

**KLESTADT WINTERS JURELLER
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**Hearing Date: June 13, 2017 at 10:00 a.m.
Objections Due: June 6, 2017 at 5:00 p.m.**

Attorneys for Debtor and Debtor in Possession

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

In re:

THE NEW YORK INTERNET CO., INC.

Debtor.

Chapter 11

Case No. 17-10326 (SHL)

**NOTICE OF HEARING ON DEBTOR'S MOTION PURSUANT TO
11 U.S.C. §§ 105(a), 363 AND 365 AND FED. R. BANKR. P. 2002, 6004 AND 6006
FOR AN ORDER (A) AUTHORIZING DEBTOR TO (i) SELL ITS DESIGNATION
RIGHTS FOR ITS UNEXPIRED NONRESIDENTIAL REAL PROPERTY
LEASEHOLD INTEREST AND CUSTOMER SERVICE AGREEMENTS TO
CLEAREON FIBER NETWORKS, LLC AND (ii) SELL ALL OR
SUBSTANTIALLY ALL OF ITS ASSETS TO CLEAREON FIBER NETWORKS,
LLC FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND
(B) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE, that The New York Internet Co., Inc. (the "Debtor") will present its Motion (the "Motion") for entry of an order pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") (A) authorizing the Debtor (i) to sell its exclusive right, power and authority under section 365 of the Bankruptcy Code to determine whether to assume, reject, or assume and assign to one or more designees (the "Designation Rights") its interests in its unexpired nonresidential real property lease for the premises located at 100 William Street, Suites 318, 801 and 2100, New York, New York 10038 (the "NYC Facility") and its customer contracts to Cleareon Fiber Networks, LLC, or its designee (the "Purchaser"), and (ii) to sell all or substantially all of its assets, as described in the Term Sheet attached to the Sale Motion as Exhibit B (collectively, together with the Designation Rights, the "Property"), to the Purchaser free and clear of all liens, claims and encumbrances and (B) granting related relief, as more fully detailed in the Motion, on **June 13, 2017 at 10:00 a.m. (Prevailing Eastern Time)**, before the

Honorable Sean H. Lane, United States Bankruptcy Judge, Courtroom 701, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004.

PLEASE TAKE FURTHER NOTICE, that the Motion and all exhibits thereto have been filed electronically with the Clerk of the United States Bankruptcy Court for the Southern District of New York, and may be reviewed by all registered users of the Court's website at <http://www.nysb.uscourts.gov>. Copies of the Motion and exhibits thereto may be obtained by telephonic or e-mail request to the undersigned counsel for the Debtor, Attn: Tracy L. Klestadt.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief sought in the Motion shall be made in writing, filed with the Court electronically by registered users of the Court's electronic case filing system and, by all other parties in interest, e-mailed, preferably in Portable Document Format (PDF), Microsoft Word or any other Windows-based word processing format, or mailed to the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, NY 10004, with a hard copy delivered directly to the Chambers of the Honorable Sean H. Lane, United States Bankruptcy Judge, New York, NY 10004, and served upon (i) the undersigned counsel to the Debtor, 200 West 41st Street, 17th Floor, New York, NY 10036, Attn: Tracy L. Klestadt, (ii) counsel to the Purchaser, Chiesa Shahinian & Giantomasi PC, One Boland Drive, West Orange, New Jersey 07052, Attn: Robert Nies, rnies@csglaw.com; and (iii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014, so as to be actually received no later than **June 6, 2017 at 5:00 p.m. (Prevailing Eastern Time)**.

Dated: New York, New York
May 23, 2017

KLESTADT WINTERS JURELLER
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DEBTOR'S MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 365 AND FED. R. BANKR. P. 2002, 6004 AND 6006 FOR AN ORDER (A) AUTHORIZING DEBTOR TO (i) SELL ITS DESIGNATION RIGHTS FOR ITS UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASEHOLD INTEREST AND CUSTOMER SERVICE AGREEMENTS TO CLEAREON FIBER NETWORKS, LLC AND (ii) SELL ALL OR SUBSTANTIALLY ALL OF ITS ASSETS TO CLEAREON FIBER NETWORKS, LLC FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND (B) GRANTING RELATED RELIEF

TO THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:

The New York Internet Co., Inc. (the "Debtor"), as debtor-in-possession, submits this motion (this "Motion") pursuant to Sections 105(a), 363 and 365 of Title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") for entry of an order substantially in the form attached hereto as Exhibit A (the "Sale Order") (A) authorizing the Debtor (i) to sell its exclusive right, power and authority under section 365 of the Bankruptcy Code to determine

whether to assume, reject, or assume and assign to one or more designees (the “Designation Rights”) its interests in its unexpired nonresidential real property lease for the premises located at 100 William Street, Suites 318, 801 and 2100, New York, New York 10038 (the “NYC Facility”) and its customer contracts (the “Customer Service Agreements”) to Cleareon Fiber Networks, LLC, or its designee (“Cleareon” or the “Purchaser”), and (ii) to sell all or substantially all of its assets, as described in the Term Sheet attached hereto as Exhibit B (the “Term Sheet”)¹ (collectively, together with the Designation Rights, the “Property”) to the Purchaser free and clear of all liens, claims and encumbrances and (B) granting related relief, and respectfully set forth as follows:

JURISDICTION

1. This Court has jurisdiction over the Motion by virtue of 28 U.S.C. §§ 157(a) and (b) and 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O).
2. Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought in the Sale Motion are sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

BACKGROUND

I. General

4. On February 14, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

¹ In the event of any discrepancy between the provisions of this Motion and the provisions of the Term Sheet, the provisions of the Term Sheet shall control.

5. The Debtor continues to manage its business and property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No trustee, examiner or official committee has been appointed in this chapter 11 case.

7. The facts and circumstances supporting the relief requested herein are further set forth in the Declaration of Philip Koblence, Vice President and Chief Operating Officer of the Debtor, in Support of the Motion (the "Koblence Declaration"), which was filed contemporaneously herewith.

II. The HSBC Loan Agreements

8. NYI-NJ, LLC ("NYI-NJ") is a wholly independent and separate New Jersey-based non-debtor affiliate of the Debtor. NYI-NJ provides the same services as the Debtor, but to customers located in New Jersey and outside of the New York City area.

9. The Debtor, NYI-NJ, Phillip Koblence and his brother Erik Koblence (the "Affiliated Parties") are parties to a Loan and Security Agreement with HSBC Bank USA, National Association ("HSBC"), dated as of January 2015, whereby the Debtor and NYI-NJ obtained a secured loan in the principal amount of \$450,000 secured by all assets of the Affiliated Parties (the "HSBC Term Loan Agreement"). As of the Petition Date, the balance owed under the HSBC Loan Agreement was approximately \$275,986.78.

10. The Affiliated Parties are also parties to a Revolving Credit Agreement with HSBC, dated as of January 2015, whereby the Affiliated Parties obtained a \$550,000 revolving line of credit secured by all assets of the Affiliated Parties (the "HSBC Revolving Credit Agreement" and, together with the HSBC Term Loan Agreement, the "HSBC Loan Agreements"). As of the Petition Date, the balance owed under the HSBC Revolving Credit Agreement was approximately \$500,000.00.

