

THE PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION FOR USE IN CONNECTION WITH THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN OF REORGANIZATION DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISSEMINATION OF THIS PROPOSED DISCLOSURE STATEMENT ARE NOT INTENDED AND SHOULD NOT IN ANY WAY BE CONSTRUED AS A SOLICITATION OF VOTES ON THE PLAN, NOR SHOULD THE INFORMATION CONTAINED HEREIN BE RELIED UPON FOR ANY PURPOSE BEFORE A CONDITIONAL DETERMINATION BY THE BANKRUPTCY COURT THAT THE PROPOSED DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION.

**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	§	

**DEBTORS’ DISCLOSURE STATEMENT IN SUPPORT OF
CHAPTER 11 PLAN OF REORGANIZATION**

COMES NOW UPH Holdings, Inc., (“UPH”), Pac-West Telecom, 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) propose the following Plan of Reorganization for the Debtors (the “Plan”).

I. INTRODUCTION

A. General Information Concerning Disclosure Statement and Plan

The Debtors submit this 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 Security Holders.

The purpose of this Disclosure Statement is to disclose information adequate to enable the Creditors and Equity Security Holders to arrive at a reasonably informed decision in exercising the right to vote on the 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. The purpose of the Plan is to provide the maximum recovery to each Class of Claims in light of the assets and anticipated 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 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 ANALYSIS 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 holders of impaired claims against, or interests in, the Debtors. Section 1125 of the Bankruptcy Code requires that a plan proponent fully disclose sufficient information about the Debtors, its assets and the plan to creditors and stockholders before acceptances of that 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. Generally, each secured creditor will be placed in a class by itself, because each such creditor usually has a lien on distinct property and, therefore, has distinct legal rights.

The Bankruptcy Code does not require that each 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 2 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*, "Requirements for Confirmation of the Plan," Article VI, for a discussion of the section 1129 requirements for confirmation of a plan of reorganization.

THE DEBTORS BELIEVE THAT THIS 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 approve the disclosure statement and determine that the disclosure statement contains information adequate to allow creditors to make informed judgments about the plan. After Bankruptcy Court approval of the disclosure statement, the disclosure statement, the proposed plan and a ballot are sent to the holders of claims. The creditors will then have the opportunity to vote on the Plan and should consider this Disclosure Statement for such vote.

At the 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.** 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 security holders and with public policy, and that the identity and compensation of any insiders that will be employed or retained by the reorganized Debtors 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 Chapter 7 liquidation. 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. The Court must also find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtors. Additionally, the Plan must provide for payment of certain required fees to the United States Trustee.

In the event that the Plan is not accepted by all classes of claims or interest, the Debtors may attempt to obtain confirmation under what is known as “cram- down.” To obtain confirmation by cram- down, the Court must find that the Plan does not discriminate unfairly and is fair and equitable with respect to each class of claims or interest that is impaired by the Plan and has not accepted the Plan. The Code provides several options for a Plan to be “fair and equitable” to a secured creditor. Included among these options are that the secured creditor retains its lien and received 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 interest receive or retain any property on account of its prior claim.

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, ITS 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 CONDITIONAL 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 Holdings, Inc. ("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, Inc. and Pac-West Telecomm, Inc. All other Debtors are subsidiaries of either UniPoint Holdings, Inc. or Pac-West Telecomm, Inc.

UniPoint Holdings is a Delaware corporation. UniPoint Holdings provides enhanced product and service offerings, primarily in the wholesale arena. Products and services include 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 Telecomm, Inc. is a California corporation. Pac-West Telecomm, Inc. provides advanced telecommunications and data services, and offers origination, termination, managed modem, co-location, database, and transport services. Pac-West is a wholly-owned subsidiary of PWAC, which is a publicly-traded 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., which provides local exchange and interexchange services in Virginia, and Tex-Link Communications, Inc., which provides local and interexchange services within Texas. Pac-West holds 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 is 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 is also certified as a competitive carrier in the District of Columbia.

Peering Partners is a Texas LLC. 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 carrier throughout the United States. Peering Partners has contracts with either 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 operates in a highly competitive and price-sensitive segment.

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

UniPoint Enhanced Services is a Texas corporation. UniPoint Enhanced Services is a Texas corporation that buys and sells unbundled network communications elements.

Tex-Link is a telecommunications company that provides 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 have 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 PUC 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 are now 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 Chapter 11 proceedings to maximize the value of the estate for the benefit of all creditors, to provide a forum for resolution of the offsetting accounts, and to treat each of the Debtors' creditors *pari passu*.

The Debtors' primary secured creditor is Hercules Technology II, L.P. ("Lender") 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. As of the Petition Date, the Debtors had total assets of approximately \$ 17 million and total liabilities of approximately \$17 million. The Debtors employ approximately 50 people.

III. THE CHAPTER 11 CASE

A. General

On March 28, 2013, the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the Bankruptcy Case) 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 Schedule of Assets and Liabilities with the Bankruptcy Court. In the aggregate, the Debtors' scheduled pre-petition unsecured claims total approximately \$65 million. The Debtors' scheduled secured claims total approximately \$17 million. In addition to claims scheduled by the Debtors, Proofs of Claims have been or will be filed against the Debtors. The Debtors will examine all of the filed claims. Upon completion of this examination, it is expected that substantive objections to certain claims will be filed.

C. Post-Petition Operations

The Debtors have continued to operate their businesses post-petition. The Debtors currently have approximately 50 employees. In addition, on July 24, 2013, the Court entered the Order Granting Debtors' Motion for Entry of Orders (I) Approving Procedures and Providing Certain Protections and (II) Authorizing the (A) Sale of Substantially All the Debtors' Assets, (B) Payment of the Net Proceeds of Sale of Hercules Technology II, L.P. and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases.

