COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:	{	
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BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T KENTUCKY	{	
	{	
COMPLAINANT	{	**CASE NO. 2011-00283**
	{	
V.	{	
	{	
HALO WIRELESS, INC.	{	
	{	
RESPONDENT	{	

PARTIAL MOTION OF HALO WIRELESS, INC. TO DISMISS COMPLAINT AND NOTICE OF MAY 16, 2006 ORDER CONFIRMING PLAN OF REORGANIZATION FOR TRANSCOM ENHANCED SERVICES

NOW COMES Halo Wireless, Inc. and files this Partial Motion to Dismiss Counts I, II, and III with Prejudice and Notice of May 16, 2006 Order Confirming Plan of Reorganization for Transcom Enhanced Services and, would respectfully show unto the Commission as follows:

I. BACKGROUND

1. Halo is a CMRS provider. Halo has a valid and subsisting Radio Station Authorization ("RSA") from the FCC authorizing Halo to provide wireless service as a common carrier. AT&T has filed a complaint that it claims to be a post- ICA dispute. While the parties do have an ICA in Kentucky, Halo contends that AT&T's Counts I, II, and III do not really seek an interpretation or enforcement of those terms. As explained further below, AT&T is impermissibly and improperly seeking to have the Commission decide whether Halo is acting within and consistent with its federal license. The Commission, however, lacks the jurisdiction and capacity to consider that topic.

2. In addition, Halo sells CMRS-based telephone exchange service to Transcom,[1] Halo's high volume customer. As explained further below, AT&T's Counts I, II and III do not actually seek an interpretation or enforcement of the ICA terms. Instead, AT&T is impermissibly and improperly seeking to have the Commission decide whether Transcom is "really" an end user and an ESP, because if Transcom is an end user and an ESP then there can be no dispute that the traffic in issue does originate "through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T..." ICA (quoted in Complaint ¶ 6). The Commission, however, lacks the jurisdiction and capacity to take up the issue of whether Transcom is "really" an ESP because the issue is governed by federal law and only the FCC or a federal court may resolve it.

3. As discussed below, courts of competent jurisdiction have ruled that Transcom is an end user and an enhanced service provider *even for phone-to-phone calls*[2] because Transcom changes the content of every call that passes through its system, often changes the form, and also offers enhanced capabilities (the "ESP Rulings").[3] The court directly construed and then decided Transcom's regulatory classification and specifically held that Transcom (1) is not a carrier; (2) does not provide telephone toll service or any telecommunications service; (3) is an end user; (4) is not required to procure exchange access in order to obtain connectivity to the public switched telephone network ("PSTN"); and (5) may instead purchase telephone exchange service just like any other

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[1] Halo has other CMRS customers as well, but it is likely that AT&T's Complaint does not address those customers.

[2] Transcom also has a very significant and growing amount of calls that originate from IP endpoints.

[3] True and correct copies of the ESP Rulings are attached as Exhibits A, D, and G and are incorporated herein by reference. Exhibits A and D are discussed at length in Section III of this pleading, as they bear on the *res judicata* and collateral estoppel issues. Exhibit G does not bear on the *res judicata* and collateral estoppel issues, but rather is an Order Granting Transcom's Motion for Partial Summary Judgment Based on the Affirmative Defense that Transcom Qualifies as an Enhanced Service Provider, which confirms the previous rulings made in Exhibits A and D.

end user. Three of these decisions were reached after the so-called "IP-in-the-Middle" and "AT&T Calling Card" orders[4] and expressly took them into account. The court ruled that Transcom is an end user, not a carrier. AT&T was a party to each of those proceedings and is bound by those decisions.

4. Halo is selling CMRS-based telephone exchange service to an ESP end user. All of the communications at issue originate from end user wireless customer premises equipment ("CPE") (as defined in the Act, 47 U.S.C. § 153(14))[5] that is located in the same MTA as the terminating location. The bottom line is that not one minute of the relevant traffic is subject to access charges. Further, and equally important, the ICA uses a factoring approach that allocates as between "local" and "non-local." Halo has paid AT&T for termination applying the contract rate and using the contract factor. AT&T cannot complain.

5. Multiple telecommunications companies, AT&T and other ILECs do not like the arrangement between Halo and Transcom. They want the Commission and other commissions across the country to rule that Halo's service is "not wireless" and "not CMRS." However only the FCC has jurisdiction to make such determinations.

6. Despite this fact, AT&T and multiple other ILECs have coordinated a multi-state attack on Halo and Transcom involving more than 100 ILECs suing Halo (and sometimes Transcom) in over 20 different proceedings in 14 states, in all cases accusing

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[4] *See* Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457 (rel. April 21, 2004) ("*AT&T Declaratory Ruling*" also known as "*IP-in-the-Middle*"); Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, FCC 05-41, 20 FCC Rcd 4826 (rel. Feb. 2005) ("*AT&T Calling Card Order*").

[5] Stated another way, the mobile stations (*see* 47 U.S.C. § 153(28)) used by Halo's end user customers – including Transcom – are not "telecommunications equipment" as defined in section 153(45) of the Act because the customers are not carriers. Halo has and uses telecommunications equipment, but its customers do not. They have CPE.

Halo and Transcom of an "access charge avoidance scheme," without bothering to mention that Transcom has been ruled to be an ESP. Complaint, pg. 1. In all the cases, the ILECs accuse Halo and Transcom of manipulating call stream data when they know that is not true. Neither Halo nor Transcom makes any changes to Called Party Number ("CPN"). Halo populated the Charge Number ("CN") field with Transcom's number because Transcom is Halo's end user customer, and the applicable industry standards call for this practice.

7. Halo's business model will bring 4G WiMAX broadband to unserved or underserved rural areas in many parts of the country without government subsidies, and for about the same cost as those consumers are paying now for basic telephone service. Meanwhile, Transcom's services lower the cost of communications to its customers, and this lower cost benefits users, including users in Kentucky. Halo and Transcom have a solid legal foundation for their business models, and those business models benefit consumers. That this result impacts the ILECs' *pecuniary* interest does not mean that Halo's services and Transcom's services are not consistent with the *public's* interest. Congress chose to allow competition. Any competitive entry will necessarily reduce the ILECs' revenues. Any decision that equates the ILECs' pecuniary interest with the public interest will necessarily mean that the Commission believes Congress' "competition experiment" was in error.

8. The underlying dispute is controlled by federal law, which therefore preempts any state disposition of these issues. The FCC has made it clear that decisions affecting federal telecom licensees like Halo, and their services, are not entrusted to the

state commissions because doing so is impractical and would make deployment of nationwide wireless systems like Halo's "virtually impossible."[6]

9. The courts have agreed that state commissions cannot attempt to impose rate or entry regulation on wireless providers, and in particular, state commissions cannot issue "cease and desist" orders on wireless providers. *Motorola Communications & Electronics, Inc. v. Mississippi Public Service Com.*, 515 F. Supp. 793, 795-796 (S.D. Miss. 1979), *aff'd Motorola Communications v. Mississippi Public Service, Comm.*, 648 F.2d 1350 (5th Cir. 1981). Further, Halo has a *federally*-granted right to interconnect and the FCC has asserted "plenary" jurisdiction over CMRS interconnection and expressly pre-empted any state authority to deny interconnection. Declaratory Ruling, *In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Report No. CL-379, FCC 87-163, ¶¶ 12, 17, 2 FCC Rcd 2910, 2911-2912 (FCC 1987) ("*RCC Interconnection Order*").

10. The regulatory classifications for Halo and Transcom are defined and governed exclusively by *federal* law. For example, the ESP Rulings hold that Transcom

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[6] The FCC has directly held on several occasions that even the possibility of state regulation and inconsistent burdens and obligations constitutes a barrier to entry and must be avoided. *See, e.g.*, Declaratory Ruling, *In the Matter of Public Service Company of Oklahoma Request for Declaratory Ruling*, DA 88-544, ¶ 24, 3 FCC Rcd 2327, 2329 (rel. Apr. 1988) (**finding that "inconsistent state regulation" "would impede development of a uniform system of regulation for Commission licensees."**); Second Report and Order, *In the Matter of Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; In the Matter of the Applications of Global Land Mobile Satellite, Inc.; Globesat Express; Hughes Communications Mobile Sattellite, Inc.; MCCA American Satellite Service Corporation; McCaw Space Technologies, Inc.; Mobile Satellite Corporation; Mobile Satellite Service, Inc.; North American Mobile Satellite, Inc.; Omninet Corporation; Satellite Mobile Telephone Co.; Sky-Link Corporation; Wismer & Becker/Transmit Communications, Inc.*, FCC 86-552, ¶ 40, 2 FCC Rcd 485, 491 (rel. Jan. 1987)(**finding that "permitting states to impose their individual regulatory schemes over" an FCC licensee "would not only be impractical but would seriously jeopardize the operation of the system. Requiring the consortium to adhere to fifty potentially conflicting" standards "would render implementation" "*virtually impossible.*"**)

is *not* a carrier, is *not* an interexchange carrier ("IXC"), and its traffic is *not* subject to access charges. These rulings hold, instead, that Transcom is an end user and an ESP, and further, that Transcom is entitled to obtain "telephone exchange service" as an end user rather than "exchange access" as an IXC.

11. CMRS providers – like Halo here – predominately provide "telephone exchange service" to end users.[7] States are pre-empted from imposing rate or entry regulation on CMRS. *See* 47 U.S.C. § 332(c)(3). Nor can states or local governmental authorities take action that will "prohibit or have the effect of prohibiting the provision of personal wireless services."[8] 47 U.S.C. § 332(c)(7)(B)(i)(II). The FCC has *exclusive* jurisdiction over wireless licensing, market entry by private and commercial wireless service providers and the rates charged for wireless services.

12. The Supreme Court and several courts of appeals have consistently held that state commissions cannot undertake to interpret or enforce federal licenses because "a multitude of interpretations of the same certificate" will result.[9] *See Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 178-79 (1959). The FCC is the exclusive "first decider" and must be the one to interpret, in the first instance, whether a particular activity falls within the certificates it has issued. *Id.* at 177; *see also Gray Lines Tour, Co. v. Interstate Commerce Com.*, 824 F.2d 811, 815 (9th Cir. 1987) and *Middlewest*

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[7] See First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, ¶¶ 1004, 1006, 1008, 11 FCC Rcd 15499, 16045 (1996) ("Local Competition Order") (subsequent history omitted) (finding that CMRS predominately provides "telephone exchange service").

[8] "Personal Wireless Service" is defined in § 332(c)(7)(C)(i) and includes CMRS.

[9] "It appears clear that interpretations of federal certificates of this character should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action. * * * Thus the possibility of a multitude of interpretations of the same federal certificate by several States will be avoided and a uniform administration of the Act achieved." *Service Storage & Transfer Co. v. Com. of Va.*, 359 U.S. 171, 177 (1959).

Motor Freight Bureau v. ICC, 867 F.2d 458, 459 (8th Cir. 1989). If a state commission or AT&T believes that the federally-licensed entity is engaging in some "scheme" or "subterfuge" through its practices, the proper forum is the FCC. Similarly, if any state commission has a concern, its remedy is to petition the federal licensing body for relief. *Service Storage*, 359 U.S. at 179. A state commission cannot take any action that would "amount to a suspension or revocation" of a federal license. *Castle, Attorney General v. Hayes Freight Lines*, 348 U.S. 61, 64 (1954).[10]

II. PARTIAL MOTION TO DISMISS COUNTS I, II, AND, III

A. The Commission should dismiss Count I of the Complaint because the traffic being sent to AT&T does originate from end user wireless equipment.

13. The ICA has a recital (cited by AT&T in ¶ 6 of the Complaint) that provides:

> Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before Carrier delivers traffic to AT&T for termination by AT&T or for transit to another network.

14. Contrary to AT&T's assertion in paragraph 7 of the Complaint, the traffic in issue *does* originate "through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T." The network arrangement in every state and every MTA is the same. Halo has established a 3650 MHz base station in each MTA. Halo's customer has 3650 MHz wireless stations – which constitute CPE as defined in the Act – that are sufficiently proximate to the base station to establish a wireless link with the base

[10] "Under these circumstances, it would be odd if a state could take action amounting to a suspension or revocation of an interstate carrier's commission-granted right to operate. ... It cannot be doubted that suspension of this common carrier's right to use Illinois highways is the equivalent of a partial suspension of its federally granted certificate."

station. When the customer wants to initiate a session, the customer originates a call using the wireless station that is handled by the base station, processed through Halo's network, and ultimately handed off to AT&T for termination or transit over the interconnection arrangements that are in place as a result of the various ICAs.

15. AT&T is apparently claiming that Halo is merely "re-originating" traffic and that the "true" end points are elsewhere on the PSTN. In making this argument, however, AT&T is advancing the exact position that the D.C. Circuit rejected in *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000). In that case, the D.C. Circuit held it did not matter that a call received by an ISP is instantaneously followed by the origination of a "further communication" that will then "continue to the ultimate destination" elsewhere. The Court held that "the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not 'terminate' at the ISP." In other words, the D.C. Circuit clearly recognizes – and functionally held – that an ESP is an "origination" and "termination" endpoint for intercarrier compensation purposes (as opposed to *jurisdictional* purposes, which does use the "end-to-end" test).

16. The traffic here goes to Transcom where there is a "termination." Transcom then "originates" a "further communication" in the MTA. In the same way that ISP-bound traffic *from* the PSTN is immune from access charges (because it is not "carved out by section 251(g) and is covered by section 251(b)(5)), the call *to* the PSTN is also immune.[11] Enhanced services were defined long before there was a public

[11] The ILECs incessantly assert that the ESP Exemption only applies "only" for calls "from" an ESP customer "to" the ESP. This is flatly untrue. ESPs "may use incumbent LEC facilities to originate and terminate interstate calls[.]" *See* NPRM, *In the Matter of Access Charge Reform*, 11 FCC Rcd 21354, 21478 (FCC 1996). The FCC itself has consistently recognized that ESPs – as end users – "originate"

Internet. ESPs do far more than just hook up "modems" and receive calls. They provide a wide set of services and many of them involve calls to the PSTN.[12] The FCC observed in the first decision that created what is now known as the "ESP Exemption" that ESP use of the PSTN resembles that of the "leaky PBXs" that existed then and continue to exist today, albeit using much different technology. Even though the call started somewhere else, as a matter of law a Leaky PBX is still deemed to "originate" the call that then terminates on the PSTN.[13] As noted, the FCC has expressly recognized the bidirectional nature of ESP traffic, when it observed that ESPs "may use incumbent LEC facilities to originate and terminate interstate calls." Halo's and Transcom's position is simply the direct product of Congress' choice to codify the ESP Exemption, and neither the FCC nor state commissions may overrule the statute.

17. In other proceedings, the ILECs have pointed to certain language in paragraph 1066 of the FCC's recent rulemaking that was directed at Halo, and the FCC's discussion of "re-origination." That language, however, necessarily assumes that Halo is serving a carrier, not an ESP. TDS told the FCC that Transcom was a carrier, and the FCC obviously assumed – while expressly not ruling – that the situation was as TDS

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traffic even when they received the call from some other end-point. That is the purpose of the FCC's finding that ESPs systems operate much like traditional "leaky PBXs."

[12] *See*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket Nos. 96-262, 96-263, 94-1, 91-213, FCC 96-488, 11 FCC Rcd 21354, 21478, ¶ 284, n. 378 (rel. Dec. 24, 1996); Order, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, FCC 88-151, 3 FCC Rcd 2631, 2632-2633. ¶13 (rel. April 27 1988); Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983).

[13] *See*, Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983) [discussing "leaky PBX and ESP resemblance]; Second Supplemental NOI and PRM, *In the Matter of MTS and WATS Market Structure*, FCC 80-198, CC Docket No. 78-72, ¶ 63, 77 F.C.C.2d 224; 1980 FCC LEXIS 181 (rel. Apr. 1980) [discussing "leaky PBX"].

asserted. This is clear from the FCC's characterization in the same paragraph of Halo's activities as a form of "transit." "Transit" occurs when one carrier switches traffic *between two other carriers*. Indeed, that is precisely the definition the FCC provided in paragraph 1311 of the recent rulemaking.[14] Halo simply cannot be said to be providing "transit" when it has an end user as the customer on one side and a carrier on the other side. Any other construction necessarily leads to the conclusion that the FCC has decided that the D.C. Circuit was wrong in *Bell Atlantic*.

18. Halo agrees that a call handed off from a Halo carrier customer would not be deemed to originate on Halo's network.[15] But Transcom is not a carrier, it is an ESP. ESPs always have "originated further communications," but for compensation purposes (as opposed to jurisdictional purposes), the ESP is still an end-point and a call originator. Again, once one looks at this from an end user customer perspective, the call classification result is obvious. The FCC and judicial case law is clear that an end user PBX "originates" a call even if the communication initially came in to the PBX from another location on the PSTN and then goes back out and terminates on the PSTN.[16]

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[14] "1311. Transit. Currently, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network. Thus, although transit is the functional equivalent of tandem switching and transport, today transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under section 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. In the Order, we adopt a bill-and-keep methodology for tandem switched transport in the access context and for transport in the reciprocal compensation context. The Commission has not addressed whether transit services must be provided pursuant to section 251 of the Act; however, some state commissions and courts have addressed this issue." (emphasis added)

[15] *See* § 252(d)(2)(A)(i), which imposes the "additional cost" mandate on "calls that originate on the network facilities of the other carrier."

[16] *See, e.g., Chartways Technologies, Inc. v. AT&T, 8 FCC Rcd 5601, 5604 (1993); Directel Inc. v. American Tel. & Tel. Co.*, 11 F.C.C.R. 7554 (June 26, 1996); *Gerri Murphy Realty, Inc. v. AT&T*, 16 FCC Rcd 19134 (2001); *AT&T v. Intrend Ropes and Twines, Inc.*, 944 F.Supp. 701, 710 (C.D. Ill. 1996; *American Tel. & Tel. Co. v. Jiffy Lube Int'l., Inc.*, 813 F. Supp. 1164, 1165-1170 (D. Maryland 1993); *AT&T v. New York Human Resources Administration*, 833 F. Supp. 962 (S.D.N.Y. 1993); *AT&T, v.*

19. So, Halo has an end-user customer—Transcom. Although this end user customer receives calls from other places, for intercarrier compensation purposes, the calls still originate on Halo's network. That customer connects wirelessly to Halo. Transcom "originates" communications "wirelessly" to Halo, and all such calls are terminated within the same MTA where Transcom originated them (the system is set up to make sure that all calls are "intraMTA"). This arrangement matches up exactly with the requirement in the recital that AT&T relies on.

20. AT&T is barred from asserting that Halo's customer is not an end user. Halo's "High Volume" customer whose traffic is at issue is Transcom. Transcom and AT&T were directly involved in litigation, and the court twice held – over AT&T's strong opposition – that Transcom is an ESP and end user, is not a carrier, and access charges do not apply to Transcom's traffic.[17] This specific set of rulings was incorporated into the Confirmation Order in Transcom's bankruptcy case. AT&T was a party and is bound by these holdings. AT&T is barred from raising any claim that Transcom is anything other than an ESP and end user qualified to purchase telephone exchange service from carriers, and cannot now collaterally attack the bankruptcy court rulings. Transcom's status as an end user is not subject to debate.

21. Once it is clear that Transcom is Halo's telephone exchange service end user customer, then all of AT&T's contentions simply fail. End users originate calls. The calls at issue are "end user" calls, so AT&T's assertions are flatly incorrect and the claim is based on the impermissible and incorrect premise that Halo's customers are not "end users" purchasing telephone exchange service in the MTA.

Community Health Group, 931 F. Supp. 719, 723 (S.D. Cal. 1995); *AT&T Corp. v. Fleming & Berkley*, 1997 U.S. App. LEXIS 33674 *6-*16 (9th Cir. Cal. Nov. 25, 1997).

[17] *See* the ESP Rulings.

B. The Commission should dismiss Count II of the Complaint because Halo is not altering or deleting call detail, and therefore, Halo is not in breach of the ICA.

22. AT&T's contentions in Count II also fail once it is understood that this is end user telephone exchange service originating traffic, and the service being provided is functionally equivalent to an integrated services digital network ("ISDN") primary rate interface ("PRI") (hereinafter referred to as "ISDN PRI") trunk to a large communications intensive business customer. Indeed, Halo's signaling practices with regard to the CN were exactly the same as those AT&T uses when it provides ISDN PRI trunk service to a business customer.

23. To the extent any E.164 address is used for rating or jurisdictionalizing (which we deny is either applicable or proper in this circumstance), CN address signal content, rather than that for CPN, is the information that should have been used. The reason is that the presentation of this address signal content correctly advertises that the call is originating from a Halo end user customer, and the particular billing number used demonstrates that the call originated in the same MTA as the terminating location.

24. For this reason, Halo's practices did not in any way prevent AT&T from accurately measuring, rating, or billing Halo traffic; to the contrary, it *ensured* that AT&T's systems recognize the end user telephone exchange traffic that it is. The ICA in issue does not rate traffic based on telephone numbers, but if and to the extent AT&T's systems nonetheless (and in violation of the ICA) use the calling and called numbers to rate, bill, or validate, Halo's practice would result in proper rating and billing.

25. The ICA only generally addresses signaling content. It does prohibit alteration of CPN, but Halo has never altered CPN and AT&T does not claim otherwise.

Nothing in the ICA addresses the CN parameter. AT&T cannot assert a breach when the contract does not expressly impose any specific requirements.

26. Halo performed the "Class 5" functions and populated the CPN and CN parameters with the address signal information that should appear in each location. Halo's practices with regard to the CN were exactly the same as AT&T's when it serves a business end user with an ISDN PBX.

27. Halo does not change the content or in any way "manipulate" the address signal information that is ultimately populated in the SS7 ISUP IAM CPN parameter. Halo populated the CN parameter with the Billing Telephone Number of its end user customer, Transcom. AT&T alleges improper modification of signaling information related to the CN parameter, but the basis of this claim once again results from the assertion that Transcom is a carrier rather than an end user and runs counter to the ESP Rulings discussed above.

28. Halo's network is IP-based, and the network communicates internally and with customers using a combination of WiMAX and SIP. To interoperate with the SS7 world, Halo must conduct a protocol conversion from IP to SS7 and then transmit call control information using SS7 methods. AT&T's allegations fail to appreciate this fact, and are otherwise technically incoherent. They reflect a distinct misunderstanding of technology, SS7, the current market, and most important, a purposeful refusal to consider this issue through the lens of CMRS telephone exchange service provided to an end user.

29. From a technical perspective, "industry standard" in the United States for SS7 ISUP is American National Standards Institute ("ANSI") T1.113, which sets out the semantics and syntax for SS7-based CPN and CN parameters. The "global" standard is

contained in ITU-T series Q.760-Q.769. ANSI T1.113 describes the CPN and CN parameters:

> Calling Party Number. Information sent in the forward direction to identify the calling party and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, address presentation restriction indicator, screening indicator, and address signals.
>
> Charge Number. Information sent in either direction indicating the chargeable number for the call and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, and address signals.

30. The various indicators and the address signals have one or more character positions within the parameter and the standards prescribe specific syntax and semantics guidelines. The situation is essentially the same for both parameters, although CN can be passed in either direction, whereas CPN is passed only in the forward direction. The CPN and CN parameters were created to serve discrete purposes and they convey different meanings consistent with the design purpose. For example, CPN was created largely to make "Caller ID" and other CLASS-based services work. Automatic Number Identification ("ANI") and CN, on the other hand, are pertinent to billing and routing. Halo's signaling practices on the SS7 network complied with the ANSI standard with regard to the address signal content.

31. Halo's practices were also consistent with the Internet Engineering Task Force ("IETF") standards for Session Initiated Protocol ("SIP") and SIP to Integrated Services Digital Network ("ISDN") User Part ("ISUP") mapping. Halo populated the SS7 ISUP IAM CPN parameter with the address signal information that Halo has received from its High Volume customer, Transcom. Specifically, Halo's practices were consistent with the IETF Request for Comments ("RFCs") relating to mapping of SIP headers to ISUP parameters. *See, e.g.*, G. Camarillo, A. B. Roach, J. Peterson, L. Ong,

RFC 3398, *Integrated Services Digital Network (ISDN) User Part (ISUP) to Session Initiation Protocol (SIP) Mapping*, © The Internet Society (2002), available at http://tools.ietf.org/html/rfc3398.

> When a SIP INVITE arrives at a PSTN gateway, the gateway SHOULD attempt to make use of encapsulated ISUP (see [3]), if any, within the INVITE to assist in the formulation of outbound PSTN signaling, but SHOULD also heed the security considerations in Section 15. If possible, the gateway SHOULD reuse the values of each of the ISUP parameters of the encapsulated IAM as it formulates an IAM that it will send across its PSTN interface. In some cases, the gateway will be unable to make use of that ISUP - for example, if the gateway cannot understand the ISUP variant and must therefore ignore the encapsulated body. Even when there is comprehensible encapsulated ISUP, the relevant values of SIP header fields MUST 'overwrite' through the process of translation the parameter values that would have been set based on encapsulated ISUP. In other words, the updates to the critical session context parameters that are created in the SIP network take precedence, in ISUP-SIP-ISUP bridging cases, over the encapsulated ISUP. This allows many basic services, including various sorts of call forwarding and redirection, to be implemented in the SIP network.
>
> For example, if an INVITE arrives at a gateway with an encapsulated IAM with a CPN field indicating the telephone number +12025332699, but the Request-URI of the INVITE indicates 'tel:+15105550110', the gateway MUST use the telephone number in the Request-URI, rather than the one in the encapsulated IAM, when creating the IAM that the gateway will send to the PSTN. Further details of how SIP header fields are translated into ISUP parameters follow.

