

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE	§	
	§	
UPH HOLDINGS, INC.	§	CASE NO. 13-10570
PAC-WEST TELECOMM, INC.	§	CASE NO. 13-10571
TEX-LINK COMMUNICATIONS, INC.	§	CASE NO. 13-10572
UNIPOINT HOLDINGS, INC.	§	CASE NO. 13-10573
UNIPOINT ENHANCED SERVICES, INC.	§	CASE NO. 13-10574
UNIPOINT SERVICES, INC.	§	CASE NO. 13-10575
NWIRE, LLC	§	CASE NO. 13-10576
PEERING PARTNERS	§	CASE NO. 13-10577
COMMUNICATIONS, LLC,	§	
	§	
DEBTORS.	§	Jointly Administered Under
	§	
EIN: 45-1144038; 68-0383568; 74-2729541;	§	CASE NO. 13-10570
20-3399903; 74-3023729; 38-3659257; 37-	§	(Chapter 11)
1441383; 27-2200110; 27-4254637	§	
	§	
6500 RIVER PL. BLVD., BLDG. 2, # 200	§	
AUSTIN, TEXAS 78730	§	

[CORRECTED]
DEBTORS' FIRST AMENDED DISCLOSURE STATEMENT
IN SUPPORT OF FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION

TABLE OF CONTENTS

I. INTRODUCTION 1

 A. General Information Concerning Disclosure Statement and Plan 1

 B. Disclaimers 4

II. HISTORICAL BACKGROUND..... 5

 A. The Debtors’ Businesses 5

III. THE BANKRUPTCY CASES 7

 A. General 7

 B. The Debtors’ Schedules and Bar Date 7

 C. Cash Collateral Authorization 7

 D. Appointment of the Committee 7

 E. Retention of Professionals 8

 F. The TNCI Sale 8

 G. The Committee-Hercules Settlement 9

 H. Patent Sale 11

 I. Receivables Litigation 11

 J. Tax Motion/Litigation 12

 K. Miscellaneous Other Matters 12

IV. SUMMARY OF THE PLAN 12

V. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS 13

 A. General Provisions and Classifications 13

 B. Classification 13

 C. Impaired Classes of Claims and Equity Interests 14

 D. Impairment and Classification Controversies 14

 E. Class Acceptance Requirement 14

 F. Cramdown 14

 G. Elimination of Classes 15

VI. PROVISIONS FOR TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN 15

 A. Unclassified Claims: 15

 B. Treatment of Classified Claims and Interests 17

VII. ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF IMPAIRED CLAIMS 21

 A. Classes Entitled to Vote 21

- B. Presumed Acceptance/Rejection of Plan21
- C. Non-Consensual Confirmation21
- VIII. PROVISIONS GOVERNING EXECUTORY CONTRACTS AND UNEXPIRED LEASES; REJECTION CLAIMS BAR DATE22**
 - A. Executory Contracts and Unexpired Leases22
 - B. Bar to Rejection Damages22
- IX. PROVISIONS REGARDING DISTRIBUTIONS.....22**
 - A. Distribution Record Date22
 - B. Distributions To Be Pro Rata Within Class22
 - C. Withholding and Reporting Requirements22
 - D. Funding of Distributions23
 - E. Delivery of Distributions23
 - F. Unclaimed Distributions23
 - G. Time Bar to Cash Payments.....23
 - H. Establishment and Administration of Disputed Claims Reserve24
 - I. Establishment and Administration of Hercules Deficiency Claim Reserve24
 - J. Other Provisions Regarding Hercules’s Claims24
 - K. Fractional Dollars.....25
 - L. De Minimis Distributions25
 - M. No Distributions Pending Allowance25
- X. CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN25**
 - A. Conditions Precedent to Confirmation of the Plan25
 - B. Conditions Precedent to the Effective Date of the Plan.....26
 - C. Effect of Non-Occurrence of Confirmation or the Effective Date26
- XI. MEANS FOR IMPLEMENTATION OF THE PLAN27**
 - A. Source of Funds27
 - B. Default.....27
 - C. Substantive Consolidation27
 - D. Establishment of Liquidating Trust28
- XII. PROVISIONS FOR MANAGEMENT33**
 - A. Corporate Authority33
 - B. Professional Fees33
 - C. Transfer of Powers33

XIII. CERTIFICATES OF INCORPORATION AND BY-LAWS OF THE DEBTORS/RESTRICTION ON TRANSFER OF SHARES	35
A. Amendments to Certificates of Incorporation and By-Laws	35
XIV. PROCEDURES FOR RESOLVING AND TREATING/DISPUTED CLAIMS	35
A. Claim Objection Deadline	35
B. Prosecution of Objections	35
C. Distribution Upon Allowance of Disputed Claims Entitled to Payment in Full in One Payment	36
D. Distributions Upon Allowance of Disputed Claims Entitled to Payment in Full in Installment Payments	36
XV. RETENTION OF JURISDICTION POST-CONFIRMATION	36
A. Scope of Jurisdiction	36
B. Failure of the Bankruptcy Court to Exercise Jurisdiction	36
XVI. EFFECT OF CONFIRMATION OF THE PLAN	37
A. Discharge of Debtors	37
B. Binding Effect	37
C. Certain Activities Enjoined	37
XVII. SETTLEMENT, RELEASE, EXCULPATION AND INJUNCTIONS	38
A. Releases by Debtors	38
B. Consensual Releases by Holders of Claims	38
C. Exculpation	39
D. Injunction	39
E. Term of Bankruptcy Injunction or Stays	39
XVIII. CONFIRMATION PROCEDURE	40
A. Solicitation of Votes	40
B. Confirmation Hearing	40
C. Acceptance	40
D. Fair and Equitable Test/Cramdown	41
E. Feasibility	41
F. Objections to Confirmation	42
XIX. CAUSES OF ACTION	42
A. Receivables Actions/Trust A/R Assets	43
B. Preferences	44
C. Fraudulent Conveyances/Insider Transfers	45
D. Director and Officer Claims	45

E. Other Rights of Action/Other Assets46

F. Disclaimer46

XX. FINANCIAL INFORMATION AND DISCLOSURES46

XXI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN47

A. Alternative Plans of Liquidation.....47

B. Liquidation Under Chapter 747

XXII. risk factors TO BE CONSIDERED48

A. Allowance of Claims.....48

B. Post-Confirmation Date Administrative Claims49

C. Litigation Risks.....49

D. Objection to Classifications49

E. Non-confirmation of the Plan49

F. Delays of Confirmation and/or Effective Date50

XXIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN50

A. General.....50

B. Tax Consequences to Debtors.....50

C. Tax Consequences to Creditors51

D. Tax Treatment of the Liquidating Trust.....52

XXIV. CONCLUSION AND RECOMMENDATION.....53

COMES NOW UPH Holdings, Inc., (“UPH”), Pac-West Telecomm, Inc., (“Pac-West”), Tex-Link Communications, Inc. (“Tex-Link”), UniPoint Holdings, Inc. (“UniPoint Holdings”), UniPoint Enhanced Services, Inc. (“UniPoint Enhanced”), UniPoint Services, Inc., (“UniPoint”), nWire, LLC (“nWire”), and Peering Partners Communications, LLC (“Peering Partners”) (collectively “Debtors”), pursuant to § 1121(a) to propose the following disclosure statement for the First Amended Plan of Reorganization for the Debtors (the “Plan”).

I. INTRODUCTION

A. General Information Concerning Disclosure Statement and Plan

The Debtors submit this First Amended Disclosure Statement (“Disclosure Statement”) under section 1125 of the Bankruptcy Code and Rule 3016 of the Federal Rules of Bankruptcy Procedure to all of their known creditors and Equity Interest Holders.

The purpose of this Disclosure Statement is to disclose information adequate to enable Holders of Claims and Equity Interests to arrive at a reasonably informed decision in exercising the right to vote on the Debtors’ First Amended Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code (the “Plan”). A copy of the Plan is attached hereto as Exhibit “1.” Capitalized terms used herein, if not separately defined, have the meanings assigned to them in the Plan or in the Bankruptcy Code and Bankruptcy Rules.

The Debtors have formulated the Plan consistent with the provisions of the Bankruptcy Code and the terms of the Committee-Hercules Settlement. The Committee-Hercules Settlement is described in detail in Section III(G) of this Disclosure Statement. The purpose of the Plan is to provide the maximum potential recovery to each Class of Claims in light of the Assets and anticipated potential funds available for distribution to creditors. The Debtors believe that the Plan permits the maximum possible recovery for all Classes of Claims by facilitating a liquidation of the Debtors’ Estates through a Liquidating Trust.

This Disclosure Statement is not intended to replace a careful review and analysis of the Plan, including the specific treatment you will receive under the Plan. It is submitted as an aid and supplement to your review of the Plan in an effort to explain the terms and implications of the Plan. Every effort has been made to explain fully various aspects of the Plan as it affects creditors. If any questions arise, the Debtors urge you to contact the Debtors’ counsel and every effort will be made to resolve your questions. You may, of course, wish to consult with your own counsel.

A general discussion of the projected Assets and Distributions under the Plan are set out below in this Disclosure Statement. The following summary is general in nature. Creditors are referred to the full Disclosure Statement and Plan for a full discussion of these matters.

The Disclosure Statement is prepared to reflect all relevant information known to the Debtors’ management as of the date of this Disclosure Statement. The Debtors are not aware of any events subsequent to such date that would materially affect this analysis. There can be no assurance that the assumptions underlying this analysis would be made or accepted by the Bankruptcy Court.

ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE VALUES AND AMOUNTS REFLECTED IN THIS DISCLOSURE STATEMENT WILL BE REALIZED AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE SHOWN HERE.

After a plan has been filed with a bankruptcy court, it must be accepted by at least one Class of impaired Claims against, or interests in, the Debtors that is entitled to vote. Section 1125 of the Bankruptcy Code requires that a plan proponent fully disclose sufficient information about the Debtors, their Assets and the Plan to creditors and stockholders before acceptances of the Plan may be solicited. This Disclosure Statement is being provided to the holders of Claims against, or Equity Interests in, the Debtors to satisfy such requirements of section 1125 of the Bankruptcy Code.

The Bankruptcy Code provides that creditors and stockholders are to be grouped into “classes” under a plan and that they are to vote to accept or reject a plan by class. While courts have disagreed on the proper method to be used in classifying creditors and stockholders, a general rule of thumb (which is subject to exceptions) is that creditors with similar legal rights are placed together in the same class and that stockholders with similar legal rights are placed together in the same class. For example, all creditors entitled to priority under the Bankruptcy Code might be placed in one class, while all creditors holding subordinated unsecured claims might be placed in a separate class.

The Bankruptcy Code does not require that each individual claimant or stockholder vote in favor of a plan for the Court to confirm a plan. Rather, each class of claimants and stockholders must accept a plan (subject to the exception discussed below). A class of claimants accepts a plan if, of the claimants in the class who actually vote on a plan, such claimants holding at least two-thirds in dollar amount and more than one-half in number of allowed claims vote to accept the plan. For example, if a hypothetical class has ten creditors that vote and the total dollar amount of those ten creditors’ claims is \$1,000,000.00, then for such class to have accepted the plan, six or more of those creditors must have voted to accept the plan (a simple majority), and the claims of the creditors voting to accept the plan must total at least \$666,667.00 (a two-thirds majority).

The Court may confirm a plan even though fewer than all classes of claims and interests vote to accept the plan. In this instance, the plan must be accepted by at least one “impaired” class of claims, without including any acceptance of the plan by an Insider. Section 1124 of the Bankruptcy Code defines “impairment” and generally provides that a claim as to which legal, equitable or contractual rights are altered under a plan is deemed to be “impaired.” Under the Plan, all Classes except Classes 1 and 3 are impaired.

If all impaired classes of claims and interests under a plan do not vote to accept the plan, the Debtors are entitled to request that the Court confirm the plan pursuant to the “cramdown” provisions of Section 1129(b) of the Bankruptcy Code. These “cramdown” provisions permit a plan to be confirmed over the dissenting votes of classes of claims and/or interests if at least one impaired class of claims votes to accept a plan (excluding the votes of insiders) and the Court determines that the plan does not discriminate unfairly and is fair and equitable with respect to each impaired, dissenting class of claims and interests.

Independent of the acceptance of a plan as described above, to confirm a plan, the Court must determine that the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. See, *infra*, “Confirmation Procedure,” Section XVIII, for a discussion of the section 1129 requirements for confirmation of a plan of reorganization.

THE DEBTORS BELIEVE THAT THE PLAN SATISFIES EACH OF THE CONFIRMATION REQUIREMENTS OF SECTION 1129(a) AND, IF NECESSARY, SECTION 1129(b) OF THE BANKRUPTCY CODE.

The Bankruptcy Code requires that the Debtors solicit acceptances and rejections of the proposed Plan before the Plan can be confirmed by the Bankruptcy Court. Before the Debtors can solicit acceptances of the Plan, the Bankruptcy Court must have approved the Disclosure Statement and determined that the Disclosure Statement contains information adequate to allow creditors to make informed judgments about the Plan. After the Bankruptcy Court has approved the Disclosure Statement, a “solicitation package” consisting of the Disclosure Statement, proposed Plan and, for those Holders of Claims entitled to vote, a Ballot are sent to the Holders of Claims and Equity Interests. The Holders of impaired Claims entitled to receive Distributions will then have the opportunity to vote on the Plan and should consider this Disclosure Statement for such vote.

At the Confirmation Hearing scheduled by the Court, the Court will consider whether the Plan should be confirmed. Section 1129 of the Bankruptcy Code contains the requirements for confirmation of a Plan. YOUR VOTE IS IMPORTANT. As noted, in order for the Plan to be accepted, at least two-thirds in amount and more than one-half in number of the voting Creditors in each Class must affirmatively vote for the Plan. Even if all Classes of Claims accept the Plan, the Bankruptcy Court may refuse to confirm the Plan. The Court must find that the Plan complies with the applicable provisions of the Bankruptcy Code and that the proponent of the Plan has also complied with the Bankruptcy Code. The Court must also find that the Plan has been proposed in good faith and not by any means forbidden by law. The Court must find that the proponents of the Plan, the Debtors, have disclosed the identity and affiliation of the persons who will manage the Debtors after confirmation, that the appointment of such persons is consistent with the interest of Creditors and Equity Interest holders and with public policy, and that the identity and compensation of any Insiders that will be employed or retained by the Liquidating Trust have been disclosed. The Court must additionally find that each Class of Claims has either accepted the Plan or will receive at least as much as it would under a Chapter 7 liquidation of the Debtors. The Code also provides for the treatment of certain Priority Claims. If any Classes of Claims are impaired under the Plan, the Court must find that at least one Class of Claims that is impaired has accepted the Plan without counting any votes by Insiders. Additionally, the Plan must provide for payment of certain required fees to the U.S. Trustee.

As noted, in the event that the Plan is not accepted by all Classes of Claims or Equity Interests, the Debtors may attempt to obtain confirmation under what is known as “cram-down” which requires a finding that the Plan does not discriminate unfairly and is fair and equitable with respect to each Class of Claims or Equity Interests that is impaired by the Plan and has not accepted the Plan. The Code provides several options for the Plan to be “fair and equitable” to a Secured creditor. Included among these options are that the Secured creditor retains its Lien(s) and receives deferred Cash payments at a market interest rate totaling either the value of the

property securing the Claim or the amount of the Allowed Claim as found by the Court, whichever is less. With respect to a Class of unsecured Claims, the requirement that a Plan be “fair and equitable” requires that the Holder of an unsecured Claim be paid the Allowed amount of its Claim or that no junior Claim or Equity Interest receive or retain any property on account of such Claim or Equity Interest.

B. Disclaimers.

NO SOLICITATION OF VOTES HAS BEEN OR MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT AND SECTION 1125 OF THE BANKRUPTCY CODE, AND NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTORS TO SOLICIT ACCEPTANCES OR REJECTIONS OF THE PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. CREDITORS SHOULD NOT RELY ON ANY INFORMATION RELATING TO THE DEBTORS OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO OR SUBMITTED HEREWITH.

EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS, NO REPRESENTATION CONCERNING THE DEBTORS, THEIR ASSETS, PAST OR FUTURE OPERATIONS, OR CONCERNING THE PLAN IS AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN. ANY REPRESENTATIONS MADE TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD BE REPORTED TO COUNSEL FOR THE DEBTORS.

UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF.

NEITHER DELIVERY OF THE DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE DISCLOSURE STATEMENT AND THE PLAN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.

THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR THE COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT AND THE PLAN ATTACHED HERETO SHOULD BE READ IN THEIR ENTIRETY PRIOR TO VOTING ON THE PLAN. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN, WHICH CONTROLS IN THE EVENT OF ANY INCONSISTENCY.

II. HISTORICAL BACKGROUND

A. The Debtors' Businesses

Organizational Structure & Background

UPH is a Delaware corporation headquartered in Austin, Texas. UPH is a privately held, non-operating holding company with investments in UniPoint Holdings and Pac-West, and indirect investments in subsidiaries of those two companies. UPH does not currently hold any authorizations to provide telecommunications services. UPH was formed to hold the stock of UniPoint Holdings, and its subsidiaries, Peering Partners, and nWire. UPH then acquired the stock in Pac-West pursuant to a Merger Agreement dated September 7, 2011. As a result of these various transactions and the Pac-West Merger Agreement, UPH is now the holding company for UniPoint Holdings and Pac-West. All other Debtors are subsidiaries of either UniPoint Holdings or Pac-West.

UniPoint Holdings is a Delaware corporation. Until the Debtors' assets were sold during the Bankruptcy Cases, UniPoint Holdings provided enhanced product and service offerings, primarily in the wholesale arena. Products and services included the following: business and residential communications services; IP peering; unbundled VoIP network elements; direct Internet access; virtual private networks; virtual network elements; origination; termination; toll-free; and other cloud-based services. UniPoint Holdings was formed in 2001 to acquire the assets of PointOne Communications, Inc. and its various subsidiaries out of the chapter 11 reorganization case, *In re PointOne Communications, Inc.* in the United States Bankruptcy Court for the Western District of Texas, Case No. 01-12978-FRM.

Pac-West is a California corporation. Pac-West provided advanced telecommunications and data services, and offered origination, termination, managed modem, co-location, database, and transport services. Pac-West is a wholly-owned subsidiary of PWAC, which is a publicly-traded non-Debtor California corporation with its principal business office located in Stockton, California. Pac-West also has two wholly-owned subsidiaries that provide telecommunications services outside of California: Pac-West Telecom of Virginia, Inc., a non-Debtor, which provides local exchange and interexchange services in Virginia, and Tex-Link, which, until the sale, provided local and interexchange services within Texas. Until the sale, Pac-West held a certificate of public convenience and necessity (CPCN), authorizing the provision of facilities-based and resold local exchange services and interexchange services in California. Pac-West was a certified non-dominant carrier authorized to provide telecommunications services in the following states in addition to California: Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode

Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. Pac-West was also certified as a competitive carrier in the District of Columbia.

Peering Partners is a Texas limited liability company. Peering Partners is qualified to do business in the State of Nevada. Peering Partners was formed for the purposes of acquiring the carrier services division of CommPartners Holding Corporation (“CommPartners”) that provides wholesale origination and termination services to other carriers throughout the United States. Until the sale, Peering Partners had contracts with enhanced service providers (“ESPs”), who generate IP-based traffic, to have the traffic carried across Peering Partners’ network, convert the traffic to TDM and hand it off to the terminating carrier. Peering Partners operated in a highly competitive and price-sensitive segment.

nWire is a Texas limited liability company. nWire is a facilities-based CLEC certified to provide services in Texas, Arkansas, and Oklahoma.

UniPoint Enhanced is a Texas corporation that, until the sale, bought and sold unbundled network communications elements.

Tex-Link is a telecommunications company that provided customized voice and data services to small-and medium-sized businesses through a facilities-based local exchange and inter-exchange network.

Financial

Following the merger with PacWest, the Debtors struggled to retire overhang debt predating the merger. In addition, carrier services and other wholesale services are subject to increasing downward price pressures that will only increase given recent regulatory pronouncements. In addition, the Ninth Circuit recently reversed the ruling of the California Public Utilities Commission concerning certain CLEC-to-CLEC state access tariff charges that Pac-West had been awarded from Comcast Phone of California and other California CLECs.¹ This reversal will also potentially affect access tariffs collected in other states. Economically, this ruling means that access tariffs paid to Pac-West five to ten years ago will now have to be refunded to various sister CLECs. Further, although the CLECs are owed the refund, those same CLECs and various affiliates owe the Debtors a roughly equal amount, but refuse to offset these sums and, as of the Petition Date, were threatening disconnection of services to the Debtors or other collection remedies.

To avoid the loss of any of its network facilities or functionality, the Debtors initiated these Bankruptcy Cases to maximize the value of their Estates for the benefit of all creditors, to provide a forum for resolution of the offsetting accounts, and to treat each of the Debtors’ similarly situated creditors *pari passu*.

The Debtors’ primary secured creditor is Hercules Technology II, L.P. (“Hercules”) with respect to that certain Loan and Security Agreement dated as of April 12, 2010, as amended and restated from time to time (the “Loan Agreement”), in the principal amount of \$10,518,378.34. The Debtors’ Schedules reflect that, as of the Petition Date, the Debtors had total assets of

¹ AT&T Communications of California, Inc. v. Pac-West Telecomm, Inc., 651 F.3d 980 (9th Cir. 2011).

approximately \$27 million, and total liabilities of approximately \$19 million. As of the Petition Date, the Debtors employed approximately 50 people.

III. THE BANKRUPTCY CASES

A. General

On March 28, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Western District of Texas, Austin Division (the “Bankruptcy Court”). As of the Petition Date, the Debtors’ primary headquarters were located in Austin, Travis County, Texas.

B. The Debtors’ Schedules and Bar Date

The Debtors have filed their Schedules of Assets and Liabilities with the Bankruptcy Court. In the aggregate, the Debtors’ scheduled pre-petition unsecured Claims total approximately \$8,563,743.75. The Debtors’ Scheduled Secured Claims total approximately \$11,142,062.17. In addition to Claims Scheduled by the Debtors, Proofs of Claim have been filed against the Debtors in the aggregate amount of \$87 million. The Liquidating Trustee will examine all of the filed Claims. Upon completion of its evaluation, it is expected that objections to certain Claims, including scheduled Claims, will be filed and that the total aggregate amount of Allowed General Unsecured Claims will be substantially reduced to approximately \$6 million.

C. Cash Collateral Authorization

As a result of the Debtors’ depleted financial condition, the Debtors required the uninterrupted use of Hercules’s cash collateral to avoid irreparable harm to the Debtors’ Estates. Simultaneously with filing the Bankruptcy Cases, the Debtors requested authority to use Hercules’s cash collateral. The Debtors requested such authority to fund the operation of their businesses in the ordinary course during the Bankruptcy Cases. On April 17, 2013, the Bankruptcy Court entered the Final Cash Collateral Order, which authorized the Debtors’ to use Hercules’s cash collateral on a final basis during the Bankruptcy Cases in accordance with a budget approved by the Court. The Debtors’ ability to use Hercules’s cash collateral allowed the Debtors to meet their payroll obligations and salaries, to pay operating expenses, general and administrative operating expenses, and other essential costs and expenses during the Bankruptcy Cases. The Debtors’ failure to timely pay such items would have resulted in immediate and irreparable harm to the Debtors’ Estates.

D. Appointment of the Committee

On April 15, 2013, the U.S. Trustee appointed an Official Committee of Unsecured Creditors of the Debtors consisting of: Samsara Communications, Inc.; AOL, Inc.; Genband US LLC; One Communications Corp./Earth Link, Inc.; and Alpheus Communications LLC. On April 18, 2013, the U.S. Trustee appointed two additional members to the Committee: Pacific

Bell Telephone d/b/a AT&T California and Cogent Communications.² No other official committees have been appointed or designated in the Bankruptcy Cases.

E. Retention of Professionals

The Debtors obtained approval from the Bankruptcy Court to retain Professionals pursuant to Section 327 of the Bankruptcy Code. The Debtors retained the law firm of Jackson Walker, L.L.P. as bankruptcy counsel for the Debtors in the Bankruptcy Cases. The Debtors also obtained approval to retain (i) Tamarack Associates, Inc. as financial advisors, (ii) the Brown Law Firm as special counsel, and (iii) Q Advisors, LLC as investment banker. In addition, the Committee retained Kelley Drye & Warren LLP as its bankruptcy counsel and QSI Consulting, Inc. as its financial advisor with respect to certain telecommunications issues in these cases.

F. The TNCI Sale

As referenced above, the Debtors retained Q Advisors as their investment banker. The Debtors retained Q Advisors to market the Debtors' businesses and Assets for sale in the Bankruptcy Cases. To facilitate a sale, Q Advisors, among other things, prepared information materials, created an online data room and solicited interest from potential strategic and financial buyers for the Debtors' Assets.

On June 20, 2013, the Debtors filed a motion to approve procedures to solicit bids to sell a substantial portion of their Assets pursuant to an auction (the "Bid Procedures Motion"). The Court entered an order approving the Bid Procedures Motion on June 28, 2013 (the "Bid Procedures Order"). In addition to granting the Debtors authority to solicit bids and conduct an auction sale of their assets pursuant to section 363 of the Bankruptcy Code, the Bid Procedures Order also authorized the Debtors to select a "stalking horse bidder" and to grant certain protections to such bidder upon consultation with Hercules and the Committee. Among other protections, the Debtors were authorized to provide the stalking horse with the right to a "breakup fee" in the event the stalking horse was not the prevailing bidder at auction.

The Debtors received three (3) qualifying bids for their Assets under the Bid Procedures Order. After extensive consultation and negotiation among the Debtors, Hercules and the Committee, the Debtors selected a bid submitted by TNCI (the "TNCI Bid") to serve as the stalking horse bid for the auction. The TNCI Bid included, among other things, an agreement to purchase a substantial portion of the Debtors' assets for \$9,750,000 plus certain assumed liabilities.

The Debtors held an auction on July 10, 2013. Besides TNCI, one other bidder, Onvoy, Inc. ("Onvoy"), appeared at the auction. Although it appeared at the auction, Onvoy ultimately declined to 'top' the TNCI Bid, and the Debtors proceeded to seek approval of a sale to TNCI (the "TNCI Sale") on the terms of the TNCI Bid.

On July 23, 2013, the Court entered an order (the "TNCI Sale Order") authorizing the Debtors to consummate the TNCI Sale, subject to the further litigation and/or liquidation of cure

² Alpheus Communications LLC and Pacific Bell Telephone d/b/a AT&T California have since resigned from the Committee.

amounts required to be paid to various AT&T and Qwest entities to facilitate the assumption and assignment of certain key “essential contracts” (the “Essential Contracts”) to TNCI.³ Each of the counterparties to these contracts disputed the cure amount the Debtors proposed to pay to assume and assign their contracts to TNCI and contended the amount required to pay was substantially higher (the “Essential Contract Cure Disputes”).

After the TNCI Sale Order was entered, the Essential Contract counterparties (i) entered confidential agreements with TNCI to settle the cure amount payable for their contracts, and (ii) entered stipulations with the Debtors and TNCI to implement these settlements. The stipulations provide for the mutual release of claims by and against the contract counterparty and the Debtors as of the Initial Closing Date of the TNCI Sale.

The Initial Closing of the TNCI Sale occurred on September 25, 2013.⁴ At the Initial Closing, the Debtors received \$7,800,000 million (or 80%) of the TNCI Purchase Price (the “Initial Sale Proceeds”). Pursuant to the Final Cash Collateral Order and the TNCI Sale Order, Hercules received \$7,396,335 million from the Initial Sale Proceeds, which amount was applied to reduce the Hercules Secured Claim. The remaining 20% of the TNCI Purchase Price in the amount of \$1,950,000 (the “Initial Closing Escrow Amount”) was placed in escrow for release to Hercules as additional assets are transferred to TNCI.

Subsequently, a dispute ensued among the Debtors, TNCI, and Hercules regarding the working capital adjustment in the TNCI APA. Specifically, TNCI contended that under the working capital formula in the TNCI APA, TNCI was entitled to receive the full amount of the Initial Closing Escrow Amount. The Debtors, Committee and Hercules vigorously disputed TNCI’s position. Following hard-fought negotiations and a lengthy mediation with Former Bankruptcy Judge Clark as mediator, the Debtors, TNCI, and Hercules reached a settlement of the working capital dispute under which (i) Hercules received an additional \$1 million in sale proceeds⁵, and (ii) TNCI received \$950,000 plus assignment of an interconnection agreement between nWire and AT&T. The Court approved the settlement on January 27, 2014, upon the entry of the Order Authorizing and Approving Settlement of Working Capital Dispute Pursuant to Fed. R. Bankr. Pro. 9019 [Dckt. 713].

The Final Closing of the TNCI Sale occurred on January 31, 2014.

G. The Committee-Hercules Settlement

Throughout the TNCI Sale process, the Committee informally raised numerous objections to the Debtors and Hercules regarding the TNCI Bid, the designation of TNCI as a stalking horse and the consequences for the Estates if the Debtors’ Assets were sold on terms that would set the Estates up for administrative insolvency (*i.e.* unable to satisfy the costs of administering the Bankruptcy Cases in full), with no prospect for a meaningful recovery by

³ Pursuant to Section 365 of the Bankruptcy Code, a debtor is required to cure all monetary defaults before it can assume an executory contract and assign it to a third party.

⁴ The TNCI Sale involved multiple closing dates to allow for the transfer of the purchased Assets to TNCI on a rolling basis as various State and regulatory approvals required to transfer various Assets are obtained.

⁵ As of the date of this Disclosure Statement, the unpaid amount of the Hercules Secured Claim is not less than approximately \$1.9 million, plus accrued, interest, fees and costs.

General Unsecured Creditors. The Committee was also very concerned that there be a mechanism and resources available after the TNCI Sale closed to pursue Causes of Action for the benefit of creditors and otherwise wind down the Debtors' Estates pursuant to a confirmable liquidating plan.

To address the Committee's concerns and objections to the TNCI Sale, the Committee and Hercules engaged in extensive, hard-fought and arms-length negotiations over, among other things, (i) the designation of TNCI as a stalking horse, (ii) the TNCI Sale, and (iii) the need for these Bankruptcy Cases to remain administratively solvent.

The Committee and Hercules ultimately reached an agreement (the "Committee-Hercules Settlement") that resolved the Committee's objections to the TNCI Sale in exchange for concessions by Hercules with respect to the liquidation of the Debtors' remaining Assets. Among other things, the Committee-Hercules Settlement includes an agreement to share in the proceeds of certain Causes of Action consisting of Trust A/R Assets on which Hercules holds a senior Lien and first right of recovery. The terms of the Committee-Hercules Settlement are incorporated into the Plan and the Liquidating Trust Agreement and are described in further detail below.

The key components of the Committee-Hercules Settlement are:

1. Sharing of Net Proceeds of Trust A/R Assets. As discussed throughout this Disclosure Statement, the Trust A/R Assets, which are actions to recover and collect accounts receivables due to the Debtors under various theories of liability ("Receivables Actions") are the primary source of potential recovery for creditors. Hercules has a first-priority Lien on the proceeds of the Trust A/R Assets. Under the Committee-Hercules Settlement, Hercules will (i) waive its right to receive payment of the first \$100,000 of Net Proceeds of Trust A/R Assets, and (ii) agree to share the remaining Net Proceeds of Trust A/R Assets with the Estates on a 75-25 percent basis, with Hercules receiving 75 percent of such remaining Net Proceeds of Trust A/R Assets on account of the Hercules Secured Claim until the Hercules Secured Claim is paid in full. Hercules's agreement to share the Net Proceeds of Trust A/R Assets, which are Encumbered Trust Assets, is the primary basis on which the Debtors are able to propose and seek confirmation of the Plan.
2. Hercules Secured Claim. The Hercules Secured Claim will be Allowed in the amount of \$10,531,673.68 plus all accrued interest, fees, costs and charges as of the Petition Date. Hercules will waive its right to accrue post-petition interest on the Hercules Secured Claim at the default rate. If the Hercules Secured Claim is fully secured (*i.e.* the amount of the Hercules Secured claim equals or is less than the value of Hercules's collateral), Hercules's agreement to waive default rate interest reduces the Hercules Secured Claim by approximately \$500,000.
3. Hercules Deficiency Claim. Hercules will have an Allowed General Unsecured Claim (*i.e.* the Hercules Deficiency Claim) for any portion of the Hercules Secured Claim that remains unpaid after all of Hercules's collateral is liquidated and the net proceeds of such collateral are distributed to Hercules in accordance

with the Plan. In connection with the Hercules Deficiency Claim, the Liquidating Trustee will establish the Hercules Deficiency Claim Reserve.

