. S.D.N.Y. May 18, 2007) (order confirming first amended plan of reorganization and deeming non-voting classes to have accepted); Adelphia, 368 B.R. at 261 (stating that "Ruti-Sweetwater carries even greater weight when applied to a case like this one, because the situation faced by the debtor-in-possession there was similar to that of the Debtors. Like this case, Ruti-Sweetwater involved a complicated plan of reorganization for a large multi-entity conglomerate with a sophisticated capital structure and various levels of indebtedness. Subjecting the plan to the higher requirements for cramdown, simply by reason of a class's failure to vote, made no sense.").

209 See Voting Decl., Ex. A.

210 Id.

230. Nevertheless, even where certain impaired classes of claims or interests do not accept a plan, and therefore the requirements of section 1129(a)(8) of the Bankruptcy Code are not satisfied, the plan nevertheless may be confirmed over such nonacceptance pursuant to the "cramdown" provisions of section 1129(b)(1) of the Bankruptcy Code. As a result, the condition precedent to confirmation contained in section 1129(a)(8) is the only condition of section 1129(a) that is not necessary for confirmation of a plan of reorganization. As described in Part II.Q. below, the Plan Proponents have met the "cramdown" requirements under section 1129(b) of the Bankruptcy Code necessary to obtain Confirmation of the Plan, notwithstanding the deemed rejection of the Deemed Rejecting Classes.[211]

I. Section 1129(a)(9) — The Plan Provides for the Payment of Priority Claims

231. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments, except to the extent that the holder of such a priority claim agrees to different treatment. See 11 U.S.C. § 1129(a)(9). In particular,

- Section 1129(a)(9)(A) of the Bankruptcy Code requires that holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code (i.e., administrative claims allowed under section 503(b) of the Bankruptcy Code) must receive cash equal to the allowed amount of such claims on the effective date of the plan;

- Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in sections 507(a)(1) and sections 507(a)(4) through (7) of the Bankruptcy Code — generally, in the context of corporate chapter 11 cases, wage, employee benefit and deposit claims entitled to priority — must receive (1) if the class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (2) if the class has not accepted the plan, cash equal to the allowed amount of such claim on the effective date of the plan;

[211] Moreover, even if the Non-Voting Classes were not deemed to accept the Plan, the Debtors could satisfy the "cramdown" requirements of section 1129(b) of the Bankruptcy Code with respect to such Classes (as set forth below).

- Section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (i.e., priority tax claims) must receive regular installment payments in cash

    - of a total value, as of the effective date of the plan, equal to the allowed amount of the claim;

    - over a period ending not later than five years after the date the order for relief was entered in the chapter 11 case; and

    - in a manner not less favorable than the most favored non-priority unsecured claim provided for by the plan (other than cash payments made to a convenience class under section 1122(b) of the Bankruptcy Code); and

- Section 1129(a)(9)(D) of the Bankruptcy Code provides that, with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code (but for the claim's secured status), the holder of such a claim will receive cash payments in the same manner and over the same period as prescribed in section 1129(a)(9)(C) of the Bankruptcy Code.

232. The Plan satisfies each of the requirements of section 1129(a)(9) of the Bankruptcy Code.[212] *First*, with respect to claims addressed by section 1129(a)(9)(A) of the Bankruptcy Code:

- Subject to certain bar date provisions and except as otherwise agreed by the Holder of an Administrative Claim and the applicable Reorganized Debtor, the Plan provides that each Holder of an Allowed Administrative Claim will receive Cash equal to the amount of such Allowed Administrative Claim on either (i) the latest to occur of (A) the Effective Date (or as soon as thereafter as practicable), (B) the date such Claim becomes an Allowed Administrative Claim and (C) such other date as may be agreed upon by the Reorganized Debtors and the Holder of such Claim or (ii) on such other date as the Court may order (Plan, Section II.A.1.a);

- Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business or under the Mexico Sale Documents — including Administrative Claims arising from or with respect to the sale of goods or provision of services on or after the Petition Date, Administrative Claims of governmental units for Taxes (including Tax audit Claims related to Tax years or portions thereof ending after the Petition Date), Administrative Claims arising under Executory Contracts and Unexpired Leases and all Intercompany Administrative Claims — will be paid by the applicable Reorganized

212 In accordance with the DIP Order, Allowed DIP Claims, which would otherwise be paid in full in Cash pursuant to Section II.A.1.g of the Plan, were satisfied in full in Cash on [May 1, 2015] pursuant to the Mexico Sale Order upon consummation of the Mexico Sale Transaction. Accordingly, it is no longer necessary to treat Allowed DIP Claims under the Plan.

Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the Holders of such Administrative Claims or further approval from the Court (Plan, Section II.A.l.c); and

- To the extent not paid in full in Cash pursuant to the Plan Support Agreement Order, Requisite Consenting Noteholders Professionals Fees/Expenses will be paid in full in Cash as Allowed Administrative Claims, subject to the limitations set forth in Section I.A.160 of the Plan (Plan, Section II.A.1.d).

233. *Second*, with respect to Priority Claims addressed by section 1129(a)(9)(B) of the Bankruptcy Code, the Plan provides that each Holder of an Allowed Priority Claim against the Debtors, unless otherwise agreed to by the Plan Proponents (with the consent of each of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed) and the Holder of an Allowed Priority Claim against a Debtor, will receive, at the Debtors' election (following consultation with the Creditors' Committee and with the consent of each of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed), (i) Cash in the amount of such Allowed Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code and/or (ii) such other treatment required to render such Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code. See Plan, Sections II.B.1 and II.B.2.

234. *Third*, with respect to Priority Tax Claims addressed by section 1129(a)(9)(C) of the Bankruptcy Code, the Plan provides that, unless otherwise agreed by the Holder of a Priority Tax Claim and the Plan Proponents (with the consent of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed), each Holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Priority Tax Claim that is due and payable on or before the Effective Date, Cash equal to the amount of such Allowed Priority Tax Claim on the later of (1) the Effective Date (or as soon as reasonably practicable thereafter) and (2) the date such Priority Tax Claim becomes an Allowed Priority Tax

Claim, or as soon as reasonably practicable thereafter. See Plan, Section II.A.2.a.[213] Such treatment of Priority Tax Claims is as favorable as the treatment accorded to the most favored non-priority unsecured Claim under the Plan — i.e., Classes 4A and 4D Claims (Luxco Note Claims) — which is estimated to receive Plan Distributable Value equal to approximately 100% of the allowed amount of such Claims on the Effective Date.[214]

235. Accordingly, in light of the foregoing, the Plan satisfies the requirements set forth in section 1129(a)(9) of the Bankruptcy Code.

J. Section 1129(a)(10) — The Plan Has Been Accepted By at Least One Impaired, Non-Insider Class at Each Debtor

236. Section 1129(a)(10) of the Bankruptcy Code requires that the Plan be accepted by at least one class of claims that is impaired under the Plan, determined without including the acceptance of the plan by any insider. See 11 U.S.C. § 1129(a)(10). In this case, given the non-consolidated nature of the Plan, section 1129(a)(10) of the Bankruptcy Code is satisfied with respect to each individual Debtor.

237. As set forth in the Voting Declaration, the Plan Proponents have satisfied this requirement because Impaired Classes 4A, 4D, 5A through 5C, 6E, 7A and 8A through 8E have voted to accept the Plan after excluding the votes of any insiders.[215] The Holders of the Luxco Notes voted to approve the Plan and the Settlement by over 94% in amount and over 84% in number. Holders of the Capco Notes voted to approve the Plan and the Settlement by over 89% in amount and 97% in number. Even looking at voting on a per issuance basis for the Capco Notes demonstrates the overwhelming support for the Plan and the Settlement: Holders

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213 Allowed Priority Tax Claims that are not due and payable on or before the Effective Date will be paid in the ordinary course of business by the Reorganized Debtors as they become due. See Plan, Section II.A.2.a.

214 See Plan, Section II.C.4.

215 See Voting Decl., Ex. A.

of the Capco 8.875% Notes voted in favor of the Plan and the Settlement by over 99% in amount and over 99% in number; Holders of the Capco 10% Notes voted in favor of the Plan and the Settlement by over 99% in amount and over 98% in number; and Holders of the Capco 2021 Notes voted in favor of the Plan and the Settlement by over 78% in amount and over 95% in number. In addition, section 1129(a)(10) of the Bankruptcy Code is inapplicable with respect to Debtors NII International Services S.à r.l. and NII International Holdings S.à r.l. because there are no Impaired Classes of Claims against such Debtors. Thus, the Plan Proponents have complied with section 1129(a)(10) of the Bankruptcy Code.

K. Section 1129(a)(11) — The Plan Is Feasible

238. Under section 1129(a)(11) of the Bankruptcy Code, a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). One commentator has stated that this section "requires courts to scrutinize carefully the plan to determine whether it offers a reasonable prospect of success and is workable." 7 COLLIER ON BANKRUPTCY ¶ 1129.03[11] (Henry J. Sommer & Alan N. Resnick eds. 16th ed. rev. 2012); see also Leslie Fay, 207 B.R. at 788 (same); In re Woodmere Investors L.P., 178 B.R. 346, 361 (Bankr. S.D.N.Y. 1995) (same).

239. Section 1129(a)(11) of the Bankruptcy Code, however, does not require a guarantee of the plan's success; rather, the proper standard is whether the plan offers a "reasonable prospect" of success. See, e.g., Kane, 843 F.2d at 649 ("As the Bankruptcy Court correctly stated, the feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."); In re Adelphia Bus. Solutions, Inc., 341 B.R. 415, 421 (Bankr. S.D.N.Y. 2003) (same, citing Kane); Leslie Fay, 207 B.R. at 788 ("Basically,

feasibility involves the question of the emergence of the reorganized debtor in a solvent condition and with reasonable prospects of financial stability and success. It is not necessary that success be guaranteed, but only that the plan present a workable scheme of organization and operation from which there may be a reasonable expectation of success."); Drexel, 138 B.R. at 762 ("Feasibility does not, nor can it, require the certainty that a reorganized company will succeed.") (citation omitted); Texaco, 84 B.R. at 910 ("All that is required is that there be reasonable assurance of commercial viability.").

240. Courts have identified a number of factors relevant to evaluating the feasibility of a proposed plan of reorganization, including (1) the adequacy of the capital structure; (2) the earning power of the business; (3) prevailing macroeconomic conditions; (4) the ability of management; (5) the probability of the continuation of the same management; (6) the availability of prospective credit, both capital and trade; (7) the adequacy of funds for equipment replacements; (8) the provisions for adequate working capital; and (9) any other matter bearing on the successful operation of the business to enable performance with the provisions of the plan. See, e.g., Leslie Fay, 207 B.R. at 789; Texaco, 84 B.R. at 910. The foregoing list is neither exhaustive nor exclusive. Drexel, 138 B.R. at 763.

241. As described below and in the Disclosure Statement, and in the declarations of Daniel Freiman and Jay Jubas and as will be demonstrated at the Confirmation Hearing, the Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code. For purposes of determining whether the Plan satisfies the feasibility standards articulated above, the Debtors have analyzed their ability to meet their obligations under the Plan and with respect to future operations. The consolidated financial projections (attached as Exhibit 3 to the Disclosure Statement (collectively, the "Financial Projections"), Trial Exhibit P004, Ex. A, at

Ex. 3), project the Reorganized Debtors' operating profit, free cash flow and certain other items through fiscal year 2018, demonstrating that the Reorganized Debtors will be financially viable entities on a prospective basis and that the Plan is therefore feasible. See, e.g., In re M&S Assocs., Ltd., 138 B.R. 845, 852 (Bankr. W.D. Tex. 1992) (adopting "time period contemplated by the plan" as the relevant time horizon for feasibility determination); Johns-Manville, 68 B.R. at 635 (same).

242. The Financial Projections are based on the Debtors' five-year strategic business plan (the "Business Plan"), which was formulated by the Debtors and refined and validated with the assistance of McKinsey Recovery & Transformation Services U.S., LLC ("McKinsey").[216] Since early 2014, McKinsey has been assisting the Debtors with the process of developing and verifying the Business Plan.[217] An initial version of the Business Plan was completed in June 2014 and revised in December 2014 in connection with the negotiations relating to the prior version of the Plan.[218] In addition, in connection with the Debtors' restructuring negotiations, including the formulation of the Initial Plan, the Business Plan and Financial Projections were distributed to the Creditors' Committee, the advisors to the Consenting Noteholders and certain Consenting Noteholders who were subject to non-disclosure agreements.[219]

243. The Financial Projections indicate that, after giving effect to Confirmation and consummating the Restructuring Transactions contemplated by the Plan (and subject to the reasonable limitations and assumptions described in the Financial Projections and elsewhere in the Disclosure Statement), Reorganized NII and the other Reorganized Debtors will have and

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216 See Freiman Decl. ¶ 47.

217 See id.

218 See id.

219 See Parkhill Decl. ¶¶ 18 & 32.

maintain sufficient liquidity and capital resources to meet their future financial obligations during the projection period. In particular, the $816 million of cash, restricted cash and short-term investments expected to be available as of December 31, 2015 (see Financial Projections, Trial Exhibit P004, Ex. A, Ex. 3, at 8) and the extensive cost-saving measures that have been implemented before and during the Chapter 11 Cases are projected to provide sufficient sources of liquidity and capital for the Reorganized Debtors to meet their financial obligations under the Plan (including, but not limited to, payment of the Requisite Consenting Professionals Fees/Expenses required under the Plan Support Agreement) and to fund ongoing business operations.[220] Moreover, after giving effect to the Restructuring Transactions, Reorganized NII will be capitalized with assets sufficient to satisfy its operating costs and other liabilities.

244. Finally, the Plan's feasibility is underscored by the support of (1) the Consenting Noteholders, (2) ATC and (3) CDB. The Consenting Noteholders have vested interests in ensuring the Plan's success because they have agreed, pursuant to the Plan Support Agreement, to receive, and will receive under the Plan, a substantial portion of their recoveries in the form of equity of Reorganized NII in the form of the Reorganized NII Common Stock (subject to dilution by any Management Incentive Plan Shares).[221] Likewise, ATC and CDB will have ongoing contractual relationships with the Reorganized Debtors and certain of the Non-Debtor Affiliates and have a vested interest in the success of those entities.[222] Therefore, the support of the Consenting Noteholders, ATC and CDB, all of whom directly benefit by the

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220 As noted above, the availability of a significant amount of Cash for the Reorganized Debtors upon emergence was made possible by the agreement of the Consenting Noteholders in connection with the Settlement to accept both Cash and equity on account of their Claims.