32. Halo's high volume customer will sometimes pass information that belongs in the CPN parameter that does not correctly convey that the Halo end user customer is originating a call in the MTA. When this is the case, Halo still populated the CPN, including the address signal field with the original information supplied by the end user customer. Halo, however, also populated the CN parameter. The number appearing in the CN address signal field was usually one assigned to Halo's customer and is the Billing Telephone Number, or its equivalent, for the service provided in the MTA where the call is processed. In ANSI terms, that is the "chargeable number." This practice was

also consistent with the developing IETF consensus and practices and capabilities that have been independently implemented by many equipment vendors in advance of actual IETF "standards."

33. SIP "standards" do not actually contain a formal header for "Charge Number." Vendors and providers began to include an "unregistered" "private" header around 2005. The IETF has been working on a "registered" header for this information since 2008. *See* D. York and T. Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-info-01) © The IETF Trust (2008), available at http://tools.ietf.org/html/draft-york-sipping-p-charge-info-01 (describing "'P-Charge-Info', a private SIP header (P-header) used by a number of equipment vendors and carriers to convey simple billing information."). The most recent draft was released in September, 2011. *See* D. York, T. Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-info-12), © 2011 IETF Trust, available at http://www.ietf.org/id/draft-york-sipping-p-charge-info-12.txt. Halo's practices related to populating the Halo-supplied Billing Telephone Number for Transcom in the SS7 ISUP IAM CN parameter were quite consistent with the purposes for and results intended by each of the "Use Cases" described in the most recent document.

34. Halo notes that, with regard to its consumer product, Halo will signal the Halo number that has been assigned to the end user customer's wireless CPE in the CPN parameter. There is no need to populate the CN parameter, unless and to the extent the Halo end user has turned on call forwarding functionality. In that situation, the Halo end

user's number will appear in the CN parameter and the E.164 address of the party that called the Halo customer and whose call has been forwarded to a different end-point will appear in the CPN parameter. Once again, this is perfectly consistent with both ANSI and IETF practices for SIP and SS7 call control signaling and mapping.

35. Halo was exactly following industry practice applicable to an exchange carrier providing telephone exchange service to an end user, and in particular a communications-intensive business end user with sophisticated CPE.

C. Count III expressly disclaims that the traffic is subject to the ICA, and thus, the Commission lacks jurisdiction over Count III. Further, the Bankruptcy Stay prohibits consideration of any order to pay access charges.

36. AT&T incorrectly asserts that Halo's traffic is subject to exchange access. Paragraph 18 of the Complaint asserts that the traffic in issue is not covered by the ICA at all. AT&T then asks that Halo be required to pay AT&T significant sums for access on both an historical and prospective basis. Halo does not owe access charges to AT&T for several reasons.

37. First, as noted above, this is end user telephone exchange service originated intraMTA traffic, and as such is subject to the intraMTA rule. It is not telephone toll traffic and is not interMTA.

38. Second, the ICA does not provide for rating individual calls on a call by call basis. Instead, the parties employ a negotiated factor. This negotiated factor cannot be unilaterally changed. Instead, it must be mutually acceptable. If the parties cannot reach agreement, then the dispute resolution provisions in the ICA must be used. Any change to the factor is prospective only. AT&T has not proposed any change to the current negotiated factor. Halo has not agreed to any change. AT&T cannot unilaterally

re-rate traffic – either historically or prospectively – absent a negotiated change or a mandated change after dispute resolution. Again, however, any mandated change would be prospective only.

39. Halo contests AT&T's attempt to unilaterally change the factors used to attribute traffic between intraMTA and interMTA. Factor changes cannot be dictated by AT&T, and use data or information AT&T collects and employs however it wants without ever disclosing the data or information to Halo. AT&T's "demand" to Halo, mentioned in paragraph 14 of the Complaint, did not request a change to the negotiated factor, did not ask Halo to agree to a change, and was inadequate to raise the issue of whether the factors should be changed and what any new factor should be within any informal or formal dispute resolution. AT&T's Complaint does not seek an order compelling a change to the factor. Therefore, regardless of whether any particular call somehow be deemed subject to the exchange access regime rather than section 251(b)(5), no relief can be granted because the ICA has a negotiated factor that already allocates minutes between those two regimes, and AT&T has not done what is necessary to obtain a change to that factor.

40. If, and to the extent, AT&T asserts that the ICA excludes certain traffic or activities from the ICA, then the ICA does not govern. AT&T cannot use the "post-ICA" dispute process to secure rulings on these excluded topics. At most, the Commission can rule that the ICA does not apply. AT&T must then use whatever process or venue is appropriate to secure a determination on what the prices, terms, and conditions are for the excluded traffic or activities.

41. Halo denies that AT&T's access tariff does apply. If the question of whether the tariff does apply, and what the tariff requires should it apply, is litigated in this case over Halo's objection, Halo demands that AT&T be required to carry the burden of proving the contents of its tariff and showing the specific tariff terms and conditions it asserts control do in fact control. In particular, AT&T must be required to plead and prove the specific switched access feature group it contends Halo is using is the arrangement that is in fact in use, and that Halo is receiving that arrangement. Halo denies that it has requested, subscribed, used, or received any switched access service from AT&T.

D. Conclusion

42. AT&T's repeated, conclusory allegations that Halo is engaged in some kind of "scheme" are unfounded. All of these allegations are premised on the impermissible claim that Halo's customer is not an end user purchasing telephone exchange service. Halo is not an "aggregator" or what AT&T has in the past derisively called a "least-cost router." Halo has no IXC customers that consume the equivalent of Halo's exchange access service[18]; each customer is an end user.

43. Halo is a CMRS provider and is providing CMRS service to its end user customers in the form of telephone exchange service. Halo does not provide any "telephone toll service" where the traffic is going over the interconnection arrangements with AT&T. Halo's end user customers can use the service as they see fit to transmit messages and information, and Halo – as a common carrier – does not and cannot inquire

[18] Halo can serve IXCs, and very likely will. When that happens, Halo will be providing exchange access as defined in the Act, and the associated traffic handled by both AT&T and Halo will be "jointly provided access," which means each of Halo and AT&T will be responsible for separately billing the IXC for the part of the access that each provides. Halo will not be responsible for paying AT&T's access entitlement.

into its nature or content so long as the end user complies with Halo's terms of service. Halo's network was designed to obtain the result that only traffic handled by a base station communicating with a end user customer's wireless station in the MTA where the call is terminated will be routed to AT&T in that MTA. Once the end user/telephone exchange service nature of the traffic at issue is recognized, the "scheme" assertions – like all of AT&T's other spurious claims – simply vanish.

44. For the foregoing reasons, Counts I, II, and III of the Complaint should be dismissed.

III. HALO WIRELESS, INC.'S NOTICE OF MAY 16, 2006 ORDER CONFIRMING PLAN OF REORGANIZATION OF TRANSCOM ENHANCED SERVICES AND MOTION TO DISMISS COMPLAINT WITH PREJUDICE

45. In further support of the Motion to Dismiss urged above, Halo files this Notice of May 16, 2006 Order Confirming Plan of Reorganization of Transcom Enhanced Services, LLC n/k/a Transcom Enhanced Services, Inc. and, for such, would respectfully show unto the Commission as follows:

A. Transcom's Chapter 11 Proceeding and Confirmation Order.

46. Transcom Enhanced Services, LLC n/k/a Transcom Enhanced Services, Inc. ("Transcom") was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, Transcom has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol ("IP") services over privately managed private IP networks. Transcom's information services include voice processing and arranged termination utilizing voice over IP technology.

47. In July 2003, Transcom entered into a MTA Agreement MA Reference No. 120783 dated July 11, 2003 (the "AT&T Master Agreement"). At or around the same time, Transcom also entered into a MSA Agreement with BellSouth Telecommunications, Inc. n/k/a BellSouth Telecommunications, LLC ("AT&T") (the "MSA Agreement").

48. On February 18, 2005 (the "Petition Date"), Transcom filed a voluntary petition for relief under chapter 11 of title 11 U.S. Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Transcom Bankruptcy Court") under Bankruptcy Case No. 05-31929-HDH-11 (the "Transcom Bankruptcy Case").

49. AT&T, AT&T Corporation, Southwestern Bell Telephone, L.P., Illinois Bell Telephone, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, Ohio Bell Telephone Company, Wisconsin Bell, Inc., Pacific Bell Telephone Company, Nevada Bell Telephone Company, The Southern New England Telephone Company, and The Woodbury Telephone Company, were all creditors and parties in interest in the Transcom Bankruptcy Case (collectively, the "AT&T/SBC Creditors").

50. On March 31, 2006, Transcom and First Capital Group of Texas III, L.P. (collectively, the "Proponents"), filed their Original Joint Plan of Reorganization and Disclosure Statement for Plan (hereafter, the "Plan" and "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement, and on April 12, 2006, the Transcom Bankruptcy Court conditionally approved the Disclosure Statement.

51. On April 12, 2006, the Disclosure Statement, Plan, Ballot (for accepting or rejecting the Plan), Notice of May 16, 2006 Confirmation Hearing, and related materials was served upon all creditors, including AT&T.

52. Throughout the Bankruptcy Case, the primary issue litigated with the AT&T/SBC Creditors was whether Transcom provided enhanced services, as defined by the FCC, and was therefore exempt from the payment of access charges. Shortly after the Petition Date, on March 11, 2005, Transcom filed its Motion to Assume the AT&T Master Agreement. An evidentiary hearing was held on April 14, 2005, and after taking the matter under advisement, the Transcom Bankruptcy Court, on April 28, 2005, issued a Memorandum Opinion and order which granted Transcom's Motion to Assume. In the Memorandum Opinion, the Bankruptcy Court specifically found and concluded that "[Transcom]'s service is an enhanced service, not subject to payment of access charges." Memorandum Opinion, p. 12. The Bankruptcy Court also established a Bankruptcy Code Section 365 cure amount of $103,262.55. *Id.* Some of the AT&T/SBC Creditors appealed the April 28, 2005 Order to the United States District Court for the Northern District of Texas, Dallas Division (Case No. 3:05-CV-1209-B) (the "District Court"). However, because Transcom did not pay the cure amount while the appeal was pending, the District Court on February 9, 2006, dismissed the appeal as moot and vacated the April 28, 2005 Order and Memorandum Opinion.

53. Notwithstanding the dismissal of the April 28, 2005 Order and Memorandum Opinion, Transcom maintained throughout its Bankruptcy Case that it continued to provide enhanced services. In the Disclosure Statement, Transcom stated that it

> has continued to provide enhanced information services, including toll-quality voice and data communications utilizing, Internet Protocol (IP) services over privately managed private IP networks. ... By providing unique, customized call solutions over its VoIP network, [Transcom] believes that it meets the FCC's definition of Enhanced Services, eliminating the need to pay standard voice call tolls.

Disclosure Statement, Sec. 5 p. 7 (citations omitted). Both the Plan and Disclosure Statement further provide that Transcom

> continues to use and benefit from its contracts pursuant to which it sells its enhanced services (the "Customer Contracts"). Assumption of the Customer Contracts is in the best interest of the [Transcom] estate. Accordingly, pursuant to Bankruptcy Code Section 365, the Confirmation Order will authorize [Transcom] to assume all of its Customer Contracts. No cure payments are owed or required with respect to the Customer Contracts.

Disclosure Statement, Sec. 9 p. 14; Plan, Sec. 10.01-.02, p. 23. Plan Exhibit 1-B also identifies the MSA Agreement between Transcom and AT&T.

54. All of the AT&T/SBC Creditors, including AT&T, received the Plan and Disclosure Statement approximately one month prior to the May 16, 2006 Confirmation Hearing. Despite receiving adequate notice, AT&T neither objected to confirmation of Transcom's Plan nor the proposed assumption of the MSA Agreement with AT&T.

55. On May 16, 2006, and after considering the evidence and arguments of counsel, the Bankruptcy Court entered its Order Confirming the Plan (the "Confirmation Order"). In relevant part, paragraph 4 of the Transcom Confirmation Order provides

> In contested hearings held on or about April 14, 2005, [Transcom] established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 64.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service"

> (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, **[Transcom]'s services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.**

(Emphasis added). Pursuant to Bankruptcy Code Section 365(a), the Confirmation Order also assumes Transcom's Customer Contracts and Vendor Agreements. Confirmation Order, p. 9.

56. On May 18, 2006, Transcom served the Confirmation Order on all creditors, including AT&T and the AT&T/SBC Creditors. A Certificate of Service was filed with the Bankruptcy Court on May 18, 2006. No creditor or party sought to appeal the Transcom Confirmation Order, and the Order is now final and non-appealable.

57. As set forth below, the Bankruptcy Court's determination that Transcom provides enhanced services not subject to access charges, and that Transcom is an end user, is binding on all creditors of Transcom, including AT&T. Because Counts I, II and III of AT&T's Complaint against Halo necessitates a finding that Transcom does *not* provide enhanced services, the Commission should dismiss, with prejudice, those three counts of the Complaint.

B. Exhibits.

58. The following Exhibits are attached hereto as referenced below and are incorporated herein for all purposes:

Exhibit A	**Bankruptcy Court's April 28, 2005 Memorandum Opinion**
Exhibit B	**Transcom's March 31, 2006 Disclosure Statement for (including) Joint Plan of Reorganization**
Exhibit C	**April 12, 2006 Certificate of Service of Order (1) Conditionally Approving Disclosure Statement, (2) Setting Date for Confirmation Hearing, (3) Fixing Deadlines for Voting on and Objection to the Plan, and (4) Approving Form of Solicitation Package**

Exhibit D	**Bankruptcy Court's May 16, 2006 Order Confirming Plan**
Exhibit E	**May 18, 2006 Certificate of Service of Order Confirming Plan**
Exhibit F	**District Court's January 20, 2006 Memorandum Order and February 9, 2006 Judgment which vacated Bankruptcy Court's Memorandum Opinion**
Exhibit G	**Order Granting Transcom's Motion for Partial Summary Judgment Based on the Affirmative Defense that Transcom Qualifies as an Enhanced Service Provider**

C. Effect of Confirmation of Transcom's Plan.

59. The Confirmation Order binds Transcom and all of its creditors, including AT&T. In relevant part, Bankruptcy Code Section 1141(a) provides

> [T]he provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, and entity acquiring property under the plan, and any creditor, equity security holder, or general partner of the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

Because the Plan and Confirmation Order are binding, AT&T may not challenge Transcom's status as an Enhanced Service Provider.

60. *Res Judicata*. In addition to the clear mandate of Bankruptcy Code Section 1141(a), claim preclusion, or *res judicata* "bars the litigation of claims that either have been litigated or should have been raised in an earlier suit." *Petro-Hunt, L.L.C. v. U.S.*, 365 F.2d 385, 395 (5th Cir 2004).

61. "The doctrine of claim preclusion serves at least two important interests: protecting litigants against gamesmanship and the added litigation costs of claim-splitting, and preventing scarce judicial resources from being squandered in unnecessary litigation." *Airframe Systems, Inc. v. Raytheon Co.*, 601 F.3d 9, 14 (1st Cir. 2010). As shown herein, those interests are especially implicated in this proceeding since AT&T

had every opportunity to fully litigate Transcom's status as an Enhanced Service provider by objecting to confirmation of the Plan yet made the strategic choice not to do so. Simply because AT&T was unhappy with the Bankruptcy Court forum, it "cannot obtain a second chance at a different outcome by bringing related claims against closely related defendants at a later date." *Id.*

62. To establish a *res judicata* defense, a party must establish: "(1) the parties must be identical in both suits, (2) the prior judgment must have been rendered by a court of competent jurisdiction, (3) there must have a final judgment on the merits and (4) the same cause of action must be involved in both cases." *Osherow v. Ernst & Young, LLP (In re Intelogic Trace, Inc.),* 200 F.3d 382, 386 (5th Cir. 2000). This "four-part test has been applied in the bankruptcy context of an order confirming a plan of reorganization." *Eubanks v. F.D.I.C.*, 977 F.2d 166, 170 (5th Cir. 1992) (citing *Howe v. Vaughan*, 913 F.2d 1138 (5th Cir. 1990), *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1053 (5th Cir. 1987)). *Res judicata* bars a cause of action adjudicated between the same parties or their privies in a prior case. *Id.* at 1057.

63. The first element, identity of the parties, is satisfied because AT&T was a creditor of Transcom throughout the Bankruptcy Case. It is also not necessary for Transcom to intervene in this proceeding for Halo to assert *res judicata* as a defense. Litigants which are in privy with an earlier litigant, and/or litigants which hold such a 'close and significant relationship' with an earlier litigant (here, Transcom and Halo), sufficiently satisfy the 'identical parties' requirement. *Airframe Systems, Inc. v. Raytheon Co.*, 601 F.3d 9, 14 (1st Cir. 2010) ("Under our precedents, privity is a sufficient but not a necessary condition for a new defendant to invoke a claim preclusion

defense. We, along with other circuits, have long held that claim preclusion applies if the new defendant is "closely related to a defendant from the original action-who was not named in the previous law suit," not merely when the two defendants are in privity.") (also collecting cases); see also *Hermes Automation Tech., Inc. v Hyundai Elec. Indus. Co., Ltd.,* 915 F2d. 739, 751 (1st Cir. 1990) (reaffirming the 'close and significant relationship test'); *In re El San Juan Hotel Corp.*, 841 F.2d 6, 10-11 (1st Cir. 1988) (holding that the new defendant, an alleged co-perpetrator of the financial harms litigated in the first lawsuit, had a sufficiently close relationship to the original defendant as to invoke *res judicata* as a defense); *Gambocz v Velencsics*, 468 F.2d 837, 841-42 (3d Cir. 1972) (holding that unnamed co-conspirators sued in a subsequent suit could assert a *res judicata* defense when plaintiff had sued other conspirators on the same claims in the first suit). Accordingly, the first element of 'identical parties' is satisfied.

64. The second element is satisfied since the Bankruptcy Court had jurisdiction over the Plan and Confirmation Order pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (L), and 28 U.S.C. §§1334(b).

65. The third element is also established because the Confirmation Order is final, and confirmation by the Bankruptcy Court necessitated a finding of Plan feasibility, among other things, and that Transcom provides enhanced services.

66. Finally, the fourth element is established because the "critical issue under this determination is whether the two actions are based on the 'same nucleus of operative facts.'" *In re Intelogic,* 200 F.3d at 386 (The bankruptcy court determined that an order approving a chapter 11 fee application had *res judicata* effect against the chapter 7 trustee's professional malpractice claim, and granted the defendant summary judgment.

In affirming both the bankruptcy and district courts, the Fifth Circuit determined that the malpractice concerns should have been raised at the fee application hearing.).

67. Although the ICA between AT&T and Halo was signed after the Confirmation Order, the current action is undeniably based on the same nucleus of operative facts as the Bankruptcy Case because the primary issue in both proceedings is whether Transcom provides enhanced services.

68. As the Restatement of Judgments explains "When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar ..., the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Id.* at 386 (paraphrasing Restatement (Second) of Judgments, § 24 (1982)). As the Fifth Circuit further noted, Comment (c) of Section 24 explains:

> Transaction may be single despite different harms, substantive theories, measures or kinds of relief.... That a number of different legal theories casting liability on an actor may apply to a given episode does not create multiple transactions and hence multiple claims. This remains true although the several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts, or would call for different measures of liability or different kinds of relief.

Id. at 386 (citing Section 24, Comment c).

69. In entering its Confirmation Order, the Bankruptcy Court determined that Transcom

> established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of

> "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, **as this Court has previously determined, [Transcom]'s services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.**

Confirmation Order, para. 4 (emphasis added).

70. In sum, the Court made findings on not only similar shadings or different elements of facts, but the identical facts that are now the subject of AT&T's Complaint against Halo. Since the Bankruptcy Court determined that Transcom provides enhanced services which are 'not subject to access charges', AT&T may not seek a contrary determination in this or any other proceeding.

71. This is also not a situation where AT&T was unaware of Transcom's contentions that it provided enhanced services at the time that the Bankruptcy Case was pending – this contention was openly litigated during Transcom's Bankruptcy Proceeding and was ultimately a critical component of Transcom's emergence from bankruptcy. If AT&T desired to challenge Transcom's status as an Enhanced Service provider, it "could or should have" objected to confirmation of Transcom's Plan and the assumption of the MSA Agreement.

72. *Collateral Estoppel*. Even assuming that the 'identical parties' element of *res judicata* is absent, AT&T is nonetheless collaterally estopped from challenging Transcom's status as an Enhanced Service provider. "Defensive use of collateral estoppel occurs when a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against the same or a different party." *United States v. Mendoza*, 464 U.S. 154, 159 n. 4 (1984).

73. Collateral estoppel precludes a party from litigating an issue already raised in an earlier action if:

> (1) the issue at stake is identical to the one involved in the earlier action;
> (2) the issue was actually litigated in the prior action; and
> (3) the determination of the issue in the prior action was a necessary part of the judgment in that action.

Petro-Hunt, L.L.C. v. U.S., 365 F.2d 385, 397 (5th Cir. 2004).

74. As set forth above, the Bankruptcy Court determined that "[Transcom]'s services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges." Confirmation Order, para. 4. AT&T's Complaint now confronts the Commission with the identical issue that the Bankruptcy Court was confronted with over five years ago. The issue was litigated on April 14, 2005, and again at the Confirmation Hearing. The Bankruptcy Court's determination that Transcom is an Enhanced Service Provider was a necessary part of confirmation; if the Bankruptcy Court determined that Transcom did not provide enhanced services, the Plan would not be feasible and confirmation would have been denied.

75. Because AT&T's Complaint raises claims and issues which were disposed of in the Plan and Confirmation Order – including a finding that Transcom provides enhanced services not subject to access charges – AT&T is barred under Bankruptcy Code Section 1141(a) and the doctrines of *res judicata* and collateral estoppel from seeking the payment of access charges from Halo.

WHEREFORE, based on the foregoing, Halo denies that AT&T is entitled to the relief sought in Counts I, II, or III, or any other relief, and respectfully requests that the relief requested in Counts I, II, and III of the Complaint be denied in their entirety and that Counts I, II, and III of the Complaint be dismissed.

Respectfully submitted this 29th day of May 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Answer* was served via certified mail, return receipt requested, on the following counsel of record on this the 29th day of May, 2012:

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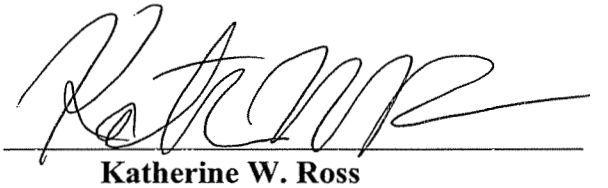

Katherine W. Ross

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
TRANSCOM ENHANCED	§	**Case No. 05-31929-HDH-11**
SERVICES, LLC,	§	
	§	
Debtor.	§	

MEMORANDUM OPINION

On April 14, 2005, this Court considered Transcom Enhanced Services, LLC's (the "Debtor's") Motion To Assume AT&T Master Agreement MA Reference No. 120783 Pursuant To 11 U.S.C. § 365 ("Motion").[1] At the hearing, the Debtor, AT&T, and Southwestern Bell Telephone, L.P., et al ("SBC Telcos") appeared, offered evidence, and argued. These parties also submitted post-hearing briefs and proposed findings of fact and conclusions of law supporting their positions. This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 151, and the standing order of reference in this district. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) & (O).

I. Background Facts

This case was commenced by the filing of a voluntary Bankruptcy Petition for relief under Chapter 11 of the Bankruptcy Code on February 18, 2005. The Debtor is a wholesale

[1]Debtor's Exhibit 1, admitted during the hearing, is a true, correct and complete copy of the Master Agreement between Debtor and AT&T.

provider of transmission services providing its customers an Internet Protocol ("IP") based network to transmit long-distance calls for its customers, most of which are long-distance carriers of voice and data.

In 2002, a company called DataVoN, Inc. invested in technology from Veraz Networks designed to modify the aural signal of telephone calls and thereby make available a wide variety of potential new services to consumers in the area of VoIP. The FCC had long supported such new technologies, and the opportunity to change the form and content of the telephone calls made it possible for DataVoN to take advantage of the FCC's exemption provided for Enhanced Service Providers ("ESP"s), significantly reducing DataVoN's cost of telecommunications service.

On September 20, 2002, DataVoN and its affiliated companies filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, before Judge Steven A. Felsenthal. Southwestern Bell was a claimant in the DataVoN bankruptcy case. On May 19, 2003, the Debtor was formed for purposes of acquiring the operating assets of DataVoN. The Debtor was the winning bidder for the assets of DataVoN and on May 28, 2003, the bankruptcy court approved the sale of substantially all of the assets of DataVoN to the Debtor. Included in the order approving the sale, were findings by Judge Felsenthal that DataVoN provided "enhanced information services".