4. Professional Carve-Out. Notwithstanding its Lien on the Initial Sale Proceeds, on the Initial Closing Date, Hercules funded the unpaid portion of budgeted amounts for Professionals under the Final Cash Collateral Order.
5. Deferred Payment of Professional Fee Claims. Estate Professionals will accept deferred payment of unpaid Allowed Fee Claims and will accept payment of such unpaid Claims (which the Estates otherwise would be required to pay in full on the later of the Effective Date of the Plan or the date such claim is Allowed) on a first-priority/first-out basis from (i) the Estate Portion of Net Proceeds of Trust A/R Assets, and (ii) Net Proceeds of Unencumbered Trust Assets.
6. Release. In exchange for its material concessions and compromises under the Committee-Hercules Settlement, Hercules will receive a third-party release under the Plan to the greatest extent permitted under applicable law, provided, however, that Hercules will not be released from the Estates' right to seek to recharacterize any post-petition interest paid to Hercules as payment of principal if the Hercules Secured Claim is found to be undersecured. Hercules's right to challenge any claim for recharacterization is also reserved. **Creditors should review Section XVII below for further discussion of the proposed releases and exculpation provisions of the Plan.**

The Debtors believe the Committee-Hercules Settlement, including the material compromises made by the Committee, Hercules and the Estates' Professionals, facilitated the Debtors' ability (i) to obtain approval of the TNCI Sale, and (ii) propose and seek confirmation of the Plan, which the Debtors believe maximizes the potential for recovery by creditors.

H. Patent Sale

On October 24, 2013, the Debtors filed a motion to sell certain patents that the Debtors owned jointly with Michael Holloway, the Debtors' president, and Sam Shiffman, a former vice-president of the Debtors. On November 20, 2013, the Court granted the Debtors' motion. The Debtors received \$125,000 on account of this sale. This amount was paid to Hercules on account of the Hercules Secured Claim.

I. Receivables Litigation

During the Bankruptcy Cases, the Debtors have filed approximately seventeen (17) Receivables Actions. The Receivables Actions primarily consist of claims to recover amounts the Debtors believe are due to them from other telecommunications providers for "inter-carrier" services one or more of the Debtors provided to the defendants. The Debtors believe they will file additional Receivables Actions before the Confirmation Hearing, and the Liquidating Trustee may pursue additional Receivables Actions after the Plan becomes effective.

The aggregate amount demanded in the Receivables Actions currently on file is approximately \$26 million. Recoveries from the Receivables Actions represent a primary source of recovery for Creditors under the Plan.

The Receivables Actions are discussed in further detail below in Section XIX of this Disclosure Statement. Creditors are encouraged to review Section XIX carefully, including the discussion therein of defenses asserted in the Receivables Actions and the risks and uncertainty attendant to any litigation.

J. Tax Motion/Litigation

On September 11, 2013, the Debtors filed their Motion Pursuant to 11 U.S.C. § 505(A) for the Determination of Debtors' Tax Liability ("505 Motion") [Dckt. No. 499]. In the 505 Motion, the Debtors endeavored to address various tax-related issues, including addressing potential ramifications of an audit from the State Board of Equalization of California, and to reduce the amounts owed to taxing authorities in both California and Texas. As a result of the Debtors' 505 Motion, the amounts owed by the Debtors to San Joaquin County Tax Collector were reduced, pursuant to the Order Determining Debtors' Tax Liability Due to San Joaquin County Tax Collector Pursuant to 11 U.S.C. § 505 [Dckt. No. 556], from the amount claimed on the proof of claim of approximately \$118,000.00, to approximately \$27,000. With respect to amounts owed to Los Angeles County Treasurer and Tax Collector ("LA County"), the Debtors and LA County were able to resolve the 505 Motion and entered into the Agreed Order Determining Debtors' Tax Liability Due to the Los Angeles County Treasurer and Tax Collector [Dckt. No. 569], entered by the Court on October 21, 2013.

With respect to taxing authorities in Texas, the Debtors have initiated a proceeding under Texas state law to attempt to reduce taxes owed to Harris County, Texas, based on an appraisal of the Debtors' property. To allow for processing of such proceeding, the Debtors' 505 Motion has been continued, and is currently set for hearing before the Bankruptcy Court on April 10, 2014, at 1:30 p.m. (CST).

K. Miscellaneous Other Matters

Other orders entered by the Bankruptcy Court during the Bankruptcy Cases include orders granting (a) the Debtors' Motion for Order Authorizing (1) the Payment of Pre-Petition Contract Amounts to Contract Labor; and (2) the Payment of Certain Pre-Petition Employee Benefits; (b) Motion to Establish Monthly Fee Reimbursement Procedures, and (c) Debtors' Motion for Joint Administration. The Bankruptcy Court has also entered various orders concerning the Debtors' provision of payment assurance and authorization for setoff of certain provider contracts.

IV. SUMMARY OF THE PLAN

Generally, the Plan will implement the Committee-Hercules Settlement by establishing a Liquidating Trust to be funded/vested with all of the Debtors' Assets as of the Effective Date of the Plan. The Liquidating Trust will be administered by the Liquidating Trustee pursuant to the terms of the Plan and the Liquidating Trust Agreement. Among other things, the Liquidating Trustee will liquidate the Assets, reconcile outstanding Claims, and make Distributions to

holders of Allowed Claims pursuant to the terms of the Plan and the Liquidating Trust Agreement.

On the Effective Date of the Plan, all objections to Claims and all Causes of Action (including Receivables Actions and Avoidance Actions) will be preserved and prosecuted by the Liquidating Trustee. The Liquidating Trustee may object to the Allowance of Claims for which liability, in whole or in part, is Disputed for whatever reasons, even if Claims were not Scheduled by the Debtors as disputed, contingent or unliquidated. All objections to Claims must be filed within one year following the Effective Date of the Plan, unless such date is extended by the Bankruptcy Court on motion by the Liquidating Trustee.

The Plan provides that certain of the Debtors' Estates will be substantively consolidated for purposes of allowance and Distributions on account of Allowed Claims. Please see Article [XI(C)] of this Disclosure Statement for a more detailed description of the reasons and legal justifications for substantively consolidating the Estates.

Additionally, each unexpired executory contract and unexpired lease to which the Debtors are a party that has not expired by its own terms on or before the Effective Date, shall be deemed rejected unless it is assumed under the Plan, identified as not being rejected in the Plan Supplement or is the subject of a motion to assume that is pending on the Effective Date.

V. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

A. General Provisions and Classifications

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including without limitation, voting, confirmation and Distributions under the Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that the remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled before the Effective Date.

To the extent that a creditor or an Equity Interest Holder has more than one Claim or Interest in a single Class, such Claims or Interests shall be aggregated and treated as a single Claim or as a single Interest. To the extent that a Creditor and/or Interest Holder has Claims and/or Interests in different Classes, such Claims and/or Interests shall not be aggregated. Notwithstanding the foregoing, Creditors who have filed duplicate Claims for the same debt against the Debtors shall be entitled to the allowance of only one Claim in the Debtors' Bankruptcy Cases.

B. Classification

Section 1123(a) of the Bankruptcy Code provides that Administrative Claims and Priority Tax Claims are not subject to classification under the Plan and are not entitled to vote to accept or reject the Plan. The Claims against, and Equity Interests in, the Debtors that are subject to

classification are classified in the Classes described below. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest fits within the description of such Class, and is in such other and different Class or Classes to the extent that the remainder of such Claim or Equity Interest fits within the description of such other Class or Classes. Any Holder of a Claim or Equity Interest that disputes the classification of Claims or Equity Interests or impairment must file a motion with the Bankruptcy Court, with notice to the Debtors, the Committee and Hercules, and have such motion heard before the Voting Deadline. The Plan will only provide Distributions to Allowed Claims; and, except for the Hercules Secured Claim and statutory fees due to the U.S. Trustee, nothing in the Plan provides for the Allowance of any Claim. Allowed Claims and Equity Interests are classified as follows:

Administrative Claims (unclassified)

Priority Tax Claims (unclassified)

Class 1: Priority Non-Tax Claims

Class 2: Hercules Secured Claim

Class 3: Other Secured Claims

Class 4: General Unsecured Claims

Class 5: Subordinated Claims

Class 6: Intercompany Claims

Class 7: Equity Interests

C. Impaired Classes of Claims and Equity Interests

Claims in Classes 2, 4, and 5 are impaired under the Plan and entitled to receive Distributions. Holders of Claims in Classes 2, 4, and 5 are entitled to vote to accept or reject the Plan.

Claims in Classes 6 and 7 are impaired and are not entitled to receive Distributions. Holders of Claims in Classes 6 and 7 are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.

D. Impairment and Classification Controversies

As set forth above, if a controversy arises as to whether any Claim or Equity Interest or any Class of Claims or Class of Equity Interests is impaired under the Plan or is classified incorrectly, the Bankruptcy Court shall, upon notice and a hearing, determine such controversy on or before the Voting Deadline.

E. Class Acceptance Requirement

A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds in amount and more than one-half in number of the Holders of Allowed Claims in such Class that have voted on the Plan.

F. Cramdown

If any Class of Claims or Equity Interests fails to accept the Plan in accordance with § 1126(c) of the Bankruptcy Code, the Bankruptcy Court may still confirm the Plan in accordance with § 1129(b) of the Bankruptcy Code. The Debtors will seek confirmation of the Plan pursuant to § 1129(b) with respect to any non-accepting Class.

G. Elimination of Classes

Any impaired Class that is not occupied as of the date of the Confirmation Hearing shall be deemed deleted from the Plan for purposes of voting on acceptance or rejection of the Plan and determining whether the Plan has been accepted by such class pursuant to 11 U.S.C. § 1129.

**VI. PROVISIONS FOR TREATMENT OF CLAIMS AND
EQUITY INTERESTS UNDER THE PLAN**

The following summary of claims is derived from the Debtors' Schedules and a review of the claims filed in the Bankruptcy Cases. THE EXACT AMOUNT OF EACH CLAIM FOR PURPOSES OF THIS PLAN WILL BE AS STATED IN THE DEBTORS' SCHEDULES EXCEPT THAT A PROOF OF CLAIM FILED BY A CREDITOR IS PRIMA FACIE EVIDENCE OF THE AMOUNT OF THE CLAIM, UNLESS AN OBJECTION TO THE PROOF OF CLAIM IS FILED, IN WHICH CASE THE COURT WILL DETERMINE THE ALLOWED AMOUNT OF A PARTICULAR CLAIM. THOSE CLAIMS WHICH ARE LISTED AS DISPUTED IN THE DEBTORS' SCHEDULES OR ARE OBJECTED TO BEFORE THE CLAIMS OBJECTION DEADLINE WILL BE SETTLED BY AGREEMENT OF THE PARTIES OR FIXED BY THE COURT BEFORE DISTRIBUTION UNDER THE PLAN OCCURS TO THAT CREDITOR. PROCEDURES GOVERNING DISPUTED CLAIMS ARE DESCRIBED LATER IN THIS DISCLOSURE STATEMENT.

EACH CREDITOR WILL BE PAID IN THE MANNER SET FORTH BELOW WHICH APPLIES TO THAT PARTICULAR CREDITOR AND ONLY AS TO THE ALLOWED AMOUNT OF THAT CREDITOR'S CLAIM IN THAT CLASS.

Claims against and Equity Interests in the Debtors shall be treated under the Plan as follows:

A. Unclassified Claims:

1. Administrative Claims:

- a. **General:** Subject to the Initial and Supplemental Administrative Expense Bar Dates, and except for Professional Fee Claims, unless a Holder of an Allowed Administrative Claim agrees to different treatment, each Holder of an Allowed Administrative Claim will receive Cash equal to the unpaid portion of such Allowed Administrative Claim as soon as reasonably practicable after the later of the Effective Date and the date the Claim becomes Allowed.
- b. **Professional Fee Claims:** Holders of Allowed Professional Fee Claims shall receive (i) the amount allocated to such Professional under the Professional Fee Reserve on or as soon as reasonably practicable after the

later of the Effective Date and the date on which the Professional Fee Claim becomes Allowed, and (ii) such Professional's Pro Rata share of (a) the Estate Portion of Net Proceeds of Trust A/R Assets, and (b) the Net Proceeds of Unencumbered Trust Assets, to each of which Professionals have a first priority right of recovery (after payment of any U.S. Trustee Fees then due and outstanding) to satisfy Allowed Professional Fee Claims.

- c. **Payment of Statutory Fees:** All fees payable pursuant to 28 U.S.C. § 1930 shall be Allowed and shall be paid in Cash when due.

2. **Bar Date for Administrative Claims:**

- a. **General Provisions:** On December 4, 2013, the Bankruptcy Court entered the Order Setting Deadline for Requests for Payment of Certain Administrative Expenses, and Approving Form, Manner, and Sufficiency of Notice Thereof ("Administrative Bar Claim Order") [Dckt. No. 637], pursuant to which February 4, 2014, was set as the Initial Administrative Expense Bar Date for asserting any claim against the Debtors for the "actual, necessary costs and expenses of preserving the estate" pursuant to 11 U.S.C. § 503(b) arising after March 28, 2013, and prior to September 30, 2013.

Except as otherwise provided below for Professionals, Administrative Expense Requests for Administrative Claims arising on or after September 30, 2013 must be filed no later than forty-five (45) days after the Effective Date (i.e. the Supplemental Administrative Expense Bar Date). Holders of Administrative Claims (including, without limitation, Holders of any Claims for federal, state or local taxes that such Holder believes constitutes an Administrative Claim) that are required to file Administrative Expense Requests and do not file an Administrative Expense Request by the applicable Administrative Expense Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Estates, the Liquidating Trust or any of their respective property. Administrative Expense Requests included within a Proof of Claim will be of no force and effect, and are Disallowed in their entirety unless an Administrative Expense Request with respect to such Administrative Claim is subsequently filed by the applicable Administrative Expense Bar Date.

- b. **Professionals:** All Professionals requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any compensation requested by any professional or any other entity for making a substantial contribution in the Debtors' Bankruptcy Cases) shall file and serve on the Liquidating Trustee and the U.S. Trustee an application for final

allowance of compensation and reimbursement of expenses no later than sixty (60) days after the Effective Date. Objections to any Professional application for compensation or reimbursement of expenses must be filed and served on the Liquidating Trustee, the U.S. Trustee and the Professional(s) to whose application(s) the objections are addressed no later than seventy-five (75) days after the Effective Date. Any fees of Professional(s) and reimbursement or expenses incurred by the Debtors or the Committee subsequent to the Effective Date may not be paid without application to the Bankruptcy Court. Holders of Allowed Professional Fee Claims shall receive the treatment provided for such Claims in section 4.1.2 of the Plan.

3. Priority Tax Claims:

At the Liquidating Trustee’s option, Holders of Allowed Priority Tax Claims shall receive (i) 100% of the Allowed amount of such Claim on or as soon as reasonably practicable after the later of the Effective Date and the date the Claim becomes Allowed; (ii) 100% of the unpaid Allowed amount plus interest to be paid in Cash over a period not later than 5 years from the Petition Date; or (iii) such alternative treatment as leaves unaltered the legal, equitable, and contractual rights of the Holders of such Claims.

As of the date of this Disclosure Statement, the Claim Register reflects aggregate asserted Priority Tax Claims of \$987,243.87. The Debtors or the Liquidating Trustee will review, reconcile and file objections to Priority Tax Claims. The Debtors believe that, after prosecution of objections, the aggregate amount of Allowed Priority Tax Claims will be materially reduced. Certain ad valorem tax claims will be paid as set forth in the Asset Purchase Agreement.

4. Impairment & Voting:

Administrative Claims (including Professional Fee Claims) and Priority Tax Claims are not subject to classification under the Bankruptcy Code, and Holders of Administrative Claims and Priority Tax Claims are not entitled to vote to accept or reject the Plan.

B. Treatment of Classified Claims and Interests

Class of Claims/Interests	Estimated Aggregate Amount of Filed and Scheduled Claims in Class:	Estimated Projected Recovery:
Priority Non-Tax Claims	<p style="text-align: center;">\$125,415.18 filed \$4,000.00 scheduled only Total: \$129,415.18 Estimated Allowed:</p>	100%

	\$40,000.00	
Hercules Secured Claim	<p style="text-align: center;">\$10,531,673.68 (as of the Petition Date, exclusive of postpetition interest, fees or costs)</p> <p style="text-align: center;">Approximately \$1,900,000, plus fees, cost and interest as of the date of this Disclosure Statement</p>	100%
Other Secured Claims	<p style="text-align: center;">\$190,461.49, subject to objection and reduction</p> <p style="text-align: center;">Estimated Allowed: \$0.00</p>	100%
General Unsecured Claims	<p style="text-align: center;">\$65,966,602.71 filed \$2,206,280.14 scheduled only</p> <p style="text-align: center;">Total: \$68,172,882.85</p> <p style="text-align: center;">Estimated Allowed: \$8,000,000</p>	72.9%⁶
Subordinated Claims	\$158,738.00	\$0
Intercompany Claims	N/A	\$0
Equity Interests	N/A	\$0

Class 1: Priority Non-Tax Claims

(A) *Classification:* Class 1 consists of Priority Non-Tax Claims against the Operating Debtors.