D. Cash Collateral Authorization

As a result of the Debtors' depleted financial condition, Debtors required immediate post-petition financing to avoid irreparable harm to Debtors estate. Simultaneously with the filing of

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

the Bankruptcy Case, the Debtors requested authority to use cash collateral in the ordinary course (the “Cash Collateral Motion”) authorizing it to use the cash collateral of Hercules Technology II, L.P. The Debtors requested such authorization for the purposes of operating their business in the ordinary course on an interim basis. The Debtors required funds to meet their payroll obligations and salaries, to pay operating expenses, general and administrative operating expenses, and other essential costs and expenses. The Debtors failure to timely pay such items would have resulted in immediate and irreparable harm to their estates. The Bankruptcy Court entered its Final Order on Debtors’ Emergency Motion Pursuant to 11 U.S.C. § 363 for (1) Authority to Use Cash Collateral in the Ordinary Course, (2) Provide Adequate Protection, and (3) Scheduling Final Hearing pursuant to which the Debtors continued operations, which sets the later of the effective date of any confirmed chapter 11 Plan in these cases and 120 days from the date of the entry of the Final Order for the continued use of cash collateral.

E. Retention of Professionals

The Debtors obtained approval from the Bankruptcy Court for the retention of 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 this Chapter 11 Case. The Debtors also obtained approval to retain Tamarack Associates, Inc. as financial advisors and the Brown Law Firm as special counsel. The Debtors also obtained approval to retain Q Advisors, LLC as financial advisors to the Debtors. In addition, the Official Committee of Unsecured Creditors retained Kelley Drye & Warren LLP as bankruptcy counsel.

F. Miscellaneous Matters

Other orders entered by the Bankruptcy Court include granting 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; Motion to Establish Monthly Fee Reimbursement Procedures, Debtors’ Motion for Joint Administration, and 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 provide for the transfer to a trust (the “Liquidating Trust”) of all of the Debtors’ assets that remain (the “Trust Assets”) after: (i) the sale (the “TNCI Sale,” and the net proceeds payable to the Debtors therefrom (all such proceeds to be remitted to Hercules), the “TNCI Sale Proceeds”) of a substantial portion of the Debtors’ assets to TNCI Operating Company, LLC pursuant to the Asset Purchase Agreement referenced in, and terms of, the Order Regarding Motion for Entry of Orders (I) Approving Procedures and Providing Certain Protections and (II) Approving and Authorizing the (A) Sale of Substantially All of the Debtors’ Assets, (B) the Payment of the Net Proceeds of Sale to Hercules Technology II, L.P., and (C) the Assumption and Assignment of Certain Executory Contracts and Leases (the “TONIC Sale Order”). The Liquidating Trust will be administered by the Liquidating Trustee (defined below) pursuant to the terms of the Liquidating Trust Agreement (defined below). Among other things, the Liquidating Trustee shall liquidate the Trust Assets, reconcile outstanding claims, and make distributions to holders of allowed claims pursuant to the terms of the Plan and the Liquidating Trust Agreement.

After the Confirmation Date of the Plan, all objections to Claims and all Causes of Action and Avoidance Actions shall be prosecuted by the Trustee of the Liquidating Trust. The 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 ninety (90) days following the Effective Date of the Plan, unless extended by the Bankruptcy Court.

The bankruptcy estates of the Debtors will be substantively consolidated for purposes of allowance and distributions to claims.

Additionally, each Executory Contract and Unexpired Lease to which the Debtors are a party shall be deemed rejected unless the Debtors, through the Asset Purchase Agreement definition of Excluded Contracts, expressly assumes a particular Executory Contract before the Confirmation Date, or in this Plan.

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 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

As provided in 11 U.S.C. § 1123(a), Administrative Expense Claims shall not be classified for purposes of voting or receiving distributions under the Plan. The Allowed Claims against, and Allowed Equity Interests in, the Debtors are classified as set forth in this Article III. 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 dispute with respect to classification of Claims or Equity Interests or impairment shall be resolved by the Bankruptcy Court upon motion of the Claimant or Equity Interest holder affected thereby, with notice to the Debtors. This Plan shall only provide distributions to Allowed Claims; nothing within this Plan shall provide for the Allowance of any Claim. The Allowed Claims and Equity Interests are classified as follows:

Administrative Claims

Professional Claims

Class 1: Priority Tax Claims

Class 2: Priority Non-Tax Claims

Class 3: Internal Revenue Secured and/or Priority Claim

Class 4: Prepetition Lender's Secured Claim

Class 5: General Unsecured Claims

Class 6: Equity Interests

C. Impaired Classes of Claims and Equity Interests

Claims in Classes 4 through 5 are impaired under the Plan, and, therefore, shall vote to accept or reject this Plan. Class 6 is deemed to have rejected the Plan.

D. Impairment and Classification Controversies

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 at the Confirmation Hearing.

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 shall fail 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 Proponent will seek confirmation of the Plan pursuant to § 1129(b) with respect to any non-accepting class.

G. Disallowance of Claims Subject To Avoidance Actions

Any otherwise Allowed Claim, subject to Avoidance Actions as described in the Disclosure Statement under Section 547 of the Bankruptcy Code shall be disallowed pursuant to § 502(d) of the Bankruptcy Code until such time as the avoidable transfers are returned to the Debtors' estate and such holder of a claim subject to an avoidable preference shall not be entitled to vote to accept or reject this Plan.

H. Elimination of Classes

Any impaired class that is not occupied as of the date of the Confirmation Hearing by an Allowed Claim or Allowed Equity Interest or a Claim or Equity Interest temporarily allowed pursuant to Bankruptcy Rule 3018 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 this proceeding. 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 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 BY THE COURT BEFORE DISTRIBUTION UNDER THE PLAN OCCURS.

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 CREDITORS' CLAIM IN THAT CLASS.

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

A. Administrative Claims:

1. General: Subject to the bar date provisions herein, unless otherwise agreed to by the parties, each holder of an Allowed Administrative Claim shall 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.

2. Payment of Statutory Fees: All fees payable pursuant to 28 U.S.C. § 1930 shall be paid in Cash equal to the amount of such Administrative Claim when due.

B. Bar Date for Administrative Claims:

1. General Provisions: Except as otherwise provided in this Article IV, requests for payment of Administrative Claims must be included within a motion or application and filed no later than forty-five (45) days after the Effective Date or by such earlier deadline governing a particular Administrative Claim contained in an order of the Bankruptcy Court entered before the Effective Date. Holders of Administrative Claims (including, without limitation, professionals requesting compensation or reimbursement of expenses and the holders of any Claims for federal, state or local taxes) that are required to file a request for payment of such Claims and that do not file such requests by the applicable bar date specified in this section shall be forever barred from asserting such Claims against the Debtors or any of their respective property. Requests for payments of Administrative Claims included within a proof of claim are of no force and effect, and are disallowed in their entirety as of the Confirmation Date unless such Administrative Claim is subsequently filed in a timely fashion as provided herein.