On July 11, 2003, AT&T and the Debtor entered into the AT&T Master Agreement MA Reference No. 120783 (the "Master Agreement"). In an addendum to the Master Agreement, executed on the same date, the Debtor states that it is an "enhanced information services" provider, providing data communications services over private IP networks (VoIP), such VoIP

services are exempt from the access charges applicable to circuit switched interexchange calls, and such services would be provided over end user local services (such as the SBC Telcos).

AT&T is both a local-exchange carrier and a long-distance carrier of voice and data. The SBC Telcos are local exchange carriers that both originate and terminate long distance voice calls for carriers that do not have their own direct, "last mile" connections to end users. For this service, SBC Telcos charge an access charge. Enhanced service providers ("ESP's") are exempt from paying these access charges, and the SBC Telcos had been in litigation with DataVoN during its bankruptcy, and has recently been in litigation with the Debtor, AT&T and others over whether certain services they provide are entitled to this exemption to access charges.

On April 21, 2004, the FCC released an order in a declaratory proceeding between AT&T and SBC (the "AT&T Order") that found that a certain type of telephone service provided by AT&T using IP technology was not an enhanced service and was therefore not exempt from the payment of access charges. Based on the AT&T Order, before the instant bankruptcy case was filed, AT&T suspended Debtor's services under the Master Agreement on the grounds that the Debtor was in default under the Master Agreement. Importantly, the alleged default of the Debtor is not a payment default, but rather pursuant to Section 3.2 of the Master Agreement, which, according to AT&T, gives AT&T the right to immediately terminate any service that AT&T has reason to believe is being used in violation of laws or regulations.

AT&T asserts that the services that the Debtor provides over its IP network are substantially the same as were being provided by AT&T, and therefore, the Debtor is also not exempt from paying these access charges. At the point that the bankruptcy case was filed, service had been suspended by AT&T pending a determination that the Debtor is an ESP, but

AT&T had not yet assessed the access charges that it asserts are owed by the Debtor.

II. Issues

The issues before the Court are:

(1) Whether the Debtor has met the requirements of § 365 in order to assume the Master Agreement; and

(2) Whether the Debtor is an enhanced service provider ("ESP"), and is thus exempt from the payment of certain access charges in compliance with the Master Agreement.[2]

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[2] AT&T has stated in its Objection to the Motion that since it does not object to the Debtor's assumption of the Master Agreement provided the amount of the cure payment can be worked out, the Court need not reach the issue of whether the Debtor is an ESP. However, this argument appears disingenuous to the Court. AT&T argues that the entire argument over cure amounts is a difference of about $28,000.00 that AT&T is willing to forgo for now. However, AT&T later states in its objection (and argued at the hearing):

> To be sure, this is not the total which ultimately Transcom may owe. It is also possible that . . . Transcom will owe additional amounts if it is determined that it should have been paying access charges. But at this point, AT&T has not billed for the access charges, so under the terms of the Addendum, they are not currently due. . . . AT&T is not requiring Transcom to provide adequate assurance of its ability to pay those charges should they be assessed, but will rely on the fact that post-assumption, these charges will be administrative claims. . . . Although Transcom's failure to pay access charges with respect to prepetition traffic was a breach, the Addendum requires, as a matter of contract, that those pre-petition charges be paid when billed. This contractual provision will be binding on Transcom post-assumption, and accordingly, is not the subject of a damage award now."

AT&T Objection p. 3-4. As will be discussed below, in evaluating the Debtor's business judgment in approving its assumption Motion, the Court must determine whether or not its approval of the Motion will result in a potentially large administrative expense to be borne by the estate.

AT&T argues against the Court's jurisdiction to determine this question as part of an assumption motion. However, the Court wonders if AT&T will make the same argument with regard to its post-assumption administrative claims it plans on asserting for past and future access charges that it states it will rely on for payment instead of asking for them to be included as cure

III. Analysis

Under § 365(b)(1), a debtor-in-possession that has previously defaulted on an executory contract[3] may not assume that contract unless it: (A) cures, or provides adequate assurance that it will promptly cure, the default; (B) compensates the non-debtor party for any actual pecuniary loss resulting from the default; and (C) provides adequate assurance of future performance under such contract. *See* 11 U.S.C. § 365(b)(1).

In its objection, briefing and arguments made at the hearing, AT&T does not object to the Debtor's assumption of the Master Agreement, provided the Debtor pays the cure amount, as determined by the Court. It does not expect the Debtor to cure any non-monetary defaults, including payment or proof of the ability to pay the access charges that have been incurred, as alleged by the SBC Telcos, as a prerequisite to assumption. *See In re BankVest Capital Corp.*, 360 F.3d 291, 300-301 (1st Cir. 2004), *cert. denied*, __ U.S. __, 124 S.Ct. 2874, 159 L.Ed. 2d 776 (2004) ("Congress meant § 365(b)(2)(D) to excuse debtors from the obligation to cure non-monetary defaults as a condition of assumption.").

Only the Debtor offered evidence of the cure amounts due at the hearing totaling $103,262.55. Therefore, based on this record, the current outstanding balance due from Debtor to AT&T is $103,262.55 (the "Cure Amount"). Thus, upon payment of the Cure Amount Debtor's Motion should be approved by the Court, provided the Debtor can show adequate assurance of future performance.

AT&T argues that this is where the Court's inquiry should cease. Since AT&T has

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payments under the present Motion.

[3] The parties agree that the Master Agreement is an executory contract.

suspended service under the Master Agreement, whether or not the Debtor is an ESP, and thus exempt from payment of the disputed access charges is irrelevant, because no future charges will be incurred, access or otherwise. This is because no service will be given by AT&T until the proper court makes a determination as to the Debtor's ESP status. However, in its argument, AT&T ignores the fact that part of the Court's necessary determination in approving the Debtor's motion to assume the Master Agreement is to ascertain whether or not the Debtor is exercising proper business judgment. *See In re Lilgeberg Enter., Inc.*, 304 F.3d 410, 438 (5th Cir. 2002); In *re Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir. 1985).

If by assuming the Master Agreement the Debtor would be liable for the large potential administrative claim, to which AT& T argues that it will be entitled,[4] or if the Debtor cannot show that it can perform under the Master Agreement, which states that the Debtor is an enhanced information services provider exempt from the access charges applicable to circuit switched interexchange calls, and the Debtor would loose money going forward under the Master Agreement should it be determined that the Debtor is not an ESP, then the Court should deny the Motion. On this record, the Debtor has established that it cannot perform under the Master Agreement, and indeed cannot continue its day-to-day operations or successfully reorganize, unless it qualifies as an Enhanced Service Provider.

AT&T and SBC Telcos argue that a forum selection clause in the Master Agreement should be enforced and that any determination as to whether the Debtor is an ESP, and thus exempt from access charges, must be tried in New York. While this argument may have validity in other contexts, the Court concludes that it has jurisdiction to decide this issue as it arises in the

[4] See n. 2 above.

context of a motion to assume under § 365. *See In re Mirant Corp.*, 378 F.3d 511, 518 (5th Cir. 2004) (finding that district court may authorize the rejection of an executory contract for the purchase of electricity as part of a bankruptcy reorganization and that the Federal Energy Regulatory Commission did not have exclusive jurisdiction in this context); *see also, Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056 (5th Cir. 1997) (Bankruptcy Court possessed discretion to refuse to enforce an otherwise applicable arbitration provision where enforcement would conflict with the purpose or provisions of the Bankruptcy Code).

In re Orion, which is heavily relied upon by AT&T, is inapplicable in this proceeding. *See In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir. 1993). On its face, *Orion* is distinguishable from this case in that in *Orion*, the debtor sought damages in an adversary proceeding at the same time it was seeking to assume the contract in question under Section 365. The bankruptcy court decided the Debtor's request for damages as a part of the assumption proceedings awarding the Debtor substantial damages. Here, the Debtor is not seeking a recovery from AT&T under the contract which would augment the estate. Rather the Debtor is only seeking to assume the contract within the parameters of Section 365. Similar issues to the one before this Court have been advanced by another bankruptcy court in this district.

The court in *In re Lorax Corp.*, 307 B.R. 560 (Bankr. N.D. Tex. 2004), succinctly pointed out that a broad reading of the Orion opinion runs counter to the statutory scheme designed by Congress. *Lorax*, 307 B.R. at 566 n. 13. The *Lorax* court noted that *Orion* should not be read to limit a bankruptcy court's authority to decide a disputed contract issue as part of hearing an assumption motion. *Id.* To hold otherwise would severely limit a bankruptcy court's inherent

equitable power to oversee the debtor's attempt at reorganization and would diffuse the bankruptcy court's power among a number of courts. The *Lorax* court found such a result to be at odds with the Supreme Court's command that reorganization proceed efficiently and expeditiously. *Id.* at 567 (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 376 (1988)). This Court agrees. The determination of the Debtors status as an ESP is an important part of the assumption motion.

Since the Second Circuit's 1993 *Orion* opinion, the Second Circuit has further distinguished non-core and core jurisdiction proceedings involving contract disputes. In particular, if a contract dispute would have a "much more direct impact on the core administrative functions of the bankruptcy court" versus a dispute that would merely involve "augmentation of the estate," it is a core proceeding. *In re United States Lines, Inc.*, 197 F.3d 631, 638 (2d Cir. 1999) (allowing the bankruptcy court to resolve disputes over major insurance policies, and recognizing that the debtor's indemnity contracts could be the most important asset of the estate). Accordingly, the Second Circuit would reach the same conclusion of core jurisdiction here since the dispute addressed by the Motion "directly affect[s]" the bankruptcy court's "core administrative function." *United States Lines.* at 639 (citations omitted).

Determination, for purposes of the motion to assume, of whether the Debtor qualifies as an ESP and is exempt from paying access charges (the "ESP Issue") requires the Court to examine and take into account certain definitions under the Telecommunications Act of 1996 (the "Telecom Act"), and certain regulations and rulings of the Federal Communications Commission ("FCC"). None of the parties have demonstrated, however, that this is a matter of first impression or that any conflict exists between the Bankruptcy Code and non-Code cases.

Thus, the Court may decide the ESP issues for purposes of the motion to assume.

Several witnesses testified on the issues before the Court. Mr. Birdwell and the other representatives of the Debtor were credible in their testimony about the Debtor's business operations and services. The record establishes by a preponderance of the evidence that the service provided by Debtor is distinguishable from AT&T's specific service in a number of material ways, including, but not limited to, the following:

(a) Debtor is not an interexchange (long-distance) carrier.

(b) Debtor does not hold itself out as a long-distance carrier.

(c) Debtor has no retail long-distance customers.

(d) The efficiencies of Debtor's network result in reduced rates for its customers.

(e) Debtor's system provides its customers with enhanced capabilities.

(f) Debtor's system changes the content of every call that passes through it.

On its face, the AT&T Order is limited to AT&T and its specific services. This Court holds, therefore, that the AT&T Order does not control the determination of the ESP Issue in this case.

The term "enhanced service" is defined at 47 CFR § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Dr. Bernard Ku, who testified for SBC was a knowledgeable and impressive witness. However, during cross examination, he agreed that he was not familiar with the legal definition for enhanced service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).

> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R.

§ 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users . . . as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services.* (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the evidence and testimony presented at the hearing, the Court finds, for purposes of the § 365 motion before it, that the Debtor's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Debtor's system falls outside of the definition of "telecommunications service" because Debtor's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Debtor's service is not a "telecommunications service" subject to access charges, but rather is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to the Debtor, that DataVoN provided "enhanced information services". *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. The

Debtor now uses DataVoN's assets in its business.

Because the Court has determined that the Debtor's service is an "enhanced service" not subject to the payment of access charges, the Debtor has met its burden of demonstrating adequate assurance of future performance under the Master Agreement. The Debtor has demonstrated that it is within Debtor's reasonable business judgment to assume the Master Agreement.

Regardless of the ability of the Debtor to assume this agreement, the Court cannot go further in its ruling, as the Debtor has requested to order AT&T to resume providing service to the Debtor under the Master Agreement. The Court has reached the conclusions stated herein in the context of the § 365 motion before it and on the record made at the hearing. An injunction against AT&T would require an adversary proceeding, a lawsuit. Both the Debtor and AT&T are still bound by the exclusive jurisdiction provision in § 13.6 of the Master Agreement, as found by the United States District Court for the Northern District of Texas, Hon. Terry R. Means. As Judge Means ruled, any suit brought to enforce the provisions of the Master Agreement must be brought in New York.

IV. Conclusion

In conclusion, the Court finds that the provisions of 11 U.S.C. § 365 have been met in this case. Because the Court finds that the Debtor's service is an enhanced service, not subject to payment of access charges, it is therefore within Debtor's reasonable business judgment to assume the Master Agreement with AT&T.

Only the Debtor offered evidence of the cure amounts at the hearing. Based on the record at the hearing, the current outstanding balance due from Debtor to AT&T is $103,262.55. To

assume the Master Agreement, the Debtor must pay this Cure Amount to AT&T within ten (10) days of the entry of the Court's order on this opinion.

A separate order will be entered consistent with this memorandum opinion.

SIGNED: 4/28/05

/s/ Harlin D. Hale
Harlin D. Hale
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CHAPTER 11**
	§	
	§	
DEBTOR.	§	

DISCLOSURE STATEMENT

FOR

JOINT PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR AND FIRST CAPITAL GROUP OF TEXAS, III, L.P.

J. Mark Chevallier
State Bar No. 04189170
Steven H. Thomas
State Bar No. 04189170
David L. Woods
State Bar No. 24004167
McGuire, Craddock & Strother, P.C.
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ATTORNEYS FOR THE DEBTOR and DEBTOR-IN-POSSESSION

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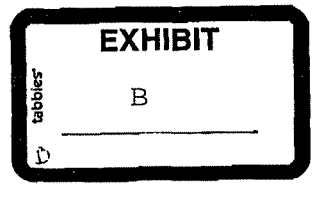
(410) 752-7092 – facsimile
ATTORNEYS FOR FIRST CAPITAL GROUP OF TEXAS, III, L.P.

Dated: March 31, 2006



NOTICE

THE DESCRIPTION OF THE PLAN CONTAINED HEREIN IS INTENDED AS A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH PLAN, WHICH IS ON FILE IN THE OFFICE OF THE CLERK OF THE BANKRUPTCY COURT IN DALLAS, AND WHICH IS ATTACHED HERETO. EACH CREDITOR AND INTEREST HOLDER IS ENCOURAGED TO READ, CONSIDER, AND ANALYZE CAREFULLY THE TERMS AND PROVISIONS OF THE PLAN.

AMENDMENTS BENEFICIAL TO ONE OR MORE CLASSES WITHOUT FURTHER IMPAIRMENT OF OTHER CLASSES MAY BE MADE IN THE PLAN. SUCH AMENDMENTS MAY BE APPROVED BY THE BANKRUPTCY COURT AT THE CONFIRMATION HEARING WITHOUT RESOLICITATION OF CREDITORS AND INTEREST HOLDERS.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED IN IT SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE LEGAL EFFECTS OF THE REORGANIZATION ON HOLDERS OF CLAIMS OR INTERESTS. CERTAIN INFORMATION, BY ITS NATURE, IS FORWARD LOOKING, CONTAINS ESTIMATES AND ASSUMPTIONS WHICH MAY PROVE TO BE WRONG, AND CONTAINS PROJECTIONS WHICH MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE EXPERIENCES.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THIS DISCLOSURE STATEMENT SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.

NO REPRESENTATIONS CONCERNING THE PLAN HAVE BEEN AUTHORIZED OTHER THAN AS SET FORTH IN THE DISCLOSURE STATEMENT. ALL THE FINANCIAL INFORMATION WITH RESPECT TO THE DEBTOR'S RECORDS WAS COMPILED FROM THE DEBTOR'S RECORDS. WHILE EVERY ATTEMPT HAS BEEN MADE TO BE AS ACCURATE AND COMPLETE AS POSSIBLE, INADVERTENT ERRORS OR OMISSIONS COULD HAVE BEEN MADE. THE DEBTOR, THEREFORE, IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS TOTALLY COMPLETE OR IS WITHOUT ANY INACCURACY.

THE PRESENTATION OF THE INFORMATION SET FORTH HEREIN DOES NOT CONSTITUTE FACTUAL OR LEGAL ADMISSIONS BY THE DEBTOR OR FIRST CAPITAL.

TABLE OF CONTENTS

I. INTRODUCTION

Transcom Enhanced Services, L.L.C. ("Debtor") filed a Petition for Reorganization under Chapter 11 of the Bankruptcy Code ("the Petition") on February 18, 2005 (the "Petition Date"). The Debtor and First Capital Group of Texas, III, L.P. ("First Capital") proposed a Joint Plan of Reorganization, dated March 31, 2006 ("Plan") (the Debtor and First Capital are referred to collectively as the "Plan Proponents"). This Disclosure Statement is to be used in connection with the solicitation of votes on the Plan and is intended to disclose all information necessary to enable parties entitled to vote on approval of the Plan to make a reasonably informed decision. A copy of the Plan is attached hereto as **Exhibit "1"**. Unless otherwise defined herein, terms used herein have the meaning given them in the Plan.

II. NOTICE TO HOLDERS OF CLAIMS

The purpose of this Disclosure Statement is to enable creditors and interest holders of the Debtor whose Claims or Interests are impaired to make an informed decision in exercising their right to vote to accept or reject the Plan.

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS DOCUMENT WITH CARE.

THE PLAN PROPONENTS ARE REQUESTING THAT THE COURT COMBINE THE HEARING ON APPROVAL OF THIS DISCLOSURE STATEMENT WITH THE HEARING ON CONFIRMATION OF THE PLAN PURSUANT TO 11 U.S.C. §105(d)(2)(B)(vi).

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

Each holder of a Claim or Equity Interest entitled to vote to accept or reject the Plan should read this Disclosure Statement and the Plan in its entirety before voting. No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and §1125 of the Bankruptcy Code. No person has been authorized to use or promulgate any information concerning the Debtor, its business, or the Plan, other than the information contained herein, in connection with the solicitation of votes to accept or reject the Plan. No holder of a Claim entitled to vote on the Plan should rely upon any information relating to the Debtor's business, or the Plan other than that contained in the Disclosure Statement and the exhibits hereto. Unless otherwise indicated, the source of all information set forth herein is the Debtor and its professionals.

After carefully reviewing this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed ballot.

If you do not vote to accept the Plan, or if you are the holder of an unimpaired Claim or Equity Interest, you may be bound by the Plan which is confirmed by the Court.

III. VOTING PROCEDURES AND REQUIREMENTS

A. Ballots and Voting Deadline

A ballot to be used for voting to accept or reject the Plan is enclosed with all copies of this Disclosure Statement mailed to all holders of claims and equity interests entitled to vote.

The Bankruptcy Court has directed that, in order to be counted, ballots for the acceptance or rejection of the Plan must be received no later than 5:00 p.m. Central Time on _____, 2006 at the following address:

Julia Appleton
3550 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
214/954-6868 (facsimile)

PLEASE NOTE: TO BE COUNTED YOUR BALLOT MUST BE RECEIVED BY 5:00 P.M. CENTRAL TIME ON _____, 2006.

B. Parties in Interest Entitled to Vote

Any holder of a Claim against or Equity Interest in the Debtor at the date on which the order is entered approving the Disclosure Statement whose Claim or Equity Interest has not previously been disallowed by the Bankruptcy Court is entitled to vote to accept or reject the Plan, if such Claim or Equity Interest is impaired under the Plan and either (i) such holder's Claim or Equity Interest has been scheduled by the Debtor (and such Claim or Equity Interest is not scheduled as disputed, contingent, or unliquidated) or (ii) such holder has filed a proof of claim or proof of interest on or before June 22, 2005, the last date set by the Bankruptcy Court for such filings. Any Claim or Equity Interest as to which an objection has been filed is not entitled to vote, unless the Bankruptcy Court, upon application of the holder to whose Claim or Equity Interest an objection has been made, temporarily allows such Claim or Equity Interest in an amount that it deems proper for the purpose of accepting or rejecting the Plan. Any such application must be heard and determined by the Bankruptcy Court on or before commencement of the Confirmation Hearing. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

IF YOU HAVE ANY QUESTIONS REGARDING THE PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE DEBTOR'S COUNSEL AT THE FOLLOWING ADDRESS:

J. Mark Chevallier
McGuire, Craddock & Strother, P.C.
3550 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
(214) 954-6800/(214) 954-6868 (facsimile)

C. Impaired Classes Entitled to Vote

Only classes that are impaired under the Plan are entitled to vote to accept or reject the Plan. Generally, under the terms of §1124 of the Bankruptcy Code a class of claims is considered to be impaired under a plan unless the plan does not alter the legal, equitable and contractual rights of the holders of the claims included in the class. Additionally, a class is considered impaired unless all outstanding defaults on the obligations included in the claims in the class, other than defaults relating to the insolvency or financial condition of the Debtor or related to the commencement of the bankruptcy proceeding, are to be cured, and the holders of claims in the class are to be compensated for damages incurred as a result of their reasonable reliance on their right to demand accelerated payment under applicable contractual provisions or law.

Under the Plan, all classes of claims and equity interests, with the exception of administrative claims, are impaired and are, therefore, entitled to vote to accept or reject the Plan.

D. Vote Required for Class Acceptance.

The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by both (a) holders of two-thirds in dollar amount and (b) a majority in number of the claims of that class that actually cast ballots for acceptance or rejection of the plan. Thus, class acceptance occurs only if at least two-thirds in amount and a majority in number of the holders of claims voting cast their ballots in favor of acceptance.

The Bankruptcy Code defines acceptance of a plan by a class of equity interests as acceptance by both (a) holders of two-thirds in amount and (b) a majority in number of the equity interests of that class that actually cast ballots for acceptance or rejection of the plan. Thus, class acceptance occurs only if at least two-thirds in amount and a majority in number of the holders of equity interests voting cast their ballots in favor of acceptance.

E. Confirmation and Disclosure Statement Hearing

Section 1129(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan. By order of the Bankruptcy Court, the Confirmation

and Disclosure Statement Hearing ("Combined Hearing") has been scheduled for _____, 2006, at _____ _.m. Central Time, in the Courtroom of the Honorable Harlin D. Hale, United States Bankruptcy Judge, 1100 Commerce Street, 14th Floor, Dallas, Texas 75201. The Combined Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the hearing or any adjournment thereof.

Any objection to confirmation of the Plan or to the adequacy of information in the Disclosure Statement must be made in writing and filed with the Bankruptcy Court on or before _____, 2006, at the following address:

Office of the Clerk
U.S. Bankruptcy Court
1100 Commerce Street
Suite 12-A-24
Dallas, Texas 75242-1496

In addition, any such objection must be served upon the following parties, together with proof of service, on or before _____, 2006:

J. Mark Chevallier
McGuire, Craddock & Strother, P.C.
3550 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
ATTORNEYS FOR DEBTOR

Martin T. Fletcher
Whiteford, Taylor & Preston, LLP
Seven Saint Paul Street, Suite 1500
Baltimore, Maryland 21202
ATTORNEYS FOR FIRST CAPITAL

Objections to confirmation of the Plan and adequacy of the Disclosure Statement are governed by Bankruptcy Rule 9014. UNLESS AN OBJECTION TO CONFIRMATION AND/OR ADEQUACY OF THE DISCLOSURE STATEMENT IS TIMELY SERVED AND FILED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

IV. EXPLANATION OF CHAPTER 11

A. Overview of Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11, the Debtor-in-Possession attempts to reorganize its business for the benefit of the Debtor, its creditors, and other parties in interest. The present Chapter 11 Case commenced with the filing of a voluntary Chapter 11 petition by the Debtor on February 18, 2005.

The commencement of a chapter 11 case creates an estate comprised of all the legal and equitable interests of the Debtor in property as of the date the petition is filed. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession" unless the bankruptcy court orders the appointment of a trustee. In the present Chapter 11 case, the Debtor has remained in possession of its property and continued to operate its business.

The filing of a chapter 11 petition also triggers the automatic stay provisions of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides for an automatic stay of all attempts to collect pre-petition claims from the Debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay remains in full force and effect until the effective date of a confirmed plan of reorganization.

The formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the claims against and interests in the Debtor. Generally, unless a trustee is appointed, only the Debtor may file a plan during the first 120 days of a chapter 11 case (the "Exclusive Period"). After the Exclusive Period has expired, a creditor or any other party in interest may file a plan.

B. Plan of Reorganization

Although referred to as a plan of reorganization, a plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of the debtor's assets. The Plan contemplates the Debtor's continued operation of its business with certain payment to creditors made from the Debtor's income and exit loans totaling $1,000,000; the exit loans will assist the Debtor in settling certain payment obligations owing to Redwing, one of the Debtor's Secured Creditors.

After a plan of reorganization has been filed, the holders of claims against or interests in the debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, §1125 of the Bankruptcy Code requires the plan proponents to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. This Disclosure

Statement is presented to holders of Claims against and Equity Interests in the Debtor to satisfy the requirements of §1125 of the Bankruptcy Code, in connection with the Plan.

