

July 9, 2008

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212.336.4252
JKostyu@mofocom

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Supplement to Joint Application to Assign the International and Domestic Section
214 Authorizations of Empire State Independent Network, LLC to ION HoldCo, LLC
WC Docket No. 08-89, File No. ITC-ASG-20080609-00259

Dear Ms. Dortch:

ION HoldCo, LLC ("ION") and Empire State Independent Network, LLC ("Empire") supplement the above-referenced pending Joint Application (the "Joint Application"), which seeks consent for ION to acquire the assets of Empire, with additional information regarding the proposed transaction.

As noted in the Joint Application, Empire filed on December 14, 2007 a voluntary petition for relief under Chapter 11 of Title 11 of the United State Code in the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court"). On July 8, 2008, the Bankruptcy Court issued an Order approving the sale of Empire's assets to ION, a copy of which is attached.

Marlene H. Dortch
July 9, 2008
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If you have any questions regarding this supplement, please contact the undersigned.

Very truly yours,

/s/ Jennifer L. Kostyu

Jennifer L. Kostyu

Attachment

cc: Jodie May (WCB)
Sally Stone (OGC)
Sumita Mukhoty (IB)
Keith Roland (Empire State Independent Network, LLC)

SO ORDERED.

SIGNED this 08 day of July, 2008.



ROBERT E. LITTLEFIELD, JR.
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

----- X
 In re: : Chapter 11
 :
 EMPIRE STATE INDEPENDENT NETWORK LLC : Case No. 07-13445 (REL)
 D/B/A INDEPENDENT OPTICAL NETWORK :
 :
 Debtor. :
 ----- X

**ORDER UNDER 11 U.S.C. §§ 105(a), 363 AND 365 AND
 FED. R. BANKR. P. 2002, 6004 AND 6006 AUTHORIZING AND APPROVING (A) THE
 SALE OF ASSETS FREE AND CLEAR OF LIENS AND OTHER INTERESTS AND (B)
 ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES TO SUCCESSFUL BIDDER(S) AT AUCTION**

Upon the motion (the "Motion")¹ of the Debtor for an order, under Bankruptcy
 Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006, authorizing and

¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement if therein defined or otherwise as set forth in the Motion.

approving the proposed sale of substantially all of the assets (the “Assets”) of Empire State Independent Network, LLC d/b/a Independent Optical Network (the “Seller” or the “Debtor”), to ION HoldCo, LLC, a Delaware limited liability company (the “Purchaser”), pursuant to that certain Asset Purchase Agreement, dated May 29, 2008, a copy of which is attached hereto as Exhibit A (the “Agreement”); the Court having considered the Motion and the Agreement, objections thereto, the statements of counsel and any testimony or offer of proof as to testimony on the record at the hearing on July 2, 2008 (the “Sale Hearing”), at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Seller, its bankruptcy estate, its creditors and other parties-in-interest; and after due deliberation and good cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:²

A. **Jurisdiction and Venue.** This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

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

C. **Notice.** As evidenced by the affidavits of service filed with this Court and based upon the representations of counsel at the Sale Hearing: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing and the transactions set forth

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

in the Agreement (the “Transaction”), including the assumption and assignment of the Assumed Contracts and Cure Amounts with respect thereto, has been provided in accordance with Bankruptcy Code sections 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006; (ii) it appearing that no other or further notice need be provided; (iii) such notice was and is good, sufficient and appropriate under the circumstances; and (iv) no other or further notice of the Motion, the Auction, the Sale Hearing or the Transaction (including the assumption and assignment of the Assumed Contracts), is or shall be required, except that notice of the Sale Hearing was not served on the office of the New York State Attorney General or the New York State Public Service Commission, however representatives of each participated at the Sale Hearing.

D. **Opportunity to Object.** A reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein has been given, in light of the circumstances, to all interested persons and entities, including the following: (a) the U.S. Trustee; (b) counsel to the official committee of unsecured creditors (the “Committee”); (c) all parties known to be asserting a lien on any of the Debtor’s Assets; (d) all counterparties to unexpired real property leases and executory contracts potentially to be assumed and assigned; (e) all entities known to have expressed an interest in acquiring any of the Assets; (f) the United States Attorney’s office; (g) various federal and state agencies and authorities, including the Internal Revenue Service, and the Federal Communications Commission; (h) the Purchaser and its counsel; and (i) all other parties who have filed notices of appearance and demands for service of papers in the Debtor’s chapter 11 case under Bankruptcy Rule 2002 as of the date of filing the Motion. A reasonable opportunity to object and to be heard with respect to the Motion and the relief requested therein has been given. All objections to the sale of the Assets are overruled

(including the informal objections asserted by the State of New York with respect to the successor liability provisions of this Order), except for (i) the limited objections of Qwest Communications Corporation (“Qwest”) and (ii) the limited objection of Primelink, Inc. and The Champlain Telephone Company (collectively, “Primelink”) as to the Cure Amounts attributable to Primelink’s contracts. To the extent the Qwest and Primelink objections are not resolved consensually, a hearing shall be held before this Court on July 16, 2008 at 10:30 a.m. Such hearing may be adjourned on consent of the parties without further notice.

