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May 31, 2002

VIA OVERNIGHT DELIVERY

Thomas Dorman
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED

JUN 3 2002

PUBLIC SERVICE
COMMISSION

**Re: Notice of Debtors in Possession Financing in Connection to a Restructuring
Conducted under the U.S. Bankruptcy Code**

Dear Mr. Dorman:

Lightyear Communications, Inc., and Lightyear Telecommunications LLC., (collectively "Lightyear"), by its undersigned counsel, notifies the Commission that Lightyear has engaged in debtor in possession ("DIP") financing of up to \$50 Million in revolving debt that matures on September 30, 2002 ("Agreement").¹

Lightyear's restructuring is being conducted pursuant to the U.S. Bankruptcy Code and in connection with voluntary petitions filed by Lightyear under Chapter 11 of the United States Bankruptcy Code to reorganize its business and financial structure.² Lightyear advised the Commission of its Chapter 11 filing by letter of April 29, 2002.

The DIP financing is an initial step designed to provide the company with bridge financing for Lightyear while undergoing reorganization. The DIP financing was approved by the Bankruptcy Court on April 30, 2002.³ In accordance with the Court Order, the parties previously served this Commission with a copy of the Court Order. Service of this Court Order on this Commission

¹ As Debtor-in-Possession, Lightyear will retain possession of its property and businesses during the reorganization process. There has been no change in the directors, officers, management, or shareholders of Lightyear as a result of the Chapter 11 petition, and Lightyear intends to continue its operations during the reorganization.

² *In re Lightyear Communications, Inc.*, Chap. 11 Case No. 02-32723 (Bankr. W. D. Ky.); *In re Lightyear Telecommunications, LLC*, Chap. 11 Case No. 02-32725 (Bank. W. D. Ky).

³ *Interim Order Authorizing Secured Postpetition Financing on a Superpriority Administrative Expense Basis Pursuant to Section 264(C) of the Bankruptcy Code and Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c)*, (Bankr. W. D. Ky, April 30, 2002) (the "Court Order").

Thomas Dorman
May 31, 2002
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satisfies Lightyear's compliance obligations in this matter.⁴ For your convenience, an additional copy of the Court Order is enclosed with this letter.

Lightyear is pursuing a number of strategic options in its reorganization. To the extent that Lightyear conducts a discontinuance, sale of assets, or transfer of control, Lightyear will seek any approval of this Commission, if such approval is required.

An original and ten (10) copies of this letter are enclosed for filing. Please date-stamp the enclosed extra copy, and return it to the undersigned. Please do not hesitate to contact us if you have any questions regarding this matter.

Respectfully submitted,



William B. Wilhelm
Douglas D. Orvis II

Special Counsel for Lightyear

Enclosure

cc: John J. Greive

404309.1

⁴ See, Court Order at Para. 26.

By _____ Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

3 2002

U.S. Bankruptcy Court
Western District of Kentucky

In re
Lightyear Holdings, Inc.,
through
et al.

Debtors.

) Chapter 11
)
) Case Nos. 02-32257
)
)
)
) Hon. David T. Stosberg
) Jointly Administered

INTERIM ORDER AUTHORIZING SECURED POSTPETITION
FINANCING ON A SUPERPRIORITY ADMINISTRATIVE
EXPENSE BASIS PURSUANT TO
SECTION 364(C) OF THE BANKRUPTCY CODE AND
SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001 (c)

Upon the motion (the "Motion") dated April 29, 2002, of Lightyear Holdings, Inc. (the "Parent"), Lightyear Communications, Inc. ("LCI"), Lightyear Telecommunications LLC ("LTL") and Lightyear Communications of Virginia, Inc. ("LCV" and collectively with the Parent, LCI and LTL, the "Debtors" or the "Borrowers"), (a) for authorization pursuant to sections 364(c)(1), 364(c)(2) and 364(c)(3) of Title 11 of the United States Code (as amended, the "Bankruptcy Code") and Rules 2002, 4001(c) and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the Debtors, *inter alia* to (i) obtain secured postpetition financing (the "DIP Facility") pursuant to the Debtor-in-Possession Revolving Credit Agreement dated as of April 29, 2002 (as amended, supplemented or otherwise modified from time to time, the "DIP Credit Agreement"), by and among the Debtors, U.S. Bank National