2. Professionals: All Professional Persons 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 an application for final allowance of compensation and reimbursement of expenses no later than sixty (60) days after the Effective Date. Objections to applications of Professional Persons for compensation or reimbursement of expenses must be filed and served on the Liquidating Trustee and the Professional Persons to whose application the objections are addressed no later than seventy-five (75) days after the Effective Date. Any fees of Professional Persons and reimbursements or expenses incurred by the Debtors subsequent to the Effective Date may be paid without application to the Bankruptcy Court. On the later date of the Effective Date of the Plan (the "Effective Date") or the date on which professional fees are allowed, retained professionals ("Professionals") shall be entitled to payment of their unpaid allowed fees and expenses from the Initial Closing Carve-Out up to and limited by the amounts budgeted for such Professionals in the budget annexed to the Second Amended Final Cash Collateral Order. Professionals shall agree to accept deferred payment of any additional unpaid allowed fees and expenses on a first-out/first-priority basis from the net proceeds of Trust Assets that are carved out from (i.e. the estates' share of net account receivable recoveries) or do not comprise, Hercules's prepetition collateral and that are not otherwise payable to Hercules. Payment of such allowed fees and expenses shall be made to Professionals on a pro rata basis until all such fees and expenses are paid in full.

3. Tax Claims: All requests for payment of Administrative Claims and other Claims by a Governmental Unit for taxes (and for interest and/or penalties related to such taxes) for any tax year or period, which accrued or was assessed within the period from and including the Petition Date through and including the Effective Date ("Post-Petition Tax Claims") and for which no bar date has otherwise been previously established, must be filed on or before the later of (i) forty-five (45) days following the Effective Date; and (ii) ninety (90) days following the filing with the applicable Governmental Unit of the tax return for such taxes for such tax year or period. Any holder of any Post-Petition Tax Claim that is required to file a request for payment of such taxes and does not file such a Claim by the applicable bar date shall be forever barred from asserting any such Post-Petition Tax Claim against the Reorganized Debtors or their property, whether any such Post-Petition Tax Claim is deemed to arise prior to, on, or subsequent to the Effective Date. To the extent that the holder of a Post-Petition Tax Claim holds a Lien to secure its Claim under applicable state law, the holder of such Claim shall retain its Lien. At the Liquidating Trustee's option, (i) 100% of the allowed amount 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.

4. Ordinary Course Liabilities: The Reorganized Debtors shall pay each liability incurred in the Ordinary Course of Business pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course of Business Claim. Holders of any Ordinary Course of Business Claim will not be required to file or serve any request for payment of the Claim in the Ordinary of Course of Business.

C. Treatment of Classified Claims

<u>Claims:</u>	<u>Total Claims in Class</u>	<u>Total Payments to Class</u>	<u>Percentage of Claim Paid under Plan</u>
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<u>Claims:</u>		<u>Total Claims in Class</u>	<u>Total Payments to Class</u>	<u>Percentage of Claim Paid under Plan</u>
<u>Class 1:</u>	Priority Tax Claims	3,732	3,732	100.0%
<u>Class 2:</u>	Priority Non-Tax Claims	140	140	100.0%
	Internal Revenue Secured and/or			
<u>Class 3:</u>	Priority Claims	2,601	2,601	100.0%
<u>Class 4:</u>	Prepetition Lender’s Secured Claim	10,715	10,715	100.0%
<u>Class 5:</u>	General Unsecured Claims	22,000		Pro rata
<u>Class 6:</u>	Equity Interest	N/A	N/A	0%

Class 1: Allowed Priority Non-Tax Claims

This Class shall consist of Allowed Priority Non-Tax Claims arising under Section 507(a)(4), (5) or (7) of the Bankruptcy Code.

Treatment: Each holder of an Allowed Priority Non-Tax Claim shall be paid in full, through quarterly Cash payments commencing on the Effective Date, its Allowed Priority Non-Tax Claim, together with interest at the Plan Interest Rate, or as otherwise agreed, over a period through the fifth anniversary of the Effective Date.

Funding: The Liquidating Trust will pay the claims in Class 1 as set forth in the Liquidating Trust Agreement.

Total Claims: The total of Class 1 Claims as filed is \$635,405.84.

Impairment & Voting: Class 1 is unimpaired. Acceptance of this Plan from holders of Class 1 Claims will not be solicited.

Class 2: Hercules Secured Claim

This Class shall consist of the secured claim of Hercules Technology II, L.P. (“Hercules”) asserted against the Debtors.

Total Claims: The estimated total of Class 2 Claims is estimated to be \$10,531,673.68.

Impairment & Voting: Class 2 is impaired. Acceptance of this Plan from holders of Class 2 Claims will be solicited.

Class 3: Other Secured Claims

This Class shall consist of other Secured Claims.

Treatment: At the Liquidating Trustee’s option, (i) 100% of the unpaid allowed amount on or as soon as reasonably practicable after the later of the Effective Date and the date the claim becomes allowed, or (ii) abandonment of the relevant collateral, in whole or in part.

Funding: The Liquidating Trust will pay the claims in Class 3 as set forth in the Liquidating Trust Agreement.

Impairment & Voting: Class 3 is unimpaired. Acceptance of this Plan from holders of Class 3 Claims will not be solicited.