E. **Corporate Authority.** The Debtor (i) has full corporate power and authority to execute the Agreement and all other documents contemplated thereby and the Debtor’s sale of the Assets has been duly and validly authorized by all necessary corporate action, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement, (iii) has taken all corporate action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated thereby, and (iv) no consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtor to consummate such transactions.

F. **Sale in Best Interests.** Good and sufficient reasons for approval of the Agreement and the Transaction have been articulated, and the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest.

G. **Business Justification.** The Debtor has demonstrated both (i) good, sufficient and sound business purposes and justifications and (ii) compelling circumstances for the Transaction other than in the ordinary course of business under Bankruptcy Code section 363(b) before, and outside of, a plan of reorganization in that, among other things, the immediate consummation of the Transaction with the Purchaser is necessary and appropriate to maximize

the value of the Debtor's estate. Entry of an order approving the Agreement and all the provisions thereof is a necessary condition precedent to the Purchaser consummating the transactions set forth in the Agreement.

H. **Arm's-Length Sale.** The Agreement was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith and from arms-length bargaining positions. The Purchaser is not an "insider" of the Debtor, as that term is defined in Bankruptcy Code section 101(31). Neither the Debtor, nor the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n). Specifically, the Purchaser has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders.

I. **Good Faith Purchaser.** The Purchaser is a good faith purchaser of the Assets within the meaning of Bankruptcy Code section 363(m) and, is therefore entitled to all of the protections afforded thereby. The Purchaser has proceeded in good faith in all respects in connection with this proceeding in that: (a) the Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring the Assets; (b) the Purchaser complied with the provisions in the Bid Procedures Order; (c) the Purchaser agreed to subject its bid to the competitive bidding procedures set forth in the Bid Procedures Order dated June 16, 2008; and (d) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Transaction have been sufficiently disclosed.

J. **Highest and Best Offer.** The Debtor conducted the Auction in accordance with, and has otherwise complied in all respects with, the Bid Procedures Order. The Auction established in the Bid Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The

Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity was given to any interested party to make a higher and better offer for the Assets. The Agreement constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. The Debtor's determination that the Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment.

K. **Consideration.** The consideration to be paid by the Purchaser constitutes reasonably equivalent value or fair consideration, as the case may be (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and Section 548 of the Bankruptcy Code), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. The Agreement represents a fair and reasonable offer to purchase the Assets under the circumstances of this chapter 11 case. No other person or entity or group of entities, other than the Purchaser, has offered to purchase the Assets for an amount that would give greater economic value to the Debtor's estate. Approval of the Motion and the Agreement and the consummation of the transactions contemplated thereby are in the best interests of the Debtor, its creditors, its estate and all other parties in interest.

L. **Free and Clear.** The Debtor is the sole and lawful owner of the Assets. The transfer of the Assets to the Purchaser under the Agreement will be a legal, valid, and effective transfer of the Purchased Assets, and vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Assets free and clear of all liens, claims (as defined in Section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature whatsoever (collectively, the "Interests"), including, but not

limited to, (i) those that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtor's interests in the Assets, or any similar rights and (ii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtor's business prior to the Closing Date. For avoidance of doubt, all Interests shall attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtor or its estate, as applicable, may possess with respect thereto.

M. The Purchaser would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, its estate, and its creditors, if the sale of the Assets to the Purchaser and the assumption and assignment of the Assumed Contracts to the Purchaser was not free and clear of all Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Interests.

N. The Purchaser will not consummate the transactions contemplated by the Agreement unless the Agreement specifically provides, and the Bankruptcy Court specifically orders, that none of the Purchaser or its affiliates, members or shareholders or the Assets will have any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Encumbrance (other than the Permitted Encumbrances) or Excluded Liability.

O. The Debtor may sell the Assets free and clear of any Interests of any kind or nature whatsoever because in each case, one or more of the standards set forth in section

363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Each entity with an Interest in the Assets to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Order, consented to the Transaction or is deemed to have consented to the Transaction; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of Interests who did not object to the Motion are deemed, subject to the terms of this Order, to have consented pursuant to Bankruptcy Code section 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtor or its estate, as applicable, may possess with respect thereto.

P. **No Fraudulent Transfer.** The Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither the Debtor nor the Purchaser is entering into the transactions contemplated by the Agreement fraudulently.