Association ("U.S. Bank"), as Administrative Agent, (the "Administrative Agent") for itself and the banks party thereto, the Issuing Bank^{1/} and the Swingline Bank (together with U.S. Bank, the "Lenders"), in substantially the form of Exhibit "A" annexed to the Motion, and the other Loan Documents (the DIP Credit Agreement and the other Loan Documents being herein collectively referred to as the "DIP Loan Documents"), (ii) grant security interests, liens and superpriority claims in favor of the Administrative Agent for the benefit of the Lenders and the Administrative Agent pursuant to section 364(c) of the Bankruptcy Code as more fully set forth below, (iii) pending a final hearing on the Motion (the "Final Hearing") obtain postpetition loans under the DIP Loan Documents to and including the date on which a final Order (the "Final Order") is entered (the "Interim Facility"), and (iv) use a portion of the proceeds of borrowings under the DIP Credit Agreement to pay in full the Debtors' obligations to the Prepetition Lenders (as hereinafter defined) consisting of unpaid principal, accrued and unpaid interest, contingent reimbursement obligations under undrawn letters of credit, if any, and unpaid fees and expenses for which the Debtors are responsible (subject to the rights of the Committee (as defined below) as identified in paragraph 25, below), and (b) in accordance with Bankruptcy Rule 4001(c), requesting that this Court schedule the Final Hearing and approve notice with respect thereto; and the Court having considered the Motion, the DIP Loan Documents and any and all documents and instruments delivered thereto or in connection therewith; and, in accordance with Bankruptcy Rule 4001(c), requisite notice of the Motion and the DIP

^{1/} Capitalized terms used herein and not otherwise defined shall have the meaning
(footnote continued to next page)

Loan Documents having been provided and a hearing to consider approval of the Interim Facility having been held and concluded (the "Interim Hearing"); and it appearing to the Court that entry of this Order is in the best interests of the Debtors and their creditors and is essential for the continued operation of the Debtors' businesses; upon all the pleadings filed with the Court and the record made by the Debtors at the Interim Hearing; and objections, if any, to the relief requested in the Motion with respect to the Interim Facility having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor

IT IS HEREBY FOUND that:

A. On April 29, 2002 (the "Petition Date"), each of LCI, LTL, and LCV filed voluntary petitions for relief (the "Voluntary Cases") with the United States Bankruptcy Court for the Western District of Kentucky, Louisville Division (this "Court" or the "Bankruptcy Court") under Chapter 11 of the Bankruptcy Code. On April 10, 2002, an involuntary petition under Chapter 7 of the Bankruptcy Code was filed against the Parent in this Court. On April 29, 2002, the Parent consented to the entry of an Order for Relief with respect to such involuntary petition and this Court entered an Order converting such case to a case under Chapter 11 of the Bankruptcy Code (collectively with the Voluntary Cases, the "Chapter 11 Cases"). The Debtors are continuing in possession of their property, and operating and managing their

(footnote continued from previous page)

ascribed to such terms in the DIP Credit Agreement.

businesses, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered.

C. This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

D. Pursuant to that certain Second Amended and Restated Loan Financing Agreement, dated as of April 11, 2000 (as amended, supplemented or otherwise modified prior to the Petition Date, the "Prepetition Credit Agreement"), among LCI and LTL (the "Prepetition Borrowers"), and U.S. Bank and Deutsche Bank AG New York Branch and/or Cayman Islands Branch (the "Prepetition Lenders") and U.S. Bank, as administrative agent for the Prepetition Lenders (in such capacity, the "Prepetition Agent"), the Prepetition Lenders made revolving loans and advances to, issued or caused letters of credit to be issued for and/or provided other financial accommodations to or for the benefit of the Prepetition Borrowers (collectively, together with the interest, fees, including without limitation attorneys' fees and related expenses, and other charges owing in respect thereof pursuant to the Prepetition Credit Agreement, the "Prepetition Indebtedness").

E. To secure the Prepetition Indebtedness, the Prepetition Borrowers granted to the Prepetition Agent, pursuant to the Prepetition Credit Agreement, security interests and liens (collectively referred to herein as the "Prepetition Liens"). The Prepetition Liens consist of: a perfected first-priority security interest in and lien on all of the Prepetition Borrowers' assets including, without limitation, all goods, equipment, deposit accounts, investment property, accounts, chattel paper,

instruments, documents, letter of credit rights, tort claims, insurance claims, supporting obligations, leasehold interests, fixtures, intellectual property and general intangibles of the Borrowers of any nature, whether then owned or thereafter acquired and any proceeds, products, rents and profits of all of the foregoing (the "Prepetition Collateral"), with priority over all other liens. The Prepetition Indebtedness is also guaranteed by the Parent and pursuant to the limited guaranty of J. Sherman Henderson III.