III. The NYC Facility Lease

11. On or about December 14, 2006, the Debtor entered into a lease (the "Original Lease") for non-residential real property located at 100 William Street, Suite 318 (the "3rd Floor Premises"), with MFA 100 William L.L.C., a Delaware limited liability company ("MFA 100").

12. On November 6, 2009, the Debtor entered into a second lease agreement with MFA 100 whereby the Debtor agreed to lease Suite 801 (the "8th Floor Premises") at 100 William Street (the "8th Floor Lease").

13. On May 31, 2012, the Debtor and MFA 100 agreed to amend the 8th Floor Lease whereby upon the expiration of the Original Lease, and in order for the lease for the 3rd Floor Premises to be co-terminus with the 8th Floor Premises, new lease terms for the 3rd Floor Premises were incorporated into the 8th Floor Lease (the "First Amended Lease").

14. On October 31, 2013, the Debtor and MFA 100 agreed to amend the First Amended Lease and incorporated the Debtor's leasing of Suite 2100 into the same (the "Second Amended Lease") and collectively with the 8th Floor Lease and the First Amended Lease, the "NYC Facility Lease").

15. On or around January 2014, John Hancock Life & Health Insurance Company and John Hancock Life Insurance Company of New York (collectively, the "Landlord") purchased the NYC Facility and became the successor in interest to MFA 100 under the NYC Facility Lease.

16. The Debtor has been involved in discussions with the Landlord in an effort to settle a pending lawsuit alleging certain arrearages and to negotiate an acceptable lease arrangement, but to date such discussions have been unsuccessful and have recently stalled.

IV. Marketing Efforts

17. As described in the Koblence Declaration, the Debtor solicited, and engaged in discussions with, multiple parties both before and after the Petition Date in an effort to refinance its existing obligations under the HSBC Loan Agreements and/or to sell all or substantially all of its assets. Most of the parties with whom the Debtor spoke were interested in purchasing the Debtor's assets only if they could obtain the Debtor's NYC Facility in order to service the Debtor's customers in the New York City area. Such parties were ultimately unable to reach an agreement with the Landlord and therefore could not consummate a sale with the Debtor.

V. Acquisition of NYI-NJ and HSBC Loan Agreements by Cleareon Fiber Networks, LLC

18. Ultimately an agreement in principal was reached for the acquisition of NYI-NJ by Cleareon. The Debtor's representatives have been involved in negotiations with representatives of Cleareon with respect to the NYI-NJ acquisition for the past few months. That transaction is currently pending but is well underway and is expected to close on or about June 30, 2017.

19. In connection with Cleareon's purchase of NYI-NJ, Cleareon additionally intends to acquire the Debtor's obligations to HSBC under the HSBC Loan Agreements and HSBC's liens and secured claims in the bankruptcy case (the "HSBC Purchase"). Based on Cleareon's discussions with HSBC, it appears that such purchase is underway and can close promptly.

THE PROPOSED SALE

I. Cleareon Fiber Networks, LLC and the Proposed Sale Terms

20. Cleareon provides dark fiber and high-speed Ethernet services throughout the New York City metro and tri-state region, including New York, New Jersey and Connecticut, creating a complete optical and Ethernet offering for service provider and large enterprise customers. Cleareon connects service providers, clouds, content, wireless carriers, data centers and exchanges with each

other and with their customers to empower the digital marketplace. Over the past few years, Cleareon has steadily expanded its presence in New York City and the tri-state area, most recently with its imminent acquisition of NYI-NJ.

21. The Term Sheet provides for Cleareon to purchase substantially all of the Debtor's assets, including, but not limited to, all accounts receivable, transferable licenses, machinery and equipment, designs and research data, warranties and guaranties, customer lists and data, insurance claims, telephone and facsimile numbers, the Debtor's names and any derivatives thereof, books and records (provided that the Purchaser shall retain access to such books and records for three years from the Closing Date (as defined below) and allow the Debtor or its agents reasonable access to same), and intellectual property. Excluded from the sale is the Debtor's cash on hand, which will be retained by the Debtor for operations pending the closing of the sale.

22. The Term Sheet additionally provides for Cleareon to purchase the Debtor's Designation Rights. As a result of the sale of the Designation Rights, the Purchaser will have the right to assume, reject, or assume and assign the NYC Facility Lease and the Customer Service Agreements, in each case subject to Court approval and compliance with the requirements of Section 365 of the Bankruptcy Code, including "adequate assurance of future performance."

23. In exchange for the Designation Rights, upon the Court's approval of this Motion, the Purchaser will pay the estate \$50,000 to cover any shortfall in the Debtor's ordinary operating expenses and for payment of administrative expenses (the "Designation Rights Consideration"). Substantially simultaneously with the filing of this Motion, the Purchaser has provided or will provide the Debtor with a good faith deposit in the amount of \$40,000, which may be used to fund in part the Designation Rights Consideration.

24. In exchange for all other Property acquired in the sale, on the Closing Date, the Purchaser will pay the estate \$400,000, which may be, in whole or in part, in the form of a credit bid of Cleareon's secured claim acquired in the HSBC Purchase.

25. The Term Sheet provides that the sale is contingent upon the parties' execution of a definitive agreement in respect of the sale, closing of Cleareon's acquisition of NYI-NJ, closing of the HSBC Purchase, the Purchaser's completion of due diligence – provided that the due diligence condition shall be deemed waived if not satisfied on or before June 12, 2017 – and certain force majeure events (collectively, the "Buyer Conditions"). The NYI-NJ sale to Cleareon is not contingent upon the proposed sale of the Debtor's Property.

26. If this Motion is approved by the Court, the closing of the sale will take place on the date on which each of the above Buyer Conditions is waived or satisfied (the "Closing Date"), provided that the Closing Date shall occur no earlier than the date on which the NYC Facility Lease has been rejected or assumed by the Purchaser.

27. As set forth in the Koblence Declaration, Cleareon's offer represents the best and only available opportunity for the Debtor to maximize the value of its assets and provide for continued service to its customer base. The Purchaser has a strong presence in New York City and the tri-state area and is the only interested party that has the resources to acquire the Debtor's assets and serve the Debtor's existing customers whether or not a mutually acceptable arrangement can be reached with the Landlord for the assumption of the NYC Facility Lease.

II. Extraordinary Provisions of the Term Sheet

28. In accordance with General Order M-383, In re: Adoption of Amended Guidelines for the Conduct of Asset Sales, dated November 18, 2009, the Debtor discloses the following Extraordinary Provisions provided for in the Term Sheet:

(i) Sale to Insider. It is intended that the Purchaser will create a new entity to receive certain of the Property and that Philip Koblence, part owner of the Debtor, will obtain a minimal ownership interest in such new entity. As a result, there will be a limited common identity of stockholders between the Debtor and the Purchaser's designee. However, the sale was negotiated with the Purchaser at arms' length and in good faith in an effort to produce the highest value possible for the estate. Currently, and at all times during such negotiations, there was no common identity of stockholders or any other affiliation between the Debtor and the Purchaser. The proposed sale is the only offer for the Debtor's Property that currently exists and is the best opportunity to preserve the value of the Debtor's estate for customers and creditors.