Class 4: Allowed General Unsecured Claims

This Class shall consist of all Allowed General Unsecured Claims asserted against the Debtors. Hercules shall have a general unsecured claim for any unpaid portion of the Hercules Secured Claim that remains after all of Hercules's prepetition collateral is liquidating and the net proceeds of such collateral are distributed in accordance with the Plan (the "Hercules Deficiency Claim," and together with the Hercules Secured Claim, the "Hercules Claims.") The Liquidating Trustee and Hercules shall work in good faith to reconcile the Hercules Deficiency Claim on a rolling basis. Each of Hercules and the Liquidating Trustee shall provide their current calculation of the Hercules Deficiency Claim to the other party upon the reasonable written request of the requesting party (which may be made by email to the other party's counsel of record). If the parties are not able to resolve any dispute regarding the calculation of the Hercules Deficiency Claim, the Bankruptcy Court shall determine the dispute. Hercules shall not receive any distributions on account of the Hercules Deficiency Claim until all of Hercules's prepetition collateral is liquidated. If the Liquidating Trustee makes any distributions to general unsecured creditors before all of Hercules's prepetition collateral is liquidated and the final amount of the Hercules Deficiency Claim is fixed, the Liquidating Trustee shall simultaneously place in a restricted reserve ("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 general unsecured claims, shall be released to Hercules when the final amount of the Hercules Deficiency Claim (if any) is fixed. In no event shall any costs or expenses of the Liquidating Trust nor any other deductions (other than to Hercules) be made from the Hercules Deficiency Claim Reserve until the Hercules Deficiency Claim is paid in full; provided, however, that Hercules and the Liquidating Trustee shall work in good faith on a rolling basis to reconcile and authorize the release of any excess funds in the Hercules Deficiency Claim Reserve. If the parties are not able to resolve any dispute regarding the amount or administration of the Hercules Deficiency Claim Reserve, the Bankruptcy Court shall determine the dispute.

Treatment: Each holder of an Allowed Unsecured Claim shall receive its pro rata share of distributable cash held by the Liquidating Trust (after payment of allowed Professional fees/expenses and the expenses of the Liquidating Trust/Liquidating Trustee).

Total Claims: The estimated total of Class 20(a) Claims as filed total **\$65,040,531.38**.

Impairment & Voting: Class 20(a) is impaired. Acceptance of this Plan from holders of Class 20(a) Claims will be solicited.

Class 5: Prepetition Equity Interests

This Class shall consist of all Prepetition Equity Interests.

Treatment: Prepetition Equity Interests shall be canceled and holders of Prepetition Equity Interests shall receive no distribution under the Plan.

Impairment & Voting: Class 5 is impaired and deemed to have rejected the Plan. Acceptance of this Plan from holders of Class 5 Claims will not be solicited.

Administrative claims are not a true class and are neither impaired nor unimpaired. Acceptance of the Plan from such Claimants will not be solicited.

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 still pending on the voting date, 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 date and time 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.

B. Claim Class Acceptance Requirement

The Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of two-thirds in dollar amount and a majority in number of the claims of that class which actually cast ballots for acceptance or rejection of the plan. In other words, acceptance takes place only if two-thirds in amount and majority in number of the creditors in a given class who vote cast their ballots in favor of acceptance.

C. Presumed Acceptance/Rejection of Plan

Classes 1 and 3 are unimpaired Classes; Classes 2, 4, and 5 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 5 is deemed to have rejected the Plan. Any impaired Class of Claims that has a single member who does not vote to reject the Plan shall be deemed to have accepted the Plan.

D. Non-consensual Confirmation

If any impaired Class of Claims entitled to vote shall 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. TREATMENT OF EXECUTORY CONTRACTS AND LEASES

A. Rejection of Executory Contracts and Unexpired Leases

Pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between any of the Debtors and any person, to the extent not previously rejected by order of the Bankruptcy Court, shall be deemed rejected by the Debtors as of the Effective Date except for any executory contract or unexpired lease that (a) has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (b) has been renegotiated and either assumed or rejected on renegotiated terms pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (c) is the subject of a motion to assume that is pending before the Bankruptcy Court on the Effective Date,

(d) is the subject of a motion to approve renegotiated terms and assumption or rejection on renegotiated terms that is pending before the Bankruptcy Court on the Effective Date, (e) was entered into after the Petition Date either in the ordinary course of business by the Debtors or pursuant to an order of the Bankruptcy Court; or (f) is specifically assumed or treated otherwise in the Plan or the Confirmation Order. Entry of the Confirmation Order shall constitute the approval, pursuant to sections 365(a) and 1123(b) (2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases, or, as the case may be, the assumption of executory contracts as set forth in the Plan.

B. Bar Date for Filing Proofs of Claim for Rejection Damages

Claims arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan shall be filed with the Bankruptcy Court no later than thirty (30) days after the date of entry of the Confirmation Order. Any Claims not filed within such time will be forever barred from assertion against the Debtors, its estate, its property, the Reorganized Debtors or the Reorganized Debtors property. Unless otherwise ordered by the Bankruptcy Court, all timely filed Claims arising from the rejection of executory contracts and unexpired leases shall be treated as Unsecured Claims under the Plan.

IX. PROVISIONS REGARDING DISTRIBUTIONS UNDER THE PLAN AND TREATMENT OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS

A. Method of Distributions Under the Plan

In General. All distributions under the Plan shall be made as set forth in the Plan by the Liquidating Trustee to the holders as of the Confirmation Date of each Allowed Claim at the address of such holder as listed on the Schedules, unless the Debtors has been notified in writing of a change of address before the Confirmation Date, including, without limitation, by the filing of a proof of claim by such holder that provides an address for such holder different from the address reflected on the Schedules for such holder. The Debtors shall not recognize any transfer of a Claim occurring after the Confirmation Date, and shall be entitled instead to recognize and deal for all purposes herein with only those holders listed on the Schedules or on the register of proofs of claim maintained by the Clerk of the Bankruptcy Court as of the close of business on the Confirmation Date.

1. Distributions of Cash. Any payment of Cash made by the Liquidating Trustee pursuant to the Plan shall be made by check drawn on a domestic bank.

2. Timing of Distributions. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Any payment or distribution required to be made under the Plan on any specific day shall be deemed timely if made no later than twenty (20) Business Days after such date.

3. Minimum Distributions. No payment of Cash less than \$25.00 shall be made by the Liquidating Trustee to any holder of a Claim unless a request therefor is made in writing to the Liquidating Trustee or such payment constitutes the final distribution to the holder of a Claim under the Plan.

4. Unclaimed Distributions. Any distributions pursuant to the Plan, including cash, interest or other amounts earned thereon, that are unclaimed for a period of one (1) year after distribution thereof shall be reinvested in the Liquidating Trust and any entitlement of any holder of any Claim to such distributions shall be extinguished and forever barred. Failure to claim,

cash or negotiate any distribution within one (1) year of such distribution shall relieve the Liquidating Trustee of the obligation to make any further distributions to the holder of the Claim to whom the distribution was made.