F. Without prejudice to the rights of any party that is not a party to this Order, as set forth in paragraph 25, below, the Debtors acknowledge and agree that (i) the Prepetition Liens are valid, binding, enforceable, and perfected first-priority liens subject only to certain liens described in or otherwise permitted by the Prepetition Credit Agreement (the "Permitted Prior Liens"), and are not subject to avoidance or subordination, (ii) the Prepetition Indebtedness constitutes legal, valid and binding obligations of the Debtors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses, rights of recoupment or counterclaims to the Prepetition Indebtedness exist, and no portion of the Prepetition Indebtedness is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (iii) as of the Petition Date, the Prepetition Indebtedness constitutes an allowed secured claim within the meaning of section 506 of the Bankruptcy Code in an amount that is not less than \$40,952,765.24 in unpaid principal and interest including, without limitation, the undrawn amount of all the outstanding letters of credit under the Prepetition Credit Agreement, costs, fees (including without limitation attorneys' fees and related expenses) and other charges

owing in respect thereof, and that each Debtor has waived and released any right it may have to challenge the Prepetition Indebtedness and the security therefor.

G. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses in the ordinary course of business or operate their businesses and maintain their property in accordance with state and federal law without the DIP Facility. The Debtors' ability to maintain business relationships with their agents, vendors, suppliers, including without limitation, network suppliers, and customers, to pay their employees and otherwise finance their operations, is essential to the Debtors' continued viability and success in these Chapter 11 Cases.

H. The Debtors' need for financing is immediate. In the absence of the DIP Facility, the continued operation of the Debtors' businesses may not be possible, and serious and irreparable harm to the Debtors and their estates could occur. The preservation, maintenance and enhancement of the going concern value of the Debtors are of the utmost significance and importance to a successful reorganization of the Debtors under Chapter 11 of the Bankruptcy Code.

I. Given the Debtors' current financial condition, financing arrangements and capital structure, the Debtors cannot obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. Financing on a postpetition basis is not otherwise available without the Debtors (i) granting, pursuant to section 364(c)(1) of the Bankruptcy Code, claims having priority over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code and otherwise, other than as described below in respect of the Carve-Out, and (ii) securing, pursuant to section 364(c) of the Bankruptcy Code, such indebtedness and obligations with security

interests in and liens on the Debtors' assets as provided below and in the DIP Loan Documents, other than as described below in respect of the Carve-Out.

J. The use of a portion of the financing under the DIP Facility to pay the Prepetition Indebtedness does not prejudice the Debtors' estates, because payment is subject to the estates' rights under paragraphs 4 and 25, below.

K. The Administrative Agent and the Lenders are willing to provide the DIP Facility subject to the conditions set forth herein and in the DIP Loan Documents, including, without limitation the provisions of this Order assuring that the Postpetition Liens (as defined below) and the various claims, superpriority claims and other protections granted pursuant to this Order and the DIP Loan Documents will not be affected by any subsequent reversal or modification of this Order or any other order which is applicable to the DIP Facility, as provided in section 364(e) of the Bankruptcy Code.

L. Based on the record presented to this Court by the Debtors at the Interim Hearing, the DIP Facility has been negotiated in good faith and at arm's length between the Debtors on the one hand and the Administrative Agent and the Lenders on the other, and the terms of such financing arrangement are fair, reasonable and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. Any credit extended, letters of credit issued, loans made or funds advanced to the Debtors pursuant to the DIP Credit Agreement shall be deemed to have been extended, issued, made or advanced, as the case may be, in good faith by the Lenders as required by, and within the meaning of, section 364(e) of the Bankruptcy Code.

M. Notice of the Interim Hearing and the relief requested in the Motion has been given to (i) the Office of the United States Trustee, (ii) counsel for the Prepetition Lenders and the Lenders, (iii) the creditors holding the 20 largest unsecured claims against the Debtors (on a consolidated basis), (iv) counsel to the petitioning creditors of Parent's involuntary petition; (v) the Internal Revenue Service, and (vi) counsel to MCI/Worldcom, Inc., counsel for Williams Communications, Inc., and all other secured creditors of record, having filed financing statements or otherwise identified in public records. To date, no official committee of unsecured creditors (the "Committee") has been appointed in these Chapter 11 Cases. Under the circumstances, such notice complies with the requirements of, and constitutes adequate notice under, sections 102(1) and 364(c) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(c).

N. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Good cause has been shown for the entry of this Order. Among other things, entry of this Order will minimize disruption of the Debtors' businesses and operations and permit them to meet payroll and other operating expenses and retain customer, agent, supplier and network supplier confidence by demonstrating an ability to maintain normal operations. The financing arrangement authorized hereunder is vital to avoid immediate and irreparable harm to the Debtors' estates. Absent immediate court approval of new credit availability to the Debtors, the agents, suppliers and network suppliers are likely to suspend business with the Debtors and critical customers may be lost. This Court concludes that entry of this Order is in the best interest of the Debtors and their estates and creditors as its implementation will, among other things, provide the

Debtors with the necessary liquidity to sustain the operation of the Debtors' businesses and enhance the Debtors' prospects for successful reorganization.