(ii) Private Sale/No Competitive Bidding. The Debtor is not actively seeking higher or better offers because the Debtor conducted extensive marketing and financing efforts both before and after the Petition Date, and no party other than the Purchaser has come forward with an offer for the purchase of the Property. In part, this is a result of the fact that other interested parties were unable to negotiate an agreement with the Landlord to assume the NYC Facility Lease. The Purchaser already has the space necessary to continue the Debtor's services to its customers in the New York City area and is willing to purchase the Property regardless of whether an agreement is ultimately reached with the Landlord. Based on the marketing efforts already conducted, the Debtor does not believe that further marketing could increase the consideration that any party is willing to pay for the Debtor's Property above the consideration offered by the Purchaser.

(iii) Relief from Bankruptcy Rule 6004(h). A material inducement to the Purchaser's willingness to enter into the definitive documentation in respect of the sale is the

condition that Bankruptcy Rule 6004(h) is waived and there will be no stay of execution of the Sale Order under Bankruptcy Rule 7062.

ARGUMENT

I. The Sale of the Property is Supported by Legitimate Business Justifications

29. Section 363(b)(1) provides that the “[t]he Debtor, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The decision to use, sell or lease property of the estate is subject to the exercise of the Debtor’ business judgment. *See Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). Further, to obtain court approval to sell property under section 363(b) of the Bankruptcy Code, a debtor need only show a legitimate business justification for the proposed action. *See id.* at 1070 (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

30. The sale of the Designation Rights is subject to the same standard as the sale of the Debtor’s other Property pursuant to Section 363 of the Bankruptcy Code. Courts have held that a debtor’s designation rights are property of the estate that can be sold outside of the ordinary course of business, free and clear of all liens, claims and encumbrances, subject to the requirements of Section 363 of the Bankruptcy Code. *See, e.g., In re Ames Dept. Stores, Inc.*, 287 B.R. 112, 115 (Bankr. S.D.N.Y. 2002) (“[S]ubject to the usual notice, business judgment and other garden-variety requirements for approval of a sale under section 363, the sale of designation rights is fully permissible in bankruptcy cases....”); *In re Bradlees Stores, Inc.*, No.

00-16033, 2001 WL 34809984, at *2 (Bankr. S.D.N.Y. Mar. 28, 2001), aff'd, No. 00-16033 (BRL), 2001 WL 1112308 (S.D.N.Y. Sept. 20, 2001) (“[T]his Court entered an order approving the Lease Designation and Disposition Agreement and authorizing Bradlees to sell its designation rights for its unexpired leases free and clear of all liens, claims, encumbrances and interests....”). As this Court has previously held, “there is nothing in either bankruptcy or non-bankruptcy law that prohibits this plainly salutary means for making available for the benefit of creditors the underlying economic value in a debtor’s leases.” *In re Ames Dept. Stores, Inc.*, 287 B.R. at 115. However, “a sale of designation rights with respect to leases cannot and does not result in an exemption from the requirements of section 365.” *Id.*

31. The Debtor believes that it is in the best interests of all of the Debtor’s creditors and customers that the Debtor proceed expeditiously with the sale of the Property, including the Designation Rights, to the Purchaser in order to preserve value and business with the Debtor’s customers. The proposed sale is the highest and best offer for the Property and will maximize value for all creditors of the Debtor’s estate.

32. The Landlord and counterparties to the Customer Service Agreements will not be prejudiced by the sale of the Designation Rights, as this Motion is not intended to and shall not affect any rights or claims that they may have relating to the NYC Facility Lease or the Customer Service Agreements, all of which rights and claims will exist with the same force and effect and subject to the same defenses as against the Purchaser or its designee as they did against the Debtor. Any assumption or assignment will remain subject to separate Court approval and the requirements of section 365, including “adequate assurance of future performance.”

II. The Property Should be Sold Free and Clear of Liens, Claims and Encumbrances

33. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell property free and clear of any interest in such property of an entity other than the estate only if:

- (i) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (ii) such entity consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (iv) such interest is in bone fide dispute; or
- (v) such entity should be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

34. Section 363(f) is drafted in the disjunctive and satisfaction of any one of its five requirements will suffice to permit the sale “free and clear” of liens, claims and encumbrances. *See Michigan Employment Sec. Comm’n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991).

35. Several courts have held that notwithstanding the use of the term “interest” in the statutory language of section 363(f), such section grants bankruptcy courts the power to convey assets free and clear of claims. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3rd Cir. 2003); *In re Medical Software Solutions*, 286 B.R. 431, 446 (Bankr. D. Utah 2002); *In re Trans World Airlines, Inc.*, Case No. 01-0056, 2001 WL 1820325 at *5 (Bankr. D. Del. Mar. 27, 2001) (“Authorizing the sale [of debtor’s assets] free and clear of . . . successor liability claims achieves the purpose of section 363 [of the Bankruptcy Code] intended by Congress.”). Section 105(a) of the Bankruptcy Code provides additional support for a court’s authority to convey assets free and clear of claims. *See Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such sale, as such authority is implicit in the court’s equitable powers when necessary to carry out the

provisions of Title 11). *See also, Equity Broadcasting Corp. v. Winstar New Media Co., Inc. (In re Winstar Communications, Inc.)*, 284 B.R. 40, 48 (Bankr. D. Del 2002) (approving a sale order transferring the debtor's securities free and clear of all encumbrances pursuant to sections 105(a) and 363(f) of the Bankruptcy Code).

36. One or more of the standards set forth in section 363(f)(1)–(5) has been satisfied with regard to any liens, claims and encumbrances of which the Property is to be sold free and clear. Those non-Debtor parties with liens, claims and/or encumbrances in or with respect to the Property who did not object to the Motion, or who withdrew their objections to the Motion, will be deemed to have consented to the sale of the Property free and clear of such liens, claims and encumbrances pursuant to section 363(f)(2) of the Bankruptcy Code. Those non-Debtor parties with liens, claims and/or encumbrances in or with respect to the Property who objected to the Motion, but who did not withdraw any such objection, can be compelled to accept a monetary satisfaction of their liens, claims and/or encumbrances within the meaning of section 363(f)(5) of the Bankruptcy Code, or applicable nonbankruptcy law permits sale of the Property free and clear of such liens, claims and encumbrances under section 363(f)(1) of the Bankruptcy Code.

37. For the foregoing reasons, the Debtor submits that the sale of the Property should be permitted free and clear of all liens, claims and encumbrances, with any such liens, claims and encumbrances to attach to the sale proceeds, if any.

III. Private Sale is Appropriate

38. The Debtor is seeking to transfer the Debtor's interest in the Property in a private sale without the need to conduct an auction process. Although many sales of assets outside the ordinary course of business are conducted pursuant to competitive bidding procedures and public auctions, section 363 of the Bankruptcy Code does not ordinarily require these procedures.

Indeed, Bankruptcy Rule 6004(f) specifically authorizes private sales, stating that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1).