(B) *Treatment:* Unless the Holder of a Priority Non-Tax Claim agrees to different treatment, each Holder of an Allowed Priority Non-Tax Claim shall receive 100% of its Allowed Priority Non-Tax Claim on or as soon as reasonably practicable after the later of the Effective Date and the date the Priority Non-Tax Claim becomes Allowed.

⁶ As discussed throughout this Disclosure Statement, estimated recoveries for Class 4 Creditors (General Unsecured Claims) are based upon litigation recoveries, including net recoveries from the Receivables Actions and Avoidance Actions.

(C) *Voting:* Class 1 is unimpaired, and Class 1 creditors are conclusively deemed to have accepted the Plan. Class 1 Creditors are not entitled to vote to accept or reject the Plan.

(D) *Total Claims:* The estimated total of filed and Scheduled Class 1 Claims as of the date of this Disclosure Statement is **\$388,315.99**. The Debtors believe a substantial portion, if not all, of these Claims (i) have been satisfied, (ii) were not timely filed, and/or (iii) are not properly entitled to the priority status asserted in the relevant Proof of Claim, and are, therefore, subject to objection by the Debtors, the Liquidating Trustee or other parties in interest. Of this total, \$158,738.37 represents late filed claims for unpaid employee personal time, which are included in Class 5 pursuant to 11 U.S.C. § 726.

Class 2: Hercules Secured Claim

(A) *Classification:* Class 2 consists of the Hercules Secured Claim.

(B) *Treatment:* In addition to the TNCI Sale Proceeds in the amount of \$8,396,335, and the proceeds from the sale of the Debtors' patents, which Hercules has already received on account of the Hercules Secured Claim, Hercules shall receive on account of the Hercules Secured Claim: (i) the Hercules Portion of Net Proceeds of Trust A/R Assets, and (ii) 100% of the Net Proceeds of Other Encumbered Trust Assets.

(C) *Voting:* Class 2 is impaired, and Hercules is entitled to vote as a Class 2 creditor to accept or reject the Plan.

(D) *Total Claims:* As of the Date of this Disclosure Statement, not less than \$1.9 million, plus interest, fees and costs remains outstanding on account of the Hercules Secured Claim.

Class 3: Other Secured Claims

(A) *Classification:* Class 3 consists of Other Secured Claims.

(B) *Treatment:* Unless the Holder of an Other Secured Claim agrees to different treatment, each Holder of an Other Secured Claim shall receive, at the Liquidating Trustee's option, (i) 100% of the unpaid Allowed Amount of such Other Secured Claim on or as soon as practicable after the later of the Effective Date and the date on which the Claim becomes Allowed, or (ii) abandonment of the relevant unencumbered collateral, if any, in whole or in part, to such Holder.

(C) *Voting:* Class 3 is unimpaired, and Class 3 Creditors are conclusively deemed to have accepted the Plan. Class 3 Creditors are not entitled to vote to accept or reject the Plan.

(D) *Total Claims:* The estimated allowable total of filed and Scheduled Class 3 Claims as of the date of this Disclosure Statement is \$0.00.

Class 4: General Unsecured Claims

(A) *Classification:* Class 4 consists of General Unsecured Claims, including for the avoidance of doubt, the Hercules Deficiency Claim, or other deficiency claim arising from the insufficiency of a creditor's collateral to satisfy the claims.

(B) *Treatment:* Each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of Distributable General Unsecured Cash.⁷

(C) *Voting:* Class 4 is impaired, and Class 4 creditors are entitled to vote to accept or reject the Plan.

(D) *Total Claims:* The estimated total of filed and Scheduled Class 4 Claims as of the date of this Disclosure Statement is \$68,035,488.16. As reflected earlier in this Disclosure Statement, the Debtors believe the aggregate amount of Allowed General Unsecured Claim will be materially reduced to approximately \$8 million by the prosecution of claim objections by the Debtors or the Liquidating Trustee (as applicable).

Class 5: Subordinated Claims

(A) *Classification:* Class 5 consists of Subordinated Claims.

(B) *Treatment:* Holders of Subordinated Claims shall not receive or retain any property or interest in property on account of such Claims unless and until all Allowed Class 4 Claims have been paid in full with interest. If all Allowed Class 4 Claims and Liquidation Expenses are paid in full, then any distributable Cash in the Liquidating Trust shall be distributed Pro Rata to Holders of Allowed Subordinated Claims.

(C) *Voting:* Class 5 is impaired and Holders of Class 5 Claims (if any) are entitled to vote to accept or reject the Plan.

(D) *Total Claims:* The estimated allowable total of Class 5 Claims as of the date of this Disclosure Statement is \$158,730.00.

Class 6: Intercompany Claims

(A) *Classification:* Class 6 consists of Intercompany Claims.

(B) *Treatment:* On the Effective Date, Intercompany Claims shall be Disallowed and expunged in their entirety and with prejudice. Holders of Intercompany Claims shall not receive or retain any property on account of their Claims under the Plan.

(C) *Voting:* Class 6 is impaired. Class 6 creditors are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.

⁷ Under the Plan, "Distributable General Unsecured Cash" means unencumbered or unrestricted Cash (if any) held by the Liquidating Trust after satisfaction of unpaid Allowed Professional Fee Claims, unpaid statutory fees due to the U.S. Trustee, unpaid, outstanding Allowed Priority Claims (including Allowed Priority Tax Claims) and Liquidating Expenses. "Distributable General Unsecured Cash" does not include any Cash proceeds of Other Encumbered Trust Assets or the Hercules Portion of Net Proceeds of Trust A/R Assets.

Class 7: Equity Interests

- (A) *Classification:* Class 7 consists of Equity Interests.
- (B) *Treatment:* Holders of Equity Interests shall not receive or retain any property or interest in property on account of such Claims unless and until all Allowed Class 5 Claims have been paid in full with interest. If all Allowed Class 5 Claims and Liquidation Expenses are paid in full, then any distributable Cash in the Liquidating Trust shall be distributed Pro Rata to Holders of Allowed Equity Interests.
- (C) *Voting:* Class 7 is impaired and Holders of Class 7 Equity Interests (if any) are entitled to vote to accept or reject the Plan.

VII. ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF IMPAIRED CLAIMS

A. Classes Entitled to Vote

Any creditor of the Debtors whose Claim is Impaired under the Plan is being solicited to vote, if either (i) its Claim has been scheduled by the Debtors and such Claim is not scheduled as Disputed, contingent or unliquidated, or (ii) it has filed a Proof of Claim or Interest on or before the Bar Date set by the Bankruptcy Court for such filings. Any Claim as to which an objection has been filed, and such objection is pending on the Voting Deadline, is not entitled to have its vote counted, unless the Bankruptcy Court temporarily allows the Claim upon motion by such creditor. If such a motion is filed and granted, such creditor will be allowed to vote in an amount that the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan. Any such motion must be heard and determined by the Bankruptcy Court prior to the Voting Deadline established by the Bankruptcy Court to confirm the Plan. In addition, a creditor's vote may be disregarded if the Bankruptcy Court determines that the creditor's acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code, or if the creditor's Ballot fails to satisfy the requirements of the Solicitation Procedures Order.

B. Presumed Acceptance/Rejection of Plan

Classes 1 and 3 are unimpaired Classes; Classes 2, 4, 5, 6 and 7 are impaired Classes. As unimpaired Classes, Classes 1 and 3 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 6 is deemed to have rejected the Plan. Any impaired Class that has a single member who does not vote to reject the Plan will be deemed to have accepted the Plan.

C. Non-Consensual Confirmation

If any impaired Class of Claims entitled to vote does not accept the Plan by the requisite statutory amounts as set forth herein, the Debtors reserve the right to amend the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both.

**VIII. PROVISIONS GOVERNING EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; REJECTION CLAIMS BAR DATE**

A. Executory Contracts and Unexpired Leases

The Plan constitutes a motion by the Debtors to reject, as of the Confirmation Date, all Executory Contracts (i) that the Debtors have not assumed and assigned or rejected with the approval of the Bankruptcy Court (whether as part of the TNCI Sale, the Plan, or otherwise), (ii) that the Debtors have not designated in the Plan Supplement as an Executory Contract they do not wish to reject, or (iii) that are not subject of a motion to assume the same pending as of the Effective Date. Entry of the Confirmation Order by the Bankruptcy Court will constitute approval of such rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code, except to the extent that the Debtors identify any Executory Contracts in the Plan Supplement that the Debtors do not intend to reject.

B. Bar to Rejection Damages

If the rejection of an Executory Contract results in damages to the other party or parties to such Executory Contract, a Claim for such damages, if not heretofore evidenced by a filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtors, the Estates, the Liquidating Trust or the Liquidating Trustee, their respective properties or their agents, successors or assigns, unless a Proof of Claim is filed with the Bankruptcy Court and served upon the Debtors or Liquidating Trustee (as applicable) and their counsel on or before thirty (30) days after the Confirmation Date or such later date as may be ordered by the Bankruptcy Court with respect to such Claim.

IX. PROVISIONS REGARDING DISTRIBUTIONS

A. Distribution Record Date

As of the close of business on the Distribution Record Date, the Claims Register will be deemed closed, and the Liquidating Trustee will have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. The Liquidating Trustee will be required to recognize and deal for all purposes under the Plan only with those record Holders identified on the Claims Register as of the close of business on the Distribution Record Date, to the extent applicable.

B. Distributions To Be Pro Rata Within Class

All Distributions constituting of a partial payment to a class of Allowed Claims will be made on a Pro Rata Share to the holders of Allowed Claims in such class.

C. Withholding and Reporting Requirements

In connection with Distributions, the Liquidating Trustee will comply with all withholding and reporting requirements imposed by any federal, state or local taxing authority. As a condition to the Holder of an Allowed Claim receiving any Distribution under the Plan, the Liquidating Trustee may require that the Holder provide such Holder's taxpayer identification

number and such other information as the Liquidating Trustee may deem necessary to comply with applicable tax reporting and withholding laws. The failure of a Holder to respond timely to a request by the Liquidating Trustee for tax withholding or reporting information will result in the Holder being treated as the Holder of an undeliverable or unclaimed Distribution, whose treatment is summarized below and provided under Sections 9.5 and 9.6 of the Plan.

D. Funding of Distributions

Except as otherwise provided in the Liquidating Trust Agreement, all Distributions to Holders of Allowed Claims will be made by the Liquidating Trustee and funded by Cash that the Liquidating Trustee, in its sole discretion, determines is available for Distributions to Holders of Allowed Claims in accordance with the Plan. Cash payments made pursuant to the Plan shall be in U.S. funds, by check, wire or other method as the Liquidating Trustee deems appropriate under the circumstances.

E. Delivery of Distributions

Subject to Bankruptcy Rule 9010 and the provisions of the Plan, Distributions to Holders of Allowed Claims shall be made at the address for such Holder set forth in the Schedules, unless superseded by the address set forth on such Holder's Proof of Claim, or in a written notice delivered to the Liquidating Trustee and its counsel, to the extent that such notice is provided at least ten (10) Business Days before the applicable Distribution Date, by such Holder (or at the last known address of such Holder if no Proof of Claim is filed and there is no address in the Schedules, and the Liquidating Trustee has not been notified in writing of the address). If any Distribution to any Holder is returned as undeliverable, the Liquidating Trustee may, but will not be required to, use reasonable efforts to determine the current address of such Holder, but no subsequent Distribution to any such Holder shall be made unless and until the Liquidating Trustee has determined the then current address of such Holder, at which time such Distribution will be made to such Holder without interest. The Liquidating Trustee will retain all amounts in respect of an undeliverable Distributions made by the Liquidating Trustee until such Distributions are claimed, subject to Section 9.6 of the Plan.

F. Unclaimed Distributions

If any Distribution is not claimed, or remains undeliverable under Section 9.5 of the Plan, by the Unclaimed Distribution Date applicable to such Distribution, the Distribution will be deemed unclaimed property under section 347(b) of the Bankruptcy Code, and such unclaimed Distribution(s) will be available for Distribution to other Holders of Allowed Claims as part of the next Distribution, in accordance with the terms of the Plan. The Holder of any Claim for which a Distribution is deemed unclaimed property under the Plan will not be entitled to receive any future Distributions and will be deemed to have relinquished all rights to any future Distributions and all such future Distributions will be available for Distribution to other Holders of Allowed Claims under the Plan.

G. Time Bar to Cash Payments

Distribution checks issued to Holders of Allowed Claims will be null and void if not negotiated within ninety (90) days after their date of issuance. Requests for reissuance of any

check shall be made in writing directly to the Liquidating Trustee by the Holder to which or to whom such check originally was issued. All such requests must be made promptly and in time for the check to be reissued and cashed before the Unclaimed Distribution Date applicable to such Distribution. Distributions in respect of voided checks will be treated as unclaimed distributions under the Plan.

H. Establishment and Administration of Disputed Claims Reserve

At the time of the first Distribution Date, the Liquidating Trustee will establish the Disputed Claims Reserve. A Distribution on account of an Allowed Claim that is held back by the Liquidating Trustee by agreement or to determine the extent of any mitigation shall be reserved for and paid in the same manner as a Disputed Claim. After a Disputed Claim is resolved, the Liquidating Trustee will no longer account for such Claim in the Disputed Claims Reserve and the amount attributable to the Disallowed portion of the Disputed Claim, if any, will be deemed to be Cash available for Pro Rata Distribution to Beneficiaries, in accordance with the Plan.

I. Establishment and Administration of Hercules Deficiency Claim Reserve

If the Liquidating Trustee makes any Distributions to Holders of Allowed Claims in Class 4 before all of the Encumbered Trust Assets are liquidated and the final amount of the Hercules Deficiency Claim is fixed, the Liquidating Trustee will simultaneously place in the Hercules Deficiency Claim Reserve an amount equal to the same percentage Distribution payable on account of the Hercules Deficiency Claim as of the applicable Distribution Date. The appropriate portion of the Hercules Deficiency Claim Reserve, based on the percentage Distributed on account of Allowed Claims in Class 4, will be released to Hercules when the final amount of the Hercules Deficiency Claim (if any) is fixed.

No costs or expenses of the Liquidating Trust nor any other deductions (other than to Hercules) will be made from the Hercules Deficiency Claim Reserve until the Hercules Deficiency Claim is paid in full.

Hercules and the Liquidating Trustee will work in good faith on a rolling basis to reconcile the Hercules Deficiency Claim and authorize the release of any excess funds in the Hercules Deficiency Claim Reserve. If Hercules and the Liquidating Trustee are not able to resolve any dispute regarding the amount of the Hercules Deficiency Claim or the administration of the Hercules Deficiency Claim Reserve, the Bankruptcy Court shall determine the dispute.

J. Other Provisions Regarding Hercules's Claims

Hercules will provide to the Liquidating Trustee copies of invoices for, or summaries of, any fees and costs Hercules asserts as part of the Hercules Secured Claim. If Hercules and the Liquidating Trustee are unable to resolve any dispute regarding the reasonableness of any such fees and expenses, the Bankruptcy Court shall determine the dispute.

The Liquidating Trustee will pay to Hercules (i) the Net Proceeds of Other Encumbered Assets, and (ii) the Hercules Portion of Net Proceeds of Trust A/R Assets as and when such recoveries are collected.

Until the Hercules Secured Claim and the Hercules Deficiency Claim (if any) are paid in full, the Liquidating Trustee will consult with Hercules regarding the liquidation of Trust Assets and report to Hercules as reasonably requested; provided, however, that the Liquidating Trustee will not be under any obligation to provide any confidential or privileged information to Hercules, unless Hercules and the Liquidating Trustee have executed appropriate forms of confidentiality, common interest/joint defense or other similar agreements reasonably required to protect all confidential/privileged information and to preserve all applicable privileges. Subject only to applicable discovery or procedural rules, the Liquidating Trustee will not be obligated to provide any information to Hercules regarding any matter in dispute (or potential dispute) between Hercules and the Liquidating Trust.