221 As mentioned in Part I.D.1.d above, certain of the Consenting Noteholders also agreed to forgo receiving distributions on account of their Claims entirely in Cash in order to ensure that the Reorganized Debtors would emerge with sufficient Cash balances to support their ongoing business operations.

222 See e.g., Freiman Decl. ¶¶ 18 & 30.

Reorganized Debtors emerging from these cases as healthy entities that can meet their obligations to creditors further supports the finding that Plan is feasible.

245. In sum, the Financial Projections demonstrate that: (a) the Plan provides a feasible means of completing a reorganization of the Debtors' businesses; (b) subject to the risks described herein and in the Disclosure Statement,[223] there is reasonable assurance that Confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of the Reorganized Debtors; and (c) Reorganized NII will have sufficient assets to satisfy its known and reasonably projected liabilities. Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

L. Section 1129(a)(12) — The Plan Provides for the Payment of Fees

246. Section 1129(a)(12) of the Bankruptcy Code requires that, as a condition precedent to the confirmation of a plan of reorganization, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). The Plan complies with section 1129(a)(12) by providing that on a prospective basis all fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date will be paid by the applicable Reorganized Debtor in accordance therewith until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.[224]

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223 See, e.g., Disclosure Statement, at 78-93.

224 See Plan, Section II.A.2.b.

M. Section 1129(a)(13) — The Plan Provides for the Debtors' Obligations to Pay Retiree Benefits

247. Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all "retiree benefits" (as such term is defined by section 1114(a) of the Bankruptcy Code) at the level established by agreement or by court order pursuant to subsections (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code at any time prior to confirmation of the plan, for the duration of the period that the debtor has obligated itself to provide such benefits. See 11 U.S.C. § 1129(a)(13). The Plan provides that as of the Effective Date, the Reorganized Debtors will have the authority to (i) maintain, reinstate, amend or revise existing retirement and other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement and applicable non-bankruptcy law and (ii) enter into new employment, retirement and other agreements for a active and retired employees.[225] Therefore, to the extent it may be deemed applicable, the Plan complies with section 1129(a)(13) of the Bankruptcy Code.

N. Section 1129(a)(14) — The Plan Does Not Provide for the Payment of Any Domestic Support Obligations

248. Section 1129(a)(14) of the Bankruptcy Code provides that, if a chapter 11 debtor is subject to a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor must pay all amounts related to any such obligation accruing postpetition under such order or statute. See 11 U.S.C. § 1129(a)(14). In these Chapter 11 Cases, section 1129(a)(14) of the Bankruptcy Code is inapplicable because none of the Debtors are required to pay any domestic support obligations pursuant to either order or statute. See, e.g., 7 COLLIER ON BANKRUPTCY ¶ 1129.03[14] n. 233 (Alan N. Resnick & Henry J. Sommer eds. 16th ed. rev. 2012) (noting that "[a]lthough [section 1129(a)(14) of the Bankruptcy Code] does

[225] See Plan, Section III.F.3.

not use the term 'individual debtor,' the nature of domestic support obligations are such that it will be the rare case when a non-individual (such as a corporation or partnership) will be liable for such a debt.").

O. Section 1129(a)(15) — The Plan Does Not Provide for the Payment of Five Years' Worth of Disposable Income to Unsecured Creditors

249. Section 1129(a)(15) of the Bankruptcy Code requires, in chapter 11 cases involving individual debtors, either that the individual chapter 11 debtor pay all unsecured claims in full or that the debtor's plan devote an amount equal to five years' worth of the debtor's disposable income to unsecured creditors. See 11 U.S.C. § 1129(a)(15). In these Chapter 11 Cases, section 1129(a)(15) of the Bankruptcy Code is not applicable because none of the Debtors are individual debtors.

P. Section 1129(a)(16) — The Plan Does Not Provide for the Transfer of Property by any Nonprofit Entities Not in Accordance with Applicable Nonbankruptcy Law

250. Section 1129(a)(16) of the Bankruptcy Code provides that applicable non-bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16). The legislative history of section 1129(a)(16) of the Bankruptcy Code demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." See H.R. Rep. No. 109-31, 109th Cong. 1st Sess. 145 (2005). Although the Debtors — none of which are nonprofit entities — do not believe that any transfers of property under the Plan will be made by a nonprofit corporation or trust, to the extent that any such transfers are contemplated by the Plan, such transfers will be made in accordance with applicable non-bankruptcy law. Accordingly, the Plan satisfies the requirements of section 1129(a)(16) of the Bankruptcy Code.

Q. Section 1129(b) — The Plan Satisfies the "Cramdown" Requirements for Confirmation

251. As described above, because the Debtors do not currently anticipate that Holders of Impaired Claims and/or Interests in the Deemed Rejecting Classes will receive any distribution pursuant to the Plan, such Holders have been deemed to reject the Plan, consistent with section 1126(g) of the Bankruptcy Code.[226] Moreover, in the event that the Non-Voting Classes are not deemed to accept the Plan, the Debtors would not be deemed to have satisfied section 1129(a)(8) of the Bankruptcy Code with respect to such Classes. Thus, to confirm the Plan, the Debtors are required to satisfy the requirements of section 1129(b) of the Bankruptcy Code with respect to the Holders of Claims and Interests in the Deemed Rejecting Classes (and, potentially, the Non-Voting Classes).[227]

252. Section 1129(b) of the Bankruptcy Code provides a mechanism (known colloquially as "cram down") for confirmation of a plan of reorganization despite the rejection of the plan by a class or classes of impaired claims or equity interests. Specifically, section 1129(b) of the Bankruptcy Code provides that, if all the requirements of section 1129(a) of the Bankruptcy Code are satisfied, other than the requirement of acceptance by all impaired classes under section 1129(a)(8) of the Bankruptcy Code, a plan nevertheless may be confirmed so long as the plan "does not discriminate unfairly" and is "fair and equitable" with respect to impaired, non-consenting classes. 11 U.S.C. § 1129(b)(1).

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226 See Plan, Section II.C.

227 See In re Vita Corp., 358 B.R. 749, 751 (Bankr. C.D. Ill. 2007) (collecting cases holding that a class's failure to vote does not result in deemed acceptance). But see In re Northwest Airlines Corp., No. 05-17930 (ALG) (Bankr. S.D.N.Y. May 18, 2007); Adelphia, 368 B.R. at 261 (discussed in note 208 above).

1. The Plan Does Not Discriminate Unfairly

253. Section 1129(b)(1) of the Bankruptcy Code does not prohibit discrimination between classes under a plan of reorganization; it prohibits only discrimination that is "unfair." Generally speaking, section 1129(b)(1) of the Bankruptcy Code is intended to "ensure[] that a dissenting class will receive relative value equal to the value given to all other similarly situated classes. Thus a plan proponent may not segregate two similar claims or groups of claims into separate classes and provide disparate treatment for those classes." Johns-Manville, 68 B.R. at 636; see also In re Armstrong World Indus., Inc., 348 B.R. 111, 121 (D. Del. 2006) (citing Johns-Manville and stating that the "hallmarks of the various tests have been whether there is a reasonable basis for the discrimination, and whether the debtor can confirm and consummate a plan without the proposed discrimination."); In re Buttonwood Partners, Ltd., 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990) (same).

254. Under the foregoing standards, the Plan does not "discriminate unfairly" against the Deemed Rejecting Classes or the Non-Voting Classes. General Unsecured Claims in Class 8E against McCaw, Class 8E against Airfone and Class 8E against NIU Holdings LLC and Class 10A through 10E Claims (Section 510(b) Claims) are legally distinct from (1) every other Class of Claims, and from each other, by virtue of (a) the discrete legal rights of Holders of General Unsecured Claims against the applicable Debtors and (b) for the Section 510(b) Claims, their structural subordination pursuant to section 510(b) of the Bankruptcy Code and (2) each Class of Interests by virtue of the differing nature of their legal rights with respect to the Debtors' assets. With respect to Class 12 Interests: (1) such Interests are distinct from each Class of Claims under the Plan by virtue of the differing nature of their legal rights with respect to the Debtors' assets; and (2) the dissimilar treatment accorded to Class 13 Interests (Subsidiary Debtor Equity Interests) is reasonable and required for consummation of the Plan. With respect

to the Unimpairment of Class 13B through 13E Interests under the Plan, because NII Holdings' retention of ownership over the Subsidiary Debtors inures to the benefit of all creditors, and is essential to the business prospects of the Reorganized Debtors, it is reasonable for NII Holdings' ownership interests in its subsidiaries to be treated differently from the interests of Holders of NII Holdings' public securities. Accordingly, the Plan does not "discriminate unfairly" against the Deemed Rejecting Classes or the Non-Voting Classes.

2. The Plan is Fair and Equitable

255. Section 1129(b)(2)(B) of the Bankruptcy Code states that a plan is "fair and equitable" with respect to a class of unsecured claims if "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property." 11 U.S.C. § 1129(b)(2)(B). Section 1129(b)(2)(C) further provides that a plan is fair and equitable with respect to a class of interests if the plan provides that "the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property." 11 U.S.C. § 1129(b)(2)(C). This latter standard necessarily is satisfied with respect to any impaired dissenting class to the extent that there is no class of claims junior to such dissenting class. See Westpointe, L.P. v. Franke (In re Westpointe, L.P.), 241 F.3d 1005, 1007 (8th Cir. 2001) ("[A] plan is fair and equitable as long as the holder of any interest junior to the dissenting impaired class does not receive any property under the reorganization plan, and because there are no interests junior to the [impaired class], the confirmed plan satisfies this requirement."); Toy & Sports Warehouse, 37 B.R. at 153 (finding that plan was fair and equitable with respect to class of interests where "no interests junior to the shareholders are involved under the plan.").

256. The Plan meets the standards of section 1129(b)(2) of the Bankruptcy Code with respect to the Deemed Rejecting Classes (and to the extent applicable, the Non-

Voting Classes). *First*, the Plan satisfies the "fair and equitable" requirements of section 1129(b)(2)(B) of the Bankruptcy Code with respect to General Unsecured Claims in Class 8E against McCaw, Class 8E against Airfone and Class 8E against NIU Holdings LLC and Class 10A through 10E Claims because no Claim or Interest junior in priority to the Claims in Class 10 will receive or retain any property under the Plan on account of such Claims or Interests.[228] *Second*, the Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) of the Bankruptcy Code with respect to Class 12A Interests because no Claim or Interest that is junior to such Interests and Claims will receive or retain any property under the Plan on account of such junior Claim or Interest. In addition, no Class of Claims or Interests senior to the Deemed Rejecting Classes or the Non-Voting Classes are receiving more than full payment on account of their Claims or Interests in such Class.[229]

257. Accordingly, the requirements of section 1129(b) are satisfied with respect to the Deemed Rejecting Classes and the Non-Voting Classes.[230]

R. Section 1129(c) — The Plan is the Only Plan Filed in These Chapter 11 Cases

258. Section 1129(c) of the Bankruptcy Code provides that, with a limited exception, a bankruptcy court may only confirm one plan. The Plan is the only plan that has been Filed in the Chapter 11 Cases and is the only plan that satisfies the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

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228 See Plan, Section II.C.10-13; Disclosure Statement, at 7-8 (estimating that Classes junior to Classes 8 and 10 will receive no recovery pursuant to the Plan).

229 See e.g., Disclosure Statement, at 7-9.

230 As set forth in greater detail in Part II.A, even in a hypothetical scenario where a separate class of the Capco 2021 Notes rejected the Plan, there would be no unfair discrimination with respect to that class of Claims because holders of Capco 2021 Notes received identical recoveries as holders of other series of Capco Notes on account of Claims against the Debtors against which they all have common Claims (i.e., NII Holdings, Capco and the Debtors in the Capco Guarantor Debtor Group).

S. Section 1129(d) — The Principal Purpose of the Plan is Not the Avoidance of Taxes or the Application of Section 5 of the Securities Act

259. Section 1129(d) of the Bankruptcy Code provides that on request of a party in interest that is a governmental unit, the bankruptcy court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or of the application of section 5 of the Securities Act. No party in interest, including but not limited to any governmental unit, has requested that the Bankruptcy Court deny Confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

III. THE PLAN'S RELEASE, EXCULPATION AND INJUNCTION PROVISIONS ARE APPROPRIATE AND SHOULD BE APPROVED

260. Section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). The Plan provides for (a) a release by the Debtors and Reorganized Debtors of the Released Parties[231] (Plan, Section IX.E.1) (the "Debtor Release"); (b) a release by Holders of Claims and Interests of the Debtors, the Reorganized Debtors and the Released Parties (Plan, Section IX.E.2) (the "Third Party Release"); (c) exculpation of the Debtors, the Reorganized Debtors and the Released Parties (Plan, Section IX.D (the "Exculpation"); and (d) an injunction provision that implements the Debtor Release, the Third Party Release, the Exculpation and the discharge provisions of the Plan (Plan, Section IX.G) (the "Injunction").

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231 The Released Parties are, "collectively and individually, the Plan Proponents, the members of the Creditors' Committee, the Indenture Trustees, the Consenting Noteholders, the DIP Agent, the DIP Lenders, and the Representatives of each of the foregoing (solely in their capacities as such)." Plan, Section I.A.153.

261. These provisions are essential components of the Plan and fundamental conditions to the Consenting Noteholders' support of the Plan in accordance with the Plan Support Agreement. None of the stakeholders would have participated in the restructuring negotiations or made the compromises that led to the Plan absent the protection of the Exculpation, the Debtor Release and the Third Party Release. The Plan's release and exculpation provisions are fair, reasonable and supported by existing law.