O. The Debtors have had an opportunity to seek advice from and to consult with counsel prior to the entry of this Order.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED that:

1. The Motion is granted, subject to the terms and conditions set forth in this Order.

2. The DIP Loan Documents are hereby approved, and the Debtors are expressly authorized, empowered and directed to execute and deliver the DIP Credit Agreement and all other DIP Loan Documents and to perform their obligations hereunder and thereunder in accordance with, and subject to, the terms of this Order and the DIP Loan Documents. The Debtors are hereby authorized and directed to use the DIP Facility proceeds to pay the Prepetition Indebtedness and to pay the fees and other expenses described in the DIP Loan Documents as such become due, including, without limitation, the Closing Fee, commitment fees, facility fees, letter of credit fees, fronting fees, and such other fees and reasonable attorneys', financial advisors' and accountants' fees and disbursements, collateral auditing and other professional fees and charges as provided for in the DIP Loan Documents. Upon entry of this Order, the DIP Loan Documents shall constitute valid and binding obligations of the Debtors, enforceable against each of the Debtors in accordance with their terms.

3. From and after the Petition Date and subject to the terms and conditions of this Order, the DIP Credit Agreement and the DIP Loan Documents, the Debtors

shall be authorized through the Termination Date to borrow and reborrow, up to the principal amount of \$50,000,000 in the form of a revolving credit loan with sublimits of \$5,000,000 for swingline loans and \$500,000 for letters of credit ("Letters of Credit"). In accordance with the provisions of the DIP Credit Agreement, letters of credit issued pursuant to the Prepetition Credit Agreement shall be deemed to have been issued under the DIP Credit Agreement and shall constitute Letters of Credit under the DIP Credit Agreement and the other DIP Loan Documents.

4. The Debtors' payment of the Prepetition Indebtedness with the proceeds of the DIP Facility is without prejudice to the Committee's right to cause disgorgement from the Prepetition Lenders of the repaid Prepetition Indebtedness to the extent, if any, that any of the Prepetition Indebtedness is determined to be invalid or any of the Prepetition Liens is determined to be avoidable in accordance with and subject to the provisions of paragraph 25, below. Upon payment of the Prepetition Indebtedness, the Lenders shall be fully subrogated to the rights and interests, including the priorities, of the Prepetition Agent with respect to the Prepetition Collateral.

5. As security for all loans, advances and any other indebtedness or obligations, contingent or absolute, which may now or from time to time hereafter be owing by the Debtors to the Administrative Agent or the Lenders or the Issuing Bank under any of the DIP Loan Documents or hereunder, including, without limitation, all principal and accrued interest, letter of credit reimbursement obligations, costs, fees and expenses (the "DIP Obligations"), each of the Debtors is hereby authorized and directed to grant to the Administrative Agent, for the sole benefit of the Administrative Agent and the Lenders, valid, binding, enforceable and perfected liens, security interest, encumbrances and mortgages (the "Postpetition Liens") as follows, subject to the Carve-Out:

(a) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected first priority Postpetition Lien against (i) all property of the Debtors' estates, that was not encumbered as of the Petition Date and any proceeds and products therefrom, owned as of the Petition Date or thereafter acquired that was not encumbered as of the Petition Date and (ii) the Prepetition Collateral and any proceeds and products therefrom, including, without limitation, any avoidance power claims or actions under section 549 of the Bankruptcy Code if the transfer avoided or to be avoided was an asset otherwise constituting DIP Collateral and the proceeds thereof, but otherwise excluding avoidance actions of the Debtors under Chapter 5 and section 724(a) of the Bankruptcy Code ("Avoidance Actions"); and

(b) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected Postpetition Lien on all other assets of the Debtors and any proceeds and products therefrom, owned as of the Petition Date or thereafter acquired, which Postpetition Liens shall, except as provided in clause (c) below, be junior in priority to any other liens and security interests on such assets to the extent that, as of the Petition Date, such other security interests and liens were valid, perfected and not subject to avoidance.

The property described in the preceding clauses 5(a) and 5(b) are collectively referred to as the "DIP Collateral".

6. The Postpetition Liens shall not be (i) subject to any security interest or lien which is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise.

7. In accordance with sections 364(c)(1) and 507(b) of the Bankruptcy Code, subject only to the Carve-Out, all DIP Obligations, including, without limitation, all principal and accrued interest, letter of credit reimbursement obligations, costs, fees and expenses (a) shall be allowed administrative expense claims with priority under section 364(c)(1) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code ("Super-Priority Claims"), and (b) shall at all times be senior to the rights of the Debtors, and any successor trustee or any creditor, in the Chapter 11 Cases or any subsequent cases under Chapter 7 of the Bankruptcy Code resulting from the conversion of any of the respective Debtors' Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code.

8. No cost or expense of administration under sections 105, 364(c)(1), 503(b), 506(c), 507(b), 726, 1113, 1114 or otherwise of the Bankruptcy Code, shall be senior to, equal to, or *pari passu* with, the Super-Priority Claims of the Lenders arising out of the DIP Obligations, subject only to the Carve-Out (as hereinafter defined).