Notwithstanding anything to the contrary in the Plan, including the release provisions of Article XIV of the Plan, if, after all of the Encumbered Trust Assets are liquidated and the proceeds paid out in accordance with the Plan, the Hercules Secured Claim is determined to be undersecured (i.e. the amount of the Hercules Secured Claim exceeds the value of Hercules's collateral), the Liquidating Trustee will have the right to seek to recharacterize any and all postpetition interest payments made to Hercules as payment of principal outstanding on the Petition Date. Hercules will have the right to contest or seek to limit any such recharacterization.

K. Fractional Dollars

Notwithstanding any other provision of the Plan or the Liquidating Trust Agreement, the Liquidating Trustee will not be required to make Distributions of fractions of dollars, and whenever any Distribution of a fraction of a dollar may be called for, the actual Distribution may be rounded to the nearest whole dollar (up or down) with half dollars being rounded down.

L. De Minimis Distributions

The Liquidating Trustee will have no obligation to make a Distribution if the amount to be distributed to a Holder of an Allowed Claim would be less than \$50.00 in the aggregate.

M. No Distributions Pending Allowance

No payment or Distribution will be made with respect to (a) any Claim to the extent it is a Disputed Claim, unless and until such Disputed Claim becomes an Allowed Claim, (b) Claimants who are, or may be, defendants in Avoidance Actions and other parties subject to the application of § 502(d) of the Bankruptcy Code, and (c) reclamation claims pursuant to § 546(c)(2)(A) of the Bankruptcy Code, which are not Allowed Claims.

**X. CONDITIONS PRECEDENT TO CONFIRMATION
AND EFFECTIVENESS OF THE PLAN**

A. Conditions Precedent to Confirmation of the Plan

Confirmation of the Plan is subject, in addition to the requirements provided in § 1129 of the Bankruptcy Code, to satisfaction of the following conditions precedent, unless such conditions precedent are waived by the Debtors with the written consent of the Committee and Hercules (which consent shall not be unreasonably withheld):

1. A Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered by the Bankruptcy Court;
2. The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to the Debtors, Committee and Hercules; and
3. The Plan Supplement, including, without limitation, the Liquidating Trust Agreement, shall have been filed in form and substance reasonably acceptable to the Committee and Hercules.

B. Conditions Precedent to the Effective Date of the Plan

The occurrence of the Effective Date of the Plan is subject to satisfaction of the following conditions precedent, unless such conditions precedent are waived by the Debtors with the written consent of the Committee and Hercules (which consent shall not be unreasonably withheld):

1. Confirmation shall have occurred and the Confirmation Order shall have been entered and become a Final Order;
2. There shall not be in effect on the Effective Date any (i) Order entered by a U.S. court, (ii) order, opinion, ruling or other decision entered by any other court or governmental entity or (iii) U.S. or other applicable law staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan;
3. The Initial Administrative Expense Bar Date shall have passed and, except for Professional Fee Claims and fees payable under 28 U.S.C. § 1930, any Administrative Expense Request filed with respect to an Administrative Claim arising before September 30, 2013 shall have been Allowed and paid in full or Disallowed by Final Order;
4. The Liquidating Trust Agreement shall have been fully executed and the Liquidating Trust Assets shall have been transferred to the Liquidating Trust; and
5. All other actions, documents and agreements necessary to implement the Plan shall have been effected or executed.

C. Effect of Non-Occurrence of Confirmation or the Effective Date

If the Plan is not confirmed or if the conditions listed above are not satisfied or waived, the Plan will be null and void in all respects and nothing contained in the Plan or this Disclosure Statement will (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors' Estates, (ii) prejudice in any manner the rights of the Debtors or any other Person or (iii) constitute an admission, acknowledgement, offer or undertaking by the Debtors or any other Person.

XI. MEANS FOR IMPLEMENTATION OF THE PLAN

A. Source of Funds

The source of funds to implement the Plan and allow the Liquidating Trustee to satisfy post-Effective Date obligations are (i) the Professional Fee Reserve (which will be used solely to pay Allowed Professional Fee Claims on the terms and conditions of the Plan), (ii) the Estate Portion of Net Proceeds of Trust A/R Assets, and (iii) the Net Proceeds of Unencumbered Trust Assets, each of (ii) and (ii) as and when they may be collected by the Liquidating Trustee.

B. Default

Upon default by the Liquidating Trustee, creditors are required to provide written notice of such default to the Liquidating Trustee and its counsel, by certified mail, return receipt requested, and by regular first class mail, and the Liquidating Trustee shall have thirty (30) days from the date of the notice to cure the default. Any defect in such default notice shall toll the running of the thirty (30) day cure period. Notice of default shall be given to the Liquidating Trustee and its counsel. If the Liquidating Trustee fails to cure within the thirty (30) day cure period provided herein, creditors shall be allowed to foreclose their liens, pursue collection activity, and/or pursue available collection activities as allowed by applicable state law without further notice and hearing.

C. Substantive Consolidation

UPH, Pac-West, Peering Partners, UniPoint Holdings, and nWire (collectively, the "Operating Debtors") and their respective Estates will be substantively consolidated for purposes of voting on and making Distributions under the Plan. As a result of the substantive consolidation, (a) all Intercompany Claims (including Intercompany Claims arising from the rejection of any Executory Contract) will be eliminated and will not be entitled to any Distributions under the Plan, (b) any obligation of any of the Operating Debtors and all guarantees thereof executed by any of the Operating Debtors will be deemed to be an obligation of each of the Operating Debtors, and (c) any Claim filed or asserted against any of the Operating Debtors will be deemed a Claim against each of the Operating Debtors. The substantive consolidation contemplated by Article 6.3 of the Plan will not, however, cause any of the Operating Debtors to be liable for any Claim or Equity Interest for which it would not otherwise be liable absent the substantive consolidation under the Plan.

On the Effective Date, except as otherwise provided for in the Plan, all Claims based on guaranties of collection, payment, or performance made by any of the Operating Debtors concerning the obligations of another Operating Debtor will be discharged, released, and without further force or effect. Additionally, holders of Allowed Claims or Allowed Equity Interests who assert identical Claims against Equity Interests in multiple Operating Debtors will be entitled to a single satisfaction of such Claims or Equity Interests.

Grounds for substantive consolidation of the Operating Debtors are numerous. First, the purchase price TNCI paid was not allocated and was paid on a collective basis for all of the Operating Debtors' Assets that TNCI acquired. Allocation of the Purchase Price would be cumbersome, costly, and ultimately would not lead to more definitive or fair distributions to

unsecured creditors. Second, the Operating Debtors have been operated as a single business unit. In addition, many of the Operating Debtors' major obligations are cross-collateralized and cross-guaranteed demonstrating that (1) Intercompany Claims for reimbursement would exacerbate the detangling of the Operating Debtors' affairs and (2) creditors treated the Operating Debtors as a single credit risk and entity. Fourth, many of the Operating Debtors' creditors are creditors of all of the Operating Debtors. The substantive consolidation of the Operating Debtors will not constitute or effectuate a merger of the corporate or other legal identities of the Operating Debtors, and their respective corporate and other legal identities will remain intact, except as otherwise specified in this Plan.

This factual scenario demonstrates that allocating the TNCI Sale Proceeds and intercompany debts amongst the Operating Debtors would be so costly and time consuming as to erode any benefit that one or more creditors would derive from a distribution based on a single claim against a single Operating Debtor. Creditors generally will benefit from the avoided accounting and legal fees that would be required to arrive at a just and reasonable allocation of assets and liabilities across all of the Operating Debtors. Thus, overall distributions will be enhanced by avoiding additional and unnecessary expense.

D. Establishment of Liquidating Trust

On the Effective Date, a Liquidating Trust will be created pursuant to the Liquidating Trust Agreement to hold and liquidate Liquidating Trust Assets and provide Distributions to Holders of Allowed Claims in accordance with the Plan. The Liquidating Trust will be established as a liquidating grantor trust for the sole purpose of liquidating the Estates and making Distributions to Beneficiaries, in accordance with the Plan and Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust will consist of all Assets of the Debtors including, but not limited to, Causes of Action and Cash. As of the Effective Date, the Debtors will have no further obligations to fund any amounts into the Liquidating Trust and will bear no further financial obligation of any kind to the Liquidating Trustee. The Liquidating Trust Agreement will set forth the complete terms and conditions of the Liquidating Trustee's appointment and the Liquidating Trustee's rights, powers and responsibilities. A copy of the Liquidating Trust Agreement will be filed with the Bankruptcy Court prior to the Confirmation Hearing as part of the Plan Supplement. Key provisions of the Liquidating Trust Agreement and provisions of the Plan regarding the Liquidating Trust are summarized below. Creditors are encouraged to review the Plan and the Liquidating Trust Agreement for a full description of their terms.

1. Transfer of the Estates' Assets to the Liquidating Trust

As of the Effective Date, the Debtors will release, assign, transfer, convey and deliver, on behalf of the Beneficiaries, the Liquidating Trust Assets to the Liquidating Trust, to be held in trust for the benefit of the Beneficiaries to be administered and applied in accordance with the Liquidating Trust Agreement, the Plan and the Confirmation Order.

2. Transfer Free and Clear of Claims

Except as otherwise provided in the Plan, on the Effective Date, all Assets comprising the Estates of the Debtors will vest in the Liquidating Trust, free and clear of all Claims, Liens, charges, encumbrances of Holders of Claims or Equity Interests (except to the extent that such Claims, Liens, charges, encumbrances and/or interests have been reinstated, or as otherwise expressly provided in the Plan), which will become the Liquidating Trust Assets, to be held for the benefit of the Beneficiaries. Upon the transfer of the Assets to the Liquidating Trust, the Debtors will have no further interest in or with respect to Claims, the Liquidating Trust Assets or the Liquidating Trust. The transfer of assets to the Liquidating Trust pursuant to the Plan will not constitute a default or breach under or result in any forfeiture whatsoever with respect to any asset or property interest transferred to the Liquidating Trust.

3. The Liquidating Trustee

The Plan provides for the appointment of the Liquidating Trustee as the exclusive trustee of the Liquidating Trust Assets for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Debtors, the Committee, and Hercules, in their sound business judgment, have jointly determined that Lowell Feldman shall serve as the Liquidating Trustee. The Liquidating Trustee will be compensated from the Liquidating Trust Assets, and the Liquidating Trust Agreement shall specify the terms and conditions of such compensation, as well as provide the manner in which the Liquidating Trustee may be removed. Payment of the Liquidating Trustee's fees and expenses shall not be subject to the approval of the Bankruptcy Court.

4. The Rights and Powers of the Liquidating Trustee

The rights and powers of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and/or the Plan, and the Liquidating Trustee shall be authorized and empowered to exercise such rights and powers without supervision, application to, or approval of the Bankruptcy Court, unless otherwise specifically limited or restricted by the Plan, Confirmation Order or the Liquidating Trust Agreement. In general, the Liquidating Trustee shall serve as the trustee of the Liquidating Trust in a fiduciary capacity. The primary duties of the Liquidating Trustee shall be to manage the Liquidating Trust and the Liquidating Trust Assets, to reconcile Claims asserted against the Debtors' Estates, to pursue and, where appropriate, settle Causes of Action held by the Debtors, and to make Distributions to Beneficiaries of the Liquidating Trust. The rights, powers and duties of the Liquidating Trustee are designed to further the ultimate goal of maximizing Distributions to Beneficiaries of the Liquidating Trust under the Plan.

5. The Liquidating Trust Oversight Committee

A Liquidating Trust Oversight Committee will be formed as of the Effective Date. The Liquidating Trust Oversight Committee will have the specific rights and duties set forth in Section 6.4.5 of the Plan and in the Liquidating Trust Agreement and will generally oversee the actions taken by the Liquidating Trustee. The members of the Liquidating Trust Committee will be designated in the Plan Supplement.

6. Limitation of Liability

The Plan and the Liquidating Trust Agreement provide that neither the Liquidating Trustee, any member of the Liquidating Trust Oversight Committee, nor their respective firms, companies, affiliates, partners, officers, directors, members, employees, professionals, advisors, attorneys, financial advisors, investment bankers, disbursing agents, or agents, and any of such Person's successors and assigns will incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with the Plan or the Liquidating Trust Agreement, whether sounding in tort, contract, or otherwise, except for gross negligence or willful misconduct that is found by a Final Order of a court of competent jurisdiction to be the direct and primary cause of loss, liability, damage, or expense suffered by the Liquidating Trust. In no event will the Liquidating Trustee or Liquidating Trust Oversight Committee be liable for indirect, punitive, special, incidental or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Liquidating Trustee or Liquidating Trust Oversight Committee has been informed of the likelihood of such loss or damages and regardless of the form of action. Without limiting the foregoing, the Liquidating Trustee and the Liquidating Trust Oversight Committee will be entitled to the benefits of the limitation of liability and exculpation provisions set forth in the Plan and Confirmation Order, including, but not limited to Section 13.3 and Article XIV of the Plan.

7. Indemnification

The Plan and the Liquidating Trust Agreement provide that the Liquidating Trust will indemnify the Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of their respective professionals), incurred without fraud, gross negligence, or willful misconduct on the part of the Indemnified Parties (which fraud, gross negligence, or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise and performance of their duties under the Plan or Liquidating Trust Agreement, as applicable. The costs and expenses incurred in enforcing this right of indemnification will be paid by the Liquidating Trust. The provisions of sections 6.4.7 and 6.4.8 of the Plan will survive the termination of the Liquidating Trust Agreement, and the resignation, replacement or removal of the Liquidating Trustee or the dissolution of the Liquidating Trust Oversight Committee.

8. No Security; Insurance

The Plan provides that neither the Liquidating Trust Oversight Committee nor the Liquidating Trustee will be required to give any bond or surety or other security for the performance of their respective duties unless otherwise ordered by the Bankruptcy Court; and, in the event that either the Liquidating Trust Oversight Committee or the Liquidating Trustee is so ordered, all costs and expenses of procuring any such bond or surety will be borne by the Liquidating Trust. The Liquidating Trustee, however, will be authorized under the Plan to obtain all reasonably necessary insurance coverage for itself and its respective agents, and members of the Liquidating Trust Oversight Committee, including, but not limited to, coverage with respect

to the liabilities, duties and obligations of the Liquidating Trustee, which insurance coverage may, at the sole option of the Liquidating Trustee, be extended for a reasonable period after the closing of the Bankruptcy Cases and termination of the Liquidating Trust, as applicable.

9. Liquidation Expense Reserve

The Plan and the Liquidating Trust Agreement provide that the Liquidating Trustee may, but will not be obligated to, physically segregate and maintain separate accounts for the Liquidation Expense Reserve. The Liquidation Expense Reserve may be merely bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable the Liquidating Trustee to determine reserves and amounts to be paid to Holders of Allowed Claims.

10. Resignation, Death or Removal of the Liquidating Trustee

The Plan and the Liquidating Trust Agreement provide that the Liquidating Trustee may resign at any time upon not less than thirty (30) days' written notice to the Liquidating Trust Oversight Committee. Any party in interest may apply to the Bankruptcy Court at any time to remove the Liquidating Trustee upon a showing of cause. In the event of the death, resignation, or removal of the Liquidating Trustee, the Liquidating Trust Oversight Committee will appoint a successor Liquidating Trustee or in the event the Liquidating Trust Oversight Committee has been dissolved or is not able to obtain approval of a successor Liquidating Trustee, any party in interest (including, in the case of resignation, the Liquidating Trustee) may file a motion in the Bankruptcy Court to appoint a successor Liquidating Trustee. Counsel to the Liquidating Trustee will file a notice with the Bankruptcy Court identifying any successor Liquidating Trustee. Any successor Liquidating Trustee will not have any liability or responsibility for the acts or omissions of any of its predecessors.

11. Termination of the Liquidating Trust

Notwithstanding anything to the contrary herein or in the Liquidating Trust Agreement, the Liquidating Trust will terminate on or before the fifth (5th) anniversary of the Effective Date; provided, however, that, at any time within six (6) months of such termination, the Bankruptcy Court, upon motion by the Liquidating Trustee or any Beneficiary, may extend the term of the Liquidating Trust if such extension is determined to be in the best interests of the Beneficiaries; provided, further, that such extension or extensions will not exceed three (3) years after the initial termination date, unless the Liquidating Trustee receives a favorable ruling from the IRS, or an opinion of counsel, that such extension will not adversely affect the status of the Liquidating Trust as a liquidating trust under the Tax Regulations (defined below).

12. Governance Action

The Plan provides that any action under the Plan to be taken by or required of the Liquidating Trustee, including, as may be appropriate, dissolution of the Debtors and the amendment of organizational documents of the respective Debtors, as applicable, will be authorized and approved in all respects, without any requirement of further action by the directors or shareholders of any of the Debtors.