A. The Debtor Release is Proper

262. Pursuant to the Debtor Release, the Debtors and Reorganized Debtors

> shall forever release, waive and discharge all Liabilities that they have, had or may have against any Released Party with respect to a Debtor, the Estates, the Chapter 11 Cases, or the negotiation, consideration, formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan Term Sheet, the Plan Support Agreement, the Plan, the Exhibits, the Disclosure Statement, any amendments to any of the Operating Company Credit Agreements, the New NII-ATC Guaranty, the CDB Amended Guarantee, the Mexico Sale Transaction, the DIP Credit Agreement, the DIP Order, any of the New Securities and Documents, the Restructuring Transactions or any other transactions proposed in connection with the Chapter 11 Cases or any contract, instrument, release or other agreement or document created or entered into or any other act taken or omitted to be taken in connection therewith or in connection with any obligations arising under the Plan or the obligations assumed [under the Plan] . . .

Plan, Section IX.E.1. The Released Parties include the Plan Proponents, the members of the Creditors' Committee, the Indenture Trustees, the Consenting Noteholders, the DIP Agent, the DIP Lenders, and the successors, predecessors, officers, directors, partners, limited partners, general partners, shareholders, managers, management companies, investment managers,

affiliates, employees, agents, attorneys, advisors, investment bankers, financial advisors, accountants or other Professionals of such Released Parties.[232]

263. It is well-established that debtors are authorized to settle or release their claims in a chapter 11 plan.[233] Section 1123(b)(3)(A) of the Bankruptcy Code specifically provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). A plan that proposes to release a claim or cause of action belonging to a debtor is considered a "settlement" for purposes of satisfying section 1123(b)(3)(A) of the Bankruptcy Code. Settlements pursuant to a plan are generally subject to the same "best interests of the estate" standard that applies to settlements outside of a plan under Bankruptcy Rule 9019. See In re Bally Total Fitness of Greater N.Y., Inc., No. 07-12395 (BRL), 2007 WL 2779438, at *12 (Bankr. S.D.N.Y. Sept. 17, 2007) ("To the extent that a release or other provision in the Plan constitutes a compromise of a controversy, this Confirmation Order shall constitute an order under Bankruptcy Rule 9019 approving such compromise."); Spiegel, 2005 WL 1278094, at *11 (approving releases pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a)); see also Charter, 419 B.R. at 252 ("[W]hile the approval of a settlement rests in the Court's sound discretion, the debtor's business judgment should not be ignored.") (quotations and citations omitted).

264. Applying this standard here, the Debtor Releases are in the best interests of the estates and represent an appropriate exercise of the Debtors' business judgment. The Debtor Release provisions will eliminate the costs and risks of possible litigation — along with

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232 See Plan, Section I.A.153 & I.A.157.

233 See In re DBSD N. Am., Inc., 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) ("Section 1123(b)(3) permits a debtor to include a settlement of any claims it might own as a discretionary provision in its plan…"), aff'd in part and rev'd in part, 627 F. 3d 496 (2d Cir. 2010), aff'd in part and rev'd in part, 634 F. 3d 79 (2d Cir. 2011); Adelphia, 368 B.R. at 263 n.289 ("The Debtors have considerable leeway in issuing releases of any claims the Debtors themselves own."); Oneida Ltd., 351 B.R. at 94 n.21 (noting that a debtor's release of its own claims is permissible).

its attendant costs in both time and expense — and allow management and the officers and directors of the Reorganized Debtors to focus on operations after emergence, as opposed to being distracted by litigation (either as a party to such litigation themselves or the stakeholders who will bear the burdens of the investigation, prosecution or participation in such litigation).

265. In addition, the paramount interest of creditors is best served by the approval of the Plan, including the Debtor Releases. The Debtor Releases will eliminate the potential for post-effective date litigation against directors and officers that could threaten the viability of the reorganized company both directly (by virtue of indemnification agreements) and indirectly (through the cost and distraction of potential third-party discovery).

266. Moreover, the Debtor Releases have the support of the major creditor constituencies in these Chapter 11 Cases. The Plan reflects the settlement and resolution of several complex issues, including the substantial deleveraging of the Debtors' balance sheet and the treatment provided to all stakeholders under the Plan, and the releases are an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied therein. Quite simply, the Plan and the Settlement embodied therein would not exist without certain of the Released Parties, because none of the many parties who had to cooperate to make it happen would have made the necessary compromises without the basic assurance of a release from liability to the estates. In fact, certain of the Released Parties, including the Consenting Noteholders, bargained for this protection as evidenced in the terms of the Plan Support Agreement.[234] Absent the comprehensive Debtor Release, the Plan and Settlement would never have garnered the support of the Consenting Noteholders. Absent its approval, the Settlement

234 See Notice of Motion of Debtors and Debtors in Possession for an Order Authorizing Them to Enter Into and Perform under a Plan Support Agreement [Docket No. 590], Tr. Ex. P172, Ex. A, Ex. 1, Ex. 1 (Plan Term Sheet).

would unravel, the Plan would be rendered moot and these cases would be plunged back into complex and protracted litigation. Such a result would be universally detrimental.

267. Finally, each of the Released Parties contributed significant value to the Debtors' estates and aided in the reorganization process. The Released Parties each played an integral role in the success of these chapter 11 cases, including by participating in the formulation of the Plan and the Plan Support Agreement, expending significant time and resources analyzing and negotiating the issues involved therein, supporting the sale of NII Mexico and working with the Debtors through a complex reorganization case. When parties, such as the Released Parties, constructively participate in a debtor's restructuring process, it is appropriate to offer protection in the form of a release.[235] Indeed, courts in this and other districts routinely confirm plans of reorganization that provide for releases in favor of plan support parties in similar scope and nature (including the carve-out for gross negligence and willful misconduct (including fraud)) to the releases provided for in the Plan here.[236]

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235 WorldCom, 2003 WL 23861928, at *28 (finding that "[t]he inclusion of the [release provisions] was an essential element of the [p]lan formulation process and negotiations with respect to each of the settlements contained in the [p]lan [and] . . . [t]he inclusion of the [release provisions] were vital to the successful negotiation of the terms of [p]lan in that without such provisions, the [released parties] would have been less likely to negotiate the terms of the settlements and the [p]lan."). Importantly, parties often participate in the creation of a debtor's plan of reorganization with the understanding that "they would receive some limited protection for participating" in the debtor's restructuring process. Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.), 326 B.R. 497, 503 (S.D.N.Y. 2005) (stating that "[p]arties participated in the creation of the [p]lan under the guarantee that they would receive some limited protection for participating in one of the largest and most complex bankruptcy filings in history . . . To pull away this string would thus tend to unravel the entire fabric of the [p]lan, and would be inequitable to all those who participated in good faith to bring it to fruition.").

236 Indeed, chapter 11 plans confirmed by courts in this District commonly include releases for parties that were party to plan support agreements with the debtor. See, e.g., In re Jobson Med. Info. Holdings LLC, No. 12-10434 (SHL) (Bankr. S.D.N.Y. Mar. 5, 2012) (confirming a prepackaged chapter 11 plan containing releases of members, directors, officers and employees of the debtors as well as prepetition lenders that were party to a restructuring support agreement); In re AMR Corp., No. 11-15463 (SHL) (Bankr. S.D.N.Y. Oct. 22, 2013) (confirming chapter 11 plan containing releases of directors and officers of the debtors as well as general unsecured creditors that were party to a support and settlement agreement); In re Almatis B.V., No. 10-12308 (MG) (Bankr. S.D.N.Y. Sept. 20, 2010) (chapter 11 plan contained estate releases for directors, officers and employees as well as prepetition and postpetition lenders, committee members, and noteholders); In re Uno Rest. Holdings Corp., No. 10-10209 (MG) (Bankr. S.D.N.Y. July 6, 2010) (same); In re Ion Media Networks, Inc., No. 09-13125 (JMP) (Bankr. S.D.N.Y. 2009) (confirming plan that provided for releases by the debtor of the debtors' directors and officers in addition to parties to a global settlement, including the creditors' committee and certain consenting first lien lenders); In re DJK

268. Accordingly, the Debtors reasonably concluded that the release of these claims "falls well within the range of reasonableness" and is in their best interests and the best interests of their estates. Thus, the Debtor Release should be approved pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

B. The Third Party Release is Consensual and, Therefore, Proper

269. The Third-Party Releases provided for under Section III.G.3 of the Plan are entirely consensual and therefore consistent with and appropriate under the law of this Circuit. The Second Circuit has ruled that non-debtor releases are permissible where the affected creditors consent to the releases. Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136, 142 (2d Cir. 2005) (stating that "[n]ondebtor releases may also be tolerated if the affected creditors consent") (emphasis added) (citing In re Specialty Equip. Cos., 3 F.3d 1043, 1047 (7th Cir. 1993) (holding "releases that are consensual and non-coercive to be in accord with the strictures of the Bankruptcy Code")); Adelphia, 368 B.R. at 267 (stating that "nondebtor releases may also be tolerated if the affected creditors consent").

270. Here, only creditors that voted in favor of the Plan will be bound to the Release Provisions. Specifically, the release of Section IX.E.2 of the Plan applies only to "each Holder of a Claim that votes in favor of the Plan." As approved by the Disclosure Statement Order, the Ballots (1) disclosed, in bold and italics, that a vote in favor of the Plan would constitute assent to the Release Provisions and (2) directed creditors to the relevant section of the

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Residential LLC, No. 08-10375 (JMP) (Bankr. S.D.N.Y. May 7, 2008) (finding that releases and discharges of claims and causes of action by the Debtors were a valid exercise of the debtors' business judgment); In re Calpine Corp., No. 05-60200, 2007 WL 4565223 (BRL) (Bankr. S.D.N.Y. Dec. 19, 2007) (same); In re Tower Auto., Inc., No. 05-10578 (ALG) (Bankr. S.D.N.Y. July 12, 2007) (finding that debtor releases represented a valid settlement of whatever claims debtors may have against the "Debtor Releasees"); see also In re Washington Mutual, Inc., No. 08-12229 (MFW) (Bankr. D. Del. Feb. 24, 2012) (confirming plan premised on global settlement that provided for a debtor release of plan supporters).

Plan. The Plan Proponents also set forth the language of the Release Provisions in conspicuous bold type in both the Plan and the Disclosure Statement.

271. Courts in this District routinely approve consensual releases similar in scope to the release provisions here (including the standard carveouts for intentional misconduct) under similar circumstances. See, e.g., Charter, 419 B.R. at 242; DBSD, 419 B.R. at 217; Calpine, 2007 WL 4565223, at *9.[237]

272. While the consensual nature of the Third Party Releases alone supports their approval, certain of the Released Parties have made significant contributions to these Chapter 11 Cases that further assure the Court that approving such releases would be proper. Each of the Released Parties has provided value to the Debtors and aided in the reorganization process, including, with respect to certain Released Parties, by their entry into the Settlement, by their agreeing to provide the DIP Loan on the best terms available from the market and by providing their support of the sale of NII Mexico, all of which have facilitated the Debtors' ability to propose and pursue confirmation of the Plan. The Debtors believe that each of the Released Parties has played an integral role in these Chapter 11 Cases, has bolstered the Debtors' ability and opportunity to reorganize optimally, have increased recoveries otherwise available to other creditors and has expended significant time and resources analyzing and negotiating the issues presented by the Debtors' prepetition capital structure.

273. Indeed, certain of the non-debtor Released Parties entered into a support stipulation to confirm their support for the proposed Mexico Sale Transaction.[238] While it seems self-evident that parties would support a value-maximizing sale, the Consenting Noteholders

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237 See also In re Eastman Kodak Co., No. 12-10202 (ALG) (Bankr. S.D.N.Y. Aug. 23, 2013) [Docket No. 4966]; In re Dynegy Inc., No. 11-38111 (CGM) (Bankr. S.D.N.Y. Sept. 10, 2012) [Docket No. 1029]; In re Mesa Air Grp., No. 10-10018 (MG) (Bankr. S.D.N.Y. Jan. 20, 2011) [Docket No. 1448].

238 See Sale Support Stipulation.

here through their entry into the support stipulation and by cooperating with the Debtors did not seek to extract nuisance value by "holding up" the Mexico Sale Transaction.[239]

274. Accordingly, the Release Provisions constitute consensual releases that are consistent with applicable law and should be approved.

C. The Plan's Exculpation Should be Approved

275. Courts in the Second Circuit evaluate exculpation provisions based upon a number of factors, including whether the provision is integral to the proposed plan and whether protection from liability was necessary for plan negotiations. See In re Bearing-Point, Inc., 453 B.R. 486, 494 (Bankr. S.D.N.Y. 2011) (noting that "[e]xculpation provisions are included so frequently in chapter 11 plans because stakeholders all to often blame others for failures . . . seek vengeance against other parties; or simply with to second guess decision makers . . . ."); Bally Total Fitness, 2007 WL 2779438, at *8 (finding exculpation, release, and injunction provisions were "integral to the structure of the [p]lan and formed part of the agreement among all parties in interest embodied therein"); Enron Corp., 326 B.R. at 503 (approving an exculpation provision where it was necessary to effectuate the plan and excluded gross negligence and willful misconduct and noting that excising similar exculpation provisions "would thus tend to unravel the entire fabric of the [p]lan, and would be inequitable to all those who participated in good faith to bring it into fruition."); WorldCom, 2003 WL 23861928, at *28 (approving exculpation provision where it "was an essential element of the Plan formulation process and negotiations.").

276. Exculpations are not "back door" involuntary releases of potential litigation claims. Unlike a release, the effect of an appropriate exculpation provision is not to eliminate a cause of action, but rather to set a standard of care of gross negligence or willful

239 For example, although not a party to the support stipulation, the Luxco Group did not oppose the Bidding Procedures Motion, which was filed and heard prior to the Luxco Group agreeing to join the revised Plan Support Agreement.

misconduct in future litigation for those acts arising out of the restructuring. See Calpine, 2007 WL 4565223, at *10 (finding that exculpation provision that did not relieve any party of liability for gross negligence or willful misconduct was appropriate); Enron, 326 B.R. at 502 (holding that exculpation provision was appropriate where such provision excluded gross negligence and willful misconduct). Additionally, where a court finds that the plan has been proposed in good faith and meets the other requirements of confirmation, approval of an exculpation provision is appropriate, and sets the standard of liability, for those involved in the negotiation and formulation of the plan. See WorldCom, 2003 WL 23861928, at *28.