B. Disputed Claims

1. Disputed Claims Reserve. The Plan contemplates the establishment of a Disputed Claims Reserve, to be managed by the Liquidating Trustee, for the treatment of Disputed Claims. Under the Plan, after the Effective Date, on a date when sufficient funds are available to deposit the amount described in this paragraph, the Liquidating Trustee shall deposit into a Disputed Claims Reserve an amount equal to the Pro Rata share of the distribution allocable to Disputed Claims, as if such Claims were Allowed Claims. The Disputed Claims Reserve shall be held in trust by the Liquidating Trustee for the benefit of the holders of Allowed Claims whose Distributions are unclaimed and the holders of such Disputed Claims pending a determination of their entitlement thereto under the terms of the Plan.

2. Distributions Upon Allowance of Disputed Claims Entitled to Payment in Full in One Payment. The holder of a Claim entitled to payment in full under the Plan on one specific payment date, which Claim is a Disputed Claim on such payment date, but which Claim subsequently becomes an Allowed Claim, shall 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.

3. 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, shall 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 shall 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.

C. Objections to and Resolution of Disputed Administrative Claims and Disputed Claims

After the Confirmation Date, the Liquidating Trustee shall have the exclusive right to make and file objections to Administrative Claims, other than applications for allowance of compensation and reimbursement of expenses under sections 330 and 503 of the Bankruptcy Code, and objections to Claims. All objections shall be litigated to Final Order; provided, however, that the Liquidating Trustee shall have the authority to compromise, settle, otherwise resolve or withdraw all objections, other than applications for allowance of compensation and reimbursement of expenses under Sections 330 and 503 of the Bankruptcy Code, without approval of the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Liquidating Trustee shall file and serve all objections to Administrative Claims (other than to applications for allowances of compensation and reimbursement of expenses) and objections to Claims upon the holder of the Administrative Claim or Claim as to which the objection is made no later than (a) one hundred eighty (180) days after the later of the Effective Date or the date on

which a proof of claim or request for payment is filed with the Bankruptcy Court or (b) such other date as may be approved by the Bankruptcy Court.

D. Cancellation and Surrender of Existing Securities and Agreements

1. On the Effective Date, the promissory notes and other instruments evidencing any Claim or Interest, including without limitation any stock purchase agreement, option contract warrants, or similar instrument or right of any kind shall be deemed canceled without further act or action under any applicable agreement, law, regulation, order or rule.

2. Each holder of a promissory note, securities, or other instrument evidencing a Claim shall surrender such promissory note or instrument to the Debtors. No distribution of property hereunder shall be made to or on behalf of any such holders unless and until such promissory note or instrument is received by the Debtors or the Liquidating Trustee or the unavailability of such promissory note or instrument is established to the reasonable satisfaction of the Liquidating Trustee. The Liquidating Trustee may require any holder that is unable to surrender or cause to be surrendered any such promissory notes or instruments to deliver an affidavit of loss and indemnity and/or furnish a bond in form and substance (including, without limitation, with respect to amount) reasonably satisfactory to the Liquidating Trustee. Any holder that fails within the later of one (1) year after the Confirmation Date and the date its Claim is Allowed (i) to surrender or cause to be surrendered such promissory note or instrument, (ii) if requested, to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Liquidating Trustee, and (iii) if requested, to furnish a bond reasonably satisfactory to the Liquidating Trustee, shall be deemed to have forfeited all rights, claims and Causes of Action against the Debtors and the Liquidating Trustee and shall not participate in any distribution hereunder.

X. IMPLEMENTATION OF THE PLAN

A. Implementing Actions

On or before the Effective Date, the following shall occur in implementation of the Plan:

1. All actions, documents and agreements necessary to implement the Plan (some of which are specifically described below in paragraphs 4 through 8) shall have been effected or executed;

2. The Debtors shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions or documents that are determined by the Debtors to be necessary to implement the Plan;

3. The Reserves shall be funded.

4. On the Effective Date, all existing Common Stock and Preferred Stock of the Debtors will be canceled, annulled and extinguished, and new equity interest in certain of the Debtors will be issued to the Liquidating Trustee.

B. Cancellation of Equity Interests and Issuance of Securities

On the Effective Date, all existing Equity Interests of the Debtors will be canceled, annulled and extinguished.

C. Default.

A failure by the Liquidating Trustee to make a payment to a Taxing Authority in accordance with the terms of the Plan shall be an Event of Default. If the Liquidating Trustee fails to cure an Event of Default as to such payments within thirty (30) days after service of written notice of default served on the Liquidating Trustee with a copy to counsel for the Liquidating Trustee, then such tax creditor may (a) enforce the entire amount of its claim, (b) exercise any and all rights and remedies under applicable non-bankruptcy law, and (c) seek such relief as may be appropriate in this Court.

D. Substantive Consolidation:

The Debtors and their respective Estates shall be substantively consolidated for purposes of voting on and distribution under this Plan. As a result of the substantive consolidation, (a) all intercompany Claims by and among the Debtors (including such Claims arising from the rejection of any Executory Contract) will either be eliminated or shall remain in place but shall not be entitled to any Distributions under this Plan, (b) any obligation of any of the Debtors and all guarantees thereof executed by any of the Debtors will be deemed to be an obligation of each of the Debtors, and (c) any Claim filed or asserted against any of the Debtors will be deemed a Claim against each of the Debtors. The substantive consolidation contemplated by this section shall not, however, cause any of the Debtors to be liable for any Claim or Equity Interest for which it would not otherwise be liable absent the substantive consolidation under this Plan.

On the Effective Date, except as otherwise provided for in this Plan, all Claims based on guaranties of collection, payment, or performance made by any of the Debtors concerning the obligations of another Debtor shall 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 Debtors shall be entitled to a single satisfaction of such Claims or Equity Interests.

The substantive consolidation of the Debtors shall not constitute or effectuate a merger of the corporate or other legal identities of the Debtors, and their respective corporate and other legal identities shall remain intact, except as otherwise specified in this Plan.