Q. **Not a Successor.** The Purchaser (a) is not a successor to the Debtor, (b) has not, de facto or otherwise, merged with or into the Debtor, (c) is not a continuation or substantial continuation of the Debtor or any enterprise of the Debtor, and (d) is not holding itself out to the public as a continuation of the Debtor. The (i) transfer of the Assets to the Purchaser and (ii) assumption and assignment to the Purchaser of the Assumed Contracts, do not and will not subject the Purchaser to any liability whatsoever with respect to the operation of the

Debtor's business before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable law, including, without limitation, any theory of antitrust or successor or transferee liability and, except as otherwise contained herein or in the Agreement, the Purchaser shall not have any liability to any broker or other professionals retained by the Debtor or to cure any default of the Debtor related to the Assets or Assumed Contracts.

R. **Cure/Adequate Assurance.** The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best interests of the Debtor and its estate, creditors and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtor. The Debtor has (i) to the extent necessary, cured or provided adequate assurance of cure, of any default existing prior to the date hereof with respect to the Assumed Contracts, within the meaning of 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A), and (ii) to the extent necessary, provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Assumed Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(B) and 365(f)(2)(A). The Purchaser's promise to perform the obligations under the Assumed Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of 11 U.S.C. §§365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). The continuation of the Elantic Services during the Transition Period as set forth in section 22 below is necessary and appropriate to maximize value to the Debtor's estate and its creditors and is necessary to convey the Assets as a going concern

and no party is unduly prejudiced by the continuation of the Elantic Services during the Transition Period.

S. **Prompt Consummation**. The Transaction must be approved and consummated promptly in order to preserve the viability of the Assets as a going concern, to maximize the value of the Debtor's estate. Time is of the essence in consummating the Transaction.

T. **Personally Identifiable Information**. The Transaction may include the transfer of Personally Identifiable Information, as defined in Bankruptcy Code section 101(41A). No Consumer Privacy Ombudsman need be appointed under Code section 363(b)(1) because the Purchaser has agreed to adhere to any privacy policies applicable to the Debtor.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted**. The Motion and the relief requested therein is GRANTED and APPROVED, as set forth herein.

2. **Objections Overruled**. Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

3. **Approval**. The Agreement and all of the terms and conditions thereto are hereby approved. The Debtor is hereby authorized and directed to (1) execute the Agreement, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the Agreement, provided that such additional documents do not materially change its terms; (2) consummate the Transaction in accordance with the terms and conditions of the Agreement and the instruments to the Agreement contemplated thereby; and (3)

take all other and further actions as may be reasonably necessary to implement the transactions contemplated by the Agreement.

4. **Free and Clear.** Except as expressly permitted or otherwise specifically provided for in the Agreement or this Order, pursuant to Bankruptcy Code sections 105(a) and 363(f), the Debtor is authorized and directed to transfer the Assets to the Purchaser and, as of the Closing Date, the Purchaser shall take title to and possession of the Assets free and clear of all Interests of any kind or nature whatsoever, including but not limited to the Encumbrances (other than the Permitted Encumbrances) and Excluded Liabilities, with all such Interests to attach to the proceeds ultimately attributable to the property against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, which such Interests now have against the Assets or their proceeds, subject to any rights, claims and defenses the Debtor or its estate, as applicable, may possess with respect thereto.

5. **Valid Transfer.** As of the Closing Date, (a) the transactions contemplated by the Agreement effect a legal, valid, enforceable and effective sale and transfer of the Assets to the Purchaser, and shall vest the Purchaser with title to such assets free and clear of all Encumbrances (other than the Permitted Encumbrances) and Excluded Liabilities and (b) this Agreement and the transactions and instruments contemplated hereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtor or any chapter 11 trustee of the Debtor and its estate.

6. **General Assignment.** On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtor's interests in the Assets. Each and every federal, state, and local

governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

7. **Injunction.** Except as expressly permitted by the Agreement or by this Order, all persons and entities, including, but not limited to, the Debtor, employees, former employees, all debt security holders, equity security holders, administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state and local officials, lenders, contract parties, lessors, trade creditors and all other creditors, holding Interests of any kind or nature whatsoever against or in the Debtor or in the Debtor's interests in the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Assets, the operation of the Debtor's business before the Closing Date or with respect to any Interests arising out of or related to the Transaction, shall be and hereby are forever barred, estopped and permanently enjoined from commencing, prosecuting or continuing in any manner any action or other proceeding of any kind against the Purchaser, its property, its successors and assigns, alleged or otherwise, its affiliates or such Assets. Following the Closing Date, no holder of an Interest in the Debtor shall interfere with the Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtor may take in its chapter 11 case. Notwithstanding the above, the injunction shall not constitute any restraint on the proper exercise of police or regulatory authority by any governmental authority.

8. **Release of Interests.** Subject to Paragraphs 4 and 29 of this Order, this Order (a) shall be effective as a determination that, on the Closing Date, all Interests (other than

the Permitted Encumbrances) of any kind or nature whatsoever existing as to the Debtor or the Assets prior to the Closing Date have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets. Notwithstanding the above, this Paragraph 8 shall not constitute any restraint on the proper exercise of police or regulatory authority by any governmental authority.