277. In the Second Circuit, exculpation provisions which extend to prepetition and postpetition conduct, and cover non-estate fiduciaries, are regularly approved in plans of reorganization in cases similar to these Chapter 11 Cases. See, e.g., Calpine, 2007 WL 4565223, at *10 (finding that an exculpation provision that did not relieve any party of liability for gross negligence or willful misconduct was appropriate); Enron Corp., 326 B.R. at 501 (holding that an exculpation provision was appropriate where such provision excluded gross negligence and willful misconduct).[240]

278. As described in detail above, the Released Parties played a critical role in the formulation of the Plan. Failing to include the Exculpation Provision would have chilled the critical participation of the Debtors' key creditor groups, such as the Consenting Noteholders, as well as their management and advisors, in the process of trying to formulate and negotiate the Plan. Moreover, the scope of the exculpation provision is appropriately limited to the Released

[240] See also In re Lightsquared Inc., No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 27, 2015) [Docket No. 2276]; In re MPM Silicones, LLC, No. 14-22503 (RDD) (Bankr. S.D.N.Y. Sept. 11, 2014 [Docket No. 1001]; In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. Dec. 11, 2013) [Docket No. 6066]; In re AMR Corp., No. 11-15463 (SHL) (Bankr. S.D.N.Y. Oct. 22, 2013) [Docket No. 10367]; In re Innkeepers USA Trust, No. 10-13800 (SCC) (Bankr. S.D.N.Y. June 29, 2011); In re Neff Corp., No. 10-12610 (SCC) (Bankr. S.D.N.Y. Sept. 20, 2010) [Docket No. 443].

Parties' participation in the restructuring efforts and has no effect on liability that results from gross negligence or willful misconduct (including fraud).

279. Therefore, the Debtors respectfully request that the Court approve the Exculpation set forth in Section IX.D of the Plan.

D. The Injunction Is Necessary and Customary

280. The Injunction is necessary to effectuate and implement the release provisions in the Plan, particularly the Debtor Release, Third Party Releases and Exculpation. Moreover, the Injunction is essential to protect the Debtors, the Reorganized Debtors and the assets of the Estates from any potential litigation from prepetition creditors after the Effective Date. Any such litigation would hinder the efforts of the Debtors and the Reorganized Debtors to effectively fulfill their responsibilities as contemplated in the Plan and thereby undermine the Debtors' efforts to maximize value for all of its stakeholders. See Bally Total Fitness, 2007 WL 2779438, at *8 (exculpation, release and injunction provisions appropriate because they were fair and equitable, necessary to successful reorganization and integral to the plan); In re Drexel Burnham Lambert Grp., 960 F.2d 285, 292-93 (2d Cir. 1992) (court may approve release and injunction as important plan feature); Abel v. Shugrue (In re Ionosphere Clubs, Inc.), 184 B.R. 648, 655 (S.D.N.Y. 1995) ("[C]ourts may issue injunctions enjoining creditors from suing third parties . . . in order to resolve finally all claims in connection with the estate and to give finality to a reorganization plan.") (citation omitted). Accordingly, such provisions are a common feature in plans confirmed in this District.[241]

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[241] In re Lightsquared Inc., No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 27, 2015) [Docket No. 2276]; In re MPM Silicones, LLC, No. 14-22503 (RDD) (Bankr. S.D.N.Y. Sept. 11, 2014 [Docket No. 1001]; In re Residential Capital, LLC, No. 12-12020 (Bankr. S.D.N.Y. Dec. 11, 2013) [Docket No. 6066]; In re AMR Corp., No. 11-15463 (SHL) (Bankr. S.D.N.Y. Oct. 22, 2013) [Docket No. 10367]; In re Innkeepers USA Trust, No. 10-13800 (SCC) (Bankr. S.D.N.Y. June 29, 2011); In re Mesa Air Grp., No. 10-10018 (MG) (Bankr. S.D.N.Y. Jan. 20, 2011) [Docket No. 1448]; In re Neff Corp., No. 10-12610

281. In accordance with these precedents and the necessity of the Injunction to the Plan, the Injunction should be approved.

IV. THE ASSUMPTION OR REJECTION OF THE EXECUTORY CONTRACTS AND UNEXPIRED LEASES UNDER THE PLAN SHOULD BE APPROVED

282. The Plan proposes that the Debtors will assume and assign or reject all of their Executory Contracts and Unexpired Leases as of the Effective Date. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (stating that section 365 of the Bankruptcy Code "permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject."); see also Bildisco, 465 U.S. at 523 (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) ("business judgment" test should be applied to assumption and rejection decisions).

283. Courts generally will not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See In re Balco Equities Ltd., Inc., 323 B.R. 85, 98 (Bankr. S.D.N.Y. 2005) ("A court 'should defer to a

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(SCC) (Bankr. S.D.N.Y. Sept. 20, 2010) [Docket No. 443]; In re Oldco M Corp. (f/k/a Metaldyne Corp., No. 09-13412 (MG) (Bankr. S.D.N.Y. Feb. 23, 2010) [Docket No. 1384].

debtor's decision that rejection of a contract would be advantageous.'") (citing In re Sundial Asphalt Co., 147 B.R. 72, 84 (E.D.N.Y. 1992)); In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) ("[A] court will ordinarily defer to the business judgment of the debtor's management"). The "business judgment" test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. See, e.g., Bregman v. Meehan (In re Meehan), 59 B.R. 380, 385 (E.D.N.Y. 1986) ("The business judgment test is a flexible one . . . . The primary issue under the business judgment test is whether rejection of the contract would benefit general unsecured creditors."); In re Helm, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) ("To meet the business judgment test, the debtor in possession must establish that rejection will benefit the estate.") (quotation omitted).

284. The Plan provides that on the Effective Date, each of the Debtors' Executory Contracts and Unexpired Leases not previously assumed or rejected pursuant to an order of the Court will be deemed rejected as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except any Executory Contract or Unexpired Lease (1) identified on Exhibit G to the Plan as an Executory Contract or Unexpired Lease designated for assumption, (2) which is the subject of a separate motion or notice to assume or reject filed by the Debtors and pending as of the Confirmation Hearing, (3) that previously expired or terminated pursuant to its own terms or (4) that was previously assumed by any of the Debtors.[242] See Plan, Section IV.A.

285. After an extensive review and analysis, the Debtors have identified the Executory Contracts and Unexpired Leases to be assumed or rejected under the Plan in the

[242] See Plan, Section IV.A.

exercise of their sound business judgment.[243] See, e.g., Plan, Exhibit G. The Debtors' analysis was made with the goals of (a) preserving the agreements that the Debtors have determined are beneficial or otherwise essential to their businesses, the implementation of the Plan or the preservation of rights, claims or causes of action that the Debtors may have and (b) eliminating the agreements that are unduly burdensome or no longer necessary for these purposes. The Plan Proponents adequately provided notice of the Plan's proposed assumption of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan and provided counterparties with an opportunity to object.[244]

286. Accordingly, for all of the foregoing reasons, the proposed assumption and rejection of Executory Contracts and Unexpired Leases set forth in the Plan should be approved in connection with the Confirmation of the Plan, subject to the notice procedures set forth therein.

V. THE ANTICIPATED MODIFICATIONS TO THE PLAN ARE NOT MATERIAL, ARE IN COMPLIANCE WITH SECTION 1127 OF THE BANKRUPTCY CODE AND WILL HAVE BEEN AGREED TO AMONG ALL PARTIES

287. In the interest of clarifying certain points, making certain ministerial revisions to reflect events that have occurred during these cases since the filing of the Plan on April 20, 2015 and consensually resolving certain formal and informal objections to Confirmation of the Plan, the Plan Proponents anticipate that they will likely make certain non-material modifications to the Plan (the "Anticipated Modifications").

288. The Anticipated Modifications include:

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243 See, e.g., Plan, Exhibit G; see also See Notice Regarding (A) Executory Contracts and Unexpired Leases to be Assumed Pursuant to the First Amended Joint Plan of Reorganization and Section 365 of the Bankruptcy Code, (B) Amounts Required to Cure Defaults Under Such Contracts and Leases and (C) Related Procedures [Docket No. 705], Tr. Ex. P095 (the "Cure Schedule"); Affidavit of Service [Docket No. 716], Tr. Ex. P096.

244 See Cure Schedule.

- Addressing the dismissal of the Chapter 11 Case of NIU by (i) revising the caption to remove NIU from footnote 1 and (ii) globally replacing the singular and plural forms of the term "Plan Debtor" with singular and plural forms of the term "Debtor";

- Deleting references to "DIP Claims" in light of their full repayment from the proceeds of the Mexico Sale Transaction;

- Deleting references to prospective attainment of the New NII Exit Financing Facility to address the fact that such financing will not be necessary to consummate the Plan; and

- Adding a carve out to the exculpation and release provisions for attorney malpractice claims under New York law in response to informal comments from the U.S. Trustee.

As this list demonstrates, the Plan Proponents do not believe the Anticipated Modifications will materially and adversely affect the way any Claim or Interest Holder is treated under the version of the Plan circulated to voting creditors with the Disclosure Statement.

289. Section 1127 of the Bankruptcy Code provides:

> The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of the title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan . . . .
>
> Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

11 U.S.C. §§ 1127(a), (d).

290. Accordingly, bankruptcy courts typically allow plan proponents to make non-material changes to a plan without any special procedures or vote re-solicitation. See, e.g., Am. Solar King, 90 B.R. at 826 ("[I]f a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well.") (citation omitted); see also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006) ("[T]he bankruptcy court may deem a

claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated.").

291. In addition, Bankruptcy Rule 3019, designed to implement section 1127(d) of the Bankruptcy Code, provides in relevant part that:

> In a . . . chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019.

292. Section 1127 of the Bankruptcy Code gives a plan proponent the right to modify the plan "at any time" before confirmation. This right would be meaningless if the promulgation of all plan modifications, ministerial or substantive, adverse to certain claimants or not, necessitated the re-solicitation of votes. Accordingly, in keeping with traditional bankruptcy practice, courts have typically allowed a plan proponent to make non-material changes to a plan without any special procedures or vote resolicitation.[245]

293. Because all creditors in these Chapter 11 Cases have notice of the Confirmation Hearing, and will have an opportunity to object to any modifications at that time, the requirements of section 1127(d) of the Bankruptcy Code have been met. See Citicorp

[245] See, e.g., In re CIT Grp., Inc., No. 09-16565 (ALG), 2009 WL 4824498, at *28 (Bankr. S.D.N.Y. Dec. 8, 2009) (approving modifications that "did not materially or adversely modify the treatment of any Claims or Interests" without the need for resolicitation of votes on the plan); In re Dana Corp., No. 06-10354 (BRL) 2007 WL 4589331, at *2 (Bankr. S.D.N.Y. Dec. 26, 2007) (approving modifications to plan that did not "materially or adversely affect or change the treatment of any Claim or Interest in any Debtor" without the need for resolicitation of votes on the plan); Calpine, 2007 WL 4565223, at *6 (approving certain non-material modifications to reorganization plan without the need for resolicitation).

Acceptance Co., Inc. v. Ruti-Sweetwater (In re Sweetwater), 57 B.R. 354, 358 (D. Utah 1985) (creditors who had knowledge of pending confirmation hearing had sufficient opportunity to raise objections to modification of the plan). Moreover, where necessary, the Plan Proponents will obtain the consent of the Requisite Consenting Noteholders.

294. Accordingly, the Debtors respectfully submit that the Anticipated Modifications should not require the Debtors to resolicit the Plan because (a) the Anticipated Modifications, are (i) non-material and (ii) will not materially and adversely affect the treatment of any creditor that has previously accepted the Plan and (b) the Plan, as anticipated to be modified, will continue to comply with the requirements of sections 1122 and 1123 of the Bankruptcy Code.

VI. THE PLAN SHOULD BE CONFIRMED OVER THE OBJECTIONS

295. As described and addressed above, the only objection attempting to attack the core of the Plan and approval of the Settlement is from the Capco 2021 Group. The U.S. Trustee filed a more limited objection only with respect to the payment of certain professional fees, which is addressed above in paragraph 214 and in a separate reply filed by the Debtors. The remaining five objections that were filed, all but one of which related to the proposed assumption of Executory Contracts, are addressed immediately below and summarized in the chart attached hereto as Exhibit B.

A. The Objection of Tata America International Corporation d/b/a TCS America [Docket No. 723]

296. The Objection of Tata America International Corporation d/b/a TCS America to Debtors' Proposed Cure Amount for Assumption of Master Supply and Technical Services Agreement Pursuant to 11 U.S.C. § 365 and the Debtors' First Amended Proposed Joint Plan of Reorganization [Docket No. 723] (the "Tata Objection") related primarily to the

proposed cure amount for that certain Master Supply and Technical Services Agreement (the "Tata Agreement") that was listed for assumption on Exhibit G to the Plan. The Tata Objection has been consensually resolved with an agreement to add language to the Confirmation Order clarifying that the Debtors will continue to honor all postpetition and post-Effective Date obligations under all assumed Executory Contracts and Unexpired Leases.

B. The Objection of Nextel Communications, Inc. [Docket No. 724]

297. With respect to Nextel Communications, Inc.'s Objection to Debtor's Proposed Assumption of Trademark License Agreement [Docket No. 724], a consensual resolution has been reached that will allow the Debtors' assumption of the Trademark License Agreement.

C. The Objection of Giesecke & Devrient 3S AB f/k/a SmartTrust AB[Docket No. 726]

298. The Objection of Giesecke & Devrient 3S AB (Formerly Known as SmartTrust AB) to Proposed Cure Amount as set Forth in Notice Regarding (A) Executory Contracts and Unexpired Leases to be Assumed Pursuant to the First Amended Joint Plan of Reorganization and Section 365 of the Bankruptcy Code, (B) Amounts Required to Cure Defaults Under Such Contracts and Leases and (C) Related Procedures [Docket No. 726] (the "SmartTrust Objection") asserted that the correct cure amount for that certain Master Services Agreement for Hosted Over-the-Air Services listed on Exhibit G to the Plan was $550,000. That amount reflected a postpetition amount due under the agreement that was paid by the Debtors in the ordinary course of business subsequent to the filing of the SmartTrust Objection. That payment, combined with the Debtors' agreement to include language in the Confirmation Order clarifying that the Debtors will continue to honor all postpetition and post-

Effective Date obligations under all assumed Executory Contracts and Unexpired Leases, resolved the SmartTrust Objection.