Grounds for substantive consolidation of the Debtors are numerous. First, the proposed Purchase Price paid by TCNI is not allocated and is for all of the Debtors assets. Allocation of the Purchase Price would be cumbersome and ultimately not lead to more definitive or fair distributions to unsecured creditors. Second, the Debtors have been operated as a single business unit. In addition, many of the major obligations of the Debtors are cross-collateralized and cross-guaranteed demonstrating that (1) intercompany claims for reimbursement would exacerbate the detangling of the Debtors' affairs and (2) creditors treated the Debtors as a single credit risk and entity. Fourth, many of the Debtors' creditors are creditors of all of the Debtors.

This factual scenario demonstrates that allocating the Purchase Price and allocating intercompany debts amongst the 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 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. Thus, overall distributions will be enhanced by avoiding additional and unnecessary expense.

E. Establishment of Liquidating Trust:

The Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement creating the Liquidating Trust. A copy of the Liquidating Trust Agreement is attached hereto as Exhibit "2". Following the Effective Date, the liquidation of the Estates shall be conducted by the Liquidating Trust, the Liquidating Trustee of which shall liquidate the Liquidating Trust Assets, object to Contested Claims and Equity Interest, and make distributions pursuant to this Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall not at any time, whether on behalf of the Liquidating Trust or the Debtors or their Estates, continue or engage or engage in the conduct of a trade or business, and not part of the Liquidating Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Liquidating Trustee in the furtherance of any business. The Liquidating Trust shall not receive or retain Cash in excess of a reasonable amount to meet the Claims and contingent liabilities (including Contested Claims) or to maintain the value of the Liquidating Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidating Trust.

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

Upon confirmation of this Plan, all property of the Estates shall be deemed to have transferred to the Liquidating Trust, including all tangible and intangible property, personal, and real property, intellectual property, contractual rights, causes of action, defenses, and all other assets and rights of every kind whatsoever owned or possessed by the Debtors ("Trust Assets"). The Liquidating Trust shall hold such property in its exclusive possession, custody and control.

A) Transfer Fee and Clear of Claims; Stay of Actions Against Liquidating Trust or Trust Res

Except for the rights of those entities or individuals holding Allowed Claims, all property transferred to the Liquidating Trust from any of the Estates shall be free and clear of all Claims, interests, Liens and encumbrances, and such property shall remain as property of the Liquidating Trust until distributed pursuant to this Plan. On the Effective Date, a stay of all actions to the same extent as set forth in section 362(a) of the Bankruptcy Code with respect to the Estates and Liquidating Trust shall be and remain in effect pending consummation of this Plan. The transfer of assets to the Liquidating Trust pursuant to Section 6.5 of this Plan shall 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.

2. The Liquidating Trustee:

The Liquidating Trustee will be 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, in their sound business judgment, have determined that _____ shall serve as the Liquidating Trustee. The Liquidating Trustee shall 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.

3. The Responsibilities of the Liquidating Trustee:

The responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include (i) the receipt, management, supervisions, and protection of the

Liquidating Trust Assets on behalf of the beneficiaries of the Liquidating Trust; (ii) pursuit of objections to the Contested Claims; (iii) investigation, analysis, prosecution, and if necessary and appropriate, compromise of the claims and causes of action included among the Liquidating Trust Assets, including without limitation Avoidance Actions and non-bankruptcy causes of action against third parties; (iv) calculation and implementation of all distributions to be made under this Plan to holders of Allowed Claims; (v) marketing, selling, leasing, or otherwise disposing of all of the Liquidating Trust Assets; (vi) filing all required tax returns and paying taxes and all other obligations of the Liquidating Trust; (vii) filing all required tax returns for the Debtors; and (viii) such other responsibilities as may be vested in the Liquidating Trustee pursuant to this Plan, the Liquidating Trust Agreement, orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of this Plan.

4. The Powers of the Liquidating Trustee:

The powers of the Liquidating Trustee shall include the power to (i) invest funds; (ii) make distributions; (iii) pay taxes and other obligations owed by the Liquidating Trust or incurred by the Liquidating Trustee; (iv) engage and compensate from the Liquidating Trust Assets, consultants, agents, employees and professional persons to assist the Liquidating Trustee with respect to the Liquidating Trustee's responsibilities; (v) retain and compensate from the Liquidating Trust Assets, the services of experienced auctioneers, brokers, and/or marketing agents to assist and/or advise in the sale or other disposition of the Liquidating Trust Assets; (vi) liquidate and dispose of the Liquidating Trust Assets; (vii) compromise and settle Claims and causes of action; (viii) act on behalf of the Debtors and the Estates in all adversary proceedings and contested matters pending in the Bankruptcy Court and in all action and proceedings and contested matters pending in the Bankruptcy Court and in all actions and proceedings pending elsewhere; (ix) commence and/or pursue any and all actions involving Liquidating Trust Assets that could arise or be asserted at any time, unless otherwise waived or relinquished in this Plan; and (x) act and implement this Plan, the Liquidating Trust Agreement, and orders of the Bankruptcy Court. The Liquidating Trustee shall exercise such powers in accordance with the provisions of this Plan.

5. Bankruptcy Court Approval:

Notwithstanding anything to the contrary in this Article VI, the Liquidating Trust may not consummate or implement any sale, compromise, or other transaction involving Liquidating Trust Assets or Contested Claims where the amount in controversy exceeds \$500,000 unless and until the Bankruptcy Court authorizes and approves such sale, compromise, or other transaction upon motion by the Liquidating Trustee. The Liquidating Trustee shall provide notice of and the opportunity for a hearing on all such motions to all entities who request notice of such matters in the manner prescribed in this Plan.

6. Compensation of the Liquidating Trustee and Professionals.

In addition to reimbursement for the actual reasonable and necessary expenses incurred, the Liquidating Trustee, and any employees, agents, consultants, or professionals engaged or retained by the Liquidating Trustee, shall be entitled to reasonable compensation from the Liquidating Trust Assets for services rendered in connection with performance of the duties of the Liquidating Trustee as set forth above. With respect to any agents, consultants, employees engaged and professionals retained by the Liquidating Trust and the Liquidating Trustee, such compensation shall be in an amount and on such terms as may be agreed to by the Liquidating

Trustee and such agents, consultants, employees or professionals. The fees and expenses of the Liquidating Trustee and any professionals employed by the Liquidating Trustee shall be subject to the approval of the Bankruptcy Court, as reasonable, following the provision of notice and the opportunity for a hearing to the United States Trustee and all parties who have requested notice in the manner prescribed in Section 15.9 of this Plan. Prior to such approval, the Liquidating Trustee shall be authorized to pay, on a monthly basis, one hundred percent (100%) of the fees and one hundred percent (100%) of the expenses incurred by the Liquidating Trustee and its professionals, subject to disgorgement in the event of the disallowance of any such fees or expenses by the Bankruptcy Court.