9. **Direction to Release Interests.** On the Closing Date and subject to the Interests attaching to the proceeds of the Sale as provided for in Paragraphs 4 and 29 of this Order, the Debtor's creditors are authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist.

10. **No Successor Liability.** Neither the Purchaser nor its affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the purchase of the Assets, to: (a) be a successor to the Debtor or its estate; (b) have, de facto or otherwise, merged or consolidated with or into the Debtor or its estate; or (c) be a continuation or substantial continuation of the Debtor or any enterprise of the Debtor. Except for the Assumed Liabilities and Permitted Encumbrances, the transfer of the Assets to the Purchaser under the Agreement shall not result in (i) the Purchaser, its affiliates, members, or shareholders, or the

Assets, having any liability or responsibility for any claim against the Debtor or against an insider of the Debtor, (ii) the Purchaser, its affiliates, members, or shareholders, or the Assets, having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Encumbrance (other than the Permitted Encumbrances) or Excluded Liability, or (iii) the Purchaser, its affiliates, members, or shareholders, or the Assets, having any liability or responsibility to the Debtor except as is expressly set forth in the Agreement.

11. Without limiting the effect or scope of the foregoing, the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtor or any obligations of the Debtor arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes or other government fees, contributions or surcharges arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing Date.

12. The Purchaser has given substantial consideration under the Agreement for the benefit of the holders of Interests. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Interests against the Debtor or the Purchased Assets.

13. **RTFC.** The obligations of the Rural Telephone Finance Cooperative (“RTFC”) to the Debtor under the (a) Subordinated Capital Certificates in the original principal amount of \$675,000 and (b) Patronage Capital Certificates in an aggregate unretired amount of \$15,307.60 shall be deemed terminated, released, waived and discharged. RTFC’s Pre-Petition Claim dated April 14, 2008, is hereby permanently fixed and allowed in the aggregate amount of \$6,817,980.03 (the “Allowed RTFC Claim”) without setoff, counterclaim, subordination or reduction of any nature whatsoever and no party in interest shall have the right to object to, subordinate, reconsider or challenge the Allowed RTFC Claim.

14. In connection with the consummation of the transactions contemplated by the Agreement, an affiliate of the Purchaser has agreed with RTFC to purchase the Allowed RTFC Claim and the note and security documents related thereto. As part of such purchase from RTFC (and without modifying the terms of such purchase from RTFC), and conditioned upon the Closing and the purchase of the Allowed RTFC Claim and note and security documents related thereto being consummated, immediately prior to the Closing and immediately prior to the purchase of the Allowed RTFC Claim, the principal amount of the note evidencing the Allowed RTFC Claim shall be fixed in the aggregate amount of \$3,300,000.00. For the avoidance of doubt, this Paragraph 14 shall have no force or effect in the event that the Closing and the purchase by an affiliate of the Purchaser of the Allowed RTFC Claim and note and security documents related thereto does not take place.

15. **FCC/PSC Approval.** The rights and powers of the Federal Communications Commission (the “FCC”) to take any action pursuant to its regulatory authority, including, without limitation, its authority under the Communications Act of 1934, as amended (the “Act”), and the rules and regulations promulgated thereunder, and further including, without

limitation, its rights and powers to take any action pursuant to its regulatory authority with respect to any application to transfer, assign, lease or dispose of any rights or interests, in any authorization granted under Section 214 of the Act (“214 Authorizations”), and any related requests for relief, are fully preserved, and nothing contained in this Order or any ancillary document contemplated therein shall proscribe or constrain the FCC’s exercise of its regulatory power and authority. No transfer of any rights and interests of the Debtor in any 214 Authorizations shall take place prior to the issuance of FCC regulatory approval for such transfer. The Debtor and the Purchaser will comply with all applicable rules and regulations of the New York State Public Service Commission.

16. **Assumption and Assignment of Assumed Contracts.** Under 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the Closing of the Transaction, the Debtor’s assumption and assignment of the Assumed Contracts to the Purchaser free and clear of all Interests pursuant to the terms set forth in the Agreement, as modified by the terms of any lease amendments reached with the respective counterparty, is hereby approved, and the requirements of 11 U.S.C. §§ 365(b)(1), 365(b)(3) and 365(f)(2) with respect thereto are hereby deemed satisfied. Each counterparty to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from raising or asserting against the Debtor, or the Purchaser, or the property of either, any assignment fee, default, breach, claim, pecuniary loss, liability or obligation (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinate) arising under or related to the Assumed Contracts existing as of the Closing Date or arising by reason of the Closing. Notwithstanding anything in this Order or Exhibit B hereto to the contrary, pending agreement between Qwest and the

Purchaser or further Order of this Court, the contracts to which Qwest is a counterparty shall not constitute Assumed Contracts and the objections of Qwest shall be preserved in their entirety.