If all classes of claims and equity interests accept a plan of reorganization, the bankruptcy court may nonetheless still not confirm the plan unless the court independently determines that the requirements of §1129 of the Bankruptcy Code have been satisfied. Section 1129 sets forth the requirements for confirmation of a plan and, among other things, requires that a plan meet the "best interests" test and be "feasible." The "best interests" test generally requires that the value of the consideration to be distributed to the holders of claims and equity interests under a plan may not be less than those parties would receive if the debtor were liquidated pursuant to a hypothetical liquidation occurring under chapter 7 of the Bankruptcy Code. Under the "feasibility" requirement, the court generally must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan without the need for further financial reorganization.

Chapter 11 does not require that each holder of a claim against or interest in a debtor vote in favor of a plan of reorganization in order for the bankruptcy court to confirm the plan. At a minimum, however, the plan must be accepted by a majority in number and two-thirds in amount of those claims actually voting in at least one class of impaired claims under the plan. Only the holders of Claims or Equity Interests who actually vote will be counted as either accepting or rejecting the Plan. In addition, classes of claims or equity interests that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or equity interests in an impaired class.

The bankruptcy court may also confirm a plan of reorganization even though fewer than all the classes of impaired claims and interests accept it. For a plan of reorganization to be confirmed despite its rejection by a class of impaired claims or interests, the proponents of the plan must show, among other things, that the plan does not "discriminate unfairly" and that the plan is "fair and equitable" with respect to each impaired class of claims or interests that has not accepted the plan.

Under §1129(b) of the Bankruptcy Code, a plan is "fair and equitable" as to a class of rejecting claims if, among other things, the plan provides: (a) with respect to secured claims, that each such holder will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and equity interests, that the holder of any claim or equity interest that is junior to the claims or equity interests of such class will not receive or retain on account of such junior claim or equity interest any property at all unless the senior class is paid in full.

A plan does not "discriminate unfairly" against a rejecting class of Claims if (a) the relative value of the recovery of such class under the plan does not differ materially from that of any class (or classes) of similarly situated Claims, and (b) no senior class of Claims is to receive more than 100% of the amount of the Claims in such class.

The Plan Proponents believe that the Plan has been structured so that it will satisfy these requirements as to any rejecting Class of Claims, and can therefore be confirmed, if necessary, over the objection of any Class of Claims. The Plan Proponents reserve the right to request confirmation of the Plan under the "cramdown" provisions of §1129 of the Bankruptcy Code.

V. GENERAL INFORMATION

A. The Debtor - A Historical Overview

The Debtor (or, Transcom) is a privately held Texas limited liability company with its primary place of business in Irving, Texas. In May 2003, Transcom purchased the assets of DataVoN, Inc. Since then, Transcom has continued to provide enhanced information services, including toll-quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

The Debtor is a wholly owned subsidiary of and is operated by Transcom Holdings, Inc. ("Holdings"). All of Holdings 18 employees are engaged in the daily management and operation of the Debtor's business. The Debtor in turn pays or reimburses Holdings for the operating expenses incurred by Holdings in performing its duties under the Management Agreement. Aside from the dollar for dollar expense payment, the Debtor does not pay Holdings any mark-up or additional fee for the management services.

The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications.) The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. By providing unique, customized call solutions over its VoIP network, the Debtor believes that it meets the FCC's definition of Enhanced Services, eliminating the need to pay standard voice call tolls.

B. Financial Performance and Events Leading to the Bankruptcy Filing

Prior to the inception of this bankruptcy case, the Debtor's business model was vigorously attacked by SBC. Primarily, SBC, through both extra-judicial attacks and litigation, contended that the Debtor was not an enhanced service provider and was subject to payment of universal access charges. SBC's contentions led one of the Debtor's most significant service providers, AT&T Corp. ("AT&T"), to suspend the termination services it provided to the Debtor pursuant to a Master Service Agreement ("AT&T Agreement"). This suspension caused a major disruption of Debtor's business and was a precipitating cause of the Debtor's bankruptcy filing.

C. Current Management

The Debtor's senior management team has extensive experience in the communications industry. Senior management members' titles and years of service in the communications industry are as follows:

Name	Title	Communications experience
Scott Birdwell	Chief Executive Officer	11
Britt Birdwell	President	7
Larry Dewey	CFO/Executive Vice President	4
Carolyn Malone	Executive V.P./Human Resources	6

This management team will continue in place with the Reorganized Debtor.

D. Post Petition Events and Operations

During the Debtor's Chapter 11 case, the Debtor negotiated with and reached agreement with First Capital from whom Debtor borrows money on a revolving basis based on its levels of inventory and receivables for post petition credit ("DIP Financing"). A Final Order Authorizing the Debtor-In-Possession to Obtain Post-Petition Financing, Authorizing Use of Cash Collateral, and dealing with related matters was entered by the Court on March 26, 2005, and subsequent orders extending the Debtor's line of credit were entered thereafter, including a recent order entered on March 28, 2006, which expanded the total authorized DIP Financing to $1,985,000. The funding of the DIP Financing has enabled the Debtor to continue operations post-petition and pay all of its post-petition operating expenses. Parties are referred to the bankruptcy pleadings and monthly operating reports filed by the Debtor for detailed information on the Debtor's post-petition financial performance.

VI. THE PLAN

The following is a summary of the Plan. Interested parties are urged to read the Plan attached hereto in its entirety. If a discrepancy exists between the Plan and the Disclosure Statement, the terms of the Plan control. Capitalized terms used herein shall have the same meaning as defined in the Plan.

A. Summary of the Plan

This Plan contemplates a reorganization of the Debtor. The Pre-Petition Secured Debt of First Capital will be converted to equity in the Reorganized Debtor. The Post-Petition Secured Debt of First Capital will be renewed and extended. The Debtor will continue in the operation of its businesses with payments to creditors made from the Debtor's income and from the infusion of new capital. In addition to operating income and the DIP Financing, the Debtor obtained exit loans totaling $1,000,000 from certain investors; the exit loans from the investors will assist the Debtor in settling certain payment obligations owing to Redwing Equipment Partners Limited, one of the Debtor's Secured Creditors. Pursuant to Bankruptcy Code Section 365, the Plan also seeks authority for the Debtor to assume Customer Contracts and certain Vendor Agreements.

B. Summary of Claims

The Debtor estimates that the allowable claims against its estate will be as follows:

1. **Administrative Claims**: McGuire, Craddock & Strother, P.C. (bankruptcy attorneys for the Debtor) - **$160,000** net of the initial retainer of $20,000 and post petition payments as allowed by the Court.
2. **Class 1 - Pre-Petition Secured Claim of First Capital: $2,300,684** (claim to be converted to equity)
3. **Class 2 - Post-Petition Secured Claim of First Capital: $1,985,000,** plus accrued interest
4. **Class 3 - Secured Claim of Redwing: $1,800,000** (reduced by agreement from approximately $4.1 million)
5. **Class 4 - Secured Tax Claims: $25,000**
6. **Class 5 - General Unsecured Claims: $845,000** exclusive of disputed claims
7. **Class 6 - Insider Claims:** Allowed at -0-, scheduled in amount in excess of $350,000

C. Classification and Treatment of Claims and Equity Interests

Administrative Expense Claims and Priority Tax Claims have not been classified and are excluded from the following classes in accordance with 11 U.S.C. §1123(a)(1).

1. **Treatment of Administrative Expenses and Priority Tax Claims.** All Administrative Expenses against the Debtor, including fees and expenses related to filing, confirming and implementing the Plan, shall be treated as follows:

a. **Administrative Expenses Bar Date.** The holder of any Administrative Expense other than (i) a Fee Claim, (ii) a liability incurred and paid in the ordinary course of business by the Debtor, or (iii) an Allowed Administrative Expense, must file with the Bankruptcy Court and serve on the Debtor and its counsel, notice of such Administrative Expense within thirty (30) days after the Effective Date. At a minimum, such notice must identify (i) the name of the holder of such Claim, (ii) the amount of such Claim, and (iii) the basis of such Claim. Failure to file this notice timely and properly shall result in the Administrative Expense being forever barred and discharged.

b. **Filing Fee Claims.** Each Person asserting an Administrative Expense that is a Fee Claim incurred before the Effective Date shall be required to file with the Bankruptcy Court, and serve on Debtor's counsel, a Fee Application within thirty (30) days after the Effective Date. Failure to timely file a Fee Application shall result in the Fee Claim being forever barred and discharged.

c. **Allowance of Administrative Expenses.** An Administrative Expense with respect to which notice has been properly filed pursuant to Article 3.01(a) of the Plan shall become an Allowed Administrative Expense if no objection is filed within thirty (30) days after the filing and service of notice of such Administrative Expense. If an objection is timely filed, the Administrative Expense shall become an Allowed Administrative Expense only to the extent Allowed by Final Order. An Administrative Expense that is a Fee Claim, and with respect to which a Fee Application has been timely filed pursuant to Article 3.01(b) of the Plan, shall become an Allowed Administrative Expense only to the extent Allowed by Final Order, after notice and hearing.

d. **Payment of Allowed Administrative Expenses.** Each holder of an Allowed Claim for an Administrative Expense shall receive the amount of such holder's Allowed Claim in one Cash payment on the later of the Initial Distribution Date or the tenth (10th) Business Day after such Claim becomes an Allowed Claim.

e. **Priority Tax Claims.** Each holder of an Allowed Priority Tax Claim shall receive, at the Debtor's option, (a) payments in an amount equal to the treatment required for such holder's Allowed Claim under the Bankruptcy Code; or (b) such other treatment as may be agreed to in writing by the holder of the Priority Tax Claim and the Debtor, but only after the payment of all Allowed Administrative Expenses.

2. Classification and Treatment of Other Claims

The following is a designation of the Classes of Claims and Equity Interests under the Plan and a description of their treatment under the Plan. A Claim or Equity Interest is in a particular Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class. All classes of Claims are impaired.

The treatment of and consideration to be received by the holders of allowed Claims or interests pursuant to the Plan shall be in fulfillment, release and discharge of their respective

Claims or interests. For purposes of the Plan those parties holding Claims against the Debtor shall be treated as follows:

Class 1 – Pre-Petition Secured Claim of First Capital. The Class 1 Pre-Petition Secured Claim of First Capital in the amount of $2,177,907 plus accrued interest as of the Petition Date of $122,777.32 pursuant to an Amended and Restated Secured, Convertible Promissory Note, dated May 25, 2004 as amended on July 30, 2004 (the "Holdings Note"), and which is guaranteed by the Debtor pursuant to a Subsidiary Guaranty, dated May 25, 2004, by and between the Debtor and First Capital (the "TES Guaranty"), and which TES Guaranty is secured by certain assets of the Debtor pursuant to a Subsidiary Security Agreement, dated May 25, 2004 (the "TES Security Agreement"), shall be satisfied by issuance of 100% of the new equity in the Reorganized Debtor to First Capital. The new equity shall be in a combination of preferred and common stock to be specified in the Plan Supplement, which will be filed at least ten calendar (10) days prior to the Combined Hearing.

Class 2 – Post-Petition Secured Claim of First Capital. The post-petition Promissory Notes and Security Agreements between the Debtor and First Capital in the total amount of **$1,985,000** plus all accrued interest thereon as of Confirmation will be renewed and amended into a single note (the "Amended First Capital Note") and security agreement (the "Amended First Capital Loan Documents"). The Amended First Capital Note to be issued will have a maturity date of thirty-eight (38) months after the Effective Date. Interest shall accrue and be paid on the Amended First Capital Note at the rate of ten percent (10%) per annum. First Capital will receive interest only payments on the Amended First Capital Note until the Class 3 Claim of Redwing and the Class 5 Claims of the General Unsecured Creditors are paid in accordance with the Plan.

Class 3 - Secured Claim of Redwing. The Class 3 Pre-Petition Secured Claim of Redwing Equipment Partners Limited (as successor-in-interest to Veraz Networks, Inc.) in the filed Secured Claim amount of $4,138,658.80 shall be reduced by agreement and allowed in the reduced Secured Claim amount of $1,800,000. The claim will be paid in full without interest as follows:

(i) On March 24, 2006, one million dollars ($1,000,000) was deposited into escrow with McGuire, Craddock & Strother, P.C.; and, on the Effective Date, the escrowed $1,000,000, together with all interest earned thereon, will be disbursed to Redwing;
(ii) sixteen (16) consecutive monthly installments of $50,000 beginning upon the first day of the first month following the Effective Date; and
(iii) Debtor will surrender certain I Gate Pro Media gateway equipment to Redwing in accordance with Sections 11 and 12 of the Settlement Agreement between the parties.

Class 4 – Secured Tax Claims. Class 4 consists of Allowed Tax Claims which are secured by property of the estate pursuant to applicable state law. Each holder of a Class 4 claim shall retain its lien on the property securing its Claim in accordance with applicable state law. Class 4 Claims shall be paid in full in equal quarterly installments commencing on the last day of

the first full quarter following the Effective Date and continuing for seventy-two months until the Allowed Secured Tax Claim is paid in full with interest at the rate of 6% per annum.

Class 5 - General Unsecured Claims. This Class consists of all Allowed General Unsecured Claims. Each Claim in Class 6 shall receive a *pro rata* distribution of $120,000, without interest, to be shared with all other Allowed General Unsecured Claimants. Distributions to General Unsecured Creditors will be made on a *pro rata* basis in six (6) consecutive quarterly payments of $20,000. The first installment will be due on the last day of the first full quarter following the Effective Date and will be payable on the last day of each quarter thereafter.

Class 6- Insider Claims. This Class consists of all Allowed pre-petition Claims against the Debtor by Insiders, excluding the Class 1 and Class 2 Claims of First Capital. Insiders are defined as the Debtor's managers, prior managers, directors, prior directors, officers, prior officers and affiliates. Insider Claims include, but are not limited to, the pre-petition claim of Transcom Holdings, Inc. All Allowed Pre-Petition Insider Claims will be considered cancelled and will receive no distribution of funds from the Reorganized Debtor.

Class 7 - Equity Interests. This Class consists of all Allowed Equity Interests in the Debtor. All Allowed Equity Interests in the Debtor shall be cancelled and shall not receive any distributions under this Plan. Any warrants or other future interests or rights held in the Debtor unissued as of the Petition Date, shall be cancelled and terminated upon Confirmation.

D. Implementation

Revesting of Assets. Except as otherwise provided in the Plan or the Confirmation Order, upon the Effective Date, all property of the Debtor's estate, wherever situated shall vest in, or remain the property of Reorganized Debtor free and clear of all Claims.

Issuance of New Equity Interests. Upon Confirmation of the Plan, the Reorganized Debtor will be converted from a Texas limited liability company to a Texas corporation pursuant to Chapter 10 of the Texas Business Organizations Code; and the ownership interests of the converting entity, the Debtor, will be cancelled and First Capital will be sole initial owner of the converted entity, the Reorganized Debtor.

Compromise and Settlement of Redwing Claim and Mutual Release. Pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. § 1123(b)(3), the Plan constitutes a request for approval of the compromise and settlement of all issues relating to the validity, enforceability, priority and amount of Redwing's Claim as provided in the Redwing Settlement Agreement. A copy of the Settlement Agreement between Redwing, the Debtor, First Capital and Holdings is attached to the Plan as Exhibit 1-A and is incorporated herein.

Assumption of Debtor's Customer Contracts and Certain Vendor Agreements. Pursuant to Bankruptcy Code Section 365, the Confirmation Order will authorize the Debtor to assume its Customer Contracts and certain Vendor Agreements.

Discharge. The Debtor will receive a discharge of all prepetition liabilities as provided by 11 U.S.C. § 1141.

VII. PROVISIONS COVERING DISTRIBUTIONS

A. Distributions

Distributions. Distributions to be made to any holder of an Allowed Claim under the Plan shall be made by the Reorganized Debtor. Any payments or distributions to be made pursuant to the Plan shall be made to the holders of Allowed Claims. Any payments or distributions to be made pursuant to the Plan shall be made within thirty (30) days following the Effective Date except as otherwise provided for in the Plan, or as may be ordered by the Bankruptcy Court. Any payment or distribution pursuant to this Plan, to the extent delivered by the U.S. mail, shall be deemed made when deposited into the U.S. mail.

Means of Cash Payment. Payments of Cash to be made pursuant to the Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

Delivery of Distributions. Distributions and deliveries to holders of Allowed Claims shall be made at the addresses set forth on the proofs of Claim or proofs of interest filed by such holders (or at the last known addresses of such holders if no proof of Claim or proof of interest is filed) or if the Debtor has been notified of a change of address, at the address set forth in such notice.

Time Bar to Cash Payments. Checks issued in payment of Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of delivery thereof. Requests for the reissuance of any check shall be made directly to the Reorganized Debtor by the holder of the Allowed Claim to whom such check originally was issued who shall also bear the cost of the reissuance. Any Claim with respect to such a voided check shall be made one hundred eighty (180) days after the date of delivery of such check.

Prepayment. The Reorganized Debtor expressly reserve the right, in its sole discretion, to prepay in cash any obligation created pursuant to the Plan, and no interest shall accrue with respect to such obligation from and after the date of such prepayment.

B. Procedures for Resolving Contested Claims

Objection Deadline. Unless a different date is set by order of the Bankruptcy Court, all objections to Claims shall be served and filed no later than sixty (60) days after the Effective Date or sixty (60) days after a particular proof of Claim is filed, whichever is later. Unless arising from an avoidance action, any proof of Claim filed after the Bar Date shall be of no force and effect, shall be deemed disallowed, and will not require objection. All Contested Claims shall be

litigated to Final Order; provided, however, that the Debtor may compromise and settle any Contested Claim, subject to the approval of the Bankruptcy Court.

Responsibility for Objecting to Claims. The Reorganized Debtor shall have the responsibility for objecting to the allowance of Claims following the Effective Date; provided, however, nothing in this Plan shall be deemed to preclude objections to Claims filed by any party in interest which is specifically preserved.

Distribution to Contested Claims After Allowance. The Reorganized Debtor shall have the right to make or direct the making of all interim distributions to the holders of Allowed Claims. No interest shall accrue or be paid on account of a Contested Claim which later becomes an Allowed Claim. As soon as practicable after a Contested Claim becomes fixed, the holder of an Allowed Claim shall receive a distribution in an amount equal to the aggregate of all the distributions which such holder would have received had such Contested Claim been an Allowed Claim on the Effective Date.

VIII. LITIGATION AND AVOIDANCE ACTIONS

Except as provided in Section 6.01 of the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or causes of action that the Debtor or Reorganized Debtor may have or which the Reorganized Debtor may choose to assert under any provision of the Bankruptcy Code or any applicable nonbankruptcy law. Among other Claims and Causes of Action, the Debtor anticipates filing a lawsuit against Broadwing Communications Corporation and Broadwing Communications, LLC f/k/a Focal Communications Corporation (collectively "Broadwing") in connection with Broadwing's alleged unlawful post-petition termination of service and various alleged avoidable transfers that Broadwing received prior to the Petition Date. The Debtor also anticipates filing lawsuits against the entities formally known as SBC Communications, Inc. and AT&T Corp., including its subsidiaries and operational affiliates, in connection with alleged interference with the Debtor's business and alleged breach of contract. The Reorganized Debtor may also file an avoidance action against Global Crossing Telecommunications, Inc. with respect to certain pre-petition payments or offsets. The Plan Proponents expect that these parties will dispute these allegations and will vigorously defend their positions. Accordingly, as with all litigation, the outcome is uncertain and speculative.

IX. EXECUTORY CONTRACTS

Customer Contracts To Be Assumed. The Debtor continues to use and benefit from its contracts pursuant to which it sells its enhanced services (the "Customer Contracts"). Assumption of the Customer Contracts is in the best interest of the Debtor's estate. Accordingly, pursuant to Bankruptcy Code Section 365, the Confirmation Order will authorize the Debtor to assume all of its Customer Contracts. No cure payments are owed or required with respect to the Customer Contracts.

Vendor Contracts To Be Assumed. The Debtor continues to use and benefit from the agreements specifically identified on Exhibit 1-B to the Plan (the "Vendor Agreements"). Assumption of the Vendor Agreements is in the best interest of the Debtor's estate. Accordingly, pursuant to Bankruptcy Code Section 365, the Confirmation Order will authorize the Debtor to assume the Vendor Agreements upon the Debtor's prompt payment of the arrears in the amounts identified in Exhibit 1-B, if any. The Reorganized Debtor will cure the arrearages by tendering six (6) equal consecutive monthly payments to the contract counter-party until the arrearages are paid in full, or as otherwise agreed to in writing by the Reorganized Debtor and the contract counter-party.

General Treatment; Rejected If Not Assumed. Except for executory contracts or unexpired leases that (a) are identified above to be assumed pursuant to the Plan (b) have already been assumed or rejected pursuant to Final Order of the Bankruptcy Court, or (c) are the subject of a separate motion pursuant to §365 of the Bankruptcy Code to be filed and served on or before the Confirmation Date, all pre-petition executory contracts and unexpired leases to which the Debtor was a party will be automatically rejected effective as of the Petition Date, upon Confirmation.

Rejection Claims. If the rejection of an executory contract or an unexpired lease by the Debtor results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be forever barred and shall not be enforceable against the Debtor or its properties or agents, successors, or assigns, unless a proof of Claim is filed with the Bankruptcy Court and served upon the Reorganized Debtor by the earlier of (a) thirty (30) days after the Confirmation Date or (b) such other deadline as the Court may set for asserting a Claim for such damages. Any Rejection Claim arising from the rejection of an unexpired lease or executory contract not barred by Article 10.04 of the Plan shall be treated as a General Unsecured Claim of the Debtor pursuant to paragraph 4.06 of the Plan; provided, however, that any Rejection Claim based upon the rejection of an unexpired lease of real property either prior to the Confirmation Date or upon the entry of the Confirmation Order shall be limited in accordance with §502(b)(6) of the Bankruptcy Code and state law mitigation requirements. Nothing contained herein shall be deemed an admission by the Debtor that such rejection gives rise to or results in a Claim or shall be deemed a waiver by the Debtor of any objections to such Claim if asserted.

Indemnification Obligations. The obligations of the Debtor to indemnify its present directors and officers pursuant to charters, by-laws, and/or applicable state law shall be deemed to be, and shall be treated as though they are, executory contracts assumed under the Plan, and such obligation shall survive confirmation of the Plan and remain unaffected thereby, irrespective of whether indemnification is owed in connection with an occurrence that occurred prior to or after the Petition Date.

X. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion is a summary of certain federal income tax aspects of the Plan for general information only. It should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular holder of a Claim or Equity Interest. This discussion does not purport to be a complete analysis or listing of all potential tax issues.

The following discussion is based upon existing provisions of the Internal Revenue Code (the "IRC"), existing regulations thereunder, and current administrative rulings and court decisions. No assurance can be given that legislative or administrative changes or court decisions may not be forthcoming which would require significant modification of the statements expressed in this section. Moreover, the tax consequences to holders of Claims and Equity Interests may vary based upon the individual tax circumstances of each such holder. Nothing herein purports to describe any state, local, or foreign tax consequences.

NO RULING HAS BEEN SOUGHT OR OBTAINED FROM THE INTERNAL REVENUE SERVICE (THE "IRS") WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN OBTAINED BY THE DEBTOR OR FIRST CAPITAL WITH RESPECT THERETO. NO REPRESENTATION OR ASSURANCE IS BEING MADE WITH RESPECT TO THE FEDERAL INCOME TAX CONSEQUENCES AS DESCRIBED HEREIN. CERTAIN TYPES OF CLAIMANTS AND INTEREST-HOLDERS MAY BE SUBJECT TO SPECIAL RULES NOT ADDRESSED IN THIS SUMMARY OF FEDERAL INCOME TAX CONSEQUENCES. THERE MAY ALSO BE STATE, LOCAL, OR FOREIGN TAX CONSIDERATIONS APPLICABLE TO EACH HOLDER OF A CLAIM OR EQUITY INTEREST WHICH ARE NOT ADDRESSED HEREIN. EACH HOLDER OF A CLAIM OR EQUITY INTEREST AFFECTED BY THE PLAN MUST CONSULT AND RELY UPON SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES OF THE PLAN WITH RESPECT TO SUCH HOLDER'S CLAIM OR EQUITY INTEREST. THIS INFORMATION MAY NOT BE USED OR QUOTED IN WHOLE OR IN PART IN CONNECTION WITH THE OFFERING FOR SALE OF SECURITIES.

A. Tax Consequences To The Debtor

Under the IRC, a taxpayer generally must include in gross income the amount of any discharge-of-indebtedness income realized during the taxable year. Section 108(a)(1)(A) of the IRC provides an exception to this general rule, however, in the case of a taxpayer that is under the jurisdiction of a bankruptcy court in a case brought under the Bankruptcy Code where the discharge of indebtedness is granted by the court or occurs pursuant to a plan of reorganization approved by the court, provided that the amount of discharged indebtedness that would otherwise be required to be included in income is applied to reduce certain tax attributes of the taxpayer. Section 108(e)(2) of the IRC provides that a taxpayer will not realize income from the discharge of indebtedness to the extent that satisfaction of the liability would have given rise to a deduction.