D. The Objection of Oracle America, Inc. [Docket No. 731]

299. Oracle's Limited Objection and Reservation of Rights Regarding (I) Debtors' Notice Regarding (A) Executory Contracts and Unexpired Leases to be Assumed Pursuant to the First Amended Joint Plan of Reorganization and Section 365 of the Bankruptcy Code (B) Amounts Required to Cure Defaults Under Such Contracts and Leases and (C) Related Procedures and (II) Debtors' First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors [Docket No. 731] (the "Oracle Objection") asserts that (a) Exhibit G to the Plan did not adequately describe Oracle's agreements making it impossible for Oracle to assess the appropriate cure amounts; (b) based on the information that was provided, the cure amounts appeared to be inaccurate; and (c) Oracle does not have adequate assurance of the Debtors' future performance.

300. The Debtors have and continue to work with Oracle in the hopes of achieving a consensual resolution of the Oracle Objection. To date, the Debtors have provided additional information to Oracle regarding the relevant contracts that the Debtors' are proposing to assume. However, Oracle has yet to provide any detailed information to the Debtors to support a cure amount different from what is set forth in Exhibit G. Unless and until such time as Oracle provides information to substantiate its claim that the cure amount set forth in Exhibit G is incorrect, its objection to the proposed cure amount should be overruled.

301. In addition, any argument that the Debtors cannot provide adequate assurance of future performance is without any merit. As set forth in the Disclosure Statement, the Debtors anticipate having over $500 million in cash on the Effective Date to fund their ongoing operations. In addition, in connection with confirmation of the Plan and as set forth

above and in the Disclosure Statement, the Debtors have demonstrated that the Plan is feasible, which is sufficient to satisfy the requirement of adequate assurance of future performance for purposes of section 365 of the Bankruptcy Code. See In re Jennifer Convertibles, Inc., 447 B.R. 713, 719-20 (Bankr. S.D.N.Y. 2011) (finding adequate assurance was provided where projections showed feasibility for the enterprise as a whole in the future).

E. The Limited Objection of the Lead Plaintiff [Docket No. 732]

302. The Limited Objection of Lead Plaintiff to Confirmation of First Amended Joint Chapter 11 Plan [Docket No. 732] (the "Lead Plaintiff Limited Objection") requested two things: (a) the ability to continue to pursue claims against the Debtors to the extent of any available insurance proceeds; and (b) a document preservation protocol.[246] While the Debtors have worked to address the concerns of the Lead Plaintiff and have a reached a consensual resolution with respect to the Lead Plaintiff's request for a document retention protocol, the Lead Plaintiff's request for leave to continue to pursue claims against the Debtors is not warranted by the law or the facts, and the Lead Plaintiff Limited Objection in this respect should be overruled in its entirety.

303. It is black letter law that any claims asserted against any of the Debtors in connection with the securities class action litigation referenced in the Lead Plaintiff Limited Objection (the "Securities Litigation") will be fully and finally released and discharged upon confirmation of the Plan. See 11 U.S.C. § 1141(d). The Lead Plaintiff's request that it be permitted to continue to pursue claims **against the Debtors** to the extent of available insurance proceeds would require that the Debtors continue to be defendants in the Securities Litigation, subject themselves to all of the costs of litigation and assume the potential liabilities that may be

246 Capitalized terms not otherwise defined in this section have the meanings given to them in the Lead Plaintiff Limited Objection.

incurred in that litigation. In sum, the Lead Plaintiff's request would effectively neuter the discharge and release to which the Debtors are lawfully entitled under section 1141(d) of the Bankruptcy Code and should be rejected by the Court.

304. In any event, the discharge and release of the Debtors would not impact the Lead Plaintiff's ability to potentially recover from the D&O Policies should they ultimately prove successful in the Securities Litigation against the non-Debtor defendants. The D&O Policies provide coverage to the policies' full limits for the claims asserted against the non-Debtor defendants in the Securities Litigation. In normal circumstances, NII Holdings would, pursuant to its indemnification obligations, reimburse the litigation costs for the defense of its directors and officers in the Securities Litigation and then seek recovery from the D&O Policies. However, because such indemnification claims are prepetition claims, the Debtors are unable to fulfill these indemnification obligations. As a result, the non-Debtor defendants are presently entitled to coverage under what is called "Side A" of the D&O Policies — coverage that is triggered when an insured company is no longer financially able to provide indemnification for claims asserted against its directors and officers for actions related to their service in such capacities. Thus, the non-Debtor defendants in the Securities Litigation have the coverage of the entire D&O Policies available to protect them. Since Lead Plaintiff already has what it purports to seek — the ability to look to the D&O Policies' proceeds if it successfully prosecutes its claims against the non-Debtor defendants — adding language to the Plan to allow the Lead Plaintiff to pursue recoveries against **the Debtors** is entirely unnecessary.

305. Finally, the D&O Policies are not a "pot of money" that Debtors or the non-Debtor defendants can simply make available to whomever they choose. Instead, there are contractual requirements that must be met for any obligation to attach under those policies. In

that regard, the D&O Policies require that any claim asserted must be one that would involve liability that an insured entity "is legally required to pay." Because the Debtors will be forever discharged and released from any liability related to the Securities Litigation after confirmation of the Plan, there is a serious question whether that requirement could be met as to the Reorganized Debtors. Also, agreeing to permit the Lead Plaintiff to proceed against the D&O Policies' proceeds would be contrary to the contractual terms of the policies, which require that the Debtors cooperate in all material respects with the insurers and not admit to any liability or prejudice the position of the relevant insurers, again potentially jeopardizing the ability of the Lead Plaintiff's to recover any proceeds from the D&O Policies.

306. Consequently, for all of the reasons stated above, the Lead Plaintiff's limited objection should be overruled in its entirety.

F. Other Miscellaneous Informal Inquiries

307. The Debtors also received a handful of informal inquiries with respect to the Executory Contracts and Unexpired Leases proposed to be assumed pursuant to the Plan. The Debtors were able to address all such inquiries without the need for formal objections by (a) agreeing to certain changes to Exhibit G, a revised version of which is being filed contemporaneously with this brief and/or (b) by agreeing to add clarifying language to the Confirmation Order.

VII. WAIVER OF STAY

308. The Debtors respectfully request that the Court cause the Confirmation Order to become effective immediately upon its entry notwithstanding the 14-day stay imposed by operation of Bankruptcy Rule 3020(e), which states that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 3020(e); see also Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes,

1999 Amend (stating that a "court may, **in its discretion**, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately") (emphasis added). Such a waiver is appropriate in these circumstances to allow the Debtors to proceed with their rapid reorganization in order to conserve resources and fees. In light of the general consensus on the Plan, a prompt Effective Date is appropriate.

CONCLUSION

For all of the foregoing reasons, the Debtors submit that the Court should (a) approve integrated Settlement because it satisfies the applicable requirements in this Circuit for approval and (b) confirm the Plan because it fully satisfies all applicable requirements of the Bankruptcy Code.

Dated: May 29, 2015
New York, New York

Respectfully submitted,

/s/ Scott J. Greenberg

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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

Confirmation Standards Chart

CONFIRMATION OF THE FIRST AMENDED JOINT PLAN OF REORGANIZATION PROPOSED BY THE PLAN DEBTORS AND DEBTORS IN POSSESSION AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

THE PLAN COMPLIES WITH EACH OF THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

This chart summarizes the requirements for confirmation of the First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors, dated April 20, 2015 [Docket No. 664, Ex. A, Ex. 1] (as it may be modified or amended, the "Plan") under section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), and is provided in support of the Plan and the Debtors' (I) Memorandum of Law in Support of Confirmation of First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors and (II) Consolidated Reply to Objections to Confirmation of First Amended Joint Plan of Reorganization (the "Confirmation Memorandum") filed with the Bankruptcy Court herewith. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan and the Confirmation Memorandum, as applicable.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
11 U.S.C. § 1129(a)(1)	Section 1129(a)(1) — The Plan Must Comply with the Applicable Provisions of Title 11. The substantive provisions that are most relevant in the context of section 1129(a)(1) are sections 1122 (classification requirements) and 1123 (mandatory plan contents) of the Bankruptcy Code.	
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1122)***	A. Section 1122 of the Bankruptcy Code establishes the requirements for the classification of claims and interests in a plan of reorganization.	A. The Plan complies with, and satisfies the requirements of, section 1122 of the Bankruptcy Code.
	Section 1122 of the Bankruptcy Code provides that, except in the case of unsecured claims separately classified for administrative convenience, "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class."	1. The Plan follows a non-consolidated structure, respecting the corporate separateness of each of the Debtors. Section II of the Plan reasonably provides for the separate classification of Claims against and Interests in the 13 Debtors into 13 distinct Classes based upon (a) their security position, if any, (b) their legal priority against the applicable Debtor's assets and (c) other relevant criteria. See Plan, Section II.B, at 18-20; Confirmation Memorandum ¶¶ 173-72.
		2. Moreover, each class of Claims or Interests includes only substantially similar Claims or Interests against the applicable Debtor. See Plan, Section II.B, at 18-20. Specifically, the Plan classifies the following Claims and Interests: a. Priority Claims against each Debtor (Class 1A, 1B, 1C, 1D & 1E Claims); b. Secured Claims against each Debtor (Class 2A, 2B, 2C, 2D & 2E Claims); c. Sale-Leaseback Guaranty Claims against NII Holdings and Luxco (Class 3A & 3D Claims); d. Luxco Note Claims against NII Holdings and Luxco (Class 4A & 4D Claims); e. Capco Note Claims against NII Holdings, Capco and each of the Debtors in the Capco Guarantor Debtor Group (Class 5A, 5B & 5C Claims); f. Transferred Guarantor Claims against McCaw, Airfone and NIU Holdings, LLC (as transferee of Claims asserted against NIU) (Class 6E Claims);

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
		g. CDB Documents Claims against NII Holdings (Class 7A Claims); h. General Unsecured Claims against each Debtor (Class 8A, 8B, 8C, 8D & 8E Claims); i. Convenience Claims against NII Holdings, Capco and each Debtor in the Capco Guarantors Debtor Group (Class 9A, 9B & 9C Claims); j. Section 510 Claims against each Debtor (Class 10A, 10B, 10C, 10D & 10E Claims); k. Non-Debtor Affiliate Claims against each Debtor (Class 11A, 11B, 11C, 11D & 11E Claims); l. NII Interests in NII Holdings (Class 12A Interests); and m. Subsidiary Debtor Equity Interests in each Debtor other than NII Holdings (Class 13B, 13C, 13D & 13E Interests). See Plan, Section II.B,1 at 19-20.
		3. Valid business, factual and legal reasons exist for the separate classification of Claims and Interests. a. At a threshold level, the Plan separates Claims from Interests, Priority Claims from General Unsecured Claims and Secured Claims from both Priority and General Unsecured Claims. See Confirmation Memorandum ¶ 176. b. More particularly, due to their unique and different rights: i. Convenience Claims against NII Holdings, Capco and each of the Capco Guarantors (Class 9A, 9B & 9C Claims) are classified separately from other General Unsecured Claims pursuant to section 1122(b) of the Bankruptcy Code; ii. Sale-Leaseback Claims (Class 3A), Luxco Note Claims (Class 4A), Capco Note Claims (Class 5A), CDB Document Claims (Class 7A) and General Unsecured Claims (Class 8A), in each case, against NII Holdings are classified separately because: 1) The Luxco Note Claims (Class 4A) and the Capco Note Claims (Class 5A) arise pursuant to different Indentures under which different Debtors serve as obligors (i.e., Capco and the Capco Guarantors in the case of Holders of Capco Note Claims and Luxco in the case of Holders of Luxco Note Claims), thereby providing Holders of such respective notes with differing rights as against such Debtors. Furthermore, classifying the Luxco Note Claims together with the Capco Note Claims solely against NII Holdings could potentially have created confusion among creditors with respect to such Holders' differing recoveries against the remaining, disparate obligors under the respective notes; 2) The Sale-Leaseback Guaranty Claims (Class 3A) and the CDB Documents Claims (Class 7A) arise pursuant to different contracts — namely, the guarantees between ATC and NII Holdings and Luxco and the CDB Documents, respectively — under which different Debtors serve as obligors and which could similarly create confusion among creditors had such claims been classified together. In addition, valid business justifications exist for their separate classification because the Debtors wish to preserve their ongoing business relationships with CDB and ATC. See Freiman Decl. ¶¶ 18 & 56. CDB has historically been a major lender to the Non-Debtor Affiliates and remains the primary lender to NII Brazil. See id. ¶¶ 14 & 30 n.9. ATC is vital to NII Brazil's operations, functioning as the leading lessor of telecommunication towers on which

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
		NII Brazil's network depends. See id. ¶ 18. Further, the recovery provided to each of ATC and CDB is unique to these relationships and could not have been readily offered if these claims were combined with General Unsecured Claims, the Holders of which are receiving only Cash; 3) Holders of General Unsecured Claims (Class 8A) likely would prefer to receive recoveries in Cash, which is distinct from the distributions to the other Classes of Claims against NII Holdings of similar priority. In addition, valid business justifications exist to classify General Unsecured Claims separately because the Holders of most of these Claims are vendors and other counterparties with whom the Debtors wish to preserve ongoing business relationships, many of which are vital to the operations of the Non-Debtor Affiliates; 4) Capco Note Claims (Classes 5B and 5C) and General Unsecured Claims (Classes 8B and 8C), in each case, against Capco and each of the Capco Guarantors are classified separately because the Claims arise pursuant to distinct underlying agreements or transactions (e.g., the Capco Indentures and generally trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against Capco, and these Claims are subject to differing forms of recoveries that may not be well-suited to all Holders of these Claims; 5) Sale-Leaseback Claims (Class 3D), Luxco Note Claims (Class 4D) and General Unsecured Claims (Class 8D), in each case, against Luxco are classified separately because the Claims arise pursuant to distinct agreements or transactions (e.g., the Luxco Indentures and generally trade or ordinary course business agreements and/or transactions), giving rise to differing respective rights against Luxco, and these Claims are subject to differing forms of recoveries that may not be well-suited to all Holders of these Claims; and iii. The Transferred Guarantor Claims (Class 6E) and General Unsecured Claims (Class 6E), in each case, against McCaw International (Brazil), LLC, Airfone Holdings, LLC and NIU Holdings, LLC (as transferee of Claims asserted against NIU) are separately classified because the Transferred Guarantor Claims are being settled on the basis of an aggregate net settlement of $150 million and, thus, allowed at differing recovery rates and in differing forms of recovery than would be applicable to the General Unsecured Claims (which, for example, will receive a 100% recovery in Cash at NIU Holdings LLC). Furthermore, the Transferred Guarantor Claims are litigation claims that give their Holders distinct rights as against the applicable Debtors, when compared to ordinary trade claimants; iv. Section 510 Claims (Class 10) are properly subordinated to General Unsecured Claims pursuant to section 510(b) of the Bankruptcy Code. There are no other subordinated General Unsecured Claims that are separately classified from the Section 510 Claims; v. NII Interests (Class 12A) are Interests in NII Holdings, and Subsidiary Debtor Equity Interests (Class 13) are the respective Interests held by subsidiaries of NII Holdings in their own subsidiaries (e.g., NII Holdings' Interests in Capco, Aviation, Funding, and NIS; Capco's Interests in NII Global; NII Global's Interests in Nextel International Holdings S.à r.l.; Nextel International Holdings S.à r.l.'s and Nextel International Services S.à r.l.'s Interests in Luxco; and Luxco's Interests in NIU Holdings). Not more than one of the foregoing Classes of Interests exist at any Debtor, and, thus, these Classes of Interests are not separately classified; and vi. Because these are insider claims asserted by non-debtor affiliates, Non-Debtor Affiliate Claims (Class 11) have been separately classified in Class 11. See Confirmation Memorandum ¶ 176.