17. There shall be no rent accelerations, assignment fees, increases (including advertising rates) or any other fees charged to the Purchaser or the Debtor as a result of the assumption and assignment of the Assumed Contracts.

18. Any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract (including, without limitation, the granting of a lien therein to Purchaser's Lenders) or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. Notwithstanding the above, any applicable consent from a New York State governmental agency or authority, including, without limitation, the New York State Thruway Authority, shall be obtained as a condition of Closing.

19. The Purchaser has provided adequate assurance of its future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor, and assignment to the Purchaser of the Assumed Contracts have been satisfied.

20. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Assumed Contracts.

21. To the extent any license or permit is necessary for the operation of the business is determined not to be an executory contract assumable and assignable under section

365 of the Bankruptcy Code, the Purchaser shall apply for and obtain any necessary license or permit promptly after the Closing and such licenses or permits of the Debtor shall remain in place for the Purchaser's benefit until new licenses and permits are obtained.

22. **Elantic Services.** There will be a hearing on July 18, 2008 at 10:30 on the issue of whether the Debtor will be authorized and directed to maintain and provide to the Purchaser at cost the benefits of the network services (the "Elantic Services") the Debtor currently receives from Elantic Telecom, Inc. ("Elantic"), for a period (such period, the "Transition Period") until the earlier of (i) execution and implementation of a satisfactory agreement(s) between the Purchaser and a third party provider(s) for the same services, (ii) execution of a satisfactory agreement between Elantic and the Purchaser, or (iii) confirmation of a plan. Nothing herein shall constitute (i) a waiver of any of Purchaser's conditions to Closing under the Agreement or (ii) an assumption of any contract between the Debtor and Elantic. Nothing herein shall constitute a waiver of Elantic's rights to contend at said July 18, 2008 hearing that Elantic is not required to maintain and provide the Elantic services notwithstanding anything to the contrary in this Sale Order.

23. **Cure.** Pursuant to the Agreement, the Purchaser is obligated to pay, to the extent set forth in the Agreement (and in the amounts, if any, set forth in Exhibit B attached hereto), all Cure Amounts relative to the contracts to be assigned to the Purchaser on the Closing Date and, except as set forth in the Agreement, the Debtor shall not have any obligation to pay, or any liability for, any such Cure Amounts. Where there is no dollar amount on Exhibit B, the Cure Amount shall be \$0, except that (a) with respect to the referenced contract with Elantic, the provisions of Paragraph 22 above and footnote ii to Exhibit B shall apply, (b) with respect to the referenced contracts with Qwest and Primelink, if the Purchaser and such counterparty have not

agreed to a Cure Amount and resolved all objections prior to July 16, 2008, there will be a hearing in this Court on July 16, 2008 at 10:30 a.m. Cure Amounts payable under the Leases to be assumed shall be paid as promptly as possible after Closing, but in no event later than 20 Business Days after the Closing Date. The payment of the applicable Cure Amounts (if any) shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assumed Contracts by the Debtor, constitute adequate assurance of future performance thereof. Except as set forth in Paragraph 16, the non-Debtor party or parties to each Assumed Contract which is to be assigned on the Closing Date are enjoined and forever barred from asserting against the Purchaser, any of its affiliates or any of the Assets: (i) any fee, default, breach, claim or pecuniary loss arising under or related to the Assumed Contract existing as of the Closing Date or arising by reason of the Closing, and (ii) any objection to the assumption and assignment of such non-Debtor party's Assumed Contracts.

24. **Binding Effect of Order.** This Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

25. **Binding on Successors.** The terms and provisions of the Agreement and this Order shall be binding in all respects upon the Debtor, its estate, all creditors of (whether

known or unknown) and holders of equity interests in, the Debtor, the Purchaser and its respective affiliates, successors and assigns, and any affected third parties, including, but not limited to, all persons asserting Interests in the Assets and all non-Debtor counterparties to the Assumed Contracts, notwithstanding any subsequent appointment of any trustee of the Debtor under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding. This Order and the Agreement shall inure to the benefit of the Debtor, its estate, its creditors, the Purchaser, and their respective successors and assigns.

26. **Bankruptcy Code Section 363(n)**. The consideration provided by the Purchaser for the Assets under the Agreement is fair and reasonable. Based on the disclosures made to the Court in the Motion and at the Sale Hearing, the Debtor is not aware of any facts which would support an argument for avoidance of the Transaction under Bankruptcy Code section 363(n).

27. **Good Faith**. The transactions contemplated by the Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is used in Bankruptcy Code section 363(m) and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction (including the assumption and assignment of the Assumed Contracts) with the Purchaser, unless such authorization is duly stayed pending such appeal. The Purchaser is a good faith purchaser of the Assets, and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m).

28. **Fair Consideration**. The consideration provided by the Purchaser to the Debtor pursuant to the Agreement for its purchase of the Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer

Act, Uniform Fraudulent Conveyance Act and under the laws of the United States, any state, territory, possession or the District of Columbia.