13. Effectuating Documents and Further Transactions

Under the Plan, the Debtors and, subsequently, the Liquidating Trustee, with approval of the Liquidating Trust Oversight Committee (if required), will be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan and the Liquidating Trust Agreement.

14. Preservation of Causes of Action

Except as otherwise provided in the Plan, or in any document, instrument, release or other agreement entered into in connection with the Plan, the Confirmation Order or any other orders of this Bankruptcy Court, in accordance with section 1123(b) of the Bankruptcy Code, all Causes of Action will be preserved notwithstanding the occurrence of the Effective Date of the Plan. The Liquidating Trustee may investigate, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all Causes of Action. Confirmation of the Plan shall not have any *res judicata* or collateral estoppel effect on the Liquidating Trustee's prosecution of any Cause of Action. The Liquidating Trustee will be vested with the rights, powers and benefits afforded to a "trustee" under sections 704 and 1106 of the Bankruptcy Code.

The Liquidating Trustee will not be subject to any counterclaims with respect to any Causes of Action; provided, however, that Causes of Action will be subject to any defenses, to the same extent as if the Debtors had pursued the Causes of Action. The Liquidating Trustee may present such orders as may be necessary to require third parties to accept and acknowledge the conveyance of Causes of Action to the Liquidating Trust. Such orders may be presented without further notice other than as has been given in the Plan.

15. Tax Treatment of the Liquidating Trust

The Debtors intend that the Liquidating Trust will be treated as a "liquidating trust" within the meaning of Section 301.7701-4(d) of the Tax Regulations. The transfer of any Assets to the Liquidating Trust including, but not limited to, any transfer under this Section 6.4 of the Plan, shall be treated by all parties involved, for all federal tax purposes including but not limited to sections 61(a)(12), 483, 1001, 1012, and 1274 of the Internal Revenue Code, as a deemed transfer of such Assets to the Beneficiaries followed by a deemed transfer by such Beneficiaries of such Assets to the Liquidating Trust. The Liquidating Trust shall be considered a "grantor" trust, and the Beneficiaries of the Liquidating Trust will be treated as the grantors and deemed owners of the Liquidating Trust Assets. The Liquidating Trustee shall value the transferred property and notify in writing the Beneficiaries of the Liquidating Trust of such valuations. The assets transferred to the Liquidating Trust will be valued consistently by the Liquidating Trustee and the Beneficiaries, and these valuations will be used for all federal income tax purposes.

16. Exemption from Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan, including, without limitation, any transfer by the Debtors to the Liquidating Trust, transfer of Liquidating Trust Assets by the Liquidating Trustee to any entity, or any transfer pursuant to merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution,

deeds, bills of sale or transfers of tangible property, will not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property by the Debtors, their estates, or the Liquidating Trust on or after the Effective Date, shall be deemed to have been in furtherance of, or in connection with, the Plan.

17. Attorney-Client Privilege

On the Effective Date, any attorney-client privilege, work-product privilege, joint defense privilege, common interest privilege or other privilege or immunity that the Debtors, the Estates or the Committee are entitled to assert will transfer to and vest in the Liquidating Trustee (and its attorneys and agents) and the Liquidating Trustee will be entitled to assert or waive such privilege or immunity to the same extent that the Debtors and Committee were entitled to do so prior to the Effective Date. Communications by counsel to the Liquidating Trustee with members of the Liquidating Trust Oversight Committee will be entitled to the same privilege or immunity as if such communications were between counsel to the Liquidating Trustee and the Liquidating Trustee.

18. Liquidating Trust Interests

The beneficial interests in the Liquidating Trust will not be represented by certificates and will not be transferable except pursuant to the laws of descent and distribution or otherwise by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Liquidating Trustee, and the Liquidating Trustee may continue to cause the Liquidating Trust to pay all amounts to or for the benefit of the assigning Beneficiaries until receipt of proper notification and proof of assignment by operation of law.

XII. PROVISIONS FOR MANAGEMENT

A. Corporate Authority

All actions and transactions contemplated under the Plan will be authorized upon confirmation of the Plan. The Confirmation Order will include provisions directing the Debtors to execute such documents necessary to effectuate the Plan, which documents will be binding on the Debtors, the Estates, the Debtors' creditors and all Holders of Claims and Equity Interests.

B. Professional Fees

All Allowed Professional Fee Claims will be paid in accordance with Article 4.1 of the Plan.

C. Transfer of Powers

1. Directors and Officers

Effective as of the Effective Date, the authority, power and incumbency of the Persons then acting as officers and directors of the Debtors will be terminated and such officers and

directors will be deemed to have resigned, without further action by the Debtors. The Plan will be administered and actions will be taken in the name of the Debtors through the Liquidating Trustee, subject to the Liquidating Trust Oversight Committee.

2. Debtors' Professionals

Upon the Effective Date, the Debtors' Professionals and agents will be released from any further duties and responsibilities in the Bankruptcy Cases and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Bankruptcy Cases, which will remain in full force and effect according to their terms; (ii) applications for and/or objections to their Fee Claims; and (iii) motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. The Professionals retained by the Debtors will not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with fee applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in his discretion, may retain former Professionals of the Debtors.

3. Dissolution of the Committee

Upon the Effective Date, the Committee will automatically dissolve, whereupon its members, Professionals, and agents will be released from any further duties and responsibilities in the Bankruptcy Cases and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Bankruptcy Cases, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to their Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code for making a substantial contribution in any of the Bankruptcy Cases by any member of the Committee; and (iv) motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. The Professionals retained by the Committee and the respective members thereof will not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with fee applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in his discretion, may retain former Professionals of the Committee.

4. Succession by the Liquidating Trustee

On the Effective Date, the Liquidating Trustee will be deemed appointed and will succeed to such powers as would have been applicable to the Debtors' officers, directors and shareholders, and the Debtors will be authorized to be dissolved without further action by their shareholders, directors, or officers. All Assets of the Debtors not distributed to the Holders of Allowed Claims on the Effective Date, including, without limitation, title to any moneys held in escrow or separate segregated accounts during the pendency of the Bankruptcy Cases, will be transferred to the Liquidating Trust and managed by the Liquidating Trustee. The Liquidating Trustee will make the Distributions required under the Plan in accordance with the terms of the Plan and the Liquidating Trust Agreement. The Liquidating Trustee will be deemed to be a

judicial substitute for each of the Debtors or the Committee as the party-in-interest in the Bankruptcy Cases, under the Plan or in any judicial or administrative proceeding or appeal to which a Debtor or the Committee is a party, consistent with section 1123(b)(3)(B) of the Bankruptcy Code.

5. Formation of the Liquidating Trust Oversight Committee

On the Effective Date, the Liquidating Trust Oversight Committee will be formed to perform those duties and functions summarized above and set forth more fully in the Liquidating Trust Agreement and in Section 6.4.5 of the Plan.

XIII. CERTIFICATES OF INCORPORATION AND BY-LAWS OF THE DEBTORS/RESTRICTION ON TRANSFER OF SHARES

A. Amendments to Certificates of Incorporation and By-Laws

The Confirmation Order will provide authorization pursuant to applicable corporate and limited liability company laws for the filing by the Debtors of amended governing documents to provide that:

(A) The issued and outstanding Equity Interests of the Debtors shall be canceled, annulled and extinguished; and

(B) Such other changes as necessary to effectuate other provisions of the Plan and § 1123(a)(6) of the Bankruptcy Code.

XIV. PROCEDURES FOR RESOLVING AND TREATING/DISPUTED CLAIMS

A. Claim Objection Deadline

As soon as practicable, but in no event later than one year after the Effective Date (the “Claim Objection Deadline”), unless extended by order of the Bankruptcy Court on motion by the Liquidating Trustee, the Liquidating Trustee will file objections to Claims with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims to which objections are made. Nothing in the Plan will limit the Liquidating Trustee’s rights to object to, or deem to Allow Claims, if any, filed or amended more than one year after the Effective Date. The Claim Objection Deadline will not apply to requests to reduce Claims as a result of mitigation, or objections under section 502(d) of the Bankruptcy Code.

B. Prosecution of Objections

On and after the Effective Date, except as the Bankruptcy Court may otherwise order, the filing, litigation, settlement or withdrawal of all objections to Claims may be made by the Liquidating Trustee. The Liquidating Trustee will be authorized to resolve all Disputed Claims by withdrawing or settling such objections thereto, or by litigating them to judgment in the Bankruptcy Court, or such other court having competent jurisdiction the validity, nature, and/or amount thereof. If the Liquidating Trustee and the Holder of a Disputed Claim agree to compromise, settle, and/or resolve a Disputed Claim by granting such Holder an Allowed Claim

in the amount of \$150,000 or less, then the Liquidating Trustee may compromise, settle, and/or resolve such Disputed Claim without Liquidating Trust Oversight Committee or Bankruptcy Court approval; provided, however, the Liquidating Trustee will file a notice with the Bankruptcy Court advising that the Allowed Claim has been compromised, settled, and/or resolved. If the Liquidating Trustee and the Holder of a Disputed Claim agree to compromise, settle, and/or resolve a Disputed Claim by granting such Holder an Allowed Claim in an amount between \$150,000 and \$500,000, then the Liquidating Trustee may compromise, settle, and/or resolve such Disputed Claim only with the consent of the Liquidating Trust Oversight Committee in accordance with the Liquidating Trust Agreement, and the Liquidating Trustee will file a notice with the Bankruptcy Court advising that the Allowed Claim has been compromised, settled, and/or resolved. For any proposed settlement of a Disputed Claim resulting in an Allowed Claim in excess of \$500,000, the Liquidating Trustee will seek approval of such resolution pursuant to Bankruptcy Rule 9019. If the Liquidating Trustee and the Liquidating Trust Oversight Committee are unable to agree on the resolution of a Disputed Claim, the Bankruptcy Court will determine the dispute.

C. Distribution Upon Allowance of Disputed Claims Entitled to Payment in Full in One Payment

The holder of a Claim entitled to payment in full on one specific payment date, which Claim is a Disputed Claim on such payment date, but which Claim subsequently becomes an Allowed Claim, will receive payment of its Allowed Claim within thirty (30) Business Days following the date on which such Claim becomes a Allowed Claim pursuant to a Final Order.

D. Distributions Upon Allowance of Disputed Claims Entitled to Payment in Full in Installment Payments

The holder of a Claim entitled to payment in installments, which Claim is a Disputed Claim on the initial or any later date the installment would otherwise be made, but which Claim subsequently becomes an Allowed Claim, will receive the amount of any missed installments on the first date payments to other holders of Claims in the same Class are scheduled to be made that arises after the date on which such Claim becomes an Allowed Claim by Final Order. If such Claim does not become an Allowed Claim until after all the other Claims in the Class have received their total distributions as authorized under the Plan, then the holder thereof will receive payment of its Allowed Claim within ten (10) Business Days following the date on which such Claim becomes an Allowed Claim pursuant to a Final Order.

XV. RETENTION OF JURISDICTION POST-CONFIRMATION

A. Scope of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction as is legally permissible, as described in more particular detail in Article 12 of the Plan.

B. Failure of the Bankruptcy Court to Exercise Jurisdiction

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under or related to the Bankruptcy Cases, including the matters set forth in Article 12 of the Plan, Article 12 will have no effect upon and will not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

XVI. EFFECT OF CONFIRMATION OF THE PLAN

A. Discharge of Debtors

Pursuant to section 1141(d)(3) of the Bankruptcy Code, occurrence of the Effective Date will not discharge the Claims against the Debtors; provided, however, that from and after the Effective Date, no Holder of an Allowed Claim or Equity Interest may, on account of such Claim or Equity Interest, seek or receive any payment from, or seek recourse against, the Debtors, the Liquidating Trust, the Liquidating Trustee, the Exculpated Parties, the Released Parties, their respective property, successors and assigns, except as expressly provided in the Plan.

B. Binding Effect

On and after the Effective Date, the provisions of the Plan shall bind all present and former Holders of Claims against, or Equity Interests in, the Debtors and such Holders' successors and assigns, whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has filed a Proof of Claim or Proof of Interest or has accepted the Plan. The Confirmation Order will survive and remain effective after entry of any order converting the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, and the terms and provisions of the Plan will continue to be effective in this or any superseding case under the Bankruptcy Code.

C. Certain Activities Enjoined

Except as expressly provided herein, at all times on and after the Effective Date, all Persons who have been, are, or may be holders of Claims against or Equity Interests in the Debtors arising prior to the Effective Date, shall be enjoined from taking any of the following actions against or affecting the Debtors, their Estates, or their property, with respect to such Claims or Equity Interests (other than actions brought to enforce any rights or obligations under the Plan):

(1) commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind against the Debtors, their Estates, or their property, (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date which shall be deemed to be withdrawn or dismissed with prejudice);

(2) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against the Debtors, their Estates, or their property;

(3) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Debtors, their estate, or their property;

(4) asserting any right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due the Debtors, their estate, or their property; and

(5) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

XVII. SETTLEMENT, RELEASE, EXCULPATION AND INJUNCTIONS

As part of the Plan, the Debtors will seek approval of the following releases, exculpation and injunctions, which, if approved, will be incorporated into the Confirmation Order.

A. Releases by Debtors

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the contributions of the Released Parties to facilitate the implementation of the Plan, including without limitation, the material compromises incorporated into the Committee-Hercules Settlement, and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, the Released Parties and each of them will be deemed released and discharged by the Debtors and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtors or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) on or behalf of the Holder of any Claim or Equity Interest or other Person, based in whole or in part on any act, omission transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Bankruptcy Cases, the Committee-Hercules Settlement, the Plan or the Disclosure Statement, or related agreements, instruments or other documents, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, fraud or willful misconduct, as determined by a Final Order; provided, however, that, for the avoidance of doubt, the term “Released Party” does not include any Insider of any Debtor, and the releases provided under Article 14.2 of the Plan will not apply to any Insider.

B. Consensual Releases by Holders of Claims

As of the Effective Date, to the fullest extent permitted by applicable law, as such law may be extended or interpreted subsequent to the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the implementation of the Plan, including without limitation, the material compromises incorporated into the Committee-Hercules Settlement, and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, each Holder of a Claim or Equity Interest will be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties and each of them from any and all Claims, Equity Interests, obligations, rights,

suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims, asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Person would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Bankruptcy Cases, the Committee-Hercules Settlement, the Plan Settlement, the Plan or the Disclosure Statement, or related agreements, instruments or other documents that did or would have given rise to a Claim in the Bankruptcy Cases, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, fraud or willful misconduct, as determined by a Final Order; provided, however, that, for the avoidance of doubt, the term “Released Party” does not include any Insider of any Debtor, and the releases provided under Article 14.3 of the Plan shall not apply to any Insider.

C. Exculpation

From and after the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Person (including, without limitation, any Holder of a Claim or Equity Interest) for any action taken, suffered or omitted to be taken in connection with or related to the Debtors, the Estates, the Liquidating Trust or the Bankruptcy Cases, including, but not limited to, formulating, preparing, disseminating, implementing, confirming, consummating or administering (a) the Committee-Hercules Settlement, (b) the Plan (including soliciting acceptances or rejections thereof), (c) the Disclosure Statement or any contract, instrument, release, or other agreement or document entered into or any action taken or omitted to be taken in connection with the Plan, (d) any Distributions made pursuant to the Plan, except, in all cases, for acts or omissions constituting willful misconduct or gross negligence as determined by Final Order of a court of competent jurisdiction, and in all respects such parties shall be entitled to rely upon the advice of professionals with respect to their duties and responsibilities in the Bankruptcy Cases or under the Plan, and such reliance shall form an absolute defense to any Claim, cause of action or liability. Without limiting the generality of the foregoing, the Exculpated Parties shall be entitled to and granted the protections of section 1125(e) of the Bankruptcy Code, and nothing in the Section XVII(D) shall limit the applicability of section 1125(e) of the Bankruptcy Code to any other Person.

D. Injunction

The Confirmation Order will contain such injunctions as may be necessary and helpful to effectuate the releases and exculpation granted under the Plan. Without limiting the generality of the foregoing, such injunctions shall include an absolute prohibition from collecting Claims in any manner other than as provided for in the Plan.

E. Term of Bankruptcy Injunction or Stays

All injunctions or stays provided for in the Bankruptcy Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, will remain in

full force and effect until (i) all property of the Liquidating Trust has been liquidated and the proceeds distributed as provided under the Plan and the Liquidating Trust Agreement, (ii) the Liquidating Trust has been terminated and (iii) these Bankruptcy Cases have been closed pursuant to section 350 of the Bankruptcy Code.