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11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a))***	A. Section 1123(a) of the Bankruptcy Code specifies seven requisites for the contents of a plan of reorganization.	A. The Plan contains each of the mandatory plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(1))***	1. Section 1123(a)(1) of the Bankruptcy Code requires that a plan of reorganization designate: (a) classes of claims, other than priority claims under section 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code; and (b) classes of interests.	1. Section II.B of the Plan designates 13 classes of Claims and Interests. See Plan, Section II.B.1, at 19-20; see also supra pp. 1-3.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(2))***	2. Section 1123(a)(2) of the Bankruptcy Code requires that a plan specify classes of claims and interests that are unimpaired under the plan.	2. Section II.B of the Plan specifies that Claims and Interests in Classes 1A through 1E, 2A through 2E, 9A through 9C, 11A through 11E and 13B through 13E are Unimpaired. See Plan, Section II.B.1, at 19-20.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(3))***	3. Section 1123(a)(3) of the Bankruptcy Code requires that a plan specify the treatment of any class of claims or interests that is impaired under the plan.	3. Section II.B of the Plan specifies that Claims and Interests in Classes 3A, 3D, 4A, 4D, 5A through 5C, 6E, 7A and 8A through 8E are Impaired and describes the treatment of each such Class. See Plan, Section II.B.1, at 19-20.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(4))***	4. Section 1123(a)(4) of the Bankruptcy Code requires that a plan provide the same treatment for each claim or interest of a particular class unless the holder consents to less favorable treatment of such claim or interest.	4. Section II.C of the Plan provides for equality of treatment within each Class of Claims or Interests, unless the Holder of a Claim or Interest agrees to less favorable treatment of its Claim or Interest. See Plan, Section II.C.1-13, at 20-25. Contrary to the assertion of the Capco 2021 Group, all Capco Note Claims in Classes 5A, 5B and 5C are being treated equally on account of their Capco Note Claims against NII Holdings, Capco and each of the Capco Guarantor Debtors. See Confirmation Memorandum ¶ 189.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(5))***	5. Section 1123(a)(5) of the Bankruptcy Code requires that a plan provide adequate means for its implementation and lists several examples of the means by which plan implementation may be accomplished.	5. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Section III of the Plan, as well as various other provisions thereof, provide adequate means for the Plan's implementation. Those provisions relate to, among other things: a. the continued corporate existence of the Debtors (subject to the Restructuring Transactions) and the vesting of the Debtors' assets in the Reorganized Debtors; b. the consummation of the Restructuring Transactions; c. the obligations of successors to the Reorganized Debtors created pursuant to the Restructuring Transactions; d. the adoption of the corporate constituent documents that will govern Reorganized NII and the other Reorganized Debtors; e. the identities of, and/or method for appointing, the known directors and officers of Reorganized NII and the other Reorganized Debtors;

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		f. the issuance, distribution and listing of Reorganized NII Common Stock; g. the treatment of certain employment, retirement and workers' compensation benefits, including the Management Incentive Plan and the Severance Plan; h. the authorization for the Reorganized Debtors to consummate the New NII Exit Financing Facility (if obtained);[1] i. the preservation of rights of action by the Reorganized Debtors (other than claims settled or released pursuant to the Plan); j. the general releases by: i. the Debtors and Reorganized Debtors; ii. Holders of Claims or Interests voting in favor of the Plan; and iii. the Released Parties, as well as the other releases to be effectuated pursuant to the settlements contained in the Plan and the injunctions and exculpations relating to the foregoing; k. the cancellation and surrender of instruments, securities and other documentation; l. the release of liens; m. the mechanism for distributions of Reorganized NII Common Stock and/or Cash pursuant to the Plan; n. the assumption or rejection of Executory Contracts and Unexpired Leases; and o. the adoption, execution, delivery and implementation of all contracts, instruments, releases and other agreements or documents related to the foregoing. Moreover, the Debtors expect to have approximately $1.344 billion of unrestricted Cash to make all payments required to be made on the Effective Date pursuant to the terms of the Plan. See Plan, Section III, at 26-31.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(6))***	6. Section 1123(a)(6) of the Bankruptcy Code requires that a plan provide for the inclusion in the debtor's charter of a provision prohibiting the issuance of nonvoting equity securities and providing, as to the several classes of securities possessing voting power, an appropriate distribution of voting power among such classes.	6. The forms of certificate of incorporation and by-laws of Reorganized NII, which are attached as Exhibits B and C to the Plan Supplement, include provisions (a) prohibiting the issuance of nonvoting equity securities and (b) implementing the appropriate distribution of voting power among the classes of securities possessing voting power. See Plan, Section III.F.1, at 28; Plan Exs. B & C.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(a)(7))***	7. Section 1123(a)(7) of the Bankruptcy Code requires that a plan contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of	7. Exhibit D to the Plan sets forth the names and affiliations of six of the seven members comprising the New Board of directors of Reorganized NII. See Plan, Section III.F.2 & Exhibit D. The seventh director of Reorganized NII is unknown at this time. To the extent that the seventh director becomes known prior to the start of the Confirmation Hearing, the Plan Proponents will file a supplemental disclosure with the Bankruptcy Court setting forth his or her name and affiliations. See Confirmation Memorandum ¶ 192.

[1] Currently, the Debtors do not anticipate seeking financing pursuant to the New NII Exit Financing Facility.

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	selection of any officer, director or trustee under the plan or any successor thereto.	The directors for the boards of directors of the direct and indirect subsidiaries of Reorganized NII will be identified and selected by the New Board. See Plan, Section III.F.2. In light of the foregoing, the manner of selection of the initial officers and directors or Reorganized NII and the other Reorganized Debtors as provided for in the Plan Support Agreement and Plan Term Sheet is consistent with the interests of creditors and equity security holders and with public policy. See Confirmation Memorandum ¶ 192.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b))***	A. Section 1123(b) of the Bankruptcy Code contains various provisions that may be, but are not required to be, included in a plan of reorganization.	A. The Plan contains many of these discretionary plan provisions.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(1))***	1. Section 1123(b)(1) of the Bankruptcy Code allows a plan to impair or leave unimpaired any class of claims (secured or unsecured) or interests.	1. Section III of the Plan provides for the Impairment of certain Classes of Claims and Interests and provides that other Classes are Unmpaired. See Plan, Section II.B.1, at 19-20; see also supra p. 4.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(2))***	2. Section 1123(b)(2) of the Bankruptcy Code allows a plan, subject to section 365 of the Bankruptcy Code, to provide for the assumption, rejection or assignment of any executory contract or unexpired lease not previously rejected.	2. Section IV.A of the Plan provides for the assumption or rejection of Executory Contracts and Unexpired Leases not previously rejected (or for which motions for assumption or rejection are pending) under section 365 of the Bankruptcy Code. See Plan, Section IV.A, at 32-33.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(3))***	3. Section 1123(b)(3) of the Bankruptcy Code allows a plan to provide for the settlement or adjustment of any claim or interest belonging to a debtor or provide for the retention and enforcement of any claim or interest.	3. Section III.H.1 of the Plan provides for the retention and enforcement of claims, demands, rights, defenses and causes of action by the Reorganized Debtors, except the Avoidance Claims, the Recharacterization Claims and the Transferred Guarantor Claims. Notwithstanding the foregoing, as of the Effective Date, the Debtors shall waive and release all Recovery Actions. See Plan, Section III.H.1, at 30. a. The Plan provides that, as of the Effective Date, the Debtors will forever release, waive and discharge all Liabilities they have, had, or may have against a Released Party, subject to certain exceptions. See Plan, Section IX.E.1, at 42.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(4))***	4. Section 1123(b)(4) of the Bankruptcy Code allows a plan to provide for the sale of all or substantially all of the property of a debtor's estate.	4. N/A. This section is not applicable because the Plan does not provide for the sale of all or substantially all of the property of the Debtors' Estates.
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(5))***	5. Section 1123(b)(5) of the Bankruptcy Code allows a plan to modify the rights of holders of claims, with the exception of claims secured only by a security interest in real property that is the debtor's principal	5. Section II.B of the Plan modifies the rights of Holders of Claims in Impaired Classes and leaves unaffected the rights of Holders of other Claims in Unimpaired Classes. See Plan, Section II.B, at 19-20; see also supra pp. 4.

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	residence, or leave unaffected the rights of holders of any class of claims.	
11 U.S.C. § 1129(a)(1) ***(11 U.S.C. § 1123(b)(6))***	6. Section 1123(b)(6) of the Bankruptcy Code allows a plan to include any other appropriate provisions not inconsistent with the provisions of title 11.	6. The Plan includes numerous other provisions designed to ensure its implementation that are consistent with the Bankruptcy Code, including: a. settling certain disputes between and among the Debtors and other parties in interest, including the implementation of the Settlement (see Plan, Section III.H.2, at 30-31); b. governing distributions on account of Allowed Claims (see Plan, Section V, at 35-37); c. establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims once resolved (see Plan, Section VI, at 37-38); d. regarding the discharge, release and injunction against the pursuit of Claims and termination of Interests (see Plan, Section IX, at 40-43); and e. regarding the retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date (see Plan, Section X, at 43-44).
11 U.S.C. § 1129(a)(2)	Section 1129(a)(2) — The Plan Proponents Must Comply with the Applicable Provisions of Title 11.	
11 U.S.C. § 1129(a)(2) ***(11 U.S.C. § 1125)***	A. The primary purpose of section 1129(a)(2) of the Bankruptcy Code is to ensure that the proponent has adhered to the disclosure requirements of sections 1125 and 1126 of the Bankruptcy Code. As a result, the plan proponent's compliance with sections 1125 and 1126 of the Bankruptcy Code forms the basis of the inquiry under section 1129(a)(2) of the Bankruptcy Code.	A. The requirements of section 1129(a)(2) have been satisfied.
	1. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan from holders of claims or interests unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved by the court as containing adequate information.	1. The Plan Proponents have adhered to the disclosure requirements of section 1125 of the Bankruptcy Code. a. By an order dated April 20, 2015 [Docket No. 655] (the "Disclosure Statement Order"), the Bankruptcy Court specifically found, among other things, that the Disclosure Statement contained adequate information within the meaning of section 1125 of the Bankruptcy Code. See Disclosure Statement Order, at ¶ D. b. The Bankruptcy Court considered and, in the Disclosure Statement Order, approved all materials to be transmitted to creditors entitled to vote on the Plan (collectively, the "Solicitation Materials"), the timing and method of delivery of the Solicitation Materials and the rules for tabulating votes to accept or reject the Plan. c. The Plan Proponents (through the Voting Agent) transmitted the approved Solicitation Materials in accordance with the instructions of the Bankruptcy Court in the Disclosure Statement Order. See Affidavit of Service, filed on April 29, 2015 [Docket No. 676]; Affidavit of Service of Solicitation Materials, filed on May 6, 2015 [Docket No. 695]; Affidavit of Publication, filed on May 7, 2015 [Docket No. 697].