B. Tax Consequences To Creditors

A creditor who receives Cash or other consideration in satisfaction of any Claim may recognize ordinary income. The impact of such ordinary income, as well as the tax year for which the income will be recognized, will depend upon each creditor's individual circumstances, including the nature and manner of organization of the creditor, the creditor's applicable tax bracket, and the creditor's taxable year. Each creditor is urged to consult with its tax advisor regarding the tax implications of any distributions under the Plan.

THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY. IT IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING OR CONSULTATION WITH A TAX ADVISOR. THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR EQUITY INTEREST. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

XI. CONFIRMATION AND CRAMDOWN

A. Requirements for Confirmation of the Plan

At the confirmation hearing, the Bankruptcy Court must determine whether the Bankruptcy Code's requirements for confirmation of the Plan have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. As set forth in §1129 of the Bankruptcy Code, these requirements are generally as follows:

1. The plan proponents have complied with the applicable provisions of the Bankruptcy Code.
2. The plan has been proposed in good faith and not by any means forbidden by law.
3. Any payment made or promised by the Debtor, by the plan proponents, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the plan and incident to the case, may be approved by, or be subject to the approval of the Bankruptcy Court as reasonable.
4. The proponents of the plan must disclose the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the Debtor.
5. The appointment to, or continuance in, such office by such individual, must be consistent with the interests of creditors and equity security holders and with public policy.
6. The proponents of the plan must have disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor, and the nature of any compensation for such insider.

7. With respect to each impaired class of claims or interests, each holder of a claim or interest of such class must accept the plan or receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated on such date under chapter 7 of the Bankruptcy Code.
8. With respect to each class of claims or interests, such class must have accepted the plan or not be impaired.
9. If a class of claims is impaired under the plan, at least one class of claims that is impaired has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim of such class.
10. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the plan, unless such liquidation or reorganization is proposed in the plan.
11. All fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on confirmation of the plan, have been paid or the plan provides for the payments of all such fees on the effective date of the plan.

The Debtor and First Capital believe that their Plan satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code, that they have complied or will have complied with all the requirements of Chapter 11, and that the Plan is proposed in good faith. The Debtor and First Capital believe that holders of all Allowed Claims and Equity Interests impaired under the Plan will receive payments under the Plan having a present value as of the Effective Date not less than the amounts likely to be received if the Debtor was liquidated in a case under chapter 7 of the Bankruptcy Code. At the Confirmation Hearing, the Bankruptcy Court will determine whether holders of Allowed Claims or Allowed Equity Interests would receive greater distributions under the Plan than they would receive in a liquidation under Chapter 7.

The Debtor and First Capital also believe that the feasibility requirement for confirmation of the Plan is satisfied by the fact that cash on hand as of the Confirmation Date, from cash infusions identified, or generated by future sales or otherwise, will be sufficient to pay Allowed Claims in accordance with the treatment for each class of claims set forth previously. Attached hereto as **Exhibit 2** is a detailed cash flow proforma reflecting the Debtor's estimate of its cash flow through 2007. These facts and others demonstrating the confirmability of the Plan will be shown at the Confirmation Hearing.

B. Cramdown

In the event that any impaired Class of Claims or Equity Interests does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Plan Proponents if, as to each impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to that Class. A plan of reorganization "does not discriminate unfairly" within the meaning of the Bankruptcy Code if no Class receives more than it is legally entitled to receive for its claims or equity interests.

"Fair and equitable" has different meanings with respect to the treatment of secured and unsecured claims. As set forth in §1129(b)(2) of the Bankruptcy Code, those meanings are as follows:

1. With respect to a class of secured claims, the plan provides either:
   a. that the holders of such claims retain the liens securing such claims (whether the property subject to such liens is retained by the Debtor or transferred to another entity) and receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property; or
   b. for the sale, subject to §363(k), of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale; or
   c. the realization by such holders of the "indubitable equivalent" of their claims.
2. With respect to a class of unsecured claims, the plan provides that each holder of a claim of such class receive on account of such claim property of a value equal to the allowed amount of such claim; or that the holder of any claim or interest that is junior to the claims of such class will not receive any property on account of such junior claim or interest.

In the event that one or more Classes of impaired Claims or Equity Interests reject the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired Class of claims or equity interests. For the reasons set forth above, the Plan Proponents believe the Plan does not discriminate unfairly against, and is fair and equitable with respect to, each impaired Class of Claims or Equity Interests.

XII. LIQUIDATION ANALYSIS

In the event of a conversion to Chapter 7, a trustee would be appointed to liquidate the assets and resolve the claims. In a Chapter 7 liquidation, the Plan Proponents believe the liquidation value of its assets would be approximately $2,501,500 under a best case scenario, significantly less than the outstanding DIP financing and secured claims of First Capital and Redwing which exceed $8,000,000 in the aggregate. The Debtor's Chapter 7 Liquidation Analysis is attached hereto as **Exhibit 3** and incorporated herein by reference (the "Liquidation Analysis"). The Plan Proponents believe that any litigation recoveries would likely be the same under Chapter 7 or through the Plan, but any recoveries in a Chapter 7 would not be sufficient to pay more to unsecured creditors than they will receive under the Plan taking into account payment of senior secured debt, Chapter 7 and Chapter 11 administrative expenses and priority claims. In the event of such a shutdown and liquidation, and as supported by the attached Liquidation Analysis, it is highly unlikely that there would be any assets from which to pay any other creditors after foreclosure of the secured assets.

XIII. RISK FACTORS

The following is intended as a summary of certain risks associated with the Plan, but it is not exhaustive and must be supplemented by the analysis and evaluation made by each holder of a Claim or Equity Interest of the Plan and this Disclosure Statement as a whole with such holder's own advisors.

It is not possible to predict with any degree of certainty that the future performance of the Debtor will generate sufficient funds to make all payments to creditors contemplated by this Plan. The Debtor's financial performance is dependent on a variety of factors, many of which are outside the Debtor's control. While the Plan Proponents believe that there is a potential for substantial continuing sales of Debtor's services, there are always many risks and costs associated with same which cannot be predicted even with the best evaluation and assessments.

The alternative to the Plan is a Chapter 7 liquidation which the Plan Proponents do not believe is in the creditors' best interests. In a Chapter 7 liquidation, a trustee would have essentially no assets available to seek recovery under any litigation; and, as stated above and in the attached Liquidation Analysis, the Plan Proponents believe it unlikely that any creditors apart from First Capital and Redwing would have any recovery from a liquidation.

XIV. CONCLUSION

The Plan Proponents urge holders of impaired Claims and Equity Interests to vote to ACCEPT the Plan and to evidence such acceptance by timely returning their ballots.

DATED: March 31, 2006

Respectfully Submitted,

TRANSCOM ENHANCED SERVICES, L.L.C.

By:/s/Britt Birdwell (03/31/2006)
Name: Britt Birdwell
Title: Manager

-And-

FIRST CAPITAL GROUP OF TEXAS, III, L.P.

By:/s/James O'Donnell (03/31/2006)
Name: James O'Donnell
Title: Managing Member of the General Partner

OF COUNSEL:

/s/J. Mark Chevallier (03/31/2006)
J. Mark Chevallier, Esq.
David L. Woods, Esq.
McGuire, Craddock & Strother, P.C.
ATTORNEYS FOR DEBTOR
and DEBTOR-IN-POSSESSION

And

/s/Martin T. Fletcher (03/31/2006)
Paul M. Nussbaum, Esq.
Martin T. Fletcher, Esq.
Karen H. Moore, Esq.
Whiteford, Taylor & Preston, LLP
ATTORNEYS FOR FIRST CAPITAL
GROUP OF TEXAS, III, L.P.

SUMMARY OF EXHIBITS

Exhibit 1 – Plan of Reorganization Proposed by the Debtor and First Capital

Exhibit 1-A - Redwing Settlement Agreement
Exhibit 1-B - Assumed Vendor Contracts and Cure Amounts

Exhibit 2 – Transcom Cash Flow Proforma through 2007

Exhibit 3 – Transcom Chapter 7 Liquidation Analysis

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CHAPTER 11**
	§	
	§	
DEBTOR.	§	

ORIGINAL JOINT PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR AND FIRST CAPITAL GROUP OF TEXAS, III, L.P.

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ATTORNEYS FOR FIRST CAPITAL GROUP OF TEXAS, III, L.P.

Dated: March 31, 2006

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JOINT PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR AND FIRST CAPITAL GROUP OF TEXAS, III, L.P.

Transcom Enhanced Services, L.L.C. (the "Debtor") and First Capital Group of Texas, III, L.P. ("First Capital") jointly propose the following plan of reorganization pursuant to 11 U.S.C. §1121(c).

This Plan contemplates a reorganization of the Debtor with all old equity in the Debtor cancelled and new equity in the Reorganized Debtor issued to First Capital in exchange for and in full satisfaction of First Capital's pre-petition Secured Claim. The Plan contemplates the Reorganized Debtor's continued operation of its business with certain payments to creditors made from the Debtor's income and exit loan proceeds totaling $1,000,000. The exit loans will be used by the Debtor to fund the agreed treatment of the Redwing Secured Claim.

This Plan is intended to deal with all Claims against the Debtor or property of the Debtor of whatever character, whether or not contingent or liquidated, or whether or not allowed by this Court pursuant to Section 502(a) of the Code. However, only those Claims allowed pursuant to Section 502(a) of the Code will receive the distributions afforded by the Plan.

ARTICLE I.
DEFINITIONS AND TERMS OF CONSTRUCTION

1.01. **Definitions.**

For the purposes of the Plan, the following words or phrases have the meanings set forth below. Unless otherwise provided in this Plan, all terms used herein shall be defined under Title 11, United States Code.

"**Administrative Expense**" means any unpaid cost or expense of administration entitled to priority under §503(b) except as otherwise defined herein pursuant to §§364(a) and 503(b)(1) and 507(a)(1) of the Code, including actual and necessary expenses of preserving the estate, and all allowances of compensation or reimbursement of expenses to the extent allowed by the Court under §§330 and 331 of the Code.

"**Allowed**" means the Allowed Amount of a Claim as determined by this Plan, a Final Order or Judgment or as determined by the provisions of 11 U.S.C. §502.

"**Allowed Amount**" means the amount in which any Claim or Interest is allowed. Unless otherwise expressly required by this Plan, the Allowed Amount of any Claim does not include interest on such Claim from or after the Petition Date.

"**Bankruptcy Case**" means the bankruptcy case commenced by the Debtor's filing with the Bankruptcy Court of its voluntary petitions under Chapter 11 of the Bankruptcy Code.

"**Bankruptcy Code**" means Title 11, United States Code, Section 101, *et seq.*

"**Bankruptcy Court**" means the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), having jurisdiction over this Bankruptcy Case and any other courts or panels having competent jurisdiction to hear the Bankruptcy Case or appeals from orders entered therein.

"**Bankruptcy Estate**" means the estate created by the commencement of the Bankruptcy Case and comprised of the property described in Section 541 of the Bankruptcy Code.

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure promulgated under 28 U.S.C. § 2075, as amended, as applicable to the Bankruptcy Case.

"**Business Day**" means a day which is not a Saturday, a Sunday or a "legal holiday" as defined in Bankruptcy Rule 9006(a).

"**Bar Date**" means the deadline for filing Claims established by the Bankruptcy Court which is June 22, 2005.

"**Causes of Action**" means all actions, causes of action, suits, basis to enforce debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises or basis to seek damages or judgments or any equitable relief of any kind.

"**Claim**" has the meaning ascribed to it in Section 101(5) of the Bankruptcy Code.

"**Class**" means any group of substantially similar Claims or interests as classified in Article 2 herein pursuant to §1123(a)(1) of the Bankruptcy Code.

"**Confirmation**" means the entry by the Bankruptcy Court of the Order of Confirmation.

"**Contested**", when used with respect to a Claim, means a Claim against the Debtor (a) that is listed in the Debtor's Schedules as disputed, contingent, or unliquidated; (b) that is listed in the Debtor's Schedules as undisputed, liquidated, and not contingent and as to which a proof of Claim has been filed with the Bankruptcy Court, to the extent the proof of Claim amount exceeds the scheduled amount; (c) that is the subject of a pending action in a forum other than the Bankruptcy Court unless such Claim has been determined by Final Order in such other forum and Allowed by Final Order of the Bankruptcy Court; or (d) as to which an objection has been or may be timely filed and has not been denied by Final Order. To the extent an objection

relates to the allowance of only a part of a Claim, such Claim shall be a Contested Claim only to the extent of the objection.

"**Creditor**" means any entity holding a Claim against the Debtor.

"**Debtor**" means Transcom Enhanced Services, L.L.C.

"Disclosure Statement" means the written disclosure statement, dated as of March 31, 2006, that relates to this Plan, as approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code, as such disclosure statement may be amended, modified or supplemented from time to time.

"**Disputed Claim**" means a Claim against the Debtor: (a) that has been listed in the Debtor's Schedules as disputed, contingent, unliquidated, or amount unknown, or (b) as to which an objection, request for estimation in accordance with Section 502(c) of the Bankruptcy Code, request for subordination or adversary proceeding has been filed and which objection, request for estimation, request for subordination or adversary proceeding has not been withdrawn, overruled, or disposed of by a Final Order of the Bankruptcy Court.

"**Distribution**" means, as the context requires: (a) the cash or other property or consideration to be provided under this Plan to the holders of Allowed Claims; or (b) the payment, transfer, or delivery of cash or other property to Creditors pursuant to this Plan.

"**Equity Interest**" means a membership interest in the Debtor, whether or not that interest is contingent upon the occurrence of any future event.

"**Effective Date**" means the earliest practicable date following entry of the Order of Confirmation, but in no event more than thirty (30) days after entry of the Order of Confirmation, unless an Order staying the effect of Confirmation has been obtained.

"Fee Claim" means a Claim by a professional or any other party in interest under §§330 or 503 of the Bankruptcy Code for compensation or reimbursement in the Chapter 11 Case.

"File" or **"Filed"** means to file or filed with the Clerk of the Bankruptcy Court.

"Final Order" means an Order entered on the docket by the Bankruptcy Court that has not been reversed or stayed, and as to which (a) the time to appeal or seek reconsideration has expired and no appeal or motion for reconsideration has been timely filed, or (b) any appeal that has been taken, any motion for reconsideration that has been filed, or any petition for certiorari that has been filed, has been resolved by the highest court to which the Order or judgment was heard or appealed or from which certiorari was sought, and (i) the time for any further appeal, motion for reconsideration or petition for certiorari shall have expired without any such action being taken or (ii) any right to appeal, move to reconsider or seek certiorari shall have been waived by the party entitled thereto in writing in form and substance satisfactory to the Debtor, provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rule 9024, may be filed with respect to such Order, shall not cause such Order not to be a Final Order.

"First Capital" shall mean First Capital Group of Texas III, L.P.

"Investors" means Brooks Reed, Rick Waghorne, Chuck Waghorne, Clay Waghorne and Tyler Jones.

"Investor Notes" means the Senior Subordinated Notes to be issued to the Investors in the aggregate principal amount of $1,000,000.

"Investor Warrants" means the common stock warrants to be issued to the Investors, representing the right to purchase up to an aggregate amount of $500,000 of the Reorganized Debtor's common stock.

"Order" means an order or judgment of the Bankruptcy Court as entered on the docket in the Bankruptcy Case.

"Order of Confirmation" means the order entered by the Bankruptcy Court approving and confirming this Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

"Person" has the meaning ascribed to it in Section 101(41) of the Bankruptcy Code.

"Petition Date" means February 18, 2005, the date on which the petition for relief under Chapter 11 of the Bankruptcy Code was filed by the Debtor.

"Plan" means this Original Plan of Reorganization together with any authorized and effective amendments or modifications.

"Plan Supplement" means the supplemental appendix to this Original Plan, filed prior to the Confirmation hearing that will contain, among other things, the proposed Articles of Incorporation and Bylaws for the Reorganized Debtor.

"Post Petition Secured Claim of First Capital" means the post-petition claim of First Capital which is secured by certain assets of the Debtor.

"Pre-Petition Secured Claim of First Capital" means the pre-petition claim of First Capital which is secured by certain assets of Debtor.

"Priority Claims" means any Allowed Claim entitled to priority under 11 U.S.C. §503(b)(a), §507(a) and §364(a) including, but not limited to, priority tax Claims, priority wage

Claims, and post-petition operating expenses but excluding "Administrative Expense Claims" as defined herein.

"**Pro Rata**" means the proportion which the Allowed Amount of a Claim in a particular Class bears to the aggregate amount of the Allowed Amounts of all Claims in such Class.

"Redwing" shall mean Redwing Equipment Partners Limited.

"Redwing Settlement Agreement" means the Settlement Agreement between Redwing, the Debtor, First Capital and Transcom Holdings, Inc. dated March 24, 2006.

"**Rejection Claim**" means an Allowed Claim arising from the Debtors' rejection of an unexpired lease or executory contract pursuant to this Plan or pursuant to an Order of the Bankruptcy Court.

"**Secured Claims**" means all Claims that are Allowed Claims for Creditors with Claims secured by collateral of the Debtor, to the extent of the value (determined in accordance with Section 506(a) of the Bankruptcy Code) of the interest of the holder of such Allowed Claim in the Debtor's interest in such property.

"Secured Claim of Redwing" means the Claim of Redwing as successor-in-interest to Veraz Networks, Inc., which is secured by certain assets of Debtor.

"**Subordinated Claims**" means (i) all Claims that are not Allowed under any provision of §502 of the Bankruptcy Code, including, without limitation, Claims for indemnity, contribution, or reimbursement which are contingent at the time of allowance or disallowance of such claims, (ii) Claims for penalties and punitive damages, and (iii) any Claims subordinated pursuant to 11 U.S.C. §510.

"Tax Claim" means any Allowed Claim against the Debtor that is entitled to priority pursuant to Section 507(a)(8) of the Bankruptcy Code.

"Unsecured Claim" means a Claim which is neither a Secured Claim as specified herein nor entitled to priority under the Bankruptcy Code or the orders of the Court including that portion, if any, of an undersecured Claim that exceeds the value of the secured portion of said Claim; and includes Claims arising as a result of the Debtor's rejection of executory Contracts pursuant to §365.

1.02. **Terms of Construction.**

The Plan shall be interpreted using the following standards:

"Capitalized Terms" The capitalized terms of this Plan shall have the meaning set forth in the Plan. In the event a capitalized term of the Plan is not defined in the Plan, then it shall have the meaning given in the Bankruptcy Code or the Bankruptcy Rules. In the event a capitalized term of the Plan is not defined in the Plan, the Bankruptcy Code, or the Bankruptcy Rules, then it shall have the meaning such term has in ordinary usage and if one or more meaning for such term exists in ordinary usage, then it shall have the meaning which is most consistent with the purposes of the Plan and the Bankruptcy Code.

"Gender" Unless otherwise specified, the references to the masculine shall include the feminine and reference to the feminine shall include the masculine.

"Herein, Hereof, Hereto, and Hereunder" The words "herein," "hereof," "hereto," "hereunder," and others of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained in this Plan.

"Including" The term "including" shall not be deemed to be excusive and shall be deemed to mean "including without limitation."

"Plural" Unless otherwise specified, the plural shall include the singular and the singular shall include the plural.

"Reasonable Construction" The terms of the Plan shall not be construed against any person but shall be given a reasonable construction, consistent with the purposes of the Plan, the Redwing Settlement Agreement and the Bankruptcy Code. Except as provided in the Redwing Settlement Agreement, all provisions in favor of the Debtor are intended to be broadly construed.

ARTICLE II.
CLASSIFICATION OF CLAIMS

2.01. **General.** The following is a designation of the Classes of Claims and Equity Interests under this Plan. Administrative Expense Claims and Priority Tax Claims have not been classified and are excluded from the following classes in accordance with 11 U.S.C. §1123(a)(1). A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class. A Claim or Equity Interest is in a particular Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class. All classes of Claims are impaired.

2.02. **Designation of Classes.** For purposes of this Plan those parties holding Claims against or any Equity Interests in the Debtor are grouped and shall be treated as follows:

Class 1 – Pre-Petition Secured Claim of First Capital.

Class 2 – Post-Petition Secured Claim of First Capital.

Class 3 – Pre-Petition Secured Claim of Redwing.

Class 4 – Secured Tax Claims.

Class 5 – General Unsecured Claims.

Class 6 – Insider Claims.

Class 7 – Equity Interests.

ARTICLE III.
TREATMENT OF ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

All Administrative Expenses against the Debtor shall be treated as follows:

(a) **Administrative Expenses Bar Date.** The holder of any Administrative Expense other than (i) a Fee Claim, (ii) a liability incurred and paid in the ordinary course of business by the Debtor, or (iii) an Allowed Administrative Expense, must File with the Bankruptcy Court and serve on the Debtor and its counsel, notice of such Administrative Expense within thirty (30) days after the Effective Date. At a minimum, such notice must identify (i) the name of the holder of such Claim, (ii) the amount of such Claim, and (iii) the basis of such Claim. Failure to file this notice timely and properly shall result in the Administrative Expense being forever barred and discharged.

(b) **Filing Fee Claims.** Each Person asserting an Administrative Expense that is a Fee Claim incurred before the Effective Date shall be required to File with the Bankruptcy Court, and serve on Debtor and Debtor's counsel, a Fee Application within thirty (30) days after the Effective Date. Failure to File a Fee Application timely shall result in the Fee Claim being forever barred and discharged.

(c) **Allowance of Administrative Expenses.** An Administrative Expense with respect to which notice has been properly filed pursuant to Article 3.01(a) of the Plan shall

become an Allowed Administrative Expense if no objection is filed within thirty (30) days after the filing and service of notice of such Administrative Expense. If an objection is timely filed, the Administrative Expense shall become an Allowed Administrative Expense only to the extent Allowed by Final Order. An Administrative Expense that is a Fee Claim, and with respect to which a Fee Application has been timely filed pursuant to Article 3.01(b) of the Plan, shall become an Allowed Administrative Expense only to the extent Allowed by Final Order, after notice and hearing.

(d) **Payment of Allowed Administrative Expenses.** Except to the extent that the holder of an allowed Administrative Expense has agreed to a different treatment, each holder of an Allowed Claim for an Administrative Expense shall receive, at Debtor's option, the amount of such holder's Allowed Claim in one Cash payment on the later of the Effective Date or the tenth (10th) Business Day after such Claim becomes an Allowed Claim, provided however, that if such Administrative Expense is incurred after the Petition Date in the ordinary course of business, payment on such Claim shall be made on the date the payment is due in the ordinary course of business.

(e) **Priority Tax Claims**. Each holder of an Allowed Priority Tax Claim shall receive (a) equal consecutive quarterly installments for a period of seventy-two months following the Effective Date until the claim is paid in full with interest at 6% per annum, or (b) such other treatment as may be agreed to in writing by the holder of the Priority Tax Claim and the Debtor, but only after the payment of Allowed Administrative Expenses.

ARTICLE IV.
TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.01. **Satisfaction of Claims.** The treatment of and consideration to be received by the holders of allowed Claims or interests pursuant to this Plan shall be in fulfillment, release and discharge of their respective Claims or Equity Interests.

4.02. **Class 1 – Pre-Petition Secured Claim of First Capital.**

(a) ***Impairment***: Class 1 is impaired by this Plan.

(b) ***Treatment***: The Class 1 Pre-Petition Secured Claim of First Capital in the amount of $2,177,907 plus accrued interest as of the Petition Date of $122,777.32 pursuant to an Amended and Restated Secured, Convertible Promissory Note, dated May 25, 2004 as amended on July 30, 2004 (the "Holdings Note"), and which is guaranteed by the Debtor pursuant to a Subsidiary Guaranty, dated May 25, 2004, by and between the Debtor and First Capital (the "TES Guaranty"), and which TES Guaranty is secured by certain assets of the Debtor pursuant to a Subsidiary Security Agreement, dated May 25, 2004 (the "TES Security Agreement"), shall be satisfied by issuance of 100% of the new equity in the Reorganized Debtor to First Capital. The new equity shall be in a combination of preferred and common stock to be specified in the Plan Supplement, which will be filed at least ten calendar (10) days prior to the Confirmation Hearing.

(c) ***Release of Liens***: First Capital shall release the liens and security interests provided for under the pre-petition loan documents that secure the Pre-Petition Secured Claim of First Capital promptly after the Effective Date. The provisions of this Section 4.02 apply solely to the Pre-Petition Secured Claim of First Capital and do not affect the Post-Petition Secured Claim of First Capital.

4.03. **Class 2 – Post-Petition Secured Claim of First Capital.**

(a) ***Impairment***: Class 2 is impaired by this Plan.

(b) ***Treatment***: The post-petition Promissory Notes and Security Agreements between the Debtor and First Capital in the total principal amount of **$1,985,000** plus all accrued interest and other charges owed thereon as of Confirmation are Allowed Secured Claims and will be renewed and amended into a single note (the "Amended First Capital Note") and security agreement (the "Amended First Capital Loan Documents"). The Amended First Capital Note to be issued will have a maturity date of thirty-eight (38) months after the Effective Date. Interest shall accrue and be paid on the Amended First Capital Note at the rate of ten percent (10%) per annum. First Capital will receive interest only payments on the Amended First Capital Note until the Class 3 Claim of Redwing is paid in accordance with the Plan.