29. **Retention of Jurisdiction.** This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Purchaser; (b) compel delivery of the Purchase Price or performance of other obligations owed to the Debtor; (c) interpret, implement and enforce the provisions of this Order and the Agreement; (d) to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transaction; and (e) protect the Purchaser against any Interests in the Debtor or the Assets of any kind or nature whatsoever, attaching to the proceeds of the Transaction.

30. **Surrender of Possession.** All entities that are presently, or on the Closing Date may be, in possession of some or all of the Assets in which the Debtor holds an interest hereby are directed to surrender possession of the Assets either to (i) the Debtor before the Closing Date, or (ii) to the Purchaser on the Closing Date.

31. **Fees and Expenses.** Any amounts payable by the Debtor under the Agreement or any of the documents delivered by the Debtor in connection with the Agreement, including, but not limited to the Breakup Fee or Expense Reimbursement (to the extent payable under the Agreement), shall be paid in the manner provided in the Agreement without further order of this Court, shall be an allowed administrative claim in an amount equal to such payments in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code, and shall

not be discharged, modified or otherwise affected by any reorganization plan for the Debtor, except by agreement with the Purchaser, its successors, or assigns.

32. **Sale Proceeds.** Any and all valid and perfected Interests in Assets of the Debtor (other than the Permitted Encumbrances) shall attach to any proceeds of such Assets immediately upon receipt of such proceeds by the Debtor (or any party acting on the Debtor's behalf) in the order of priority, and with the same validity, force and effect which they now have against such Assets, subject to any rights, claims and defenses the Debtor or its estate, as applicable, may possess with respect thereto, and, in addition to any limitations on the use of such proceeds pursuant to any provision of this Order, except as required by this Order or the Agreement, no proceeds subject to an asserted Interest shall be used or disbursed by the Debtor without the express consent of the party or parties asserting an Interest therein or further order of the Court after notice (to all parties who have asserted an Interest in such proceeds) and a hearing, consistent with the requirements of the Bankruptcy Code.

33. **Tax Exemption.** The Debtor's sale of the Assets, and the assumption of the Assumed Contracts are exempt from stamp or similar tax under section 1146 of the Bankruptcy Code, only to the extent allowed by law and specifically the United States Supreme Court decision, *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.* No. 07-312 , (June 16, 2008) (Thomas, J.).

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

35. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtor's case or any order confirming any such plan or in any other order in this chapter 11 case (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agreement or this Order.

36. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agreement be authorized and approved in its entirety; provided, however, that this Order shall govern if there is any inconsistency between the Agreement (including all ancillary documents executed in connection therewith) and this Order. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

37. **No Stay of Order.** Notwithstanding the provisions of Interim Bankruptcy Rule 6004(h) and Bankruptcy Rule 6006(d), this Order shall not be stayed for ten days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtor and the Purchaser intend to close the Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

38. **Cooperation with Administration of the Estate.** The Debtor will retain or have reasonable access to its books and records to administer its bankruptcy case. The Purchaser and any Retained Employees shall cooperate with all reasonable requests of the Debtor and provide any information or documentation reasonably necessary to enable the Debtor

to administer its estate and to reconcile claims. Except for the foregoing, the Purchaser shall not be liable for any costs, fees and/or expenses associated with the administration of the Debtor's estate and/or reconciliation of claims, including, but not limited to, (i) any administrative fees and expenses, including, without limitation, allowed administrative expenses under section 503(b) of the Bankruptcy Code; (ii) any transaction costs, fees and expenses in connection with the Debtor's obligations under the Agreement or this Order; and (iii) any rejection damages claimed in the Debtor's chapter 11 cases.

39. **Confidentiality Agreements.** The Debtor is authorized and directed to enforce its rights under any confidentiality agreements they entered into with other potential bidders with respect to the Assets for the benefit of the Purchaser for the term of each respective confidentiality agreement.

40. **Further Assurances.** From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the Agreement including, such actions as may be necessary to vest, perfect or confirm, of record or otherwise, in the Purchaser its right, title and interest in and to the Purchased Assets, including, without limitation, any Intellectual Property Rights.