7. Termination.

The duties, responsibilities and powers of the Liquidating Trustee shall terminate after all causes of action transferred and assigned to the Liquidating Trust or involving the Liquidating Trustee on behalf of the Liquidating Trust is fully resolved and the Liquidating Trust Assets have been distributed on the Final Distribution Date in accordance with this Plan and the Liquidating Trust Agreement. The Liquidating Trust shall terminate no later than five years from the Effective Date. However, if warranted by the facts and circumstances provided for in this Plan, and subject to the approval of the Bankruptcy Court upon a finding that an extension is necessary for the purpose of the Liquidating Trust, the term of Liquidating Trust may be extended for a finite period based on the particular circumstances at issue. Each such extension must be approved by the Bankruptcy Court within six months of the beginning of the extended term with notice thereof to all of the beneficiaries of the Liquidating Trust.

8. 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 Remaining 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 a deemed owners 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.

9. Liquidating Trust Assets.

The transfer and assignment of the Remaining Assets to the Liquidating Trust on the Effective Date shall be made pursuant to the terms of this 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.

10. 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; provided, however, that such prohibition on transferability of beneficial

interests is not intended to impair the ability of holders of Claims to assign their Claims pursuant to and in accordance with the Bankruptcy Rules and applicable law.

F. Assignment of Causes of Action

On the Effective Date, all rights and Causes of Action that are not Purchased Assets, including claims under §§ 502, 542, 544, 545, 546, 548, 550, and 553 of the Bankruptcy Code, preference claims under § 547 of the Bankruptcy Code, fraudulent transfer claims under § 548 of the Bankruptcy Code, and all other claims and causes of action of the Debtors' estate against any Person as of the Confirmation Date shall be preserved and transferred and assigned to the Liquidating Trust. On the Effective Date, the Liquidating Trust shall be authorized and shall have the power to bring any and all such Causes of Action including Avoidance Actions for payments reflected on Exhibit "3." All recoveries, if any, received from or in respect of the causes of action (whether by settlement, judgment or otherwise) shall become and be property of the Liquidating Trust to be distributed in accordance with the Plan. To the extent permitted under law, all rights under § 363(h) of the Bankruptcy Code are also preserved for the benefit of the Debtors' estate, and the Liquidating Trust shall have the right to exercise those rights subject to Bankruptcy Court Approval. The Reorganized Debtors may prosecute, settle, or dismiss rights, claims, or causes of action that are Purchased Assets as the Reorganized Debtors sees fit and all proceeds therefrom shall be the property of the Reorganized Debtors, except as expressly released within this Plan. The Debtors, the Liquidating Trustee, its board of directors, officers, attorneys, and other professional advisors shall have no liability to any entity or parties claiming through the Debtors for pursuing or not pursuing any such rights, claims, or causes of action vested in the Reorganized Debtors pursuant to this Plan.

G. Condition Precedent to Effective Date

The Effective Date is conditioned upon each of its definitional prerequisites under the Plan occurring, and the Confirmation Order becoming a Final Order, except as waived by the Debtors and Purchaser.

XI. 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 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 is being solicited to vote, if either (i) its Claim has been scheduled by the Debtors and such Claim is no 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 still pending on the voting date, 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 date and time 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.

B. Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan after the ballots have been cast. The Confirmation Hearing has been scheduled for at ___:00 p.m. prevailing central time. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjournment made at the Confirmation Hearing. At the Confirmation Hearing, the Bankruptcy Court will (i) consider final approval of the Disclosure Statement (ii) determine whether the Plan has been accepted by the requisite majorities of each Voting Class; (iii) hear and determine all objections to the Plan and to confirmation of the Plan (iv) determine whether the Plan meets the requirements of the Bankruptcy Code and has been proposed in good faith; and (v) confirm or refuse to confirm the Plan.

C. Acceptance

Each of the Voting Classes 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 BELIEVES 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 RECOMMENDS 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 was liquidated under Chapter 7 of the Bankruptcy Code.

The Debtors believes that the Plan meets the requirements of the Feasibility Test and of the Best Interest Test by providing for the sale of new stock in the Reorganized Debtors with the cash proceeds being distributed in accordance with the priority scheme set forth in the Bankruptcy Code. Due to the minimal operational expenses the Reorganized Debtors will incur during the period of distributions under the Plan, the Reorganized Debtors is not expected to undergo liquidation or further financial reorganization.

F. Objections to Confirmation and/or Final Approval of Disclosure Statement

The Court has conditionally approved this Disclosure Statement. Final approval will be combined with the confirmation hearing. Objections to the adequacy of the Disclosure Statement will be sustained only if the defect or omission in the Disclosure Statement is of such a nature that the correction of such defect or omission might, in the Courts judgment, cause a creditor to change its vote on the Plan. Objections to final approval of the Disclosure Statement and/or to plan confirmation 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 4:00 p.m. prevailing central time upon:

Patricia Baron Tomasco
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2076 (direct phone)
(512) 691-4438 (direct fax)

XII. CAUSES OF ACTION

The primary assets available for payment of administrative, priority and unsecured claims under the Plan are the proceeds from the Trust Assets. Additional litigation assets may be available for distribution if such claims are litigated and result in recoveries. This Article V of the Disclosure Statement provides a summary of potential claims and potential recoveries under the various Causes of Action.