(c) ***Retention of Liens***: First Capital shall retain its existing liens and security interests as provided for under the Bankruptcy Court's Orders approving the post-petition financing provided by First Capital and as further clarified in the Amended Loan Documents until the Class 2 Allowed Post-Petition Secured Claim of First Capital is paid according to the terms of this Plan and the Amended First Capital Loan Documents. The provisions of this Section 4.03 apply solely to the Allowed Post-Petition Secured Claim of First Capital and do not affect the Pre-Petition Secured Claim of First Capital.

4.04. **Class 3 – Pre-Petition Secured Claim of Redwing.**

(a) ***Impairment***: Class 3 is impaired by this Plan.

(b) ***Treatment***: The Class 3 Pre-Petition Secured Claim of Redwing Equipment Partners Limited (as successor-in-interest to Veraz Networks, Inc.) in the filed Secured Claim amount of $4,138,658.80 shall be reduced by agreement and allowed in the reduced Secured Claim amount of $1,800,000 plus the transfer of four (4) media gateways in accordance with the Redwing Settlement Agreement. A true and correct copy of the Redwing Settlement Agreement is attached hereto as **Exhibit 1-A** and is incorporated herein by reference for all purposes. As provided in Section 6.01, the Redwing Settlement Agreement will be approved by the Confirmation Order. In accordance with the Redwing Settlement Agreement, the Redwing Secured Claim will be paid in full without interest as follows:

(i) On March 24, 2006, one million dollars ($1,000,000) was deposited into escrow with McGuire, Craddock & Strother, P.C.; and, on the Effective Date, the escrowed $1,000,000 together with all interest earned thereon will be disbursed to Redwing;

(ii) sixteen (16) consecutive monthly installments of $50,000 ("Redwing Installment Payments") beginning upon the first day of the first month following the Effective Date and continuing on the same calendar day of each month thereafter until all 16 payments have been made. The Redwing Installment Payments may be prepaid in whole or in part without the consent of Redwing and without prepayment penalty of any kind; and

(iii) Debtor will surrender certain Gate Pro Media gateway equipment to Redwing in accordance with Sections 11 and 12 of the Settlement Agreement.

(c) ***Retention of Liens***: Redwing shall retain its liens and security interests as provided for in the Settlement Agreement until the Class 3 Allowed Secured Claim of Redwing is paid according to the terms of this Plan and the Redwing Settlement Agreement. In

the event of any inconsistency between the terms of this Plan and the Redwing Settlement Agreement, the terms of the Redwing Settlement Agreement shall control. Nothing contained in this Plan or the Confirmation Order shall in any way affect or impair the rights and obligations of the parties to the Redwing Settlement Agreement except to reflect the approval of and enforcement by the Bankruptcy Court of its terms.

4.05. **Class 4 – Secured Tax Claims.**

(a) ***Impairment***: Class 4 is impaired by this Plan.

(b) ***Treatment***: Class 4 consists of Allowed Tax Claims which are secured by property of the estate pursuant to applicable state law. Each holder of an Allowed Priority Tax Claim shall receive (a) equal consecutive quarterly installments for a period of seventy-two months following the Effective Date until the claim is paid in full with interest at the rate of 6% per annum, or (b) such other treatment as may be agreed to in writing by the holder of the Priority Tax Claim and the Debtor, but only after the payment of Allowed Administrative Expenses.

4.06. **Class 5 - General Unsecured Claims.**

(a) ***Impairment***: Class 5 is impaired by this Plan.

(b) ***Treatment***: This Class consists of all Allowed General Unsecured Claims. Each Allowed Claim in Class 5 shall receive a *pro rata* distribution of $120,000, without interest, to be shared with all other Allowed General Unsecured Claimants. Distributions to General Unsecured Creditors will be made on a *pro rata* basis in six (6) consecutive quarterly payments of $20,000. The first installment will be due on the last day of

the first full quarter following the Effective Date and will be payable on the last day of each quarter thereafter.

4.07. **Class 6 - Insider Claims.**

(a) ***Impairment***: Class 6 is impaired by this Plan.

(b) ***Treatment***: This Class consists of all Allowed Pre-Petition Claims against the Debtor by Insiders, excluding the Class 1 and Class 2 Claims of First Capital. Insiders are defined as the Debtor's managers, prior managers, directors, prior directors, officers, prior officers and affiliates. Insider Claims include, but are not limited to, the pre-petition claim of Transcom Holdings, Inc. All Allowed Pre-Petition Insider Claims will be considered cancelled and will receive no distribution of funds from the Reorganized Debtor. Nothing in this Section 4.07 applies to the Pre-Petition Secured Claim of First Capital or the Post-Petition Secured Claim of First Capital.

4.08. **Class 7 - Equity Interests.**

(a) ***Impairment***: Class 7 is impaired by this Plan.

(b) ***Treatment***: This Class consists of all Allowed Equity Interests in the Debtor. All Allowed Equity Interests of the Debtor shall be cancelled and shall not receive any distributions under this Plan on account of such Allowed Equity Interests. Any warrants or other future interests or rights held in the Debtor unissued as of the Petition Date, shall be cancelled and terminated upon Confirmation.

ARTICLE V.
IMPLEMENTATION OF THE PLAN AND DISCHARGE OF DEBTOR

5.01. **Revesting of Assets.** Except as otherwise provided in the Plan or the Confirmation Order, upon the Effective Date, all property of the Debtor's estate, wherever situated shall vest in, or remain the property of Reorganized Debtor free and clear of all Claims.

5.02. **Discharge.** The provisions of the Plan will (i) bind all creditors and equity interest holders, whether or not they filed a Claim and whether or not they accept the Plan, and (ii) discharge the Debtor from all debts that arose before the Petition Date. In addition, the distributions of cash and securities provided for under the Plan will be in exchange for and in complete satisfaction, discharge and release of all claims against and interests in the Debtor or any of its assets or properties, including any claim or interest accruing after the Petition Date and before the Effective Date. On and after the Effective Date, all holders of impaired claims and interests will be precluded from asserting any claim against the Reorganized Debtor or its assets or properties based on any transaction or other activity that occurred before the Petition Date; provided, however, that each holder of a Contested Claim may continue to prosecute its proof of claim in the Bankruptcy Court, any defendant in litigation brought by the Debtor may assert in such litigation, such offsets, claims, counterclaims or defenses as it may have against the Debtor, and all holders of Claims and Equity Interests shall be entitled to enforce their rights under the Plan and any agreements executed or delivered pursuant to or in connection with the Plan.

5.03. **Distributions.** Except as otherwise provided herein, the Reorganized Debtor shall have the obligation to make the distributions required to be made under the Plan.

ARTICLE VI.
MEANS FOR IMPLEMENTATION OF PLAN

6.01. **Compromise and Settlement of Redwing Claim and Mutual Release.**

Pursuant to Fed. R. Bankr. P. 9019 and Section 1123(b)(3) of the Bankruptcy Code, the Plan constitutes a request for approval of the compromise and settlement of all issues relating to the validity, enforceability, priority and amount of Redwing's Claim, as described herein and in the Redwing Settlement Agreement. Confirmation shall constitute the Bankruptcy Court's approval of the Redwing Settlement Agreement and the releases contained therein and shall authorize the Debtor and the Reorganized Debtor to implement the Redwing Settlement Agreement in accordance with its terms.

6.02. **Issuance of Notes and Warrants to the Investors.** On or prior to the Effective Date:

(a) The Reorganized Debtor will issue the Investor Notes to the Investors. The Investor Notes shall contain the following general terms:

(i) Maturity: 3 years from the date of issuance.

(ii) Interest Rate: 12% annually, payable in cash quarterly.

(iii) Negative Covenant as to new senior borrowings by Reorganized Debtor, but allowing up to $1,000,000 for receivables financing and allowing up to $3,000,000 for equipment financing.

(b) The Reorganized Debtor will also issue to the Investors the Investor Warrants. The Investor Warrants will expire 5 years from the date of issuance, and will provide for a net exercise in the case of (i) a transaction (or series of transactions) that constitute a sale of

the business of the Reorganized Debtor, or (ii) any initial public offering by the Reorganized Debtor.

(c) Upon the issuance of the Investor Notes and Investor Warrants, and as a condition thereto, each Investor shall execute a definitive purchase or subscription agreement containing terms and conditions customary for such transactions, including, without limitation, representations and warranties that each Investor (i) is acquiring the Investor Notes/Warrants for such Investor's own account as principal, for investment purposes only, not for any other person or entity and not for the purposes of resale or distribution; (ii) is not subscribing for such Investor Notes/Warrants in a fiduciary capacity; (iii) is an "accredited investor" as such term is defined in Regulation D promulgated under the Securities Act of 1934, as amended; and (iv) is able to bear the economic risk of an investment in the Investor Notes/Warrants for an indefinite period of time, has adequate means to provide for his current financial needs and personal contingencies, has no need for liquidity in the Investor Note/Warrants, understands that such Investor may not be able to liquidate his investment in the Reorganized Debtor in an emergency, if at all, and can afford a complete loss of the investment.

6.03. **Authorization and Issuance of New Securities.** In addition to Plan Section 6.02, the issuance of additional stock or other securities by Reorganized Debtor is hereby authorized without further act or action under applicable law, regulation, order, or rule, and such issuance of stock or other securities shall be entitled to all of the exemptions provided by Section 1145 of the Bankruptcy Code.

ARTICLE VII.
LITIGATION AND AVOIDANCE ACTIONS

7.01. **Potential Litigation.** Except as provided in Section 6.01 of the Plan, nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or causes of action that the Debtor or Reorganized Debtor may have or which the Reorganized Debtor may choose to assert under any provision of the Bankruptcy Code or any applicable nonbankruptcy law. Among other Claims and Causes of Action, the Debtor anticipates filing a lawsuit against Broadwing Communications Corporation and Broadwing Communications, LLC f/k/a Focal Communications Corporation (collectively "Broadwing") in connection with Broadwing's alleged unlawful post-petition termination of service and various alleged avoidable transfers that Broadwing received prior to the Petition Date. The Debtor also anticipates filing lawsuits against the entity formerly known as SBC Communications, Inc. and AT&T Corp., including its subsidiaries and operational affiliates, in connection with alleged interference with Debtor's business and alleged breach of contract. The Reorganized Debtor may also file an avoidance action against Global Crossing Telecommunications, Inc. with respect to certain pre-petition payments or offsets.

7.02. **Preservation of Avoidance Actions and Causes of Action.** All claims recoverable under Section 550 of the Bankruptcy Code, including all Causes of Action owned by the Debtor pursuant to Section 541 of the Bankruptcy Code or similar state laws, all Causes of Action against third parties on account of any indebtedness, and all other claims owed to or in favor of the Debtor, to the extent not specifically compromised and released pursuant to the Plan or an agreement referred to and incorporated in the Plan, will be preserved and retained for enforcement by the Reorganized Debtor after the Effective Date. From and after the

Effective Date, the Reorganized Debtor may litigate any claims or causes of action that constituted assets of the Debtor and Debtor-in-Possession, including, without limitation, any avoidance or recovery actions under sections 541, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code and any other causes of action, rights to payments of claims that may be pending on the Effective Date or instituted by the Reorganized Debtor thereafter, to a Final Order, and the Reorganized Debtor may compromise and settle such claims, without the approval of the Bankruptcy Court.

ARTICLE VIII.
PROVISIONS GOVERNING DISTRIBUTION

8.01. **Distributions.** Distributions to be made to any holder of an Allowed Claim under the Plan shall be made by the Reorganized Debtor. Any payments or distributions to be made pursuant to the Plan shall be made to the holders of Allowed Claims. Any payment or distribution pursuant to this Plan, to the extent delivered by the U.S. mail, shall be deemed made when deposited into the U.S. mail.

8.02. **Means of Cash Payment.** Payments of Cash to be made pursuant to the Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

8.03. **Delivery of Distributions.** Distributions and deliveries to holders of Allowed Claims shall be made at the addresses set forth on the proofs of Claim or proofs of interest filed by such holders (or at the last known addresses of such holders if no proof of Claim or proof of interest is filed) or if the Debtor has been notified of a change of address, at the address set forth in such notice. All Claims for undeliverable distributions shall be made on or before the second anniversary of the Effective Date. After such date, all unclaimed property shall revert to the

Reorganized Debtor, and the Claim of any holder with respect to such property shall be discharged and forever barred.

8.04. **Time Bar to Cash Payments.** Checks issued in payment of Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of delivery thereof. Requests for the reissuance of any check shall be made directly to the Reorganized Debtor by the holder of the Allowed Claim to whom such check originally was issued who shall also bear the cost of the reissuance. Any Claim with respect to such a voided check shall be made on or before the later of the first anniversary of the Effective Date or ninety (90) days after the date of delivery of such check.

8.05. **Prepayment.** The Reorganized Debtor expressly reserves the right, in its sole discretion, to prepay in cash any obligation created pursuant to the Plan, and no interest shall accrue with respect to such obligation from and after the date of such prepayment.

ARTICLE IX.
PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND CONTINGENT CLAIMS

9.01. **Objection Deadline.** Unless a different date is set by order of the Bankruptcy Court, all objections to Claims shall be served and filed no later than sixty (60) days after the Effective Date or sixty (60) days after a particular proof of Claim is filed, whichever is later. The Reorganized Debtor may seek an extension of this deadline by motion for any good cause shown. Unless arising from an avoidance action, any proof of Claim filed after the Bar Date shall be of no force and effect, shall be deemed disallowed, and will not require objection. All Contested Claims shall be litigated to Final Order; provided, however, that the Reorganized Debtor may compromise and settle any Contested Claim, subject to the approval of the

Bankruptcy Court. Notwithstanding the foregoing, any Contested Claim where the amount in dispute is $25,000 or less may be settled without approval of the Bankruptcy Court.

9.02. **Responsibility for Objecting to Claims.** Only the Reorganized Debtor shall have standing and responsibility for objecting to the allowance of Claims following the Effective Date.

ARTICLE X.
EXECUTORY CONTRACTS AND LEASES

10.01. **Customer Contracts To Be Assumed.** The Debtor continues to use and benefit from its contracts pursuant to which it sells its enhanced services (the "Customer Contracts"). Assumption of the Customer Contracts is in the best interest of the Debtor's estate. Accordingly, pursuant to Bankruptcy Code Section 365, the Confirmation Order will authorize the Debtor to assume all of its Customer Contracts. No cure payments are owed or required with respect to the Customer Contracts.

10.02. **Vendor Contracts To Be Assumed.** The Debtor continues to use and benefit from the agreements specifically identified on **Exhibit 1-B** (the "Vendor Agreements"). Assumption of the Vendor Agreements is in the best interest of the Debtor's estate. Accordingly, pursuant to Bankruptcy Code Section 365, the Confirmation Order will authorize the Debtor to assume the Vendor Agreements upon the Debtor's prompt payment of the arrearages in the amounts identified in Exhibit 1-B, if any. Any objection to the cure amounts indicated on **Exhibit 1-B** must be filed on the same date as objections to confirmation of the Plan are due. In the event a timely objection to the cure amount indicated is not filed, Confirmation of the Plan shall constitute a final determination of the cure amount indicated in accordance with Section 365 of the Bankruptcy Code. The Reorganized Debtor will cure the arrearages by

tendering six (6) equal consecutive monthly payments to the contract counter-party until the arrears are paid in full, or as otherwise agreed to in writing by the Reorganized Debtor and the contract counter-party.

10.03. **General Treatment; Rejected If Not Assumed**. Except for executory contracts or unexpired leases that (a) are identified above to be assumed pursuant to this Plan (b) have already been assumed or rejected pursuant to Final Order of the Bankruptcy Court, or (c) are the subject of a separate motion pursuant to §365 of the Bankruptcy Code to be filed and served on or before the Confirmation Date, all pre-petition executory contracts and unexpired leases to which the Debtor was a party will be automatically rejected effective as of the Petition Date, upon Confirmation.

10.04. **Bar to Rejection Damages**. If the rejection of an executory contract or an unexpired lease by the Debtor results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be forever barred and shall not be enforceable against the Debtor or its properties or agents, successors, or assigns, unless a proof of Claim is filed with the Bankruptcy Court and served upon the Reorganized Debtor by the earlier of (a) thirty (30) days after the Confirmation Date or (b) such other deadline as the Court may set for asserting a Claim for such damages.

10.05. **Rejection Claims**. Any Rejection Claim arising from the rejection of an unexpired lease or executory contract not barred by paragraph 10.02 of the Plan shall be treated as a General Unsecured Claim of the Debtor pursuant to paragraph 4.06 of the Plan; provided, however, that any Rejection Claim based upon the rejection of an unexpired lease of real property or the rejection of an employment contract either prior to the Confirmation Date or

upon the entry of the Confirmation Order shall be limited in accordance with §502(b) of the Bankruptcy Code and state law mitigation requirements. Nothing contained herein shall be deemed an admission by the Debtor that such rejection gives rise to or results in a Claim or shall be deemed a waiver by the Debtor of any objections to such Claim if asserted.

10.06. **Indemnification Obligations.** The obligations of the Debtor to indemnify its present managers and officers pursuant to charters, by-laws, and/or applicable state law shall be deemed to be, and shall be treated as though they are, executory contracts assumed under the Plan, and such obligation shall survive confirmation of the Plan and remain unaffected thereby, irrespective of whether indemnification is owed in connection with an occurrence that occurred prior to or after the Petition Date.

ARTICLE XI.
ACCEPTANCE AND CRAM DOWN

11.01. **Claims Allowed to Vote.** All references to Claims and amounts of Claims refer to the amount of the Claim as Finally Allowed by the Court provided, however, that Claims which have been objected to and which have not been Finally Allowed or disallowed prior to the day set for return of ballots shall not be voted and counted in the amount as filed.

11.02. **Impaired Classes Entitled to Vote.** Each impaired Class of Claims or Interests with Claims against or Interests in the Debtor's estate shall be entitled to vote to accept or reject the Plan.

11.03. **Cramdown.** In the event any impaired Class of Claimants shall fail to accept the Plan, the Debtor and First Capital reserve the right to request that the Court confirm the Plan in accordance with the applicable provisions of §1129(b) of the Code.

11.04. **Transfer of Assets and Discharge.** Except as otherwise provided by the Plan, and upon the Effective Date, title to all assets and properties dealt with by the Plan shall pass to the Reorganized Debtor free and clear of all Claims. The Confirmation Order shall be a judicial determination of discharge of the Debtor's liabilities except as provided and subject to the Plan and the Confirmation Order.

ARTICLE XII.
CONDITIONS PRECEDENT TO EFFECTIVENESS OF PLAN

12.01. **Conditions to Effectiveness of Plan**. The Effective Date of the Plan shall not occur unless and until the following conditions shall have been satisfied or have been jointly waived by the Debtor and First Capital, as determined in their sole discretion: (a) the Confirmation Order shall have been entered in a form and substance satisfactory to the Debtor and First Capital, (b) no stay of the Confirmation Order shall be in effect on the Effective Date; and (c) all documents, instrument and agreements necessary to implement the Plan have been executed and delivered, including, without limitation, the Investor Notes, the Investor Warrants, the Articles of Incorporation of the Reorganized Debtor, and the Amended First Capital Loan Documents.

12.02. **Certificate of Effective Date.** Within three (3) business days after the occurrence of the Effective Date, the Reorganized Debtor shall file a Certificate of Occurrence of the Effective Date stating the exact calendar date upon which the Effective Date occurred.

ARTICLE XIII.
RIGHT TO PAYMENT

13.01. **Right to Payment**. No creditor or party in interest herein shall be entitled to any payment from the Debtor's estate or from any assets of the estate except as provided herein.

ARTICLE XIV.
GOVERNANCE AND MANAGEMENT OF REORGANIZED DEBTOR

14.01. **General.** On the Effective Date, the management, control, and operation of Reorganized Debtor shall become the general responsibility of the Management of the Reorganized Debtor. Upon Confirmation of the Plan, the Reorganized Debtor will be converted from a Texas limited liability company to a Texas corporation pursuant to Chapter 10 of the Texas Business Organizations Code pursuant to the following plan of conversion:

(a) The name of the converting entity will be Transcom Enhanced Services, LLC;

(b) The name of the converted entity will be Transcom Enhanced Services, Inc.;

(c) The converting entity will continue its existence in the organizational form of the converted entity;

(d) The converted entity will be a Texas corporation; and

(e) The ownership interests of the converting entity will be cancelled and First Capital will be sole owner of the converted entity.

The Reorganized Debtor's proposed Articles of Incorporation and Bylaws shall be Filed with the Court under a separate Plan Supplement at least ten (10) calendar days prior to the Confirmation Hearing.

14.02. **Management of Reorganized Debtor.**

(a) **Reorganized Debtor's Board of Directors.** Scott Birdwell, Britt Birdwell, James O'Donnell, and William Montgomery, shall serve as the initial Board of Directors of the Reorganized Debtor on and after the Effective Date. The initial Board of

Directors of the Reorganized Debtor shall serve in accordance with applicable non-bankruptcy law and the Reorganized Debtor's Articles of Incorporation and Bylaws, as the same may be amended from time to time.

(b) **Reorganized Debtor's Officers**. Scott Birdwell shall serve as the Reorganized Debtor's CEO; Britt Birdwell shall serve as the Reorganized Debtor's President; and, Carolyn Malone shall serve as the Reorganized Debtor's Secretary and Treasurer. Such officers shall serve in accordance with applicable non-bankruptcy law.

ARTICLE XV.
MISCELLANEOUS PROVISIONS

15.01. **Severability**. Should the Bankruptcy Court determine that any provision of the Plan is unenforceable either on its face or as applied to any Claim or Equity Interest or transaction, the Debtor, and First Capital may modify the Plan in accordance with the Code or paragraphs 15.11 and 16.02 of the Plan, as applicable, so that such provision shall not be applicable to the holder of any Claim or Equity Interest.

15.02. **Set-offs**. The Reorganized Debtor may, but shall not be required to, set off against any Claim and the payments or other distributions to be made pursuant to this Plan in respect of such Claim, Claims of any nature whatsoever the Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtor of any such Claim that the Debtor may have against such holder.

15.03. ***Limitation of Liability***. None of the managers, directors, officers, financial advisors, attorneys, or employees of the Debtor or First Capital shall have any liability for

actions taken or omitted to be taken in good faith under or in connection with the Plan, **and shall be liable only in the event of willful misconduct.**

15.04. **Release and Waiver of Claims.** Except as otherwise provided in Plan Section 15.04, upon the Effective Date, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to this Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

15.05. **Binding Effect**. The Plan shall be binding upon, and shall inure to the benefit of, the Debtor, the holders of the Claims, the holders of equity interests, and their successors and assigns.

15.06. **Governing Law**. Unless a rule of law or procedure supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) is applicable, or a specific choice of law provision is provided, the internal laws of the State of Texas shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan, without regard to conflicts of law.

15.07. **Filing of Additional Documents.** The Debtor shall file, as Plan Documents, such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

15.08. **No Interest or Penalty.** Except as expressly stated in this Plan, as stated in a previous Order of the Court, or as subsequently allowed by the Court, no interest, penalty or late charge is to be allowed on any Claim subsequent to the filing date.

15.09. **No Fees.** No attorney's fees will be paid with respect to any Claim except as specified herein or as allowed by an order of the Court.

15.10. **Immaterial Modifications.** After Confirmation, the Debtor may, with the approval of the Court, remedy any defect or omission or reconcile any inconsistencies in the Plan, or in the order of Confirmation in such matter as may be necessary to carry out the purposes and effect of the Plan unless the modification would materially or adversely affect the interest of Creditors.

ARTICLE XVI.
CONSUMMATION OF THE PLAN

16.01. **Retention of Jurisdiction.** Pursuant to §§1334 and 157 of Title 28 of the United States Code, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising in, arising under, and related to the Bankruptcy Case and the Plan, for the purposes of §§105(a) and 1142 of the Bankruptcy Code, and for, among other things, the following purposes:

(a) To hear and to determine any and all objections to or applications concerning the allowance of Claims or the allowance, classification, priority, compromise, estimation, or payment of any Administrative Expense, Claim, or Equity Interest;

(b) To hear and determine any and all applications for payment of fees and expenses from the Debtor's estate made by attorneys or any other professional pursuant to §§330 or 503 of the Bankruptcy Code, or for payment of any other fees or expenses authorized to be paid or reimbursed from the Debtor's estate under the Bankruptcy Code, and any and all objections thereto;

(c) To hear and determine pending applications for the rejection, assumption, or assumption and assignment of unexpired leases and executory contracts and the allowance of Claims resulting therefrom, and to determine the rights of any party in respect of the assumption or rejection of any executory contract or lease;

(d) To hear and determine any and all adversary proceedings, applications, or contested matters, including any remands from any appeals;

(e) To hear and to determine all controversies, disputes, and suits which may arise in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan or in connection with the enforcement of any remedies made available under the Plan;

(f) To liquidate any disputed, contingent, or unliquidated claims;

(g) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein;

(h) To enter and to implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(i) To enable the Reorganized Debtor to prosecute any and all proceedings which may be brought to set aside liens or encumbrances and to recover any transfers, assets,

properties or damages to which the Debtor may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws, including causes of action, controversies, disputes and conflicts between the Debtor and any other party, including but not limited to, any causes of action or objections to Claims, preferences or fraudulent transfers and obligations or equitable subordination;

(j) To correct any defect, cure any omission or reconcile any inconsistency in the Plan, or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

(k) To consider any modification of the Plan pursuant to §1127 of the Bankruptcy Code, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(l) To enter and to implement such orders as may be necessary or appropriate to execute, interpret, implement, consummate, or to enforce the terms and conditions of the Plan and the transactions contemplated thereunder;

(m) To hear and to determine any other matter not inconsistent with the Bankruptcy Code and Title 28 of the United States Code that may arise in connection with or related to the Plan;

(n) To determine all issues relating to the Claims of the taxing authorities, state or federal;

(o) To hear and determine any dispute arising under the Settlement Agreement; and

(p) To enter a final decree closing the Chapter 11 Case.