9. As used in this Order, "Carve-Out" means, as provided in the DIP Credit Agreement, at any time of determination, the sum of (a) allowed administrative expenses payable pursuant to 28 U.S.C. section 1930(a)(6) and (b) Priority Professional Expenses subject to the Priority Expense Cap (as defined below). "Priority Professional Expenses" means allowed and unpaid fees, costs and reasonable expenses of professionals retained by the Debtors in the Chapter 11 Cases pursuant to sections 327 and 1103 of the Bankruptcy Code. "Priority Expense Cap" means, at any time of reference thereto, (i) with respect to fees payable to Frost Brown Todd LLC, the

Professional Expense Cap is the aggregate sum of \$400,000, (ii) with respect to fees payable to Swidler Berlin Shereff Friedman, LLP, the Professional Expense Cap is the aggregate sum of \$25,000, and (iii) with respect to fees payable to Morris Anderson & Associates Ltd., the Professional Expense Cap is the aggregate sum of \$325,000. All payments of Priority Professional Expenses shall reduce the applicable Professional Expense Cap dollar for dollar. The application of retainers shall not reduce the Professional Expense Cap. With respect to clause (b) above, Priority Professional Expenses shall not include fees or expenses incurred by any Person, including the Debtors in (i) opposing (formally or otherwise), preventing, hindering or delaying the Lenders' or the Administrative Agent's enforcement or realization upon any of the DIP Collateral without the Lenders' consent, (ii) using or seeking to use cash collateral or selling any other DIP Collateral without the Lenders' consent, (iii) incurring Indebtedness without the Lenders' consent, (iv) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of the Prepetition Indebtedness or the DIP Obligations or any mortgages, encumbrances, liens or security interests with respect thereto or any other rights or interests of the Administrative Agent, the Lenders, the Prepetition Agent or the Prepetition Lenders with respect thereto, or in asserting or prosecuting any claims or causes of action, including, without limitation, any Avoidance Actions or actions for equitable subordination, or (v) arising after the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code. Nothing herein shall be construed as consent to the allowance of any Priority Professional Expenses or shall affect the right of the Administrative Agent or the Lenders to object to the allowance and payment of such expenses and nothing herein shall be construed to obligate the Administrative Agent or the Lenders, in any way, to pay the Priority Professional

Expenses or fees of the United States Trustee or to ensure that the Debtors have sufficient funds on hand to pay such Priority Professional Expenses or fees of the United States Trustee.

10. From and after the Petition Date, the Debtors shall use the proceeds of the loans and advances pursuant to the DIP Credit Agreement, and the Debtors shall request letters of credit to be issued, extended or renewed, only for the purposes specifically set forth in the DIP Credit Agreement. Notwithstanding anything herein or in the DIP Loan Documents to the contrary, the proceeds of such loans and advances and the DIP Collateral shall not, directly or indirectly, be used by the Debtors or any other Person to, object to or contest in any manner or raise any defenses to the validity, extent, perfection, priority or enforceability of the Prepetition Credit Agreement or the Prepetition Liens or any other rights or interests of the Prepetition Agent, the Prepetition Lenders, the Administrative Agent or the Lenders with respect thereto.

11. Without limiting the rights of access and information afforded the Administrative Agent and the Lenders under the DIP Loan Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the Administrative Agent and the Lenders reasonable access to the Debtors' premises and their records in accordance with the DIP Loan Documents and shall cooperate, consult with, and provide to such persons all such non-privileged information and information not subject to a binding confidentiality agreement.

12. The automatic stay of section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit the Debtors to grant the Postpetition Liens and to perform the Debtors' liabilities and obligations to the Administrative Agent and the Lenders under the DIP Loan Documents. The Debtors'

payment of the Prepetition Indebtedness with the proceeds of the DIP Facility is expressly authorized for purposes of section 549 of the Bankruptcy Code.

13. The DIP Obligations shall be due and payable, without notice or demand, on the Termination Date. Any Letter of Credit outstanding on the Termination Date shall be cash collateralized in an amount equal to the 105% percent of the maximum drawing amount of such Letter of Credit as set forth in the DIP Credit Agreement.

14. The Administrative Agent and Lenders shall have no obligation to make any loan or advance or issue any Letters of Credit under the DIP Facility unless the conditions precedent to the making of such loan or advance or issuing of such Letter of Credit under the DIP Loan Documents are satisfied.