XVIII. CONFIRMATION PROCEDURE

The Bankruptcy Court will confirm the Plan only if it finds that all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the Plan: (i) is accepted by all impaired Classes of Claims and Equity Interests or, if rejected or deemed rejected by an impaired Class, “does not discriminate unfairly” and is “fair and equitable” as to each rejecting Class; (ii) is feasible; and (iii) is in the “best interest” of creditors and Holders of Equity Interests impaired under the Plan.

A. Solicitation of Votes

Any creditor of the Debtors whose Claim is Impaired under the Plan and classified in a Class entitled to receive Distributions is being solicited to vote, if either (i) its Claim has been Scheduled by the Debtors and such Claim is not Scheduled as Disputed, contingent or unliquidated, or (ii) it has filed a Proof of Claim or Equity Interest on or before the Bar Date set by the Bankruptcy Court for such filings. Any Claim as to which an objection has been filed, and such objection is still pending on the Voting Deadline, is not entitled to have its vote counted, unless the Bankruptcy Court temporarily allows the Claim upon motion by such creditor whose Claim has been objected to, in an amount which the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan. Such motion must be heard and determined by the Bankruptcy Court prior to the Voting Deadline. In addition, a creditor’s vote may be disregarded if the Bankruptcy Court determines that the creditor’s acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

B. Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan after Ballots have been cast. The Confirmation Hearing has been scheduled for March 20, 2014 at 1:30 p.m. prevailing central time at the Homer J. Thornberry Federal Judicial Building, 903 San Jacinto Blvd., Courtroom No. 1, Austin, Texas 78701. The Confirmation Hearing may be continued from time to time by the Bankruptcy Court without further notice except for an announcement of the continuance made at the Confirmation Hearing. At the Confirmation Hearing, the Bankruptcy Court will (i) determine whether the Plan has been accepted by the requisite majorities of each Class entitled to vote; (ii) hear and determine all objections to the Plan and to confirmation of the Plan; (iii) determine whether the Plan meets the requirements of the Bankruptcy Code and has been proposed in good faith; and (iv) confirm or refuse to confirm the Plan.

C. Acceptance

Each Class entitled to vote will be deemed to have accepted the Plan if the Plan is accepted by at least two-thirds in dollar amount and more than one-half in number of the Claims

of such Class (excluding certain Claims designated under Section 1126(e) of the Bankruptcy Code) that have voted to accept or reject the Plan.

D. Fair and Equitable Test/Cramdown

The Bankruptcy Code establishes different “fair and equitable” tests for Secured and Unsecured Creditors as follows:

1. Secured Creditors. Either (i) each Secured Creditor in a non-accepting impaired Class retains the Liens securing its Secured Claim and receives on account of its Secured Claim deferred Cash payments having a present value equal to the amount of its Allowed Secured Claim, (ii) each Secured Creditor in a non-accepting impaired Class realizes the indubitable equivalent of its Allowed Secured Claim, or (iii) the property securing the Claim is sold free and clear of Liens with such Liens to attach to the proceeds of sale and the treatment of such Liens on proceeds as provided in clauses (i) and (ii) of this subparagraph.
2. Unsecured Creditors. Either (i) each Unsecured Creditor in a non- accepting impaired Class receives or retains under the Plan property having a present value equal to the amount of its Allowed Claim, or (ii) the Holders of Claims and Equity Interests that are junior to the Claims of the dissenting Class will not receive or retain any property under the Plan.

THE DEBTORS BELIEVE THAT THE PLAN DOES NOT DISCRIMINATE UNFAIRLY WITH RESPECT TO ANY CLASS, AND THAT IT IS FAIR AND EQUITABLE WITH RESPECT TO EACH IMPAIRED CLASS. THEREFORE, THE DEBTORS WILL SEEK CONFIRMATION OF THE PLAN EVEN IF LESS THAN THE REQUISITE NUMBER OF FAVORABLE VOTES ARE OBTAINED FROM ANY VOTING CLASS. THE DEBTORS RECOMMEND THAT ALL CREDITORS AND EQUITY INTEREST HOLDERS VOTE TO ACCEPT THE PLAN.

E. Feasibility

The Bankruptcy Code requires that in order to confirm the Plan the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors (the “Feasibility Test”), except as otherwise provided for under the Plan. In addition, the Bankruptcy Court must determine that the values of the Distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in liquidation under Chapter 7 of the Bankruptcy Code (the “Best Interest Test”). The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Equity Interest in such Class either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.

The Debtors believe that the Plan meets the requirements of the Feasibility Test and of the Best Interest Test by providing for the pursuit of Causes of Action by the Liquidating Trustee with the Cash proceeds being distributed as set forth in the Plan and in accordance with the

priority scheme set forth in the Bankruptcy Code. No liquidation or further financial reorganization is expected.

F. Objections to Confirmation

Objections to confirmation of the Plan must be in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or the Equity Interest in the Debtors held by the objector. Any such objection must be filed with the Bankruptcy Court and served upon the following so that it is received by them on or before March 14, 2014, 5:00 p.m. prevailing central time upon:

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Valerie L. Wenger
Trial Attorney
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XIX. CAUSES OF ACTION

The primary assets available for payment of Allowed Administrative Claims (*i.e.* unpaid Allowed Professional Fee Claims, which are the only Allowed Administrative Claims the Debtors expect will exist on the Effective Date), Priority and General Unsecured Claims under

the Plan are (i) the Estate Portion of Net Proceeds of Trust A/R Assets, and (ii) Net Proceeds of Unencumbered Trust Assets. This Article XIX of the Disclosure Statement provides additional information regarding the Trust A/R Claims (i.e. the Receivables Actions) and a summary of other potential Causes of Action and potential recoveries therefrom.

A. Receivables Actions/Trust A/R Assets

(A) The Debtors have numerous accounts receivable due to them from various third parties, and they have filed the following adversary proceedings in the Bankruptcy Court to collect the following amounts:

Adversary Proceeding Number	Date Filed	Defendant(s)	Amount Demanded
13-01094	6/18/2013	T-Mobile, USA, Inc.	\$11,702,013.33
13-01096	6/24/2013	Sprint Nextel Corporation	\$ 3,900,322.13
13-01102	7/24/2013	Leap Wireless International, Inc. d/b/a Leap Wireless Intl, Inc. d/b/a Cricket Comm., Inc.	\$10,078,214.69
13-01182	12/31/2013	Beyond the Box, LLC	\$ 24,603.84
13-01135	10/17/2013	Bharti Airtel (USA) Limited	\$ 74,896.34
13-01136	10/17/2013	Business Telecommunications Services, Inc.	\$ 23,367.27
13-01137	10/17/2013	STI Telecom, Inc. f/k/a Epana Networks, Inc.	\$ 22,056.94
13-01138	10/17/2013	Geotel Communications Services, Inc.	\$ 23,074.55
13-01139	10/17/2013	IBDC (USA), Inc.	\$ 29,101.45
13-01140	10/17/2013	Intermetro Communications, Inc.	\$ 98,973.14
13-01141	10/17/2013	JES, Inc.	\$ 29,079.54
13-01142	10/17/2013	Primus Telecommunications, Inc.	\$ 11,442.29
13-01143	10/17/2013	Teliix, Inc.	\$ 37,803.80
13-01144	10/17/2013	Wirestar, Inc.	\$ 10,618.76
13-01147	11/7/2013	Computertel, Inc., Individually and Computertel, Inc. d/b/a Directo.com	Dismissed
13-01148	11/7/2013	Great Lake Property, LLC Individually and Great Lake Property, LLC d/b/a Kallmart	\$ 88,335.60
13-01149	11/7/2013	Telepoint Enterprise Services, Corp., Telepoint International Corporation, and Telepoint USA Corporation	\$ 42,711.10
TBD	TBD	Dennis Keim d/b/a Cyberhouse	\$ 28,389.18
		Total:	\$26,225,003.95

In addition, demand letters were sent to the entities on the list attached hereto as **Exhibit “2,”** and Debtors may file additional complaints against these entities.

While the aggregate amount demanded in these filed actions is approximately \$26 million, defendants have asserted, or are likely to assert, various defenses. Among other things, Defendants have asserted various affirmative defenses, including accord and satisfaction, waiver, laches, failure to mitigate, and unclean hands.

The Debtors (or the Liquidating Trustee, as applicable) will pursue these and other potential, similar actions vigorously, and the Debtors believe the prosecution of these actions will result in significant net recoveries to the Estates. The Debtors value these receivables actions at \$8,000,000, which they believe is a reasonable estimated recovery net of costs.

Creditors should also be aware that the net proceeds of these actions (which are Trust A/R Assets under the Plan) are subject to Hercules’s Lien and, absent the Committee-Hercules Settlement, all of the net proceeds would be payable to Hercules until the Hercules Secured Claim (including unpaid postpetition interest and fees) is paid in full. As a result of the Committee-Hercules Settlement, however, non-Hercules creditors have the prospect of recovering from these assets before the Hercules Secured Claim is paid in full through the sharing mechanism for Net Proceeds of Trust A/R Assets set forth in the Plan.

B. Preferences

Section 547 of the Bankruptcy Code allows a debtor-in-possession to recover certain payments known as “voidable preferences.” A “voidable preference” is a payment made by a debtor within 90 days prior to its bankruptcy on account of an antecedent debt owed by the debtor that is made while the debtor is insolvent and which allows a creditor to recover more than it would have on such debt if the payment had not been made and the debtor’s assets were liquidated under Chapter 7. Payments made to insiders of a debtor may be preferences if they satisfy these requirements and were made within one year prior to bankruptcy. Certain payments are protected from recovery as preferences. These include, among others, payments made in the ordinary course of business and upon ordinary business terms, payments after which the defendant provided new value to the Debtors, payments representing a substantially contemporaneous exchange of new value and payments on consumer debts for less than \$600.00.

The Debtors have already commenced or plan to commence shortly the following actions to avoid and recover preferences pursuant to §§ 547 and 550 of the Bankruptcy Code:

Adversary Proceeding Number	Date Filed	Defendant(s)	Amount Demanded
13-01162	12/18/2013	Access Cost Engineering Systems, LLC	\$ 17,500.00
13-01163	12/18/2013	Arent Fox LLP	\$ 40,000.00
13-01164	12/18/2013	Bandwidth.com	\$ 82,697.13
13-01165	12/18/2013	Boxer F2, L.P.	Dismissed
14-01001	1/07/2014	Cogent Communications, Inc.	\$110,000.00
13-01166	12/18/2013	Endstream Communications, LLC	\$ 10,000.00
13-01167	12/18/2013	Grande Communications, Inc.	\$ 50,000.00
13-01168	12/18/2013	National Accounts, Inc.	\$ 50,138.75
13-01169	12/18/2013	Neustar, Inc.	\$ 29,256.02
13-01170	12/18/2013	Nixon Peabody, LLP	Dismissed
13-01171	12/18/2013	Nova Management	\$ 23,932.66
13-01172	12/18/2013	Pacific Gas & Electric Company	\$ 81,868.61
13-01173	12/18/2013	Pilot Communications	\$ 18,360.00
13-01174	12/18/2013	RiverRock Systems, Ltd.	\$116,910.00
13-01175	12/18/2013	Sidera Networks, LLC	\$ 16,635.29
13-01176	12/18/2013	Taylor Street Venture LP	\$ 25,772.77
13-01177	12/18/2013	Telepacific Communications Corporation	\$ 63,311.40
13-01178	12/18/2013	Tobin Law Group, A Professional Corporation/MPower Communications Corp.	\$ 40,000.00
13-01179	12/18/2013	Zayo Group, LLC	\$ 29,283.28
TBD	TBD	ADP, Inc.	\$ 14,519.16
TBD	TBD	Macias, Gini, O’Connell, LLP	\$ 10,000.00

Adversary Proceeding Number	Date Filed	Defendant(s)	Amount Demanded
TBD	TBD	NFS Leasing, Inc.	\$ 13,192.53
TBD	TBD	Rackspace Hosting, Inc., and/or Rackspace US, Inc.	\$ 14,642.72
TBD	TBD	SinglePipe Communications, Inc. and/or Integrated Broadband Services, LLC	\$ 13,405.25
TBD	TBD	Travelers Insurance (Travelers Indemnity Company)	\$ 27,774.00
TBD	TBD	U.S. Trustee	\$ 13,000.00
TBD	TBD	Total:	\$912,199.57

Exhibit “3” to this Disclosure Statement lists payments known at this time to have been made by the Debtors during the ninety days immediately prior to the Petition Date, including the payments demanded in the Avoidance Actions listed above. Also included is a chart which lists payments to the Debtors’ insiders within 365 days immediately prior to the Petition Date. After the Effective Date, the Liquidating Trustee will have the authority to pursue the Avoidance Actions, including by initiating additional actions to recover voidable preferences under 11 U.S.C. § 547, including those payments listed in **Exhibit “3,”** and any other payments discovered to have been made by the Debtors during the ninety days immediately prior to the Petition Date. Currently, the Debtors estimate that they paid out at least \$4 million in the 90 days prior to the Petition Date. Accounting for the numerous defenses available to preference defendants, the Debtors’ release of approximately \$4 million in payments made to Essential Contract counterparties, and the costs of collection (including attorneys’ fees), the Debtors estimate that net preference recoveries could range from approximately \$600,000.00 to \$1,200,000.00.

C. Fraudulent Conveyances/Insider Transfers

Sections 548 and 544 of the Bankruptcy Code allow a debtor-in-possession to recover certain payments or other transfers of assets as “fraudulent conveyances.” A fraudulent conveyance under section 548 of the Bankruptcy Code is a transfer made within two years of bankruptcy while the Debtors were insolvent which either was made with fraudulent intent or was made without receiving reasonably equivalent value. Section 544 of the Bankruptcy Code allows a debtor-in-possession to pursue non-bankruptcy fraudulent conveyance claims that may have a longer ‘lookback’ period than two years. Additionally, as referenced above, section 547 of the Bankruptcy Code provides for avoidance of certain payments to Insiders made within one year. The Debtors are unaware of any fraudulent conveyance actions or Insider transactions that can be avoided under section 547, but the Liquidating Trustee will investigate and pursue any and all such actions that may exist.

Section 549 of the Bankruptcy Code allows an estate to recover transfers which were made without Court approval. The Debtors are unaware of any unauthorized postpetition transfers the Estates can recover under section 549.

D. Director and Officer Claims

Under applicable non-bankruptcy laws, the Debtors may have Causes of Action arising from the conduct of the Debtors’ current and former directors, officers, and limited liability company managers, including, but not limited to, claims under state law for breach of fiduciary duties, self-dealing and breach of contract. The Liquidating Trustee shall have the right, under

the Plan and Liquidating Trust Agreement, to investigate and pursue Causes of Action against the Debtors' current and former directors, officers and limited liability company managers.

E. Other Rights of Action/Other Assets

In addition to the Causes of Action described above, the Debtors may possess other Causes of Action, including, but not limited to, breach of contract Claims, insurance adjustments or refunds, tax refunds, bank account surpluses, deposits and prepayments, unused retainers currently held by professionals, escrows and other miscellaneous Assets.

F. Disclaimer

The Debtors have attempted to disclose all material Causes of Action, including the Receivables Actions, Avoidance Actions and other potential actions under chapter 5 of the Bankruptcy Code that the Debtors may hold against third parties. However, the Debtors have not performed an exhaustive investigation or analysis of potential Claims against third parties. Additionally, any and all of the above described Causes of Action may have defenses, partial or total, to recovery by the Liquidating Trustee. **Accordingly, the ultimate resolution of such claims may result in zero distributable Assets being received by the Liquidating Trust and zero payments to creditors.** It is the contemplation of the Plan that the investigation and analysis of Causes of Action will continue post-confirmation by the Liquidating Trustee. The Debtors may hold other potential Claims or Causes of Action against third parties that the Debtors have not disclosed herein. You should not rely on the omission of the disclosure of a Claim to assume that the Debtors or the Liquidating Trust hold no Claim against any third party, including any creditor that may be reading this Disclosure Statement and/or casting a Ballot. Unless expressly released by Final Order of the Bankruptcy Court or under the Plan, any and all such Claims against third parties are specifically reserved and transferred to the Liquidating Trust. The Debtors' failure to identify a Claim herein is specifically not a waiver of any Claim or Cause of Action. The Debtors will not ask the Court to rule or make findings with respect to the existence of any Cause of Action or the value of the entirety of the Debtors' Estates at the Confirmation Hearing; accordingly, except for Claims released by Final Order or expressly released under the Plan, the Debtors' failure to identify a Claim or Cause of Action herein shall not give rise to any defense of judicial estoppel with respect to Claims which could be asserted against third parties, including creditors of the Debtors which may be reading this Disclosure Statement and/or casting a Ballot. When casting your Ballot, you should consider and take into account the possibility that the Debtors may hold a Claim against you that will be transferred to the Liquidating Trust and, if the Liquidating Trustee deems advisable, fully pursued post-confirmation.