39. Courts have approved private sales of assets upon the debtor’s satisfaction of the general standards for approval under section 363(b) of the Bankruptcy Code. *See, e.g., In re Saint Vincents Catholic Med. Ctrs.*, Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 27, 2010) (Docket No. 389) (approving private sale of a cancer center pursuant to Bankruptcy Rule 9019 and section 363 of the Bankruptcy Code); *In re Old Carco LLC*, Case No. 09-50002 (AJG) (Bankr. S.D.N.Y. Nov. 12, 2009) (Docket No. 5937) (approving sale of the debtors’ assembly plant by private sale as satisfying section 363 of the Bankruptcy Code); *In re Wellman, Inc.*, Case No. 08-10595 (SMB) (Bankr. S.D.N.Y. Oct. 6, 2009) (Docket No. 507) (approving sale of debtor’s facilities by private sale); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Nov. 29, 2005) (Docket No. 1355) (authorizing sale of aircraft by private sale without auction).

40. It is well settled that the sale of assets outside of the ordinary course of business by means of a private sale can, and in appropriate cases should, be approved. *See, e.g., In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (“[T]he sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion ... to conduct public or private sales of estate property.”) (internal quotations and citation omitted); *In re Dewey & LeBeouf*, Case No. 12-12321 (MG), 2012 WL 5386276, at *6 (Bankr. S.D.N.Y. Nov. 1, 2012) (authorizing private sale of art collection because the debtor established a good business reason to proceed by private sale); *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P’ship (In re Woodscape*

Ltd. P'ship), 134 B.R. 165, 174 (Bankr. D. Md. 1991) (“There is no prohibition against a private sale ... and there is no requirement that the sale be by public auction.”).

41. The Debtor respectfully submits that proceeding by private sale without an extensive auction and bidding process is appropriate here, where the Debtor has exhausted the market of potentially interested parties and an efficient sale is necessary to provide assurances to the Debtor’s customers of the Purchaser’s continuation of the business going forward. a private sale of the Property is appropriate. As discussed above and in the Koblence Declaration, the Property was actively marketed prior to and after the Petition Date, and the Purchaser provided the only firm offer to buy the Property. Based on that marketing process, it appears unlikely that any potential purchaser would be able to assume the Property without acquiring the NYC Facility Lease, which has proven difficult. The proposed Purchaser, on the other hand, is willing to close regardless of whether it can fully negotiate a lease with the Landlord, and there is currently still time for the Debtor to sell its Designation Rights before its time to assume or reject the NYC Facility Lease and any potential extensions thereto expires. Proceeding expeditiously with this sale will also preserve the Debtor’s business by allowing the Purchaser to assume the Customer Service Agreements as soon as possible. Finally, sufficient notice of the Sale will be provided through notice of the Sale Motion, providing parties in interest and any potential purchasers with the opportunity to voice any objections to the proposed private sale.

IV. Purchaser is a Good Faith Purchaser Pursuant to Bankruptcy Code Section 363(m)

42. The Debtor also requests that this Court enter an order finding that the Purchaser constitutes a good faith purchaser of the Property pursuant to Section 363(m) of the Bankruptcy Code such that the reversal or modification on any appeal of the sale of the Property to the

Purchaser shall not affect the validity of the sale, whether or not the Purchaser knew of the pendency of the appeal.

43. As set forth above and in the Koblence Declaration, although it is intended that Philip Koblence will be a shareholder in the Purchaser's designee, his holding is intended to be minimal at 10-15%, and at all times during the negotiations there has been and will be no affiliation between the Debtor and the Purchaser. The Purchaser has negotiated with the Debtor and is undertaking the proposed sale transactions at arm's-length, for value and in good faith, without engaging in fraud or collusion of any kind, in accordance with Section 363(m) of the Bankruptcy Code. Providing this protection to the Purchaser will ensure the finality of the sale and is a material term required by the Purchaser.

NOTICE

44. Contemporaneously with the filing of the Motion, the Debtor filed with the Court and served by first class mail a notice of the relief requested in this Motion upon: (i) the Office of the United States Trustee; (ii) counsel to the Purchaser; (iii) counsel to the Landlord; (iv) all persons who made their interest in the Property known to the Debtor or their counsel; (v) the holders of the 20 largest unsecured claims; and (vi) all other parties requesting notice pursuant to Bankruptcy Rule 2002.

45. The Debtor respectfully submit that notice of this Motion is compliant with Bankruptcy Rules 2002 and 6004 and is otherwise reasonable and appropriate, and that no other or further notice of the relief requested herein is warranted or required.

NO PRIOR RELIEF

46. Except as specifically set forth at length above, no prior motion for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Motion be granted and that the Debtor be granted such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 23, 2016

**KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS LLP**
Attorneys for Debtor and Debtor in Possession

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EXHIBIT A

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

In re:

THE NEW YORK INTERNET CO., INC.

Debtor.

Chapter 11

Case No. 17-10326 (SHL)

ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 365 AND FED. R. BANKR. P. 2002, 6004 AND 6006 (A) AUTHORIZING DEBTOR TO (i) SELL ITS DESIGNATION RIGHTS FOR ITS UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASEHOLD INTEREST AND CUSTOMER CONTRACTS TO CLEAREON FIBER NETWORKS, LLC AND (ii) SELL ALL OR SUBSTANTIALLY ALL OF ITS ASSETS TO CLEAREON FIBER NETWORKS, LLC FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND (B) GRANTING RELATED RELIEF

Upon the motion (the “Sale Motion”)¹ of The New York Internet Co., Inc. (the “Debtor”), as debtor-in-possession, for entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (A) authorizing the Debtor (i) to sell its exclusive right, power and authority under section 365 of the Bankruptcy Code to determine whether to assume, reject, or assume and assign to one or more designees (the “Designation Rights”) its interests in all unexpired leases (the “Lease” or “Leases”), including without limitation, its unexpired nonresidential real property lease for the premises located at 100 William Street, Suites 318, 801 and 2100, New York, New York 10038 (the “NYC Facility”) and its customer contracts (the “Customer Service Agreements”) to Cleareon Fiber Networks, LLC, or its designee (the “Purchaser”), and (ii) to sell all or substantially all of its assets, as

¹ Unless otherwise indicated, terms capitalized but not defined herein shall have the meanings assigned to them in the Sale Motion.

described in the Term Sheet attached to the Sale Motion as Exhibit B (the “Term Sheet”) and defined as the Acquired Assets (collectively, together with the Designation Rights, the “Property”), to the Purchaser free and clear of all liens, claims and encumbrances and (B) granting related relief [Docket No. ___]; and upon the Koblence Declaration filed in support of the Sale Motion [Docket No. ___]; and upon the record of the hearing held on June 13, 2017 with respect to the proposed Sale (the “Sale Hearing”) and all prior proceedings heretofore held in this case; and the Court having considered the Sale Motion, arguments of counsel and evidence proffered or adduced at the Sale hearing; and no objections to the relief sought in the Sale Motion having been filed, or any such objections having been overruled; and due and sufficient notice of the Sale Motion, the Sale Hearing and the relief sought in connection therewith having been provided; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Sale Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Sale Motion are sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

C. Proper notice of the Sale Motion and the relief requested therein, the Sale Hearing, and related transactions described in the Sale Motion and the Term Sheet, including

without limitation, the sale of the Designation Rights relating to the NYC Facility and the Customer Service Agreements (all such transactions being collectively referred to as the “Sale Transactions”), has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006 to all interested persons and entities, including (i) the Office of the United States Trustee; (ii) the Purchaser or its counsel; (iii) the Landlord or its counsel and all other persons who made their interest in the NYC Facility known to the Debtor or their counsel; (iv) the counterparties to the Customer Service Agreements or their counsel; (v) all persons who made their interest in the Property known to the Debtor, or their counsel; (vi) all known creditors and parties-in-interest; (vii) all entities having filed a notice of appearance; and (viii) all others who are entitled to notice pursuant to Bankruptcy Rule 2002.