16.02. **Material Modifications.** Modifications of this Plan may be proposed in writing by the Debtor and First Capital at any time before Confirmation, provided that this Plan, as modified, meets the requirements of §§1122 and 1123 of the Bankruptcy Code, and the Debtor shall have complied with §1125 of the Bankruptcy Code. This Plan may be modified at any time after Confirmation and before the Effective Date, provided that the Plan, as modified, meets the requirements of §§1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as modified, under §1129 of the Bankruptcy Code, and the circumstances warrant such modification.

16.03. **Notice.** All notices or other writings transmitted or required to be transmitted under this Plan shall be sent to the Debtor c/o J. Mark Chevallier, McGuire, Craddock & Strother, P.C., 3550 Lincoln Plaza, 500 N. Akard, Dallas, Texas 75201, ((214) 954-6868 - Facsimile) and First Capital c/o Martin Fletcher, Whiteford, Taylor & Preston, LLP, Seven Saint Paul Street, Baltimore, Maryland 21202, ((410) 223-3737 - Facsimile).

DATED: March 31, 2006.

Respectfully Submitted,

TRANSCOM ENHANCED SERVICES, L.L.C.

By: /s/Britt Birdwell (03/31/2006)
Name: Britt Birdwell
Its: Manager

-And-

FIRST CAPITAL GROUP OF TEXAS, III, L.P.

By: /s/James O'Donnell (03/31/2006)
Name: James O'Donnell
Its: Managing Member of the General Partner

OF COUNSEL:

McGUIRE, CRADDOCK & STROTHER, P.C.

/s/J. Mark Chevallier (03/31/2006)
J. Mark Chevallier (State Bar No. 04189170)
David L. Woods (State Bar No. 24004167)
500 N. Akard, Suite 3550
Dallas, Texas 75201
(214) 954-6800
(214) 954-6868 Facsimile
ATTORNEYS FOR THE DEBTOR and
DEBTOR-IN-POSSESSION

WHITEFORD, TAYLOR & PRESTON, LLP

/s/Martin T. Fletcher (03/31/2006)
Paul M. Nussbaum (MD Federal Bar No. 04394)
Martin T. Fletcher (MD Federal Bar No. 07608)
Karen Moore (MD Federal Bar No. 10510)
Seven Saint Paul Street
Baltimore, Maryland 21202
(410) 347-8700 - Telephone
(410) 223-3737 - facsimile
ATTORNEYS FOR FIRST CAPITAL GROUP OF TEXAS, III, L.P.

EXHIBIT 1-A

SETTLEMENT AND RELEASE AGREEMENT (PLAN A)

THIS SETTLEMENT AND RELEASE AGREEMENT (PLAN A) (this "Agreement") is entered into on March 24, 2006, by and among Redwing Equipment Partners, Ltd. ("Redwing"), First Capital Group of Texas III, L.P. ("First Capital"), Transcom Enhanced Services, L.L.C. ("Transcom") and Transcom Holdings, Inc. ("Transcom Holdings"). Transcom and Transcom Holdings sometimes are hereinafter referred to individually as a "Transcom Party" and collectively as the "Transcom Parties," and Redwing, First Capital and the Transcom Parties sometimes are hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Transcom Parties and Veraz Networks, Inc. ("Veraz") entered into the contracts and agreements listed and described on Schedule 1 attached hereto (the "Veraz Documents");

WHEREAS, Redwing purchased and acquired from Veraz all of its right, title and interest in, to and under the Veraz Documents (other than the obligation to provide and the right to receive payment for software maintenance and support) and the debts, liabilities and obligations of the Transcom Parties created thereunder;

WHEREAS, the Transcom Parties are in default under the Veraz Documents and Transcom has filed for protection from its creditors under Chapter 11 of the United States Bankruptcy Code in a proceeding (the "Proceeding") pending as cause no. 05-31929-HDH-11 in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division) (the "Bankruptcy Court");

WHEREAS, pursuant to certain orders of the Bankruptcy Court, Transcom entered into a DIP Loan Agreement with First Capital, whereby First Capital loaned Transcom $1,250,000.00 to be used for payment of Transcom's post-petition ordinary course of business expenses;

WHEREAS, First Capital inadvertently advanced Transcom an additional $435,000.00 for post-petition ordinary course of business expenses, which amount was not authorized by the Bankruptcy Court (the "Unauthorized Advance");

WHEREAS, Transcom and First Capital have subsequently sought Bankruptcy Court approval of the Unauthorized Advance;

WHEREAS, the Bankruptcy Court has authorized First Capital to advance an additional $300,000.00 to Transcom under the DIP Loan Agreement which amount has not yet been advanced to Transcom (the "Additional Loan");

WHEREAS, Redwing has filed, among other things, a *Proposed Chapter 11 Plan Of Reorganization*, a *Disclosure Statement In Support Of Proposed Chapter 11 Plan Of Reorganization* (collectively, the "Redwing Plan") and a *Response And Objection To Debtor's*

EXHIBIT
1-A

Second Motion To Increase Available Post-Petition Line Of Credit And For Approval Of Advances Already Provided To Debtor (the "Redwing DIP Loan Objection") to the approval of the Unauthorized Advance in the Proceeding;

WHEREAS, the Transcom Parties and First Capital, which, along with Redwing, is one of the largest creditors of Transcom, are opposed to the Redwing Plan, the Trustee Motion and the Redwing DIP Loan Objection; and

WHEREAS, subject to and on the terms and conditions set forth herein, the Parties desire to provide for the reorganization of Transcom and the restructuring of the liabilities, obligations and duties of the Transcom Parties to Redwing under the Veraz Documents.

NOW THEREFORE, for and in consideration of the payments, representations, releases and mutual promises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties agree as follows:

1. Effectiveness of this Agreement. This Agreement shall not become effective unless, prior to the close of business on March 24, 2006, (a) the parties have entered into the Escrow Agreement (as hereinafter defined), and (b) First Capital shall have deposited the Escrowed Funds with the Escrow Agent (each, as hereinafter defined) as required by Section 7. In addition, for this Agreement to become effective, Transcom must make the transfers, assignments and conveyances required by Section 11 on or before noon March 27, 2006. If this Agreement does not become effective pursuant to and in accordance with this Section 1, no Party shall have any liabilities, duties or obligations to or rights against any other Party under this Agreement.

2. Transcom Plan. Promptly after this Agreement becomes effective, but not later than March 31, 2006, the Transcom Parties and First Capital shall file a plan of reorganization and disclosure statement (collectively, the "Transcom Plan") for Transcom in the Proceeding, and will use all reasonable efforts and legal means to obtain confirmation of the Transcom Plan as quickly as possible. The Transcom Plan shall incorporate the terms and conditions set forth in this Agreement and the other agreements entered into or required to be entered into by the Parties hereto (together with this Agreement, the "Reorganization Documents") and otherwise shall be reasonably satisfactory to Redwing.

3. Redwing Plan. Provided this Agreement becomes effective under the provisions of Section 1 hereof, on or before the close of business on March 27, 2006, Redwing shall withdraw the Redwing Plan.

4. Redwing Trustee Motion. Provided this Agreement becomes effective under the provisions of Section 1 hereof, on or before the close of business on March 27, 2006, Redwing shall withdraw the Trustee Motion.

5. Redwing DIP Loan Objection. Provided that this Agreement becomes effective under the provisions of Section 1 hereof, before the hearing to approve the Unauthorized Advance that is scheduled to be heard on March 28, 2006, Redwing shall withdraw the Redwing DIP Loan Objection prior to the hearing.

6. DIP Loan. Prior to the close of business on March 24, 2006, First Capital shall advance the Additional Loan to Transcom to be used for working capital purposes. Such loan shall be secured by a lien on all of Transcom's assets and properties other than the assets and properties subject to the lien created by the Redwing Security Agreement (as hereinafter defined) and the assets and properties required to be transferred, assigned and conveyed by Transcom to Redwing hereunder. No payments under the Dip Loan Agreement, whether relating to the Unauthorized Advance, the Additional Advance or otherwise, other than interest shall be made by Transcom to First Capital or collected or received by First Capital until all amounts owed by Transcom to Redwing hereunder or under the Redwing Security Agreement (as hereinafter defined) have been paid in full.

7. Escrow of Initial Payment to Redwing. Simultaneously with the execution and delivery of this Agreement, Redwing, Transcom and First Capital are entering into an Escrow Agreement (the "Escrow Agreement") with McGuire, Craddock & Strother, P.C. (the "Escrow Agent"). Not later than the close of business on March 24, 2006, First Capital shall deposit $1,000,000.00 (the "Escrowed Funds") with the Escrow Agent by wire transfer in immediately available funds as follows:

Bank:	Frost Bank
ABA No.:	114000093
Account No.:	980021628
Reference:	First Capital/Redwing

The Escrowed Funds shall be held and administered by the Escrow Agent pursuant to the Escrow Agreement, which provides, among other things, that the Escrowed Funds shall be released and paid to Redwing on the earlier of (a) the effective date of the confirmation of the Transcom Plan in the Proceeding (the "Effective Date"), or (b) August 15, 2006, pursuant to the terms of Section 17, below. The Parties agree that the Transcom Plan shall provide for the Effective Date to occur as soon as practicable, but in no event more than 30 days after the confirmation order is entered.

8. Subsequent Payments to Redwing. The Transcom Parties shall pay Redwing the sum of $800,000.00 in 16 equal monthly installments of $50,000.00 beginning on the first business day after the Effective Date and continuing on the same calendar day of each month thereafter until all 16 payments have been made. The amounts owed under this Section 8 may be prepaid in whole or in part without the consent of Redwing and without prepayment penalty of any kind. The Transcom Parties hereby waive demand, presentment, protest, notice of dishonor, notice of nonpayment, notice of intention to accelerate, notice of acceleration, notice of protest and any and all lack of diligence or delay in collection or the filing of suit hereon which may

occur, and agree to all extensions and partial payments, before or after maturity, without prejudice to Redwing. To the extent any payment under this section 8 is not paid when due, such unpaid payment shall bear interest at the lesser of (x) the rate of 12% per annum or (y) the highest rate allowed under applicable law, until paid in full.

9. Adequate Assurance Payments. The Bankruptcy Court entered an *Agreed Order Modifying Stay* on July, 25, 2006 (the "Adequate Assurance Order"), which requires Transcom to make adequate assurance payments to Redwing under Section 361(1) of the United States Bankruptcy Code of $25,000.00 per month. Prior to the close of business on March 24, 2006, Transcom shall make a payment of $25,000.00 to Redwing under the Adequate Assurance Order. Thereafter, adequate assurance payments under the Adequate Assurance Order shall abate until May 31, 2006, at which time, if the Transcom Plan has not been confirmed, Transcom shall resume making adequate assurance payments of $25,000.00 per month on June 1, 2006, and on the first day of each month thereafter until either (a) the Transcom Plan has been confirmed, or (b) First Capital purchases Redwing's claim pursuant to Section 17, below, on August 15, 2006; provided, however, that no adequate assurance payments shall be required to be made on or after the Effective Date.

10. Security for Obligations. Simultaneously with the execution and delivery of this Agreement, Transcom and Redwing have entered into an Amendment No. 1 to Security Agreement, which amends the Security Agreement, dated June 30, 2003, between Transcom and Veraz (such Security Agreement as so amended, the "Redwing Security Agreement"). The payment obligations under Section 8 and Section 9 hereof shall be secured by the Redwing Security Agreement. First Capital acknowledges and agrees that any liens it has on any of the Collateral (as defined in the Redwing Security Agreement) (the "Redwing Collateral") are junior to Redwing. Subject to Section 17, below, First Capital further agrees not to exercise any rights or remedies against the Redwing Collateral, including, without limitation, foreclosure, unless and until all amounts owed by Transcom to Redwing hereunder (including, but not limited to, any costs or expenses due under the Redwing Security Agreement) have been paid in full. An "Event of Default" shall occur hereunder if: (a) any Transcom Party shall fail to pay any amount to Redwing as required hereunder and such failure shall continue uncured for more than five business days after Redwing delivers written notice of such failure to the Transcom Parties and First Capital; (b) any Transcom Party or First Capital shall fail to perform or default in the performance of any liability, obligation, covenant, agreement or duty imposed upon it to the benefit of Redwing under or contained in this Agreement or any other Reorganization Document and such failure shall continue uncured for more than 30 days after Redwing delivers written notice of such failure to the Transcom Parties and First Capital; (c) Transcom or First Capital shall grant or otherwise suffer any lien or encumbrance on any of the Redwing Collateral (other than the existing liens of First Capital) or the Escrowed Funds; (d) Transcom or First Capital shall fail to take any actions required under the Escrow Agreement to release and pay the Escrowed Funds to Redwing at a time when the conditions to such release and payment have been satisfied. Upon an Event of Default identified in subsection (a), Redwing shall have the right to exercise any and all of its remedies under the Veraz Documents, including, but not limited to, foreclosure on the Redwing Collateral, and the unpaid payment shall begin to accrue

interest in accordance with Section 8, above. Upon an Event of Default identified in subsections (b), (c) or (d) above, or if an Event of Default under subsection (a) continues uncured for more than 30 days after the required notice, the entire unpaid balance owed under Section 8 and all accrued interest thereon automatically shall immediately become due and payable at the option of Redwing. In addition, upon the occurrence of an Event of Default that remains uncured, Redwing shall have all rights and remedies afforded to it under this Agreement, the Redwing Security Agreement, applicable law and otherwise, all of which shall be cumulative.

11. Initial Equipment Transfer to Redwing. Prior to noon on March 27, 2006, in lieu of Redwing's foreclosure of its lien thereon under the Redwing Security Agreement, Transcom shall transfer, assign, convey, relinquish and deliver unto Redwing all of its right, title and interest in, to and under each item of personal property listed on Schedule 2A hereto. Such transfer, assignment and conveyance shall be evidenced by a bill of sale in the form attached hereto as Schedule 3, which shall be executed by Transcom and delivered to Redwing prior to noon on March 27, 2006, and Transcom simultaneously shall deliver physical possession to Redwing of each such item of personal property in tangible form and transmit to Redwing in electronic form all of such items of personal property embodied in an electronic format. First Capital hereby relinquishes and releases unto Redwing its interest if any, in, to or under all such items of personal property. Redwing is not assuming, and shall not be deemed to have assumed, any obligations, liabilities or duties of Transcom relating to any such items of personal property. The Parties acknowledge that Transcom does not have possession of certain non-material items listed on Schedule 2A and the Parties agree that such non-material insufficiencies shall not prevent this Agreement from becoming effective under Section 1. For purposes of this Section, "non-material" is defined as having a retail value of less than $1,000.

12. Subsequent Equipment Transfers to Redwing. Prior to the close of business on the earlier of (a) the first business day after the Effective Date, or (b) June 1, 2006; in lieu of Redwing's foreclosure of its lien thereon under the Redwing Security Agreement, Transcom shall transfer, assign, convey, relinquish and deliver unto Redwing all of its right, title and interest in, to and under each item of personal property listed on Schedule 2B hereto. In addition, prior to the close of business on the earlier of (a) the 30th day after the Effective Date, or (b) July 1, 2006; in lieu of Redwing's foreclosure of its lien thereon under the Redwing Security Agreement, Transcom shall transfer, assign, convey, relinquish and deliver unto Redwing all of its right, title and interest in, to and under each item of personal property listed on Schedule 2C hereto. Each such transfer, assignment and conveyance shall be evidenced by a bill of sale in the form attached hereto as Schedule 3, which shall be executed by Transcom and delivered to Redwing prior to the close of business on applicable transfer date, and Transcom simultaneously shall deliver physical possession to Redwing of each such item of personal property in tangible form and transmit to Redwing in electronic form all of such items of personal property embodied in an electronic format. First Capital hereby relinquishes and releases unto Redwing its interest, if any, in, to or under all such items of personal property. Redwing is not assuming, and shall any be deemed to have assumed, any obligations, liabilities or duties of Transcom relating to such items of personal property. Without limiting the generality of the foregoing, the Transcom Parties shall be responsible for paying, performing and

discharging all ad valorem or other personal property taxes that have accrued on such property during periods prior to the transfer, assignment and conveyance thereof to Redwing hereunder.

13. Maintenance on Routers. Redwing agrees to use reasonable best efforts to assist Transcom in obtaining discounts or other benefits from vendors of products and services relating to maintenance of routers, including, but not limited to, Cysco and Veraz. Transcom agrees to use its reasonable best efforts to take advantage of such benefits, and to implement maintenance policies, designed to efficiently manage the network's routers for optimum performance.

14. Certain Covenants of Redwing. Pending confirmation of the Transcom Plan, Redwing shall not take any action to enforce its rights under the Adequate Assurance Order or seek any other relief from the automatic stay pursuant to 11 U.S.C. § 362(d). So long as the Transcom Plan incorporates the provisions of this Agreement, Redwing hereby covenants that it shall (a) vote its claims as a creditor of Transcom in favor of the confirmation of the Transcom Plan, and (b) not object to the Transcom Plan. Further, Redwing agrees that neither it, nor any of its affiliates or agents, shall directly or indirectly take, cause to take or support, any action by any person or entity to oppose the Transcom Plan.

15. Representations and Warranties of the Parties. Each Party individually and severally represents and warrants to the other Parties that:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization, with all requisite partnership, corporation or limited liability company power and authority to enter into and perform its obligations under this Agreement and the other Reorganization Documents.

(b) All corporate, partnership or limited liability company action required of such Party to authorize this Agreement and the other Reorganization Documents and the transactions contemplated hereby and thereby has been duly taken. This Agreement has been duly authorized, executed and delivered by such Party (other than Transcom), and is the legal, valid and binding obligation of such Party enforceable against it in accordance with its terms. In the case of Transcom only, when approved by the Bankruptcy Court, this Agreement will have been duly authorized, executed and delivered by Transcom, and will be the legal, valid and binding obligation of Transcom enforceable against it in accordance with its terms. When executed and delivered pursuant hereto, each other Reorganization Document to which such Party is a party will be duly authorized executed and delivered by such Party and will be a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms.

(c) Such Party is not aware of any liens against any of the assets of Transcom other than the liens of Redwing, First Capital, and any tax or ad valorem liens that may exist, if any.

16. Waivers and Releases of Claims.

(a) Redwing, on behalf of itself and its agents, employees, representatives, attorneys, partners, affiliates, successors and assigns, shall be deemed, without any further act or deed on its part, to release, waive, acquit, and forever discharge each Transcom Party and First Capital and their agents, employees, representatives, attorneys, partners, members, shareholders, affiliates, successors and assigns from any and all claims, demands, suits, causes of action, damages, expenses, fees, attorney's fees, interests, or costs, whether known or unknown, fixed or contingent, liquidated or unliquidated, arising from or related to facts or circumstances existing on the date hereof, including without limitation, all claims arising under or relating to the Veraz Documents and the Proceeding and all claims for payment, specific performance, compensatory damages, actual damages, punitive damages, mental anguish, or emotional distress, pain and suffering, statutory damages or penalties whatsoever. In addition, the foregoing release is not intended to restrict or prohibit Redwing from enforcing its rights under this Agreement, the Redwing Security Agreement, and the other Reorganization Documents.

(b) Each of each Transcom Party and First Capital, on behalf of itself and its agents, employees, representatives, attorneys, partners, members, shareholders, affiliates, successors and assigns, hereby releases, waives, acquits, and forever discharges Redwing and its agents, employees, representatives, attorneys, partners, affiliates successors and assigns from any and all claims, demands, suits, causes of action, damages, expenses, fees, attorney's fees, interests, or costs, whether known or unknown, fixed or contingent, liquidated or unliquidated, arising from or related to facts and circumstances existing on the date hereof, including without limitation, all claims arising from or relating to the Veraz Documents and the Proceeding all claims for payment, specific performance, compensatory damages, actual damages, punitive damages, mental anguish, or emotional distress, pain and suffering, statutory damages or penalties whatsoever; provided, however, that this release will not extend to any other creditor of Transcom. The foregoing release is not intended to restrict or prohibit any Transcom Party or First Capital from enforcing its rights under this Agreement and the other Reorganization Documents. Notwithstanding the foregoing, the releases of Transcom made in this Section 17(b) shall not be effective until this Agreement has been approved by the Bankruptcy Court in the Proceeding.

17. Purchase of Redwing Claim. In the event that this Agreement becomes effective under the provisions of Section 1, but the confirmation of Transcom Plan has not become effective before the close of business on August 15, 2006, then First Capital will purchase, or will cause an affiliate of First Capital to purchase (First Capital and such affiliate collectively referred to herein as the "First Capital Nominee") all of Redwing's rights, title and interest in, to or under any of the Veraz documents and any orders or proofs of claim relating thereto, as well as all rights, title and interest of Redwing in any secured, unsecured, priority, administrative or other claims or causes of action against Transcom or any parent or affiliate of Transcom (collectively, the "Redwing Claim"), and Redwing will sell the Redwing Claim, on the following terms and conditions:

a. Release of Escrow. Pursuant to the terms of the Escrow Agreement, upon written request made (with funding instructions) to the Escrow Agent by

Redwing after close of business August 15, 2006, the Escrow Agent will release the Escrowed Funds to Redwing as soon as commercially practicable, but in no event later than close of business August 18, 2006.

b. Payments. The First Capital Nominee will make 16 monthly payments of $50,000 each beginning on August 16, 2006, and continuing thereafter until all such payments have been made, without interest or prepayment penalty; provided, however, that the First Capital Nominee will receive credit for the adequate protection payments made by Transcom under Section 9, above, other than the one due on March 24, 2006, thus reducing the amount due under this subsection by the amount of any such payments actually made by Transcom. If the First Capital Nominee fails to pay any amount to Redwing as required under this subsection and such failure shall continue uncured for more than 30 days after Redwing delivers written notice of such failure to the First Capital Nominee, Redwing shall have the right to exercise any and all of its remedies under the Veraz Documents, including, but not limited to, foreclosure on the Redwing Collateral, and the entire unpaid balance owed under this subsection and all accrued interest thereon automatically shall immediately become due and payable at the option of Redwing. Until all amounts owed to Redwing under this subsection shall have been paid in full, the First Capital Nominee shall not transfer, assign, pledge, hypothecate, convey or otherwise dispose of its interest in the Redwing Claim, release or waive any of its rights under the Redwing Claim or otherwise take any action or omit to take any action that could be reasonable likely to impair the validity, enforceability or collectibility of the Redwing Claim. The First Capital Nominee and Transcom will deliver to Redwing an instrument from the title holder of any of the Redwing Collateral pledging the Redwing Collateral to secure the obligations hereunder.

c. Conveyance of Claim. Redwing will convey all rights, title and interest in its Redwing Claim to the First Capital Nominee, subject to the understanding that the conveyances set forth in Sections 11 and 12, above, shall not be part of such transfer, and shall remain the sole and exclusive property of Redwing. Redwing hereby represents and warrants that it is the sole owner of the Redwing Claim and that, other than the conveyances in Sections 11 and 12 above and as otherwise provided for in this Agreement, no portion of the Redwing Claim has been or will be conveyed, encumbered or otherwise transferred prior to the Effective Date or August 15, 2006, whichever comes first. Except as provided above, such transfer, assignment and conveyance will be made without representation or warranty, and without recourse to Redwing for non-payment by Transcom.

18. Ownership of Claims. Each Party warrants that, to the extent stated herein, this Agreement disposes of all liability of the other Party to it and to its representatives, agents,

employees, heirs, executors, attorneys, administrators, successors and assigns. The Parties warrant that they have not assigned their rights or the claims herein released to any other person or entity. Should any further claim be made against any of the Parties arising out of the claims and causes of action herein released, and made by any of the Parties, or through anyone claiming to be an assignee of any of the Parties, the Party by whom or through whom the claim is asserted shall indemnify the Party against whom the claim is asserted from all liability for such claim, including all costs, expenses, and attorney's fees that it incurs in defending such claims.

19. No Other Agreement. This Agreement and the other Reorganization Documents constitute and set forth the complete and true agreement of the Parties with respect to the subject matter hereof, and supercede all prior or contemporaneous written and oral agreements between the Parties with respect thereto.