15. As long as any portion of the DIP Obligations remains unpaid or any DIP Loan Document remains in effect (without prejudice to other Events of Default set forth in the DIP Credit Agreement), it shall constitute an Event of Default if (a) a Final Order (as defined herein) is not entered by May 31, 2002, (b) there shall be entered any order dismissing any of the Chapter 11 Cases, or an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court, or the Debtors shall file an application for an order, converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or appointing a trustee or examiner with or without expanded powers to operate all or any part of the Debtors' businesses, or (c) there shall be entered in any of the Chapter 11 Cases or any subsequent Chapter 7 case any order which authorizes under any section of the Bankruptcy Code, including sections 105 or 364 of the Bankruptcy Code, (i) the granting of any lien or security interest in any property of the Debtors in favor of any party other than the Administrative Agent and the Lenders (other than liens granted pursuant to the terms of this Order), or (ii) the obtaining of credit or the incurring of indebtedness that is

entitled to super-priority administrative status, in either case equal or superior to that granted to the Administrative Agent and the Lenders pursuant to this Order, or the Debtors seek any of the foregoing relief; unless, in connection with any transaction cited in clause (i) or (ii) of this paragraph 15, such order requires that the DIP Obligations shall first be indefeasibly paid in full in cash (including cash collateralization of all obligations and guaranties in respect of Letters of Credit). Otherwise, and in addition to creating an Event of Default, the Debtors, on behalf of their estates, expressly waive any right to request the Court's approval of the transactions set above.

16. Without limiting the provisions and protections of paragraph 15 above, if at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the Lenders' obligations to make loans and advances under the DIP Loan Documents, including subsequent to the confirmation of any plan of reorganization respecting the Debtors, the Debtors or any trustee subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code section 364(b), 364(c) or 364(d), then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the Administrative Agent in reduction of the DIP Obligations.

17. Upon the occurrence of an Event of Default, the Lenders may declare all DIP Obligations owing under the DIP Facility to be immediately due and payable and may declare a termination of any further commitment to extend credit to the Debtors to the extent any such commitment remains. Immediately upon the occurrence of an Event of Default under the DIP Credit Agreement and following the giving and expiration of three business days' notice to the Debtors, the Committee, and the United States Trustee, and filing of such notice with this Court, the Administrative

Agent and the Lenders shall have immediate relief from the automatic stay of section 362(a) of the Bankruptcy Code and may foreclose on all or any portion of the DIP Collateral, collect accounts receivable and apply the proceeds thereof to the DIP Obligations, occupy the Debtors' premises to prepare the DIP Collateral for sale or other disposition, sell inventories and otherwise exercise remedies against the DIP Collateral permitted by the DIP Credit Agreement and applicable nonbankruptcy law (including the exercise of rights of set off and maintenance of cash collateral in an amount equal to 105% of the stated amount of all Letters of Credit) and the Debtors' right to use cash collateral shall cease. During such three-business day notice period, the Debtors shall be entitled to an emergency hearing with this Court for the sole purpose of contesting whether an Event of Default has occurred, but the Debtors shall have no right to seek to use cash collateral of the Lenders under section 363(c) of the Bankruptcy Code. Unless during such period this Court determines that an Event of Default has not occurred, the automatic stay, as to the Lenders and the Administrative Agent, shall automatically terminate at the end of such notice period and without further notice or order. In the event that during such notice period this Court finds that an Event of Default has not in fact occurred, the Lenders' rights and obligations hereunder shall continue in full force and effect. The Debtors waive any right to seek relief from this or any court enjoining the Administrative Agent and the Lenders from taking actions they could otherwise take upon termination of the automatic stay pursuant to this Order and the DIP Loan Documents.

18. The Debtors shall not seek, consent to or suffer to exist, directly or indirectly, (a) any modification, stay, vacation or amendment to this Order; (b) any order allowing use of cash collateral of the Lenders without the Lenders' prior written consent; (c) a priority claim for any administrative expense or unsecured claim against

the Borrowers (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expense of the kind specified in sections 105, 326, 330, 331, 503(a), 503(b), 506 (a), 506(c), 507(b), 546(c), 546(d), 1113 or 1114 of the Bankruptcy Code) equal or superior to the Super-Priority Claim of the Administrative Agent and the Lenders in respect of the DIP Obligations other than the Carve-Out; or (d) any encumbrance on any of the DIP Collateral with priority equal or superior to the Postpetition Liens, except for the Carve-Out and as otherwise specifically provided in the DIP Credit Agreement.