D. As demonstrated by the Koblence Declaration and the testimony and other evidence proffered or submitted and the representations of counsel made at the Sale Hearing, the Debtor has extensively marketed the Acquired Assets and contacted and entered into extensive negotiations with various parties and the Landlord with respect to the potential assignment of the Debtor’s interests in the NYC Facility and the Customer Service Agreements to interested parties.

E. Creditors, parties-in-interest and other entities have been afforded a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein.

F. The Debtor has full corporate power and authority to consummate the Sale Transactions pursuant to the Term Sheet and all other documentation contemplated thereby, and

no consents or approvals, other than those expressly provided for in the Term Sheet, are required for the Debtor to consummate the Sale Transactions.

G. Approval of the Term Sheet and consummation of the Sale Transactions are in the best interests of the Debtor, its creditors and estate, and other parties-in-interest.

H. The Debtor has demonstrated good, sufficient, and sound business purpose and justification and compelling circumstances for the Sale pursuant to section 363(b) of the Bankruptcy Code.

I. The Term Sheet was negotiated, proposed and entered into by and between the Debtor and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor nor the Purchaser has engaged in any conduct that would permit the avoidance of the Term Sheet or the Sale Transactions or the imposition of costs or damages under section 363(n) of the Bankruptcy Code. The Purchaser is not an "insider" or "affiliate" of the Debtor (as those terms are defined in the Bankruptcy Code) – although there will be a limited common identity of controlling stockholders between the Debtor and an entity to be created to hold certain of the Property, the Term Sheet and the Sale Transactions were negotiated, proposed and entered into by and between the Debtor and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions and were the highest and best offer received for the Property after extensive marketing thereof and negotiations with third parties.

J. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby in that: (i) the Purchaser recognized that the Debtor was free to deal with any other party interested in a transaction regarding the Sale; (ii) the Purchaser made the highest and best offer in respect of the

Property; and (iv) the negotiation and execution of the Term Sheet and Sale Transactions and any other agreements or instruments related thereto were in good faith and at arm's-length between the Debtor and the Purchaser. The Purchaser has at all times acted in good faith and will continue to act in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the Sale Transactions.

K. The terms and conditions of the Term Sheet are fair and reasonable. The consideration provided by the Purchaser for the Property pursuant to the Term Sheet (i) is fair and reasonable; (ii) is the highest or best offer for such Property; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States.

L. The Property constitutes property of the Debtor's estate. The transfer of the Property to the Purchaser will be a legal, valid, and effective transfer of the Property and will vest the Purchaser with all right, title, and interest of the Debtor in and to the Property free and clear of all liens, claims and encumbrances, as defined herein.

M. Title to the Property shall pass to Purchaser pursuant to, and to the fullest extent permitted by, Bankruptcy Code section 363, the Term Sheet and all other applicable laws, free and clear of any and all liens, claims, interest and encumbrances, including, but not limited to: (i) any lien, replacement lien, claim, interest or charge granted to any party under any Order entered in this case; and (ii) mechanics', materialmen's and other consensual and non-consensual liens and statutory liens), security interests, encumbrances and claims (including, but not limited to, any "claim" as defined in Bankruptcy Code section 101(5)), reclamation claims, malpractice claims, tort claims, any liability or obligations under COBRA, mortgages, deeds of trust,

pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, causes of action, instruments, contracts, leases, licenses, options, rights of first refusal, offsets, recoupment, rights of recovery, judgments, orders and decrees of any court or foreign or domestic government entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, preferences, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities, causes of action and claims, and in such case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether arising prior to, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "Liens and Claims"), with any Liens and Claims to attach only to the proceeds of sale with the same priority, validity, force, and effect as they existed with respect to the Property before the closing, subject to any and all rights, claims, defenses, and objections of Debtor and any other party-in-interest, because one or more of the standards set forth in section 363(f)(1)–(5) has been satisfied with regard to each such Liens and Claims. Those non-Debtor parties with Liens and Claims in or with respect to the Property who did not object, or who withdrew their objections to the Sale Transactions or the Sale Motion are deemed to have consented to the sale of the Property free and clear of those non-Debtor parties' Liens and Claims in the Property pursuant to section 363(f)(2) of the Bankruptcy Code. Those non-Debtor parties with Liens and Claims in or with respect to the Property who objected to the Sale Motion, but who did not withdraw any such objection, can be compelled to accept a monetary satisfaction of their Liens and Claims within the meaning of section 363(f)(5) of the Bankruptcy

Code, or applicable nonbankruptcy law permits sale of the Property free and clear of such Liens and Claims under section 363(f)(1).

N. The transfer of the Designation Rights to Purchaser is a legal, valid, and effective disposition of the Designation Rights, and vests Purchaser with all right, title, and interest of the Debtors to the Designation Rights free and clear of all Liens and Claims, including mortgages, security interests, conditional sale or other title retention agreements, pledges, liens (as that term is defined in section 101(37) of the Bankruptcy Code), judgments for damages, demands, charges, encumbrances, defects, claims, and restrictions of all kind including, without limitation, encumbrances and rights (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the interest of any Debtor or of Purchaser, as the case may be, in the Designation Rights, as the case may be, or (ii) in respect of taxes, accruing, arising, or relating to a period prior to designation for a particular Lease or Customer Service Agreement.

O. Except as expressly set forth in the Term Sheet, the (i) transfer pursuant to the Term Sheet of the Designation Rights to Purchaser, does not and will not subject or expose Purchaser, as the case may be, or any of their respective Affiliates, successors, predecessors, shareholders, members, partners, directors, officers, managers, employees, insiders, agents, representatives and advisors, to any liability, claim, cause of action or remedy by reason of such transfer under (A) the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, including, without limitation, any theory of tort, creditors' rights, equity, antitrust, environmental, successor or transferee liability, labor law, de facto merger, or substantial continuity, or (B) any employment contract, understanding or agreement, including without, limitation collective bargaining

agreements, employee pension plans, or employee welfare or benefit plans. Notwithstanding any provision hereof to the contrary, nothing contained in this Order shall release or discharge (or affect, limit or impair in any way) any defense, offset, counterclaim or right of Purchaser or its Affiliates with respect thereto.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND

DECREED THAT:

1. The Sale Motion is hereby granted in its entirety.
2. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.
3. Any objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or resolved by this Order are hereby overruled on the merits and denied with prejudice.
4. The Sale Transactions, and all of the terms and conditions and transactions contemplated by the Term Sheet, are hereby authorized and approved pursuant to sections 105(a), 363(b) and 365 of the Bankruptcy Code. The Debtor is authorized and directed to have executed and delivered the Term Sheet and to execute such other definitive documentation in respect of the Sale Transactions and any additional instruments and documents that may be reasonably necessary or desirable to implement the Term Sheet and to take such other actions as are reasonably necessary or desirable to consummate and close the Sale Transactions and

convey the Property to the Purchaser in accordance with the terms and conditions of the Term Sheet and this Order.