A. Litigation

As of the date of the filing of this Disclosure Statement, the Debtors have identified other Causes of Action including the following:

- 1) Accounts Receivable
- (a) The Debtors have numerous accounts receivable including claims against T-Mobile USA, Inc. (“T-Mobile”); Sprint Nexttel Corporation (“Sprint”); and Leap Wireless International, Inc. (“Leap”) already initiated. The amount of these claims is approximately \$25.6 million. In addition, the Debtors assets include Accounts Receivable of any kind or nature arising from goods and services supplied by the Debtors that total \$40 million and will be pursued by either the Liquidating Trust as set forth the Liquidating Trust Agreement. The Debtors estimate that in a liquidation, such receivables would be severely deteriorated by the assertion of defenses. Accounts receivable are valued at \$25 million in a reorganization with a liquidating trust and \$1 million in a chapter 7 liquidation. **Exhibit “4”** lists the Debtors’ accounts receivable.

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 within 90 days prior to bankruptcy on an antecedent debt while the Debtors is insolvent which allows a creditor to recovery more than it would have if the payment had not been made and the Debtors’ assets were liquidated under Chapter 7. Payments made to insiders of the Debtors may be preferences if made within one year prior to bankruptcy. Certain payments are protected from recovery as preferences. These include payments made in the ordinary course of business and upon ordinary business terms, payments representing a substantially contemporaneous exchange and payments on consumer debts for less than \$600.00. The Debtors made the payments set forth below to creditors during the 90 days for non- insiders and 365 days for insiders prior to bankruptcy.

Exhibit “3” lists all payments made by the Debtors during the ninety days immediately prior to the Petition Date. Also included is a chart which outlines payments to insiders within 365 days immediately prior to the Petition Date. After the Confirmation Date, the Liquidating Trust will make decisions regarding pursuit of litigation to pursue such payments under 11 U.S.C. 547. 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 and the costs of collection (including attorneys’ fees), the Debtors estimate that net preference recoveries will be \$1.1 million.

C. Fraudulent Conveyances/Insider Transfers

Section 548 of the Bankruptcy Code allows Debtors-in- Possession to recovery certain payments known as “fraudulent conveyances.” A fraudulent conveyance is a transfer made within one year of bankruptcy while the Debtors was insolvent which either was made with fraudulent intent or was made without receiving reasonably equivalent value. In addition, section 547 of the Bankruptcy Code provides for avoidance of certain payments to insiders made within one year.

Section 549 of the Bankruptcy Code allows the bankruptcy estate to recover transfers which were made without court approval. The Debtors are unaware of any unauthorized transfers.

D. Disclaimer

The Debtors have attempted to disclose all material causes of action, including avoidance and other actions under chapter 5 of the Bankruptcy Code that it 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 Trust. Accordingly, the ultimate resolution of such claims may result in zero distributable assets being received by the Liquidating Trust. It is the contemplation of the Plan that such investigation and analysis will occur post-confirmation by the Liquidating Trust. The Debtors may hold other potential claims or causes of actions 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 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' estate at the confirmation hearing; accordingly, except claims which are expressly released by the Plan, the Debtors' failure to identify a claim 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 Trust deems advisable, fully pursued post-confirmation.

XIII. FINANCIAL INFORMATION AND DISCLOSURES

Attached hereto as Exhibit "5" are the following financial data relating to the Debtors:

- 1. Annual Financial Statements for the Years Ending 2012.**
- 2. Monthly Operating Reports.**

Neither TNCI nor any known interested potential purchaser has any connection with the current equity holders of the Debtors. There are no employment contracts between current equity holders or management of the Debtors and TNCI or any other known interested potential purchaser.

XIV. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed and consummated, the alternatives include liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

A. Alternative Plans of Liquidation

The Debtors believes that failure to confirm the Plan will inevitably result in additional administrative expenses being incurred which will reduce and delay the likelihood of

distributions to Unsecured Creditors. The Debtors believes 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, the claims would be paid in the following order:

- 1) First, expenses of the Chapter 7 Trustee would be paid;
- 2) Second, expenses incurred during the Chapter 11 case and allowed by the court -- including the Chapter 11 Administrative claims -- would be paid; and
- 3) Third, priority creditors, including secured claims would be paid; and
- 4) Fourth, any remaining funds would be divided pro-rata among the unsecured creditors.

The Debtors believes that a liquidation under Chapter 7 would result in a reduced recovery of funds by the Debtors' estate 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. Additionally, a Chapter 7 Trustee would lack the extensive personal knowledge held by the proposed Debtors regarding the Causes of Action, which, here, are largely based on a highly technical field. Accordingly, the Debtors believes that if holders of Claims could or would receive anything in a Chapter 7 liquidation, such holders of Claims and Equity Interests may be expected to receive smaller distributions pursuant to a Chapter 7 liquidation than under the Plan. Currently, the liquidation analysis indicates that the distributions to unsecured creditors may be limited under the Plan as well as under a liquidation under Chapter 7.

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, the Claims in the Chapter 7 case would be classified according to the same seniority of such Claims as provided in the Plan, in the absence of a contrary determination by the Bankruptcy Court, all pre-Chapter 11 general unsecured creditor 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 Chapter 7

case of the Debtors. The distributions from the liquidation proceeds would be calculated ratably according to the amount of the aggregate Claims held by each Creditor. The Debtors believes 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. Debtors are led irrevocably to the conclusion that liquidation of its remaining assets in a Chapter 7 proceeding would not result in a distribution to unsecured creditors and may leave many priority claims unpaid.

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

XV. 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 "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

General. The transfer of the assets of the Debtors to the Liquidating Trust in satisfaction of the Classes of creditors 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.

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 Internal Revenue 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 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 Creditors 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 Trust.

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 a deemed owners 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 this 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.

XVI. 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: September 23, 2013.

Respectfully Submitted,

UPH HOLDINGS, INC.

By: /s/ J. Michael Holloway
Its: President

PAC-WEST TELECOMM, INC.

By: /s/ J. Michael Holloway
Its: President

TEX-LINK COMMUNICATIONS, INC.

By: /s/ J. Michael Holloway
Its: President

UNIPOINT HOLDINGS, INC.

By: /s/ J. Michael Holloway
Its: President

UNIPOINT ENHANCED SERVICES, INC.

By: /s/ J. Michael Holloway
Its: President

UNIPOINT SERVICES, INC.

By: /s/ J. Michael Holloway
Its: President

NWIRE, LLC

By: /s/ J. Michael Holloway
Its: President

**PEERING PARTNERS COMMUNICATIONS,
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Its: President

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