Dated: Albany, New York
July __, 2008

HONORABLE ROBERT E. LITTLEFIELD
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A
AGREEMENT

EXHIBIT B

ASSUMED CONTRACTS

	Pre-Petition Default Amountⁱ
<u>Vendor Agreements</u>	
1. User Agreement for Regeneration Facility Access by and between Empire State Independent Network LLC and Adesta, LLC, dated May 8, 2006.	N/A
2. Junction Box & Installation License by and between Albany Pearl Street Heights Associate, LLC and Empire State Independent Network LLC, dated June 6, 2007.	\$657.60
3. Engagement Letter by and between Empire State Independent Network LLC and Brown Brothers Harriman & Co., dated December 11, 2007.	N/A
4. Pole Attachment Agreement by and between Empire State Independent Network LLC and Citizens Telecommunications Company of New York, dated May 5, 2005.	N/A
5. Pole License Agreement by and between Empire State Independent Network LLC and Commonwealth Telephone Company, dated June 28, 2005.	N/A
6. Wireline Crossing Agreement by and between Empire State Independent Network LLC and CSX Transportation, Inc., dated December 6, 2005.	N/A
7. Dark Fiber Lease Agreement by and between Empire State Independent Network LLC and Elantic Telecom, Inc., dated June 1, 2005. ⁱⁱ	\$730,052.01
8. Master Service Agreement by and between Empire State Independent Network LLC and the Development Authority of the North Country, dated March 9, 2007.	\$14,673.55
9. Fiber Lease Agreement by and between Empire State Independent Network LLC and Deposit Telephone Company, Inc. d/b/a TDS Telecom, dated December 6, 2005.	\$742.68
10. Agreement for the Joint Provision of High Capacity Digital Transport and SONET Collapsed Ring Service by and between Empire State Independent Network LLC and Deposit Telephone Company, Inc. d/b/a TDS Telecom, dated January 31, 2007.	N/A

	Pre-Petition Default Amountⁱ
11. Empire Family of Services (no agreement; overnight phone service)	\$29.43
12. Master Facilities Agreement by and between Empire State Independent Network LLC and Fiber Technologies Networks, LLC, dated May 11, 2006 (dark fiber).	\$20,844.00
13. Master Facilities Agreement by and between Empire State Independent Network LLC and Fiber Technologies Networks, LLC, dated May 1, 2007 (lit fiber).	\$5,582.00
14. Service Contract by and between Finger Lake Technologies Group, Inc. and Empire State Independent Network LLC, dated June 7, 2007.	\$14,693.10
15. Lease by and between Frontier Communications of New York, Inc. and Empire State Independent Network LLC, dated September 18, 2006 (Monroe).	\$767.20
16. Lease by and between Frontier Communications of New York, Inc. and Empire State Independent Network LLC, dated September 18, 2006 (Gloversville).	N/A
17. Services provided under Tariff by Germantown Telephone Co., Inc. (special access DS-1).	\$636.78
18. Vehicle Lease by and between Empire State Independent Network LLC and DeNooyer Chevrolet, dated November 9, 2005. ⁱⁱ	\$367.24
19. Agreement by and between Empire State Independent Network LLC and Independent Network Operations Consortium LLC for collocation and engineering services, dated November 1, 2006.	\$493.20
20. Sublease by and between Empire State Independent Network LLC and Independent Network Operations Consortium LLC, dated August 17, 2006.	\$2,332.06
21. RR Crossing License Agreement by and between Empire State Independent Network LLC and Norfolk Southern Railway Company, dated February 3, 2006.	N/A
22. Midtel Cable (No agreement, 50% of J. Becker vehicle, gas, insurance, etc.). ⁱⁱ	\$1,263.19

	Pre-Petition Default Amountⁱ
23. CLEC Distribution Pole Attachment Agreement by and between Empire State Independent Network LLC and Niagara Mohawk Power Corporation, dated October 11, 2004.	\$137.76
24. Telecommunications Pole Attachment Agreement by and between Empire State Independent Network LLC and New York State Electric and Gas Corporation, dated September 18, 2004.	\$531.88
25. License Agreement by and between Empire State Independent Network LLC and New York, Susquehanna and Western Railway Corporation, dated August 22, 2006.	N/A
26. Pole Attachment Agreement by and between Empire State Independent Network LLC and the Pennsylvania Electric Company, dated January 6, 2006.	\$1,031.45
27. Master Collocation Agreement by and between Empire State Independent Network LLC and PrimeLink, dated October 24, 2005.	\$41,079.51
28. Dark Fiber Lease Agreement by and between Empire State Independent Network LLC and PrimeLink, dated December 14, 2005.	\$134,127.00
29. Collocation License Agreement by and between Empire State Independent Network LLC and Qwest Communications Corporation, dated September 30, 2005. ⁱⁱ	TBD
30. Dark Fiber Lease Agreement by and between Empire State Independent Network LLC and Qwest Communications Corporation, dated September 30, 2005. ⁱⁱ	TBD
31. Services provided under Tariff by Sprint (purchase of local loop need for Margaretville).	\$446.50
32. Syracuse Utilities (no agreement; splicing services).	\$725.00
33. Interconnection Facilities License Agreement by and between Empire State Independent Network LLC and The telx Group, Inc., dated June 9, 2005.	\$3,504.93
34. Dark Fiber Lease Agreement by and between Empire State Independent Network LLC and The Champlain Telephone Company, dated March 1, 2006.	\$9,973.22