5. Title to the Property shall pass to Purchaser pursuant to, and to the fullest extent permitted by, Bankruptcy Code section 363, the Agreement and all other applicable laws, free and clear of any and all liens, claims, interest and encumbrances, including, but not limited to: (i) any lien, replacement lien, claim, interest or charge granted to any party under any Order entered in this case; and (ii) mechanics', materialmen's and other consensual and non-consensual liens and statutory liens), security interests, encumbrances and claims (including, but not limited to, any "claim" as defined in Bankruptcy Code section 101(5)), reclamation claims, malpractice claims, tort claims, any liability or obligations under COBRA, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, causes of action, instruments, contracts, leases, licenses, options, rights of first refusal, offsets, recoupment, rights of recovery, judgments, orders and decrees of any court or foreign or domestic government entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, preferences, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities, causes of action and claims, and in such case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether arising prior to, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "Liens and Claims"), with any Liens and Claims to attach only to the proceeds of sale with the

same priority, validity, force, and effect as they existed with respect to the Property before the closing, subject to any and all rights, claims, defenses, and objections of Debtor and any other party-in-interest, because one or more of the standards set forth in section 363(f)(1) –(5) has been satisfied with regard to each such Liens and Claims. Those non-Debtor parties with Liens and Claims in or with respect to the Property who did not object, or who withdrew their objections to the Sale Transactions or the Sale Motion are deemed to have consented to the sale of the Property free and clear of those non-Debtor parties' Liens and Claims in the Property pursuant to section 363(f)(2) of the Bankruptcy Code. Those non-Debtor parties with Liens and Claims in or with respect to the Property who objected to the Sale Motion, but who did not withdraw any such objection, can be compelled to accept a monetary satisfaction of their Liens and Claims within the meaning of section 363(f)(5) of the Bankruptcy Code, or applicable non-bankruptcy law permits sale of the Property free and clear of such Liens and Claims under section 363(f)(1).

6. All persons and entities holding Liens and Claims against, in or with respect to the Debtor and/or the Property arising out of or relating to the Debtor, the Property, or the transfer of the Property to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' Liens and Claims against the Property or the Purchaser or any of the Purchaser's successors or assigns. Following the Closing, no holder of any Liens and Claims shall interfere with the Purchaser's title to or use and enjoyment of the Property based on or related to such Liens and Claims or any actions that the Debtor has taken or may take in its Chapter 11 case. The Purchaser shall have no liability for any Claims (as defined in section 101(5) of the Bankruptcy Code) against the Debtor or its estate.

7. The transfer of the Property to the Purchaser pursuant to the Term Sheet constitutes a legal, valid, and effective transfer of the Property, and shall vest the Purchaser with all right, title, and interest of the Debtor in and to the Property.

8. The transfer of the Designation Rights to Purchaser pursuant to the Term Sheet constitutes a legal, valid, and effective transfer of the Designation Rights and the applicable Leases and Customer Service Agreements, as the case may be, and vests or shall vest Purchaser or such applicable Designees, as the case may be, with all right, title, and interest to the Designation Rights free and clear of all Liens and Claims (and such Liens and Claims shall be deemed unconditionally released, discharged, and terminated).

9. Subject to the terms of the Term Sheet and upon entry of this Sale Order, Purchaser shall have the exclusive right, power and authority, which right, power and authority may be exercised by Purchaser at any time and from time to time, in its discretion, to contact, solicit, negotiate with, and enter into binding agreements concerning any or all of the Leases or Customer Service Agreements, with any Person, and assign free and clear of all Liens and Claims its right to purchase any Lease or Customer Service Agreements hereunder to one or more Designees, or with the consent of a Landlord terminate its Lease for such consideration and on such terms as Purchaser in its discretion deems appropriate.

10. Certain of the Leases or Customer Services Agreements may contain provisions that expressly or effectively restrict, prohibit, condition or limit the assignment of or the effectiveness of an assigned Lease or Customer Service Agreements, including without limitation the following provisions:

- (i) any provision of a Lease or Customer Service Agreements that purports to prohibit, condition, limit or otherwise restrict the assignment by the Debtors to Purchaser of the Designation Rights or

restrict the assignment to any Designee of the Leases or Customer Service Agreements;

- (ii) any provision of a Lease or Customer Service Agreements that permits a non-Debtor at any time to increase or reallocate payments under (including, without limitation, any rent), declare a default with respect to, terminate, modify or cancel, any Lease or Customer Service Agreements or right or obligation thereunder by reason of (A) the assignment of the Designation Rights to Purchaser or any Lease or Customer Service Agreements to any Designee; (B) the release of the Debtors from liability; (C) any Leased Premises going dark during the Designation Period; (D) discontinuation of operations, interruption of business, or minimum sales requirements; or (E) the Debtors ceasing to be a party to any Lease (clauses (A) - (E), the "Triggering Events");
- (iii) any provision of a Lease or Customer Service Agreements that permits a non-Debtor at any time to exercise a right of first refusal or rent recapture by reason of any Triggering Event;
- (iv) any provision of a Lease or Customer Service Agreements that permits a non-Debtor at any time to require payment of any fee, profit sharing or other payment by reason of any Triggering Event;
- (v) any provision of a Lease or Customer Service Agreements that permits a non-Debtor at any time to impose any penalty or rental adjustment or allocation by reason of any Triggering Event;
- (vi) any provision of a Lease or Customer Service Agreements that permits a non-Debtor at any time to cancel, modify or restrict any Designee from exercising any renewal options by reason of any Triggering Event;
- (vii) any provision of a Lease or Customer Service Agreements that permits a non-Debtor at any time to seek damages or other relief by reason of a Triggering Event.

11. The foregoing provisions, to the extent they are not of a type enumerated in Section 363(b)(4) of the Bankruptcy Code, are referred to for purposes of this Order only as "Anti-Assignment Provisions."

12. Each and every Anti-Assignment Provision is null, void and of no force and effect in connection with the transfer of the Designation Rights to the Purchaser pursuant to the Term Sheet.

13. Without limiting the other terms of this Order, prior to or upon the Closing, the Debtor's creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release their interests, if any, in the Property as such Liens and Claims may have been recorded or may otherwise exist.

14. This Order (i) shall be effective as a determination that, upon the Closing, all Liens and Claims existing with respect to the Debtor and/or the Property prior to the Closing have been unconditionally released, discharged and terminated as to the Purchaser and the Property, and that the conveyances described herein have been effected; and (ii) shall be binding upon all filing agents, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required to accept, file, register or otherwise record or release any documents or instruments in connection with the Sale Transactions.

15. From and after the date hereof, the Debtor or any creditor or other party in interest shall not take or cause to be taken any action that would interfere with the transfer of the Property to the Purchaser in accordance with the terms of this Order.