19. The Administrative Agent shall not be required to enter into or to obtain landlord waivers, mortgagee waivers, consignee waivers, processor waivers, bailee waivers, warehouseman waivers or similar instruments or agreements or to give, file or record financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien or similar instruments in any jurisdiction, or obtain consents from any licensor or similar party-in-interest, or take any other action in order to validate or attach and to perfect the Postpetition Liens granted to the Administrative Agent pursuant to this Order and in the DIP Loan Documents. If the Administrative Agent, in its sole discretion, chooses to obtain consents from any licensor or similar party-in-interest, to give, file or record such financing statements, notices of lien or similar instruments, or to otherwise confirm perfection of such security interests and liens: (a) all such documents shall be deemed to have been recorded and filed as of the time and on the date of entry of this Order, and (b) no defect in any such act shall affect or impair the validity, perfection and enforceability of the liens granted hereunder. Notwithstanding the foregoing, the Administrative Agent may, in its sole discretion, file such landlord waivers, mortgage waivers, consignee waivers, processor waivers, bailee waivers, warehouse waivers, financing statements, mortgages, deeds of trust, leasehold

mortgages, notices of liens and other similar documents without seeking modification of the automatic stay under section 362 of the Bankruptcy Code and all such landlord waivers, mortgage waivers, consignee waivers, processor waivers, bailee waivers, warehouse waivers, financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien and other similar documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the respective Chapter 11 Cases. The Debtors shall execute and deliver to the Administrative Agent all such mortgages, notices, waivers and other similar documents as the Administrative Agent or any of the Lenders may reasonably request to evidence, confirm, validate or perfect the Postpetition Liens granted pursuant hereto. In lieu of obtaining such consents or filing such financial statements, notices of lien or similar instruments, the Administrative Agent may, in its sole discretion, choose to file a certified copy of this Order in any place at which any such instruments would or could be filed, together with a description of the DIP Collateral, and such filing by the Administrative Agent shall have the same effect as if such financing statements, notices of lien or similar instruments had been filed or recorded at the time and on the date of entry of this Order and all filing officers are hereby directed to accept such certified copy of this Order for filing and recording.

20. Any landlord waiver, mortgagee waiver, consignee waiver, processor waiver, bailee letter, warehouseman waiver, Agency Account Agreement or credit card notification or similar instrument executed in connection with the Prepetition Credit Agreement shall continue to govern the rights of the respective parties thereto, and such waivers and letters shall be equally applicable to, and shall govern such parties' rights in connection with, the DIP Loan Documents, with respect to both prepetition and postpetition activities. Notwithstanding anything contained herein to the contrary

and without limiting any other rights or remedies of the Administrative Agent or the Lenders contained in this Order or the DIP Loan Documents or otherwise available at law or in equity, and subject to the terms of the DIP Credit Agreement, upon written notice to the landlord of any leased premises that the Termination Declaration Date has occurred and that the automatic stay has been lifted, the Administrative Agent may, subject to any separate agreement by and between such landlord and the Administrative Agent, enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect the DIP Collateral located thereon. Nothing herein shall require the Administrative Agent to assume any lease as a condition to the rights afforded to the Administrative Agent in this paragraph. Furthermore, any title, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any DIP Collateral located on such leased premises, to the extent the same is not void under section 545 of the Bankruptcy Code, is hereby expressly subordinated to the liens of the Administrative Agent in the DIP Collateral, except as otherwise may be held under applicable law.

21. The Debtors shall indemnify and hold harmless the Administrative Agent, the Lenders and their respective shareholders, directors, agents, officers, subsidiaries and affiliates, successors and assigns from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages and reasonable expenses of every nature and character arising out of the DIP Credit Agreement or any of the other DIP Loan Documents or the transactions contemplated thereby, pursuant to the terms of the DIP Credit Agreement and as further described therein.

22. The provisions of this Order shall be binding upon and inure to the benefit of the Administrative Agent, the Lenders and the Debtors and their respective

successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors) whether in the Chapter 11 Cases, in any subsequent cases under Chapter 7 of the Bankruptcy Code or upon dismissal of any such Chapter 11 or Chapter 7 case.

23. Based on the findings set forth in paragraphs K and L of this Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Order, in the event any or all of the provisions of this Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or any lien or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the Administrative Agent or the Lenders hereunder arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Order, and the Administrative Agent and the Lenders, as the case may be, shall be entitled to all of the rights, remedies, privileges and benefits, including the Postpetition Liens and Super-Priority Claims granted herein, with respect to any such claim.

24. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization (a "Plan") in any of these Chapter 11 Cases, (b) converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, or (c) dismissing any of the Chapter 11 Cases, and the terms and provisions of this Order as well as the Super-Priority Claims and Postpetition Liens granted pursuant to this Order and the DIP Credit Agreement shall continue in full force and effect notwithstanding the entry

of such order, and such Super-Priority Claims and Postpetition Liens shall maintain their priority as provided by this Order until all the obligations of the Debtors to the Lenders and the Prepetition Lenders pursuant to the DIP Loan Documents and this Order are indefeasibly paid in full in cash and discharged. The DIP Obligations shall not be discharged by the entry of an order confirming a Plan, the Debtors having waived such discharge. None of the Debtors shall propose or support any Plan that is not conditioned upon the payment in full in cash, on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Termination Date, of all of the DIP Obligations.