	Pre-Petition Default Amountⁱ
35. Services provided under Tariff by Verizon (collocation).	\$1,288.53
36. Services provided under Tariff by Verizon Poughkeepsie (collocation).	\$417.61
37. Pole Attachment Agreement by and between Empire State Independent Network LLC and Verizon of New York, dated January 25, 2005.	N/A
38. Master Collocation Agreement by and between Westelcom Network Inc. and Empire State Independent Network LLC, dated November 1, 2006.	\$5,747.09
39. Telecommunications Construction Permit issued to Empire State Independent Network LLC by the City of Ithaca, dated April 11, 2006.	N/A
40. Dark Fiber Lease Agreement by and between Empire State Independent Network LLC and Hancock Telephone Company, dated January 30, 2007.	N/A
41. Dark Fiber Lease Agreement by and between Empire State Independent Network LLC and Ontario & Trumansburg Telephone Co., dated January 31, 2007.	N/A
42. Services provided under Special Access Tariff by Hancock Telephone Company.	N/A

Debt Agreements

1. Loan Agreement by and between Empire State Independent Network LLC and Rural Telephone Finance Cooperative, dated November 9, 2005, and all amendments thereto (the " <u>Loan Agreement</u> ").	N/A
2. Debtor in Possession Loan Agreement by and between Empire State Independent Network LLC and Rural Telephone Finance Cooperative, dated February 1, 2008, and all amendments thereto.	N/A
3. Secured Promissory Note, dated November 9, 2005, in the principal amount of \$6,750,000, made by Empire State Independent Network LLC to the order of Rural Telephone Finance Cooperative.	N/A
4. Mortgage and Security Agreement, dated November 9, 2005, made by Empire State Independent Network LLC in favor of Rural Telephone Finance Cooperative.	N/A

	Pre-Petition Default Amountⁱ
5. Each Assignment of Private Line Services Agreement, dated various dates, by and between Empire State Independent Network LLC and Rural Telephone Finance Cooperative.	N/A
6. All other instruments or agreements that set forth any applicable term or condition of the loan made pursuant to the Loan Agreement, including any supplements, amendments, or modifications thereto or renewals or extensions thereof.	N/A

Customer Agreements

1. Master Service Agreement by and between Empire State Independent Network LLC and Plattsburg Cablevision, Inc. d/b/a/ Charter Communications, executed September 12, 2007, and any service orders thereunder.
2. Master Service Agreement by and between Empire State Independent Network LLC and Cornerstone Telephone Company, executed September 26, 2006, and any service orders thereunder.
3. Master Service Agreement by and between Empire State Independent Network LLC and Citizens Telecom Services Company LLC, dated August 1, 2005, and any service orders thereunder.
4. Master Service Agreement by and between Empire State Independent Network LLC and iNETWORKS Group, Inc., executed February 27, 2007, and any service orders thereunder.
5. Master Service Agreement by and between Empire State Independent Network LLC and Independent Network Operations Consortium LLC, executed October 30, 2006, and any service orders thereunder.
6. Master Service Agreement by and between Empire State Independent Network LLC and Microwave Satellite Technologies, Inc., executed October 29, 2007, and any service orders thereunder.
7. Mutual Master Service Agreement by and between Empire State Independent Network LLC and NEON Optica, Inc., dated March 29, 2007, and any service orders thereunder.

**Pre-Petition
Default
Amountⁱ**

8. Master Service Agreement by and between Empire State Independent Network LLC and Taconic Farms, Inc., executed November 1, 2006, and any service orders thereunder.
9. Master Service Agreement by and between Empire State Independent Network LLC and TDS Telecommunications Corporation, executed February 15, 2007, and any service orders thereunder.
10. Master Service Agreement by and between Empire State Independent Network LLC and TVC Albany, Inc. d/b/a/ Tech Valley Communications, executed December 10, 2007, and any service orders thereunder.
11. Master Service Agreement by and between Empire State Independent Network LLC and WBS Connect, LLC, dated March 18, 2008, and any service orders thereunder.
12. Letter Agreement (Attachment 1: Pricing, Payment and Other Terms and Conditions) by and between Empire State Independent Network LLC and XO Communications Services, Inc., executed November 27, 2007, and any service orders thereunder.
13. Master Service Agreement by and between Empire State Independent Network LLC and Neutral Tandem, Inc., on behalf of itself and Neutral Tandem-New York, LLC, executed May 2, 2008, and any service orders thereunder.
14. Dark Fiber Lease Agreement by and between Empire State Independent Network LLC and Finger Lake Technologies Group, Inc., dated January 31, 2007.
15. Memorandum of Understanding by and between Empire State Independent Network LLC and Westelcom, Inc., dated February, 2007.

ⁱ Each of these amounts is subject to negotiations between the Purchaser and the other party or parties thereto prior to the Closing.

ⁱⁱ Purchaser has not yet determined if this contract will be assumed. Such decision will be made prior to the Closing. Seller and Purchaser agree that this agreement may be removed from this Exhibit anytime prior to the Closing.