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	2. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Pursuant to section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan.	2. The Plan Proponents have adhered to the solicitation requirements of section 1126 of the Bankruptcy Code. a. The Plan Proponents solicited acceptances from the Holders of Allowed Claims in each Class of Impaired Claims entitled to receive distributions under the Plan. Accordingly, pursuant to section 1126(a) of the Bankruptcy Code, Holders of Claims in those Classes were entitled to vote to accept or reject the Plan. b. The Plan Proponents did not solicit acceptances from (1) the Holders of Claims or Interests that are designated as Unimpaired because, pursuant to section 1126(f) of the Bankruptcy Code, such Holders are conclusively presumed to accept the Plan or (2) the Holders of Claims or Interests that are designated as Impaired but are not entitled to receive or retain any property under the Plan on account of such Claims and/or Interests because, pursuant to section 1126(g) of the Bankruptcy Code, Holders of such Claims and/or Interests are deemed to reject the Plan.
11 U.S.C. § 1129(a)(3)	Section 1129(a)(3) — The Plan Must Be Proposed in Good Faith and Not by Any Means Forbidden by Law.	
11 U.S.C. § 1129(a)(3)	A. Under the good faith standard, good faith is present if the plan has been proposed with the reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code. Accordingly, a plan proponent simply must demonstrate that the plan is reasonably likely to succeed and that a reorganization is possible, consistent with the goals of chapter 11.	A. The Plan has been proposed by the Plan Proponents in good faith and in the belief that a successful reorganization can be accomplished. 1. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by proposing to implement: a. the Debtors' restructuring as a sustainable, viable business by removing more than $4.35 billion in debt from the Debtors' balance sheet and through several initiatives that were undertaken during their cases; and b. the integrated Settlement of the numerous Settled Claims and Disputes among the Debtors, the Creditors' Committee and the Consenting Noteholders on terms that provide significant value to the Debtors, their creditors and other stakeholders and will enable the Debtors to consummate their proposed restructuring pursuant to the Plan and effect the complete and final settlement of the Settled Claims and Disputes. See Confirmation Memorandum ¶ 207. 2. The Plan (and the Settlement implemented thereby) is the result of extensive good faith, arm's-length negotiations among the Debtors, the Creditors' Committee and the Consenting Noteholders and the Plan was overwhelmingly accepted by Holders of Claims in voting Classes of approximately 91.91% in amount and 95.35% in number. See Confirmation Memorandum ¶¶ 151 & 209; Voting Decl., Ex. A.
11 U.S.C. § 1129(a)(4)	Section 1129(a)(4) — All Payments to Be Made by the Debtor in Connection with Its Chapter 11 Case Must Be Subject to Court Approval.	
11 U.S.C. § 1129(a)(4)	A. Section 1129(a)(4) of the Bankruptcy Code requires that any payment made by a plan proponent, debtor or person issuing securities or acquiring property under a plan in connection with the plan or the bankruptcy case must have been disclosed and approved by the court, or be subject to the approval of the court, as reasonable.	A. The Plan provides that payments for Professionals' Fee Claims for services rendered and expenses incurred prior to the Effective Date are subject to approval of the Bankruptcy Court under the standards set forth in the Bankruptcy Code, including the requirements of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code, as applicable, by requiring Professionals to file final fee applications with the Bankruptcy Court. See Plan, Section II.A.1. In addition, the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date. See Plan, Section X.2. B. To the extent the Requisite Consenting Noteholders Professionals Fees/Expenses are not paid in full in Cash

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		pursuant to the Plan Support Agreement Order, the Debtors' payment of the Requisite Consenting Noteholders Professionals Fees/Expenses as a bargained for term of a global Settlement integrated into the Plan is reasonable, appropriate and consistent with the relevant precedent in this jurisdiction. See Reply of Debtors and Debtors in Possession to: (I) Objections of the U.S. Trustee to the Debtors' PSA Motion and Chapter 11 Plan; and (II) Reservation of Rights of the Capco 2021 Group to the Debtors' PSA Motion filed contemporaneously herewith. In the event the Court determines that a showing of a substantial contribution to the Chapter 11 Cases also is required, the Debtors respectfully submit that such a showing has been made by the Requisite Consenting Noteholders' efforts in these Chapter 11 Cases to date. See id.; see also Confirmation Memorandum ¶ 213.
11 U.S.C. § 1129(a)(5)	Section 1129(a)(5) — The Plan Must Disclose Information Regarding Postconfirmation Management of the Debtor.	
11 U.S.C. § 1129(a)(5)	A. Section 1129(a)(5) of the Bankruptcy Code imposes the following two requirements: 1. First, a plan may be confirmed only if the proponent discloses the identity of those individuals who will serve as management of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the compensation to be paid to such insider. 2. Second, the appointment or continuation in office of existing management must be consistent with the interests of creditors, equity security holders and public policy.	A. The Plan Proponents have fully satisfied the requirements imposed by section 1129(a)(5) of the Bankruptcy Code. 1. The Plan Proponents have satisfied the disclosure requirements of section 1129(a)(5) of the Bankruptcy Code. a. The Plan Proponents have disclosed the identities of the known directors that will comprise the New Board of Reorganized NII. As established by these disclosures, the known directors of Reorganized NII are qualified and experienced. See Plan, Exhibit D; Confirmation Memorandum ¶ 218; see also supra pp. 5-6. b. In addition, the Plan Proponents have disclosed that certain existing officers of NII Holdings (who are "insiders" as such term is defined in section 101(31) of the Bankruptcy Code) will continue to serve as the officers of Reorganized NII and that the prior compensation of such officers, as well as that of the NII Holdings' current directors, has been disclosed by the Debtors pursuant to their previous filings with the SEC as well as pursuant to various pleadings filed in their bankruptcy cases. See Confirmation Memorandum ¶ 218. 2. The appointment or continuation in office of existing management is consistent with the interests of creditors, equity security holders and public policy. a. The initial directors of Reorganized NII have been selected by a majority of Reorganized NII's future stockholders, i.e., the Consenting Noteholders, and this selection is supported by the Creditors' Committee. Furthermore, no party in interest has objected to the manner of selection of the board of directors or the officers of the Reorganized Debtors. See Confirmation Memorandum ¶ 219.

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11 U.S.C. § 1129(a)(6)	Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval.	
11 U.S.C. § 1129(a)(6)	A. Section 1129(a)(6) of the Bankruptcy Code requires that, after confirmation of a plan, any governmental regulatory commission with jurisdiction over the rates of the debtor has approved any rate change provided for in the plan, or that such rate change is expressly conditioned on such approval. Section 1129(a)(6) is applicable only to debtors subject to governmental regulatory authority.	A. N/A. This section is not applicable because the Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation.
11 U.S.C. § 1129(a)(7)	Section 1129(a)(7) — The Plan Must Be in the Best Interests of Creditors.	
11 U.S.C. § 1129(a)(7)	A. Section 1129(a)(7) of the Bankruptcy Code codifies the so-called "best interests of creditors" test. The best interests of creditors test requires that, with respect to each impaired class of claims or interests, except for claims where the section 1111(b) election applies, each holder of a claim or interest either has accepted the plan or will receive or retain property of a value, as of the effective date of the plan, that is not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.	A. The Plan satisfies the best interests of creditors test. 1. By its express terms, the best interests test is applicable only to nonaccepting Holders of Impaired Claims and Interests. 2. Under the Plan, only Classes 3A, 3D, 4A, 4D, 5A through 5C, 6E, 7A, 8A through 8E, 10A through 10E and 12A are Impaired. See Plan, Section II.B.2, at 19-20. 3. The Liquidation Analysis attached as Exhibit 2 to the Disclosure Statement and as further described in the Smyl Declaration filed contemporaneously herewith demonstrates that Holders of Impaired Claims or Interests under the Plan are not receiving less than they would receive in a chapter 7 liquidation of the Debtors. See Liquidation Analysis at 9-16; Smyl Decl. ¶ 13.

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11 U.S.C. § 1129(a)(8)	Section 1129(a)(8) — The Plan Must Be Accepted by the Requisite Classes of Claims and Interests.	
11 U.S.C. § 1129(a)(8)	A. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either vote to accept the plan or be unimpaired under the plan.	A. 11 of the 13 Classes have (i) voted to accept the Plan, (ii) are Unimpaired under the Plan or (iii) are deemed to have accepted the Plan. 1. Classes 1A through 1E, 2A through 2E, 9A through 9C, 11A through 11E and 13B through 13E are Unimpaired under the Plan and did not vote on the Plan (the "Deemed Accepting Classes"). The Deemed Accepting Classes are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. See Plan, Section II.B.2, at 19-20. 2. Classes of Claims have accepted the Plan by the requisite majorities. a. Classes 3A and 3D (Sale-Leaseback Guaranty Claims) – 100% in number; 100% in amount. b. Classes 4A and 4D (Luxco Note Claims) – 84.05% in number; 94.28% in amount. c. Classes 5A through 5C (Capco Note Claims) – 97.20% in number; 89.29% in amount. d. Class 6E (Transferred Guarantor Claims) – 99.59% in number; 99.91% in amount. e. Class 7A (CDB Documents Claims) – 100% in number; 100% in amount. f. Classes 8A through 8E (General Unsecured Claims) – 100% in number; 100% in amount. See Voting Decl., Ex. B. 3. Though entitled to vote and the recipients of Solicitation Packages with Ballots were instructed to do so, no votes were received by Holders of Impaired Claims in Class 8E against Airfone, Class 8E against McCaw and Class 8E against NIU Holdings LLC (collectively, the "Non-Voting Classes"). See Voting Decl., Ex. A. Accordingly, the Non-Voting Classes are deemed to have accepted the Plan. See e.g., Heins v. Ruti-Sweetwater, Inc. (In re Ruti Sweetwater, Inc.), 836 F.2d 1263, 1267-68 (10th Cir. 1988); see also Confirmation Memorandum ¶ 228 & n.208.
	B. Section 1129(a)(8) of the Bankruptcy Code is the only confirmation requirement that is not mandatory. If section 1129(a)(8) of the Bankruptcy Code is not satisfied with respect to certain classes of claims or interests, a plan nevertheless may be confirmed under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code.	B. Because the Holders of Claims and Interests in Classes 10A through 10E and 12A (collectively, the "Deemed Rejecting Classes") neither receive nor retain any property under the Plan, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. See Plan, Section II.B, at 19-20. Nonetheless, the Plan may be confirmed with respect to these Classes under the "cramdown" requirements of section 1129(b) of the Bankruptcy Code because the Plan does not unfairly discriminate with respect to such Classes and is otherwise fair and equitable with respect to each Impaired Class of Claims or Interests that has not accepted the Plan. See Confirmation Memorandum ¶ 230.
11 U.S.C. § 1129(a)(9)	Section 1129(a)(9) — The Plan Must Provide for the Payment of Priority Claims.	
11 U.S.C. § 1129(a)(9)	A. Section 1129(a)(9) of the Bankruptcy Code provides for mandatory treatment of certain priority claims under a plan of reorganization.	A. The Plan meets these requirements regarding the payment of Priority Claims and Priority Tax Claims.
	1. Section 1129(a)(9)(A) provides that	1. With respect to claims addressed by section 1129(a)(9)(A) of the Bankruptcy Code:

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	administrative claims under section 507(a)(2) must receive cash equal to the allowed amount of the claim on the effective date of the plan.	a. subject to certain bar dates and unless otherwise agreed by the Holder of an Administrative Claim and the applicable Reorganized Debtor, all Allowed Administrative Claims will be paid in full in Cash on either (i) the latest to occur of (A) the Effective Date (or as soon thereafter as practicable), (B) the date such Claim becomes an Allowed Administrative Claim and (C) such other date as may be agreed upon by the Reorganized Debtors and the Holder of such Claim or (ii) on such other date as the Bankruptcy Court may order ; (see Plan, Section II.A.1.a); b. Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business or under the Mexico Sale Documents will be paid by the applicable Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the Holders of such Administrative Claims or further approval from the Bankruptcy Court (see Plan, Section II.A.l.c); and c. To the extent not paid in full in Cash pursuant to the Plan Support Agreement Order, Requisite Consenting Noteholders Professionals Fees/Expenses will be paid in full in Cash as Allowed Administrative Claims, subject to the limitations set forth in Section I.A.160 of the Plan (see Plan, Section II.A.1.d).
	2. Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in sections 507(a)(1) and sections 507(a)(4) through (7) of the Bankruptcy Code — generally, in the context of corporate chapter 11 cases, wage, employee benefit and deposit claims entitled to priority — must receive (a) if the class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) if the class has not accepted the plan, cash equal to the allowed amount of such claim on the effective date of the plan.	2. With respect to Priority Claims addressed by section 1129(a)(9)(B) of the Bankruptcy Code, the Plan provides that each Holder of an Allowed Priority Claim against the Debtors, unless otherwise agreed to by the Plan Proponents (with the consent of each of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed), will receive, at the Debtors' election (following consultation with the Creditors' Committee and with the consent of each of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed), (i) Cash in the amount of such Allowed Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code and/or (ii) such other treatment required to render such Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code. See Plan, Sections II.B.1. and II.B.2.
	3. Section 1129(a)(9)(C) of the Bankruptcy Code provides that the holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code (i.e., priority tax claims) must receive regular installment payments in cash a. of a total value, as of the effective date of the plan, equal to the allowed amount of the claim; b. over a period ending not later than 5 years after the date the order for relief was entered in the chapter 11 case; and	3. With respect to Priority Tax Claims addressed by section 1129(a)(9)(C) of the Bankruptcy Code, the Plan provides that, unless otherwise agreed by the Holder of a Priority Tax Claim and the Plan Proponents (with the consent of the Requisite Consenting Noteholders, such consent not to be unreasonably withheld, conditioned or delayed) , each Holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Priority Tax Claim that is due and payable on or before the Effective Date, Cash equal to the amount of such Allowed Priority Tax Claim on the later of (1) the Effective Date (or as soon as reasonably practicable thereafter) and (2) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon as reasonably practicable thereafter. See Plan, Section II.A.2.a. Such treatment of Priority Tax Claims is as favorable as the treatment accorded to the most favored non-priority unsecured Claim under the Plan — i.e., Classes 4A and 4D Claims (Luxco Note Claims) — which is estimated to receive Plan Distributable Value equal to approximately 100% of the allowed amount of such Claims on the Effective Date. See Plan, Section II.C.4.

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	c. in a manner not less favorable than the most favored non priority unsecured claim provided for by the plan (other than cash payments made to a convenience class under section 1122(b) of the Bankruptcy Code).	
	4. Section 1129(a)(9)(D) of the Bankruptcy Code provides that, with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code (but for the claim's secured status), the holder of such a claim will receive cash payments in the same manner and over the same period as prescribed in section 1129(a)(9)(C) of the Bankruptcy Code.	N/A.
11 U.S.C. § 1129(a)(10)	Section 1129(a)(10) — The Plan Must Be Accepted by at Least One Impaired Class of Claims.	
11 U.S.C. § 1129(a)(10)	A. Section 1129(a)(10) of the Bankruptcy Code provides that if a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must accept the plan, determined without including any acceptance of the plan by any insider.	A. As set forth in the Voting Declaration, the Plan Proponents have satisfied this requirement because all Impaired Voting Classes have accepted the Plan after excluding the votes of any insiders. See Voting Decl., Ex. B.
11 U.S.C. § 1129(a)(11)	Section 1129(a)(11) — The Plan Must Be Feasible.	
11 U.S.C. § 1129(a)(11)	A. Section 1129(a)(11) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Simply put, the feasibility test requires the court to determine whether the plan offers the debtor a reasonable assurance of success. Section 1129(a)(11) of the Bankruptcy Code does not, however, require a guarantee of success.	A. Here, the feasibility test is satisfied, as demonstrated by the Financial Projections set forth in Exhibit 3 to the Disclosure Statement and as detailed in the Jubas Declaration filed contemporaneously herewith. See Disclosure Statement, Ex. 3; see also Jubas Decl.¶ 12. Further evidence of the feasibility of the Plan is the Consenting Noteholders' agreement, pursuant to the Plan Support Agreement, to receive under the Plan a substantial portion of their recoveries in the form of equity of Reorganized NII. See Plan, Section II.C.4-6. Likewise, ATC and CDB have agreed to continue their ongoing contractual relationships with the Reorganized Debtors and certain of the Non-Debtor Affiliates and have vested interests in the success of those entities. See Confirmation Memorandum ¶ 244.