25. Nothing in this Order or the DIP Loan Documents shall prejudice the rights of the Committee or any party not a party to this Order to seek to object to or challenge (a) the validity, sufficiency, extent, perfection or priority of the mortgage, security interests and liens of the Prepetition Agent or the Prepetition Lenders in and to the Prepetition Collateral, or (b) the validity, allowability, priority, status or amount of the Prepetition Indebtedness; provided, however, that, unless such party commences, as appropriate, a contested matter or adversary proceeding raising such objection or challenge within ninety (90) days of (i) the formation of the Committee, if any, solely with respect to any contested matter or adversary proceeding brought by the Committee or (ii) the Petition Date, with respect to any other party, as applicable, all such challenges and objections shall be forever waived, and the Prepetition Indebtedness shall be allowed as a secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Chapter 11 Cases. No such period of limitation shall be extended without the written consent of the Lenders. Thereafter, any and all objections or challenges (including, but not limited to, those under sections 506, 544, 547, 548, 549 and/or 553 of the Bankruptcy Code), by any

party to the validity, sufficiency, extent, perfection, priority or refinancing of, or seeking the avoidance or equitable subordination of, the Prepetition Liens, the Prepetition Indebtedness and any payments thereon shall be forever barred and the payment of the Prepetition Indebtedness in accordance with paragraph 4 shall not be subject to disgorgement. To the extent any such objection or challenge is filed and the Prepetition Agent or the Prepetition Lenders successfully defends the same, the Prepetition Agent and the Prepetition Lenders shall be entitled to recover all costs and expenses, including but not limited to reasonable attorney's fees, incurred in defending such objection or challenge, which costs and expenses shall be secured by the DIP Collateral subject only to the lien of the Administrative Agent and the Lenders and shall constitute a Super-Priority Claim (subject only to the Super-Priority Claim of the Administrative Agent and the Lenders).

26. The Debtors will not be required to: (i) obtain the approval of any state or local government agency, department or other government authority or any quasi-governmental third parties regulating the utilities and/or telecommunications companies (each of the foregoing a "Government Authority") of the transactions contemplated by the DIP Facility, notwithstanding state or local laws and/or regulations requiring notice of or approval for such transactions; or (ii) provide notice to any Governmental Authority of such transactions other than by service of a copy of this Order upon them. All such approval and notice requirements of Governmental Authorities are hereby dispensed with and waived. Each and every Government Authority, when presented with this Order, is hereby directed to accept this Order as notice of the transactions contemplated by the DIP Credit Agreement and as binding to approve such transactions. No further notice to or approval of any such Government Authority will be required to consummate such transactions.

27. The DIP Obligations shall be joint and several, with each Debtor that is a secondary obligor waiving all suretyship defenses.

28. To the extent any terms and conditions of the DIP Loan Documents are in conflict with the terms and conditions of this Order, the provisions of this Order shall control.

29. Notwithstanding anything herein, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (a) any of the rights of the Administrative Agent or the Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the Administrative Agent or the Lenders to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases, conversion of the Debtors' Chapter 11 Cases to cases under Chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans, or (iv) request adequate protection under sections 362, 363 or 364 of the Bankruptcy Code, or (b) any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Administrative Agent or the Lenders.

30. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for May 20, 2002 at 5:00p.m. in Courtroom 3 at the Bankruptcy Court, 601 West Broadway, Louisville, Kentucky. On or before May 1, 2002, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Order, the proposed Final Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; and (c) counsel for

the Committee, if any. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than 5:00 p.m. on May 13, 2002, which objections shall be served so that the same are received on or before such date by: (a) Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202 Attention: Ronald E. Gold, Esq., counsel to the Debtors; (b) Bingham Dana LLP, One State Street, Hartford Connecticut 06103-3178, Attention: F. Mark Fucci, Esq. and Sciller & Handmaker LLP, Meidinger Tower, 462 South Fourth Avenue, Suite 2200, Louisville, Kentucky 40202, Attention: David M. Cantor, Esq.; and (c) the Office of the United States.

31. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof; provided, however, that notwithstanding the provisions of this Order, the Court shall not be precluded from entering a Final Order inconsistent with the provisions herein subject to the protection of section 364(e) of the Bankruptcy Code in favor of the Lenders with respect to monies advanced during the interim period.

32. The Court has and will retain jurisdiction to enforce this Order according to its terms.

Dated: Louisville, Kentucky
4/30, 2002

ENTERED
DIANE S. ROBL, Clerk
BY SLD

APR 30 2002


HONORABLE DAVID T. STOSBERG
UNITED STATES BANKRUPTCY JUDGE

U.S. Bankruptcy Court
Western District of Kentucky
AGREED AND CONSENTED TO:

FROST BROWN TODD LLC,
Counsel to the Debtors

By: 

BINGHAM DANA LLP,
Counsel to the Lenders

By: 