16. This Court hereby retains jurisdiction, regardless of whether a plan of reorganization has been confirmed and consummated and irrespective of the provisions of any such plan or order confirming such plan, to enforce and implement the terms and provisions of the Term Sheet and the definitive documentation for the Sale, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection

therewith in all respects including, but not limited to, retaining jurisdiction to (i) compel delivery of the Property to the Purchaser in accordance with the terms of the Term Sheet and this Order; (ii) resolve any dispute, controversy or claim arising under or related to the Term Sheet or the definitive documentation for the Sale or the breach thereof; and (iii) interpret, implement, and enforce the provisions of this Order and resolve any disputes related thereto.

17. The transactions contemplated by the Term Sheet are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code. The Purchaser is a purchaser in good faith and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code. Accordingly, any reversal or modification on appeal of the authorization provided herein to consummate the Sale Transactions shall not affect the validity of the Sale Transactions.

18. The consideration to be provided by Purchaser in exchange for the Property is hereby deemed to constitute reasonably equivalent value and fair consideration.

19. The terms and provisions of the Term Sheet and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate and its creditors, the Purchaser, and any of such parties' respective affiliates, designees, successors, and assigns, and shall be binding in all respects upon all of the Debtor's creditors, all prospective and actual bidders for the Property, and all persons and entities receiving notice of the Sale Motion or the Sale Hearing, notwithstanding any subsequent appointment of any trustee, examiner, or receiver under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee, examiner, or receiver and shall not be subject to rejection or avoidance by the Debtor, its estate, its creditors, or any trustee, examiner, or receiver.

20. Pursuant to Bankruptcy Code section 365 and Bankruptcy Rules 6006 and 9014, except as otherwise stated in the Term Sheet, the Sales Transactions and annexed exhibits, the assumption and assignment of assumed and assigned contracts and leases identified prior to the closing of the Sale Transactions approved by this Sale Order, along with all related amendments and supplements thereto, are hereby authorized and approved.

21. All executory contracts and unexpired leases not specifically identified and assumed are hereby rejected.

22. The automatic stay provisions of section 362 of the Bankruptcy Code are lifted and modified to the extent necessary to implement the terms and conditions of the Term Sheet and the provisions of this Order.

23. The Court hereby authorizes and approves, for cause, the waiver of the stay provided in Rule 6004(h).

24. The failure specifically to include any particular provision of the Term Sheet in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Term Sheet be authorized and approved in its entirety.

25. The Term Sheet and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

Dated: New York, New York
June __, 2017

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

TERM SHEET
ACQUISITION OF THE ASSETS OF
THE NEW YORK INTERNET COMPANY (the “Seller”, “Debtor” or “NYI”)

- Seller:** The New York Internet Company, Inc. as debtor and debtor-in-possession in a case under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entitled *In re: The New York Internet Co., Inc.*, Case No. 17-10326 (SHL).
- Buyer:** A still to be formed limited liability company (the “Buyer”), to be initially wholly owned and financed by Cleareon Fiber Networks, LLC (“CFN” and together with the Buyer and Seller, each a “Party” and collectively, the “Parties”).
- Proposed Transaction:** Prior to or at the closing of the purchase and sale (such date, the “Closing Date”) of the NYI Assets (as defined below), CFN will contribute to the Buyer an amount sufficient to permit the Buyer to pay the NYI Consideration (as defined below) for the NYI Assets and the Designation Rights Consideration (as defined below) for the exclusive right, power and authority under Section 365 of the Bankruptcy Code to determine whether to assume, reject, or assume and assign to one or more designees (collectively, the “Designation Rights”) Seller’s interests in its unexpired non-residential real property lease (the “Lease”) for the premises located at 100 William Street, Suites 318, 801 and 2100, New York, New York 10038 (the “NYC Facility”) and any other customer, vendor, supplier or similar contracts, leases, licenses, and other agreements, commitments and legally binding arrangements, whether written or oral, and security deposits related thereto (each, a “Customer Service Agreement” and collectively, the “Customer Service Agreements”). The acquisition is proposed to be effectuated pursuant to a sale of the Purchased Assets (as defined below) under sections 363 and 365 of the Bankruptcy code or through other mutually agreed-upon means, which excludes the Excluded Assets (as defined below), free and clear of all liens, claims and encumbrances of any type whatsoever except as expressly set forth herein (collectively, the “Proposed Acquisition”).
- Business:** The Seller has operated a data center business at the NYC Facility continuously for over the last fifteen years. Current employees of the Seller will be given the opportunity to continue to work at the NYC Facility data center should CFN and the landlord of the NYC Facility agree to a new lease for the NYC Facility. Alternatively, certain of the employees will be offered positions in CFN’s NJ data center operations. The Proposed Acquisition is not going to be conditioned on CFN’s reaching an agreement with the landlord to lease the NYC Facility.

- Purchased Assets:
- (1) The Designation Rights; and
 - (2) All assets of the business of the Seller except for the Excluded Assets, including, but not limited to:
 - All accounts receivable of Seller and all other rights to payment from third parties, as the same exist on and as of the Closing Date;
 - All transferable licenses, permits or other governmental authorizations of Seller, if any;
 - All machinery and equipment (including spare parts) and tools, together with all other office equipment and/or supplies, and other tangible assets of Seller (collectively referred to as the "Machinery and Equipment");
 - All designs, data, plans, blueprints, specifications, manuals, drawings, surveys, engineering reports, test reports, material standards, performance standards, marketing studies and other research data;
 - All warranties and/or guaranties provided by, and all warranty and/or guaranty claims assertable against, third party manufacturers or providers of the Machinery and Equipment, and other tangible assets included within the Purchased Assets;
 - All customer lists, data and files, pricing information, supplier and vendor lists, data and files, marketing plans and other general intangible property of Seller, including without limitation, the goodwill associated with the business of the Seller and claims and causes of action against third parties;
 - The Lease to the extent the Buyer and/or CFN exercises its right to assume and assign the Lease;
 - Each Customer Service Agreement, to the extent the Buyer and/or CFN exercises its right to assume and assign such Customer Service Agreement;
 - All claims arising under any insurance policies for losses caused or occurring to the Purchased Assets prior to the Closing Date;
 - All telephone and facsimile numbers used by Seller in connection with the business;
 - All right, title and interest in and to the name "The New York Internet Company", "NYI", "NYI-NY", and any derivative thereof;
 - All books and records of Seller (including promotional materials) relating to (i) the business operations of Seller and/or (ii) the Purchased Assets; provided, however, Seller shall be entitled to make and retain copies of such books and records and Buyer shall retain such books and records for a period

of three years from the Closing Date and shall allow Seller or its agents reasonable access to the same;

Any and all patents, trademarks, service marks, trade names, copyrights, trade secrets, URL addresses (and the content of any websites), license rights and all other intellectual property owned or licensed by Seller and any and all rights associated therewith to enforce, maintain or otherwise preserve the same (item 2 collectively, the "NYI Assets" and together with the Designation Rights, the "Purchased Assets").

Excluded Assets: Excluded from the Proposed Acquisition is the Seller's cash on hand as of the Closing Date and each other asset as determined by the Parties prior to the Closing Date (the "Excluded Assets").

Section 363

Sale and Timing: The Seller shall file a Motion before the Bankruptcy Court for approval of the Proposed Acquisition in accordance with this Term Sheet, in form and substance mutually acceptable to the Parties, on or before May 23, 2017 (the "Sale Motion").