XX. FINANCIAL INFORMATION AND DISCLOSURES

Attached hereto as **Exhibit "4"** is the most recent Monthly Operating Report filed by the Debtors for the month of December 2013. Currently, the Debtors have cash on hand of \$420,893.00, which includes the Ad Valorem Tax Reserve created under the Asset Purchase Agreement. Administrative claims of Professionals are anticipated at \$450,000 at confirmation, Professionals will not be paid in full at confirmation, but will be paid from the Liquidating Trust after funds become available and establishment of appropriate reserves.

XXI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed and consummated, the Debtors' alternatives include the confirmation of an alternate plan of liquidation or the liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

A. Alternative Plans of Liquidation

The Debtors believe that failure to confirm the Plan will inevitably result in additional Allowed Administrative Expense Claims which will reduce and delay the likelihood of Distributions to General Unsecured Creditors. The Debtors believe that the Plan, as described herein, fairly adjusts the rights of various Classes of Creditors consistent with the distribution scheme embodied in the Bankruptcy Code and enables creditors to realize the most possible under the circumstances.

B. Liquidation Under Chapter 7

One of the requirements to confirm a Chapter 11 plan is that creditors receive at least as much as they would under a Chapter 7 liquidation. In a Chapter 7 liquidation, a trustee would be appointed to liquidate the Debtors' property and pay the Claims of creditors. Property subject to Liens would either be sold for enough to pay the Liens or foreclosed upon by the creditor. Once the property was liquidated, Claims would be paid in the following order:

- a. First, expenses of the Chapter 7 trustee would be paid;
- b. Second, expenses incurred during the Bankruptcy Cases and allowed by the Court -- including the all Allowed Administrative Claims -- would be paid; and
- c. Third, Priority and Secured Claims would be paid; and
- d. Fourth, any remaining funds would be distributed to General Unsecured Creditors on a Pro Rata basis.

The Debtors believe that a liquidation under Chapter 7 would result in a reduced recovery of funds by the Debtors' Estates because of the additional Administrative Expenses involved in the appointment of a Chapter 7 trustee for the Debtors and attorneys and other professionals to assist such a Chapter 7 trustee. Unsecured creditors would be further harmed in a Chapter 7 liquidation because they would lose the benefit of the Committee-Hercules Settlement. Additionally, a Chapter 7 trustee would lack the personal knowledge and familiarity with these Bankruptcy Cases and the technical expertise required to pursue the Causes of Action involving telecommunications and related regulatory issues that the Debtors expect the Liquidating Trustee will possess. Accordingly, the Debtors believe that if Holders of Claims could or would receive anything in a Chapter 7 liquidation, their recoveries would be less than what they otherwise receive on account of their Claims under the Plan. The Debtors' liquidation analysis, which reflects what the Debtors believe Creditors would receive under a chapter 7 liquidation, is attached to this Disclosure Statement as **Exhibit "6."** The liquidation analysis indicates that the Distributions to General Unsecured Creditors may be limited under the Plan as well as under a

liquidation under Chapter 7, but reflects that the Plan projects a greater potential for recovery. To determine what holders of Claims and Equity Interests in each impaired Class would receive if the Debtors were liquidated under Chapter 7, the Bankruptcy Court must determine what funds could be generated from the liquidation of the Debtors' assets and property in the context of a Chapter 7 liquidation case, which would consist of the proceeds resulting from the disposition of the unencumbered assets of the Debtors. Such assets amounts would be reduced by post-petition Chapter 11 administrative costs, and costs incurred by the Chapter 7 trustee and any professional retained by the Chapter 7 trustee. To determine if the Plan is in the best interest of each Impaired Class, the present value of the distributions from the proceeds of the liquidation of the Debtors' assets and property (after subtracting the amounts attributable to the aforesaid Claims) are then compared with the present value offered to such Classes of Claims under the Plan.

In applying the Best Interest Test, Claims in a hypothetical Chapter 7 case would be classified according to the same priority provided in the Plan. In the absence of a contrary determination by the Bankruptcy Court, all pre-Chapter 11 General Unsecured Claims that have the same rights upon liquidation would be treated as one Class for the purposes of determining the potential distribution of the liquidation proceeds resulting from the Debtors' hypothetical Chapter 7 case. The distributions from the liquidation proceeds would be calculated ratably according to the amount of the aggregate Claims held by each Creditor. The Debtors believe that the most likely outcome of liquidation proceedings under Chapter 7 would be the application of the rule of absolute priority of distributions. Under that rule, no junior Creditor may receive any distribution until all senior Creditors are paid in full with interest.

The Debtors' management has analyzed the Chapter 7 liquidation alternative to the Plan. Results of this analysis show clearly that liquidation of Debtors' remaining Assets would result in most creditors other than taxing authorities and Hercules receiving zero. As a result, the Debtors are led irrevocably to the conclusion that liquidation of their remaining assets in a Chapter 7 proceeding would result in a significantly lower distribution to General Unsecured Creditors and may leave many Priority Claims unpaid.

A Liquidation Analysis and comparison to distributions under this Plan is attached at Exhibit 6.

XXII. RISK FACTORS TO BE CONSIDERED

HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED HEREIN BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

A. Allowance of Claims

Distributions to Beneficiaries of the Liquidating Trust will be affected by the pool of Allowed Claims and the amount of Liquidation Expenses, in particular, the costs associated with the investigation and prosecution of Causes of Action and reconciliation of Disputed Claims. However, the Debtors have not yet fully analyzed the Claims filed against their Estates. Upon the completion of further analyses of the Proofs of Claim, which will likely lead to Claims objection litigation and related matters, the total amount of Claims that ultimately become Allowed Claims in these Bankruptcy Cases may differ from the Debtors' estimates, and such difference could be material. With respect to Class 4 Claims in particular, the actual ultimate aggregate amount of Allowed General Unsecured Claims may differ significantly from the estimate set forth herein or the Debtors' expected reduction thereof. Accordingly, the amount of Pro Rata Distributions that may be received by a particular Holder of an Allowed General Unsecured Claim may be either adversely or favorably affected by the aggregate amount of Claims ultimately Allowed in Class 4.

B. Post-Confirmation Date Administrative Claims

Because the Supplemental Administrative Claims Bar Date will occur after the Confirmation Date, there is a risk that Administrative Claims that are, to date, unknown to the Debtors could be filed and, subsequently, Allowed, which could adversely affect or eliminate Distributions to Beneficiaries. Depending on the Estates' recoveries on Causes of Action, the Debtors may also lack the Cash to pay any unexpected or unknown Allowed Administrative Claims as and when such Claims are Allowed.

C. Litigation Risks

As set forth herein, recoveries under the Plan will depend on the outcome of various litigation, including recoveries (if any) from Causes of Action. Because litigation is inherently uncertain, there is no way to predict with certainty that any litigation involving the Debtors will be decided favorably or unfavorably to the Estates.

D. Objection to Classifications

Section 1122 of the Bankruptcy Code provides that 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 interests of such class. The Debtors believe that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Notwithstanding anything to the contrary herein, the Debtors expressly reserve the right to object to the amount, priority or classification of any Claim.

E. Non-confirmation of the Plan

Even if Classes 2, 4 and 5 (the only voting Classes) accept the Plan, there is a risk that the Bankruptcy Court may not confirm the Plan if the cram down requirements discussed above are not met. The Debtors believe that the Plan satisfies all the requirements for confirmation of a liquidating plan under the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for confirmation of the Plan have been satisfied.

F. Delays of Confirmation and/or Effective Date

Any delay in confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Claims. These or any other negative effects of delays in confirmation or effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court and reduce recoveries to Beneficiaries.

XXIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A. General

Under the Internal Revenue Code of 1986, as amended (the “Tax Code”) and income tax regulations (the “Tax Regulations”) promulgated thereunder, there are certain significant federal income tax consequences associated with the Plan described in this Disclosure Statement. Certain of these consequences are discussed below.

This summary does not address foreign, state or local tax law, or any estate or gift tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as taxpayers who are not United States domestic corporations or citizens or residents of the United States, S corporations, banks, mutual funds, insurance companies, financial institutions, regulated investment companies, broker-dealers, nonprofit entities or foundations, small business investment companies, persons that hold Claims or Equity Interests as part of a straddle or conversion transaction and tax-exempt organizations).

No administrative rulings will be sought from the Internal Revenue Service (“IRS”) with respect to any of the federal income tax aspects of the Plan. Consequently, there can be no assurance that the treatment described in this Disclosure Statement will be accepted by the IRS. No opinion of counsel has either been sought or obtained with respect to the federal income tax aspects of the Plan.

THE DISCUSSION SET FORTH IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR GENERAL INFORMATION ONLY. ALL CREDITORS AND EQUITY INTEREST HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE FEDERAL INCOME TAX CONSEQUENCES CONTEMPLATED UNDER OR IN CONNECTION WITH THE PLAN, INCLUDING STATE AND LOCAL TAX CONSEQUENCES.

B. Tax Consequences to Debtors

The transfer of the assets of the Debtors to the Liquidating Trust in satisfaction of Claims may result in the recognition of gains and/or losses to the Debtors equal to the difference between the fair market value of the assets and the Debtors’ tax basis in the assets.

The character of gains and/or losses that may be recognized by the Debtors as capital or ordinary gains or losses and, in the case of capital gains or losses, as short term or long term, will depend on a number of factors, including: (1) the nature of the assets; (2) whether the assets are capital assets in the hands of the Debtors; (3) whether any gain is required to be recaptured as ordinary income; and (4) whether the assets have been held for more than one year.

To the extent the Debtors satisfy Claims at less than their face amount, the Debtors may realize Debt Discharge Income under Section 108 of the Internal Revenue Code.

However, to the extent that the Debtors realize a discharge of debt pursuant to the Plan, the Debtors may not recognize income as a result of such discharge pursuant to section 108 of the Tax Code. Even so, a taxpayer is required to reduce “tax attributes” by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; and (v) foreign tax credits.

Any loss recognized by a holder of an Allowed Claim will be a capital loss if the Claim constitutes a “security” for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a “security” is a debt instrument with interest coupons or in registered form.

THE PRECEDING INFORMATION IS BASED ON THE 1986 TAX CODE AND THE DISCUSSION HEREIN MAY CHANGE BASED ON AMENDMENTS TO THAT TAX CODE. INDIVIDUAL CREDITORS SHOULD CONSULT THEIR OWN TAX ADVISERS REGARDING THE EFFECT OF THE PLAN. TO PROTECT BOTH THE DEBTORS AND THE ESTATE FROM TAX CONSEQUENCES, THE DEBTORS, THE LIQUIDATING TRUSTEE OR ANY PARTY IN INTEREST MAY, WITH COURT APPROVAL, RETAIN ACCOUNTANTS TO EVALUATE TAX ISSUES.

C. Tax Consequences to Creditors

1. General

The tax consequences of the implementation of the Plan to a Creditor will depend in part on whether the Creditor’s present debt constitutes a “security” for federal income tax purposes, the type of consideration received by the Creditors in exchange for its Allowed Claim, whether the Creditor reports income on the accrual basis, whether the Creditor receives consideration in more than one tax year of the Creditor, whether the Creditor is a resident of the United States, and whether all the consideration received by the Creditor is deemed to be received by that Creditor in an integrated transaction.

2. Creditor Receiving Cash

A Creditor who receives Cash in full satisfaction of his Claim will be required to recognize gain or loss on the exchange. The Creditor will recognize gain or loss equal to the difference between the amount of Cash received in respect of such Claim and the Creditor’s tax basis in the Claim.

3. Creditors Receiving an Interest in the Liquidating Trust

A Creditor who receives a beneficial interest in the Liquidating Trust will be required to recognize gain or loss in an amount equal to the difference between the tax basis in their Claim and the fair market value of their equitable ownership in the assets of the Liquidating Trust. The transfer of assets to the Liquidating Trust will be treated, for all purposes of the Tax Code, as a transfer to the Creditors receiving an interest in the Liquidating Trust, followed by a contribution by such Creditors to the Liquidating Trust. All Creditors receiving an interest in the Liquidating

Trust must use, for all federal income tax purposes, valuations of the assets of the Liquidating Trust consistent with the valuations ascribed to such assets by the Liquidating Trustee.

Whether or not a reserve is established for disputed claims and whether or not Cash distributions are made to the Creditors, all of the income of the Liquidating Trust will be subject to tax on a current basis, payable by the Creditors holding an equity interest in the Liquidating Trust, and will be allocated to such Holders based on each Holder's ownership percentage of the Liquidating Trust. Such Creditors will be solely responsible for the payment of any tax on the income of the Liquidating Trust.

4. Character of Gain or Loss

The character of gain or loss recognized by a Holder of a Claim as capital or ordinary gain or loss and, in the case of capital gain or loss, as short term or long term, will depend on a number of factors, including: (i) the nature and origin of the Claim; (ii) the tax status of the Holder of the Claim; (iii) whether the Holder is a financial institution; (iv) whether the Claim is a capital asset in the hands of the Holder; (v) whether the Claim has been held for more than one (1) year; and (vi) the extent to which the Holder previously claimed a loss, bad debt deduction or charge to a reserve for bad debts with respect to the Claim. CLAIMANTS ARE URGED TO CONSULT THEIR INDIVIDUAL TAX ADVISORS REGARDING THESE ISSUES.

5. Receipt of Interest

Cash proceeds and other consideration received, or deemed received, by a Creditor which is attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether (1) the Creditor's existing Claims are capital assets in his hands and (2) the exchange is pursuant to a tax reorganization. A Creditor, who, under his accounting method, was not previously required to include in income, accrued but unpaid interest attributable to his existing Claims, and who exchanges his interest Claim for cash, other property or a combination thereof, pursuant to the Plan, will be treated as receiving ordinary interest income to the extent of any consideration so received allocable to such interest, regardless of whether that Creditor realizes an overall gain or loss as a result of the exchange of his existing Claims.

6. Backup Withholding

Under current tax law, interest, dividends and other "reportable payments" may, under certain circumstances, be subject to "backup withholding" at a thirty-one percent (31 %) rate. Withholding generally applies if the holder: (i) fails to furnish his social security number or other taxpayer identification number (hereinafter "TIN"), (ii) furnishes an incorrect TIN, (iii) fails to properly report interest or dividends, or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct number and that he is not subject to backup withholding.

D. Tax Treatment of the Liquidating Trust

The Debtors intend that the Liquidating Trust will be treated as a "liquidating trust" within the meaning of Section 301.7701-4(d) of the Tax Regulations. The transfer of Trust Assets to the Liquidating Trust shall be treated as a transfer to the Beneficiaries of the

Liquidating Trust for all purposes of the Internal Revenue Code (e.g., sections 61(a)(12), 483, 1001, 1012, and 1274) followed by and a deemed transfer by such Beneficiaries to the Liquidating Trust. The Liquidating Trust shall be considered a “grantor” trust, and the beneficiaries of the Liquidating Trust shall be treated as the grantors of the Liquidating Trust. The Liquidating Trustee shall value the transferred property and notify in writing the beneficiaries of the Liquidating Trust of such valuations. The assets transferred to the Liquidating Trust shall be valued consistently by the Liquidating Trustee and the Trust beneficiaries, and these valuations will be used for all federal income tax purposes.

The transfer and assignment of the Trust Assets to the Liquidating Trust on the Effective Date shall be made pursuant to the terms of the Plan and, accordingly, to the fullest extent permitted by law, shall be exempt from all stamp taxes and similar taxes within the meaning of section 1146(c) of the Bankruptcy Code.

XXIV. CONCLUSION AND RECOMMENDATION

THE DEBTORS BELIEVE THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ANY OF THE ALTERNATIVES DESCRIBED ABOVE AND THAT THE PLAN IS DESIGNED TO PROVIDE GREATER RECOVERIES THAN THOSE AVAILABLE IN ANY OTHER FORM OF LIQUIDATION. ANY OTHER ALTERNATIVE WOULD CAUSE SIGNIFICANT DELAY AND UNCERTAINTY, AS WELL AS ADDITIONAL ADMINISTRATIVE COSTS. THUS, THE DEBTORS RECOMMEND THE CONFIRMATION OF THE PLAN.

Dated: February 13, 2014.

Respectfully Submitted,

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