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11 U.S.C. § 1129(a)(12)	Section 1129(a)(12) — The Plan Must Provide for the Payment of Fees to the United States Trustee.	
11 U.S.C. § 1129(a)(12)	A. Section 1129(a)(12) of the Bankruptcy Code requires a plan to provide that all fees payable under 28 U.S.C. § 1930 to the United States trustee, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the Plan.	A. The Plan complies with section 1129(a)(12) of the Bankruptcy Code by providing for the payment in full of these fees in Cash by the applicable Reorganized Debtor after the Effective Date until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code. See Plan, Section II.A.2.b.
11 U.S.C. § 1129(a)(13)	Section 1129(a)(13) — The Plan Must Provide for the Payment of Retiree Benefits.	
11 U.S.C. § 1129(a)(13)	A. Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the plan's effective date, of all "retiree benefits" (as such term is defined by section 1114(a) of the Bankruptcy Code) at the level established by agreement or by court order pursuant to subsections (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code at any time prior to confirmation of the plan, for the duration of the period that the debtor has obligated itself to provide such benefits.	A. To the extent it may be deemed applicable, the Plan complies with section 1129(a)(13) of the Bankruptcy Code by providing that as of the Effective Date, the Reorganized Debtors will have the authority to (i) maintain, reinstate, amend or revise existing retirement and other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement and applicable non-bankruptcy law and (ii) enter into new employment, retirement and other agreements for a active and retired employees. See Plan, Section III.F.3.
11 U.S.C. § 1129(a)(14) **11 U.S.C. § 1129(a)(15)** **11 U.S.C. § 1129(a)(16)**	A. These provisions of the Bankruptcy Code relate to individual debtors or to non-profit organizations.	A. N/A. As the Debtors are neither individuals nor non-profit organizations, these provisions of the Bankruptcy Code are not applicable in these cases.
11 U.S.C. § 1129(b)	Section 1129(b) — If a Class of Claims or Interests Rejects or Is Deemed to Reject the Plan, the Plan Must Satisfy the Cramdown Requirements of Section 1129(b).	
11 U.S.C. § 1129(b)	A. Section 1129(b) provides that a bankruptcy court is required to confirm a plan over the dissent of one or more classes of impaired claim or interest holders if the plan:	A. The Plan satisfies the requirements of section 1129(b) with respect to the Deemed Rejecting Classes (and the Non-Voting Classes, if necessary).
	1. meets all requirements for confirmation set forth in section 1129(a) except the requirement of section 1129(a)(8) that all impaired classes accept the plan;	1. As demonstrated above, the Plan meets all the requirements of section 1129(a), except the requirement of section 1129(a)(8) with respect to the Deemed Rejecting Classes (i.e., Claims and/or Interests in Classes 10A through 10E and 12A) due to the deemed nonacceptance of those Classes, and with respect to the Non-Voting Classes (i.e., Claims in Class 8E against McCaw, 8E against Airfone and 8E against NIU Holdings LLC), if necessary.
	2. does not discriminate unfairly; and	2. As explained in subsection B below, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes (and the Non-Voting Classes, if necessary).

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	3. is otherwise fair and equitable with respect to each impaired class of claims or interests that has not accepted the plan.	3. As explained in subsection C below, the Plan is otherwise fair and equitable with respect to the Deemed Rejecting Classes (and the Non-Voting Classes, if necessary).
	B. The unfair discrimination standard prevents creditors and interest holders with similar legal rights from receiving materially different treatment under a proposed plan. Conversely, where classes of claims or interests with dissimilar legal rights have been separately and properly classified under section 1122 of the Bankruptcy Code, the unfair discrimination standard is not applicable, and the plan may treat such classes differently.	B. The Plan does not discriminate unfairly. 1. General Unsecured Claims in Class 8E against McCaw, Class 8E against Airfone and Class 8E against NIU Holdings LLC and Class 10A through 10E Claims (Section 510(b) Claims) are legally distinct from: a. every other Class of Claims, and from each other, by virtue of: i. the discrete legal rights of Holders of General Unsecured Claims against the applicable Debtors; and ii. for the Section 510(b) Claims, their structural subordination pursuant to section 510(b) of the Bankruptcy Code; and b. each Class of Interests by virtue of the differing nature of their legal rights with respect to the Debtors' assets. 2. With respect to Class 12A Interests: a. such Interests are distinct from each Class of Claims under the Plan by virtue of the differing nature of their legal rights with respect to the Debtors' assets; and b. the dissimilar treatment accorded to Class 13B through 13E Interests (Subsidiary Debtor Equity Interests) is reasonable and required for consummation of the Plan. Because NII Holdings' retention of ownership over the Subsidiary Debtors inures to the benefit of all creditors, and is essential to the business prospects of the Reorganized Debtors, it is reasonable for NII Holdings' ownership interests in its subsidiaries to be treated differently from the interests of Holders of NII Holdings' public securities. See Confirmation Memorandum ¶¶ 251-56.
	C. The Plan is otherwise fair and equitable with respect to Class 10.	C. The Plan treats the Deemed Rejecting Classes (and to the extent applicable, the Non-Voting Classes) fairly and equitably.

STATUTORY SECTION	STATUTORY REQUIREMENT	PLAN COMPLIANCE
	1. Pursuant to section 1129(b)(2)(C), in order for a plan to be fair and equitable with respect to a dissenting class of impaired equity interests, the plan must provide either: (a) that each interest holder in the class will receive or retain property of a value equal to the greatest of any fixed liquidation preference, any fixed redemption price or the value of the holder's interest; or (b) that no holder of an interest that is junior to the interests of that class will receive or retain any property under the plan on account of such junior interest.	1. The Plan satisfies the "fair and equitable" requirements of section 1129(b)(2)(B) of the Bankruptcy Code with respect to General Unsecured Claims in Class 8E against McCaw, Class 8E against Airfone and Class 8E against NIU Holdings LLC and Class 10A through 10E Claims because no Claim or Interest junior in priority to the Claims in Classes 10A through 10E will receive or retain any property under the Plan on account of such Claims or Interests. See Plan, Sections II.C.10-13; Disclosure Statement, at 7-8 (estimating that Classes junior to Classes 8 and 10 will receive no recovery pursuant to the Plan).
	2. In addition, a plan that provides for more than full payment to a class will not be fair and equitable with respect to a dissenting impaired junior class.	2. The Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) of the Bankruptcy Code with respect to Class 12A Interests because no Claim or Interest that is junior to such Interests will receive or retain any property under the Plan on account of such junior Claim or Interest; indeed, no such junior Claims or Interests exist under the Plan. In addition, no Class of Claims or Interests senior to the Deemed Rejecting Classes or the Non-Voting Classes are receiving more than full payment on account of their Claims or Interests in such Class. See, e.g., Disclosure Statement, at 7-9.
11 U.S.C. § 1129(c)	A. Section 1129(c) of the Bankruptcy Code provides that, with a limited exception, a bankruptcy court may only confirm one plan.	A. The Plan is the only plan that has been Filed in the Chapter 11 Cases and is the only plan that satisfies the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code.
11 U.S.C. § 1129(d)	A. Section 1129(d) of the Bankruptcy Code provides that on request of a party in interest that is a governmental unit, the bankruptcy court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or of the application of section 5 of the Securities Act.	A. No party in interest, including but not limited to any governmental unit, has requested that the Bankruptcy Court deny Confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, and the principal purpose of the Plan is not such avoidance.

EXHIBIT B

Summary of Plan Objections

CONFIRMATION OF THE FIRST AMENDED JOINT PLAN OF REORGANIZATION PROPOSED BY THE PLAN DEBTORS AND DEBTORS IN POSSESSION AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

SUMMARY OF PLAN CONFIRMATION OBJECTIONS

This chart summarizes the objections that have been filed to date (each, an "Objection") with respect to the First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors, dated April 20, 2015 [Docket No. 664, Ex. A, Ex. 1] (the "Plan"). For the reasons set forth below and in the Debtors' (I) Memorandum of Law in Support of Confirmation of First Amended Joint Plan of Reorganization Proposed by the Plan Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors and (II) Consolidated Reply to Objections to Confirmation of First Amended Joint Plan of Reorganization, filed contemporaneously herewith (the "Confirmation Memorandum") the Debtors respectfully request that the Court overrule in their entirety any Objections not consensually resolved.

DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
723	Tata America International Corporation d/b/a TCS America	The cure amount listed in the Assumption Schedule[1] is incorrect.	• The alleged additional cure amounts are postpetition obligations that are not yet due and payable but that the Debtors intend to pay in the ordinary course of business. • The Debtors have agreed to add language to the Confirmation Order clarifying that the Debtors will continue to honor all postpetition and post-Effective Date obligations under all assumed Executory Contracts and Unexpired Leases.	Resolved consensually

[1] "Assumption Schedule" refers to the Notice Regarding (A) Executory Contracts and Unexpired Leases to be Assumed Pursuant to the First Amended Joint Plan of Reorganization and Section 365 of the Bankruptcy Code, (B) Amounts Required to Cure Defaults Under Such Contracts and Leases and (C) Related Procedures, filed on May 11, 2015 [Docket No. 705].

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DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
724	Nextel Communications, Inc. ("Nextel")	• The Debtors cannot assume the Trademark License Agreement (the "TLA") with Nextel because trademark law prohibits the assignment of a trademark license absent the licensor's consent to such assignment and Nextel has not consented. • If assumption is permitted, the Debtors must assume both the TLA and Rebanding Agreement because these agreements are part of a single contract. • In order to assume the TLA, the Debtors must first (a) cure existing material defaults and (b) provide adequate assurance of future performance under the TLA and Rebanding Agreement with respect to quality control of certain intellectual property.	• The Debtors and Nextel have reached an agreement on the material terms of the assumption of the TLA by the Debtors. The Debtors and Nextel are currently working on drafting the settlement agreement resolving the dispute.	Resolved consensually
726	Giesecke & Devrient 3S AB f/k/a SmartTrust AB	• The cure amount listed in the Assumption Schedule is incorrect.	• The alleged cure amount was a postpetition obligation that was paid by the Debtors in the ordinary course of business subsequent to the filing of the objection. • The Debtors have agreed to add language to the Confirmation Order clarifying that the Debtors will continue to honor all postpetition and post-Effective Date obligations under all assumed Executory Contracts and Unexpired Leases.	Resolved consensually
731	Oracle America, Inc. ("Oracle")	• The Assumption Schedule does not adequately describe Oracle's agreements making it impossible for Oracle to assess the cure amounts. • Based on the information provided, the cure amounts appear to be inaccurate.	• The Debtors continue to work towards a consensual resolution with Oracle. • The Debtors have provided Oracle with additional information regarding the Oracle contracts that will be assumed but have yet to receive information from Oracle evidencing that the proposed cure amount set forth on the Assumption List is	To be addressed at the Confirmation Hearing if not consensually resolved.

DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
		• Oracle does not have adequate assurance of the Debtors' future performance because it is unclear which contracts are being assumed.	incorrect. • Adequate assurance of future performance is satisfied by virtue of the detailed business projections and feasibility analysis included in the disclosure statement and set forth in the Confirmation Memorandum.	
732	Court-appointed lead plaintiff ("Lead Plaintiff") in the putative securities class action entitled *In re NII Holdings, Inc. Sec. Litig.*, Case No. 14-cv-00227-LMP-JFA (E.D. Va.)	• The Plan should ensure that the Lead Plaintiff and Putative Class have the right to pursue claims against the Debtors solely to the extent of applicable directors and officers liability insurance. • The Debtors are required to maintain and preserve books, records, documents, files, electronic data in any format, including native format unless authorized by the Court after notice and an opportunity to be heard.	• A consensual resolution has been reached with respect to the Lead Plaintiff's request for a document retention protocol. • A detailed response to the Lead Plaintiff's request to continue to pursue claims against the Debtors is set forth in paragraphs 302-306 of the Confirmation Memorandum.	To be addressed at the Confirmation Hearing
743	U.S. Trustee[2]	• The Debtors are not authorized to pay the Requisite Consenting Noteholders Fees/Expenses pursuant to the Plan Support Agreement. • To the extent the Debtors' wish to pay such fees and expenses pursuant to the Plan, the Consenting Noteholders must demonstrate that they made a "substantial contribution" to the Debtors and their estates pursuant to section 503(b) of the Bankruptcy Code.	• A detailed response to the U.S. Trustee's objection is set forth in the Reply of Debtors and Debtors in Possession to: (I) Objections of the U.S. Trustee to the Debtors' PSA Motion and Chapter 11 Plan; and (II) Reservation of Rights of the Capco 2021 Group to the Debtors' PSA Motion, which is being filed contemporaneously herewith.	To be addressed at the Confirmation Hearing.

[2] The U.S. Trustee filed an omnibus Objection to the Debtors' motion to approve their entry into and performance under the Plan Support Agreement and the Plan [Docket No. 590] (the "PSA Motion").

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DOCKET NO.	OBJECTING PARTY	BASIS FOR OBJECTION	RESPONSE TO OBJECTION	STATUS
760	Ad Hoc Group of NII Capital 2021 Noteholders (the "2021 Group")	• The Settlement of the Transferred Guarantor Claims should not be approved because it is not "fair and equitable" and fails to satisfy the Iridium factors. • The Plan should not be confirmed because it improperly classifies the Capco Notes and the Transferred Guarantor Claims: • The Plan fails to satisfy the cramdown requirements with respect to a standalone class of the Capco 2021 Notes.	• Each of the arguments of the 2021 Group set forth in its Objection is addressed in detail in the Confirmation Memorandum.	To be addressed at the Confirmation Hearing.