As soon as reasonably practicable after the execution of this Term Sheet, the Parties shall commence to negotiate a definitive purchase agreement (the "Definitive Agreement") relating to the Proposed Acquisition, to be drafted by CFN's counsel. The Definitive Agreement will include the terms summarized in this Term Sheet [redacted] and such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for transactions of this kind and are not inconsistent with this Term Sheet.

The obligations of the Buyer and/or CFN to consummate the Proposed Acquisition shall be subject to the fulfillment or Buyer's or CFN's waiver, at or prior to September 12, 2017, of each of the following conditions (each, a "Buyer Condition" and collectively, the "Buyer Conditions"): (a) the Parties execution and delivery of the Definitive Agreement, (b) closing of CFN's acquisition of NYI-NJ (as defined in the Sale Motion), (c) closing of the HSBC Purchase (as defined in the Sale Motion), (d) Buyer's and/or CFN's satisfactory completion of due diligence, provided that such condition shall be deemed waived if not earlier satisfied on June 12, 2017, and (e) from the date of this Term Sheet, there shall not have occurred any Material Adverse Event, or any event or events that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Event. "Material Adverse Event" shall mean any event that directly or indirectly results in damage to the Purchased Assets such that the consummation of the Proposed Acquisition is prevented or materially impaired, including, without limitation, an act of war, terrorism, fire, earthquake, natural disaster or similar "force majeure" event.

The Closing Date shall occur on the date on which each of the Buyer Conditions has been waived or satisfied, provided that the Sale Motion has been approved by the Bankruptcy Court. Notwithstanding the foregoing, the Closing Date shall occur no earlier than the date on which the Lease for the NYC Facility has been rejected or assumed by the Buyer.

Consideration
and Deposit:

(1) Upon execution of this Term Sheet, CFN shall provide a deposit in the amount of Forty Thousand Dollars (\$40,000), which is ten percent (10%) of the NYI Consideration (the "Deposit").

(2) Upon approval of the Sale Motion, CFN and/or the Buyer shall pay to Seller in consideration for the Designation Rights Fifty Thousand Dollars (\$50,000) for Seller to pay any shortfall in its ordinary operating expenses and to pay administrative expenses (the "Designation Rights Consideration"). The Deposit shall be used to fund the Designation Rights Consideration in part. In the event that this Term Sheet is terminated in accordance with the paragraph entitled "Termination" below, the Parties hereby agree the amount of the Designation Rights Consideration paid over and above the Deposit shall constitute an allowed administrative claim against the Seller under the Bankruptcy Code.

(3) On the Closing Date, CFN and/or the Buyer will pay and/or credit bid Four Hundred Thousand Dollars (\$400,000) in consideration for the NYI Assets (the "NYI Consideration" and, together with the Designation Rights Consideration, the "Purchase Price").

The Deposit shall be refunded to CFN solely in the event that the Sale Motion is not approved by the Bankruptcy Court on or before June 16, 2017. For the avoidance of doubt, in the event that the closing of the Proposed Acquisition does not occur for any other reason, including, without limitation, as a result of the failure of CFN to close its purchase of NYI-NJ or the HSBC Purchase, the Deposit shall be retained by the Debtor and shall not be subject to refund.

Liquidity:

Any liquidity requirements related to the NYI Assets from the date of this Term Sheet until the Closing Date shall be paid for by the Debtor, provided that the Debtor may utilize the Designation Rights Consideration to provide such liquidity.

Remaining
Due Diligence:

The Debtor shall use its commercially reasonable best efforts to provide Buyer and/or CFN with (a) reasonable access to all pertinent financial, legal and operational documents and information pertaining to the Purchased Assets, and (b) reasonable access to all Seller's property and personnel. Buyer and CFN shall complete their due diligence within thirty (30) days after the execution of this Term Sheet (provided that the due diligence Buyer Condition shall be deemed waived on June 12, 2017).

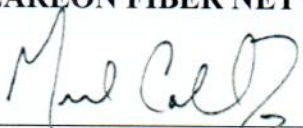
- Credit Bid: Each Party acknowledges that the order approving the Sale Motion will provide that the Buyer and/or CFN may credit bid for the NYI Assets and offset payment of the NYI Consideration in an amount up to the maximum amount of their secured claims, if any, pursuant to section 363(k) of the Bankruptcy Code.
- Covenants of Seller: From the date hereof until the earlier of (i) the termination of this Term Sheet, and (ii) the Closing Date, Seller will: (a) conduct its business in the ordinary course in a manner consistent with past practice, (b) maintain its properties and other assets in good working condition (normal wear and tear excepted), and (c) use its best efforts to maintain its business and employees, customers, assets and operations as an ongoing concern in accordance with past practice.
- Exclusivity: From the date hereof until the earlier of (i) the termination of this Term Sheet, and (ii) the Closing Date, neither the Debtor nor any of its representatives, officers, employees, managers, directors, agents, members, shareholders, subsidiaries or affiliates shall initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, with any person or entity other than the Buyer or CFN, any proposal or offer, or execute any other documents, related to any sale or acquisition of any or all of the Purchased Assets, whether by merger, purchase of stock, purchase of assets, or otherwise.
- Transaction Costs: Each Party shall be responsible for its own "transaction costs" incurred in connection with the Proposed Acquisition, including but not limited to attorney, accountant and other professional fees.
- Confidentiality: This Term Sheet is confidential to the Parties and is subject to the confidentiality agreement entered into between CFN and Seller on March 22, 2017, which continues in full force and effect.
- Governing Law and Jurisdiction: **THIS TERM SHEET SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN THOSE OF THE STATE OF NEW YORK. THE PARTIES CONSENT TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT TO HEAR AND DETERMINE ANY DISPUTE ARISING FROM OR RELATING TO THIS TERM SHEET OR THE DEFINITIVE AGREEMENT.**
- No Third Party Beneficiaries: Except as specifically set forth or referred to herein, nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this Term Sheet.

Termination: This Term Sheet will automatically terminate and be of no further force and effect upon the (i) mutual agreement of the Parties, or (ii) Buyer's and/or CFN's election to terminate this Term Sheet if any or all of the Buyer Conditions shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by September 12, 2017. Notwithstanding anything in the previous sentence, this paragraph and the paragraphs entitled "Transaction Costs", "Confidentiality", "Governing Law", "No Third Party Beneficiaries" and "Miscellaneous", as well as "Consideration and Deposit" solely as it relates to subsection 2 and/or the return of the Deposit, shall survive the termination of this Term Sheet, and the termination of this Term Sheet shall not affect any rights any Party has with respect to the breach of this Term Sheet by another Party prior to such termination.

Miscellaneous: This Term Sheet may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. Signatures transmitted electronically or by facsimile shall be deemed original signatures. The headings of the various sections of this Term Sheet have been inserted for reference only and shall not affect in any way the meaning or interpretation of this Term Sheet.

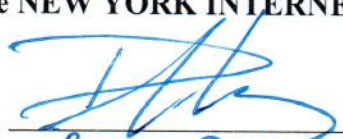
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CLEARON FIBER NETWORKS, LLC

By: 
Michael Collado – CO-CEO

Agreed to and accepted this 23rd day of May, 2017

The NEW YORK INTERNET COMPANY

By: 
Name: Paul Kabler
Title: COO