20. Costs and Expenses. Each Party shall be responsible for and pay the costs and expenses incurred by it in connection with the negotiation, execution, delivery and performance of this Agreement and the other Reorganization Documents required to be delivered by it pursuant hereto. No Party shall be entitled to assert or recover any substantial contribution claims based on any such costs or expenses.

21. Attorneys' Fees in Disputes. In the event that any dispute arises regarding this Agreement or the other Reorganization Documents or the performance by a Party of its obligations and agreements hereunder or thereunder, the non-prevailing party in such dispute shall reimburse the prevailing party for all costs and expenses, including without limitation, attorneys' fees and expenses, incurred by it in enforcing its rights hereunder or thereunder.

22. Further Assurances. At the request of the other Party, each Party shall take all actions reasonably requested by the other to perfect or evidence the completion of the transactions contemplated hereby and by the other Reorganization Documents.

23. Waivers and Modifications. This Agreement may not be amended, changed or modified, nor may any term or condition hereof be waived, except by an instrument in writing signed by all of Parties. No waiver by any Party of any breach by the other of any of the terms and conditions hereof shall constitute or be deemed to be a waiver of any subsequent breach of the same or any other term or condition hereof.

24. Understanding and Voluntary Acceptance of Terms of Agreement. Each Party acknowledges and agrees that: (a) its attorney has explained the terms of this Agreement to it and it has carefully read this Agreement and fully understands its meaning, intent and terms; (b) it has full knowledge of the legal consequences of the Agreement; (c) it agrees to all the terms of this Agreement and voluntarily executes and delivers this Agreement; (d) other than as stated herein, it acknowledges that no promise or inducement has been offered to it in exchange for execution and delivery of this Agreement; (e) this Agreement has been duly authorized, executed and delivered by it and each of this Agreement, and when executed and delivered by it pursuant hereto, the other Reorganization Documents to which it is a party is a legal, valid and binding

obligation of it enforceable against it in accordance with its terms.

25. Binding upon Successors, Assigns and Representatives. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, and legal representatives of the Parties. No Party may assign its rights or obligations hereunder without the written consent of the other Parties.

26. Severability of Terms. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

27. Governing Law; Venue. This Agreement has been executed and delivered in the State of Texas. This Agreement shall be deemed to be a contract made under and shall be construed in accordance with and governed by, the laws of the State of Texas, without reference to the rules thereof relating to conflicts of law. All acts contemplated by this Agreement shall be performable in Dallas County, Texas.

28. Multiple Counterparts; Faxed Signatures. This Agreement may be executed in multiple counterparts and faxed signatures shall have the same effect as originals hereunder.

29. No Admission of Liability. The Parties acknowledge and agree that this Agreement is a compromise of disputed claims, and nothing contained herein shall be construed as an admission of liability by any Party, all such liability being expressly denied.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the date first above-written.

REDWING EQUIPMENT PARTNERS, LTD.
By: Worldcall Interconnect, Inc., its general partner

By: Lowell Fe[illegible]
Name:
Title:

FIRST CAPITAL GROUP OF TEXAS III, L.P.
By: First Capital Group Investors 3, L.L.C., its general partner

By:_____
Name:_____
Title:_____

TRANSCOM ENHANCED SERVICES, L.L.C.

By:_____
Name:_____
Title:_____

TRANSCOM HOLDINGS, INC.

By:_____
Name:_____
Title:_____

[SIGNATURE PAGE TO SETTLEMENT AND RELEASE AGREEMENT (PLAN A)]

EXECUTED as of the date first above-written.

REDWING EQUIPMENT PARTNERS, LTD.
By: Worldcall Interconnect, Inc., its general partner

By:_____
Name:_____
Title:_____

FIRST CAPITAL GROUP OF TEXAS III, L.P.
By: First Capital Group Investors 3, L.L.C., its general partner

By:_____
Name: James H. O'Donnell
Title: Managing Member

TRANSCOM ENHANCED SERVICES, L.L.C.

By:_____
Name:_____
Title:_____

TRANSCOM HOLDINGS, INC.

By:_____
Name:_____
Title:_____

[SIGNATURE PAGE TO SETTLEMENT AND RELEASE AGREEMENT (PLAN A)]

EXECUTED as of the date first above-written.

REDWING EQUIPMENT PARTNERS, LTD.
By: Worldcall Interconnect, Inc., its general partner

By:_____
Name:_____
Title:_____

FIRST CAPITAL GROUP OF TEXAS III, L.P.
By: First Capital Group Investors 3, L.L.C., its general partner

By:_____
Name:_____
Title:_____

TRANSCOM ENHANCED SERVICES, L.L.C.

By: [signature]
Name: Britt Bierwell
Title: Manager

TRANSCOM HOLDINGS, INC.

By: [signature]
Name: Britt Bierwell
Title: Pres

[SIGNATURE PAGE TO SETTLEMENT AND RELEASE AGREEMENT (PLAN A)]

SCHEDULE 1
LIST OF VERAZ DOCUMENTS

1	Master Purchase and License Agreement dated as of 30 June 2003 ("MPLA") which includes as an attachments Addendum A which defines the specific products purchased pursuant to the MPLA and includes as attachments: (i) Exhibit A -- Hardware, Software, Deployment Sites, Training, Fees and Payment Terms; (ii) Exhibit B -- Installation Services; (iii) Exhibit C -- Post Sales Support Services; (iv) Exhibit D -- Form of Security Agreement; (v) Exhibit E – Form of Promissory Note; (vi) Exhibit F – Form of Advance Request; (vii) Exhibit G – Form of Landlord Agreement; (viii) Exhibit H – Evaluation Field Trial Terms; (ix)Exhibit I-A – Form of General Continuing Guaranty of Transcom Holdings, LLC; and (x)Exhibit I-B – Form of General Continuing Guaranty of Transcom Communications, Inc.)
2	Promissory Note dated 30 June 2003 in the amount of $3,500,000
3	Security Agreement dated 30 June 2003
4	Guaranty of Transcom Holdings, LLC dated as of 30 June 2003
5	Guaranty of Transcom Communications, Inc. dated as of 30 June 2003
6	Advance Request No. 001 under the MPLA dated as of 30 June 2003 in the amount of $294,696
7	Advance Request No. 002 under the MPLA dated as of 11 September 2003 in the amount of $1,726,105.95
8	Advance Request No. 003 under the MPLA dated as of 23 September 2003 in the amount of $418,519.34
9	Advance Request No. 004 under the MPLA dated as of 18 December 2003 in the amount of $916,246.00
10	First Amendment to MPLA ("Amendment No. 1") dated as of 31 December 2003 which includes as attachments: (A) Addendum A-1 to the MPLA dated as of 31 December 2003 which defines the specific products purchased pursuant to Addendum A-1 to the MPLA and includes as an attachment to Addendum A-1 Exhibit A -- Hardware, Software, Deployment Sites, Training, Fees and Payment Terms: and (B) Advance Request No. 005 under the MPLA dated as of 30 December 2003 in the amount of $215,114.40
11	Amended and Restated Promissory Note dated 30 December 2003 in the amount of $3,600,000
12	Second Amendment to MPLA dated as of 06 February 2004 which includes as attachments: (A) Addendum A-2 to the MPLA dated as of 06 February 2004 which defines the specific products purchased pursuant to Addendum A-2 to the MPLA and includes as an attachment

	to Addendum A-2 Exhibit A -- Hardware, Software, Deployment Sites, Training, Fees and Payment Terms: and (B) Advance Request No. 006 under the MPLA dated as of 06 February 2004 in the amount of $146,137.50
13	Amended and Restated Promissory Note dated 06 February 2004 in the amount of $3,750,000

SCHEDULE 2A

Redwing Equipment Partners Ltd
Veraz Media Gateway Hardware BOM
3/24/2006 15:49

Item Description	RP Part Numb	Content	Qty	Transcom
I-Gate 4000 PRO Basic common equipment set with TPSE interface	450/001	1 Subrack+DBTR+MB+PEFI	1	2
		2 Circuit breakers		
		1 Fan tray		
		1 Door with Veraz/ECI logo		
		1 Air buffer		
		1 Pair of flanges		
		1 PEFD card		
		1 PEFU card		
		1 TPSM-R1 card		
		1 ALRM card		
		1 TPSE card		
DSPK-R1	489/40021	1 DSPK-R1	5	10
DS3 Interface package	489/40008	1 D3MC card	2	4
		2 D3IO cards		
Full Redundancy package with DS3 Interface and TPSE Interface	450/1007	1 TPSM-R1 card	1	2
		1 TPSE card		
		1 DSPK card		
		1 D3MC card		
		2 D3BR		
19" Gateway Mounting Flange	488/40162	Mounting flange pair for one media gateway in 19" rack	1	1
Basic PDU - 19" - for mounting 3 gateways in one rack	488/40195	1 Basic PDU		
		1 Set of 19" flanges		
		1 Set of Power Cables to customer DC distribution (up to 15 meters)		
Documentation: CD-ROM Version - General Description	488/40040	CD-ROM Document Set	1	2
Maintenance Manual, Installation Manual				
Installation Materials per gateway shelf	488/45060	Required per Terminal	1	2
		Includes: PCM, DC & Grounding cables, Connectors and Installation accessories for up to 30 meters b/w I-Gate and DDF		

SCHEDULE 2B

Redwing Equipment Partners Ltd
Veraz Media Gateway Hardware BOM
3/24/2006 16:08

Item Description	ERP Part Number	Content	Qty
I-Gate 4000 PRO Basic common equipment set with TPSE interface	450/001	1 Subrack+DBTR+MB+PEFI 2 Circuit breakers 1 Fan tray 1 Door with Veraz/ECI logo 1 Air buffer 1 Pair of flanges 1 PEFD card 1 PEFU card 1 TPSM-R1 card 1 ALRM card 1 TPSE card	1
DSPK-R1	489/40021	1 DSPK-R1	5
DS3 Interface package	489/40008	1 D3MC card 2 D3IO cards	2
Full Redundancy package with DS3 Interface and TPSE Interface	450/1007	1 TPSM-R1 card 1 TPSE card 1 DSPK card 1 D3MC card 2 D3BR	1
19" Gateway Mounting Flange	488/40162	Mounting flange pair for one media gateway in 19" rack	1
Basic PDU - 19" - for mounting 3 gateways in one rack	488/40195	1 Basic PDU 1 Set of 19" flanges 1 Set of Power Cables to customer DC distribution (up to 15 meters)	
Documentation: CD-ROM Version - General Description Maintenance Manual, Installation Manual	488/40040	CD-ROM Document Set	1
Installation Materials per gateway shelf	488/45060	Required per Terminal Includes: PCM, DC & Grounding cables, Connectors and Installation accessories for up to 30 meters b/w I-Gate and DDF	1

SCHEDULE 2C

Redwing Equipment Partners Ltd
Veraz Media Gateway Hardware BOM
3/24/2006 16:08

Item Description	ERP Part Number	Content	Qty
I-Gate 4000 PRO Basic common equipment set with TPSE interface	450/001	1 Subrack+DBTR+MB+PEFI 2 Circuit breakers 1 Fan tray 1 Door with Veraz/ECI logo 1 Air buffer 1 Pair of flanges 1 PEFD card 1 PEFU card 1 TPSM-R1 card 1 ALRM card 1 TPSE card	1
DSPK-R1	489/40021	1 DSPK-R1	5
DS3 Interface package	489/40008	1 D3MC card 2 D3IO cards	2
Full Redundancy package with DS3 Interface and TPSE Interface	450/1007	1 TPSM-R1 card 1 TPSE card 1 DSPK card 1 D3MC card 2 D3BR	1
19" Gateway Mounting Flange	488/40162	Mounting flange pair for one media gateway in 19" rack	1
Basic PDU - 19" - for mounting 3 gateways in one rack	488/40195	1 Basic PDU 1 Set of 19" flanges 1 Set of Power Cables to customer DC distribution (up to 15 meters)	
Documentation: CD-ROM Version - General Description Maintenance Manual, Installation Manual	488/40040	CD-ROM Document Set	1
Installation Materials per gateway shelf	488/45060	Required per Terminal Includes: PCM, DC & Grounding cables, Connectors and Installation accessories for up to 30 meters b/w I-Gate and DDF	1

SCHEDULE 3

BILL OF SALE

Reference is hereby made to the Settlement and Release Agreement (Plan A) (the "Agreement"), dated as of March 24, 2006, by and among Redwing Equipment Partners, Ltd. ("Redwing"), First Capital Group of Texas III, L.P., Transcom Enhanced Services, L.L.C. ("Transcom") and Transcom Holdings, Inc. Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement. Pursuant to Section [11/12] of the Agreement, Transcom hereby sells, transfers, assigns and delivers to Redwing all of Transcom's right, title and interest in, to and under each item of personal property listed on Schedule A hereto. This Bill of Sale is delivered pursuant to the Agreement and subject to all of the representations, warranties and covenants set forth therein.

IN WITNESS WHEREOF, Transcom has executed this Bill of Sale as of _____, 2006.

TRANSCOM ENHANCED SERVICES, L.L.C.

By:_____
Name:_____
Title:_____

SCHEDULE A

AGREEMENT REGARDING RECEIPT AND DISPOSITION OF TRUST FUNDS

This Agreement Regarding Receipt and Disposition of Trust Funds (this "Escrow Agreement"), is executed as of March 24, 2006, by each of the following parties:

(A) McGuire, Craddock & Strother, P.C. ("MCS");

(B) Redwing Equipment Partners Ltd., a Texas limited partnership ("Redwing");

(C) First Capital Group of Texas III, L.P., a Delaware limited partnership ("First Capital"); and

(D) Transcom Enhanced Services, LLC, a Texas limited liability company, as Debtor in Possession ("Debtor") in case number 05-31929-HDH in the United States Bankruptcy Court for the Northern District of Texas ("Case").

RECITALS:

1. On March 9, 2006, the Debtor, First Capital and Redwing, entered into an agreement announced on the record in open court and memorialized by the transcript attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"). The terms of the Agreement have been memorialized by the Parties in a Settlement and Release Agreement (Plan A) of even date herewith (the "Settlement Agreement"). The Settlement Agreement contemplates two mutually exclusive plans known as "Plan A" and "Plan B" for purposes of resolving the disputes among the parties and facilitating the Debtor's emergence from bankruptcy.

2. Under the terms of the Settlement Agreement, in order to implement Plan A, First Capital must deposit $1 million (the "Deposit") into escrow on or before March 24, 2006, and such Deposit must be held in escrow and will be distributed in accordance with this Agreement.

3. To facilitate a timely and efficient closing of the transactions contemplated under Plan A of the Settlement Agreement, the above-referenced parties have requested that MCS receive and disburse the Deposit, including all interest earned thereon (the "Closing Funds") through an interest-bearing account (the "Account").

4. MCS is willing to provide this accommodation provided that its task is ministerial in nature, all parties provide mutual, irrevocable written disbursement instructions and all parties release any claims against MCS in respect of its accommodations, in each case in accordance with this Escrow Agreement.

AGREEMENTS:

a. Debtor agrees that on or before March 24, 2006, First Capital shall deliver good funds in

an aggregate amount of **$1,000,000.00** (the "Deposit") into the Account by wire transfer in accordance with the following transfer instructions:

Bank:	Frost Bank
ABA Number:	114000093
Account Name:	McGuire, Craddock & Strother, P.C. Trust Account
Account Number:	980021628
Re:	First Capital

As of the execution of this Escrow Agreement, the Deposit has been made into the above-referenced account.

b. Under the Settlement Agreement, Transcom is required to file a Plan of Reorganization with respect to Plan A (the "Transcom Plan") with the Bankruptcy Court (as defined in the Settlement Agreement) in the Proceeding (as defined in the Settlement Agreement) prior to 5:00 p.m., Dallas, Texas time, on March 31, 2006 (the "Plan Deadline Date"). In accordance with the terms and conditions of the Settlement Agreement, the Closing Funds shall be released and paid to Redwing on the earlier of (a) the effective date of the confirmation of the Transcom Plan in the Proceeding (the "Effective Date"), or (b) August 15, 2006, pursuant to the terms of Section 17 of the Settlement Agreement.

c. Debtor, First Capital and Redwing hereby acknowledge and agree that MCS obligations relating to disbursement of any Closing Funds under this Escrow Agreement shall be, and hereby are, limited to complying with the terms hereof and any final, non-appealable order of the Bankruptcy Court with respect thereto.

e. All parties to this Agreement acknowledge and agree that this Agreement inures to the benefit of, and is binding on the successors and assigns of the parties hereto.

f. Each of the undersigned acknowledges and agrees that, in the event MCS determines that it is unwilling or unable to continue to hold or disburse all, or any portion, of the Closing Funds then in its possession in accordance with this Agreement, MCS may tender such Closing Funds into the registry of the Court, and from and after such tender has been made MCS shall have no further liability or obligation under, or in respect of, this Escrow Agreement, the Settlement Agreement, or the Closing Funds so tendered.

g. In no event shall MCS be liable or responsible for any delays in receipt of funds, interest in respect of the Closing Funds or any special or consequential damages in respect of any failure of, or delay in, disbursement of the Closing Funds.

h. **EACH OF THE UNDERSIGNED HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES MCS, AND ITS SHAREHOLDERS, ASSOCIATES, EMPLOYEES, DIRECTORS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE**

"RELEASED PARTIES"), FROM ALL POSSIBLE CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES, AND LIABILITIES WHATSOEVER, KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT, OR CONDITIONAL, AT LAW OR IN EQUITY, TO THE EXTENT ARISING IN RESPECT OF THE EXECUTION AND DELIVERY OF THIS ESCROW AGREEMENT, MCS'S RECEIPT OF THE DEPOSIT OR MCS'S DISBURSEMENT OF THE CLOSING FUNDS IN ACCORDANCE WITH THIS ESCROW AGREEMENT OR ANY ORDER OR INSTRUCTION OF THE COURT, IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, EXCEPT CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSE OR LIABILITIES ARISING OUT OF MCS' INTENTIONAL OR WILLFUL MISCONDUCT OR ITS FAILURE OR REFUSAL TO DISBURSE FUNDS IN ACCORDANCE WITH THIS AGREEMENT OR ANY ORDER OR INSTRUCTION OF THE COURT. EACH OF THE UNDERSIGNED HEREBY COVENANTS AND AGREES NEVER TO INSTITUTE ANY ACTION OR SUIT AT LAW OR IN EQUITY, NOR INSTITUTE, PROSECUTE, OR IN ANY WAY AID IN THE INSTITUTION OR PROSECUTION OF ANY CLAIM, ACTION OR CAUSE OF ACTION, TO RECOVER ALL OR ANY PORTION OF THE CLOSING FUNDS FROM ANY OF THE RELEASED PARTIES TO THE EXTENT SUCH FUNDS HAVE BEEN DISBURSED IN ACCORDANCE WITH THIS AGREEMENT OR ANY ORDER OR INSTRUCTION OF THE COURT.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed this 24th day of March, 2006, by their duly authorized representatives.

McGUIRE, CRADDOCK & STROTHER, P.C.,
a Professional Corporation

By: _____
Name: STEVE THOMAS
Title: VICE PRESIDENT

REDWING EQUIPMENT PARTNERS,
a Texas limited partnership

By: _____
Name: Lowell Feldman
Title: President of its GP, LLC

FIRST CAPITAL GROUP OF TEXAS III, L.P.,
a Delaware limited partnership

By: _____
Name: _____
Title: _____

TRANSCOM ENHANCED SERVICES, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

REDWING EQUIPMENT PARTNERS,
a Texas limited partnership

By: _____
Name: _____
Title: _____

FIRST CAPITAL GROUP OF TEXAS III, L.P.,
a Delaware limited partnership

By: _____
Name: James A. O'Bennett
Title: Managing Member of The General Partner

TRANSCOM ENHANCED SERVICES, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

REDWING EQUIPMENT PARTNERS,
a Texas limited partnership

By: _____
Name: _____
Title: _____

FIRST CAPITAL GROUP OF TEXAS III, L.P.,
a Delaware limited partnership

By: _____
Name: _____
Title: _____

TRANSCOM ENHANCED SERVICES, LLC,
a Texas limited liability company

By: _____
Name: Britt Blackwell
Title: Manager

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AMENDMENT NO. 1
TO
SECURITY AGREEMENT

This Amendment No. 1 Security Agreement (this "Amendment") is made and entered into effective as of March 24, 2006, by and between Transcom Enhanced Services, L.L.C. (the "Debtor") and Redwing Equipment Partners, Ltd. (the "Security Party"), and amends the Security Agreement (the "Original Agreement"), dated as of June 30, 2003, by and the Debtor and Veraz Networks, Inc., the predecessor in interest to the Secured Party. The Debtor and the Secured Party agree as follows:

1. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Original Agreement. In addition, as used herein, the term "Settlement and Security Agreement" means the Settlement and Security Agreement (Plan A), dated as of March 24, 2006, by and among the Secured Party, First Capital Group of Texas III, L.P., the Debtor, and Transcom Holdings, Inc., as the same may be amended, supplemented or otherwise modified from time to time.

2. The definition of Obligations in Section 1.1(b) of the Original Agreement hereby is amended to read in its entirety as follows:

"Obligations" - the collective reference to the unpaid principal of and interest on the Note and all other obligations and liabilities of the Debtor (including, without limitation, interest accruing at the then applicable rate provided in the Note after the maturity of the Note and interest accruing at the then applicable rate provided in the Note after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Debtor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) to the Secured Party, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Sale Contract, the Note, this Agreement, the other Transaction Documents, the Settlement and Release Agreement or any other document made, delivered or given in connection therewith, in each case whether on account of principal, interest, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Secured Party that are required to be paid by the Debtor pursuant to the terms of any of the foregoing agreements).

3. The Debtor hereby ratifies and affirms the Original Agreement and the lien and security interest created thereby. Except as modified hereby, the Original Agreement shall remain in full force and effect. Hereafter, the term "Agreement" as used in the Original Agreement shall mean and include the Original Agreement as amended by this Amendment.

IN WITNESS WHEREOF, the Debtor and the Secured Party have executed this Agreement as of the date first above written.

REDWING EQUIPMENT PARTNERS, LTD.
By: Worldcall Interconnect, Inc., its General Partner

By:_____
Lowell Feldman, President

TRANSCOM ENHANCED SERVICES, L.L.C.

By:_____
Britt Birdwell, Member

CONSENT

Each of the undersigned hereby consents to the execution and delivery of this Amendment by the Debtor and agrees that this Amendment shall have no effect on the validity or enforceability of their respective guarantees of the Obligations.

TRANSCOM HOLDINGS, INC.

By:_____
Britt Birdwell, President

REDWING EQUIPMENT PARTNERS, LTD.
By: Worldcall Interconnect, Inc., its General Partner

By:_____
Lowell Feldman, President

TRANSCOM ENHANCED SERVICES, L.L.C.

By:_____
Britt Birdwell, ~~Member~~ Manager

CONSENT

Each of the undersigned hereby consents to the execution and delivery of this Amendment by the Debtor and agrees that this Amendment shall have no effect on the validity or enforceability of their respective guarantees of the Obligations.

TRANSCOM HOLDINGS, INC.

By:_____
Britt Birdwell, President

AUS:2651882.1
1 806

EXHIBIT 1-B

Transcom Enhanced Services, LLC
Assumed Vendor Contracts
March 2006

Vendor	Contract Type	Address	Cure
Arbinet	MSA Contract	120 Albany Street Tower II, Suite 450 New Brunswich, NJ 08901	
BellSouth	MSA Contract	P.O. Box 105262 Atlanta, GA 30348-5262	
BellSouth	MSA Contract	P.O. Box 70529 Charlotte, NC 28272-0529	
Broadvox	MSA Contract	1228 Euclid Ave., Ste. 390 Cleveland, OH 44115-1800	$4,263.92
Carrier Group Inc.	Agent Agreement	224 Fairport Village Landing Fairport, NY 14450	
Electric Lightwave, LLC	MSA Contract	4400 NE 77th Ave. Vancouver, WA 98662	
eM2 Communications, LLC	Agent Agreement	423 N Fillmore St. Arlington, VA 22201	
Express Link Communications	Agent Agreement	4013 Crestwood Dr. Carrollton, TX 75007	
Finger Lakes Associates, LLC	Agent Agreement	2130 Doran Rd. Lima, NY 14485	
Geo Tel Communications Services, Inc.	Agent Agreement	3875 Telegraph Rd. Ventura, CA 93003	
Global NAPS Inc.	MSA Contract	P.O. Box 690315 Quincy, MA 02269-0315	
IX-2 Networks	MSA Contract	1200 W. 7th Suite L2-240 Los Angeles, CA 90017	$9,424.17
LeaseNet, Inc	Agent Agreement	4359 Lindbergh DR Addison, TX 75001	
LK Communications LLC	Agent Agreement	4452 Voss Hills Place Dallas, TX 75287-2974	
MCI WorldCom Comm., Inc.	MSA Contract	P O. Box 730295 Dallas, TX 75373-0296	
Pae Tec Coomunications	MSA Contract	P.O. Box 1283 Buffalo, NY 14240-1283	$18,732.98
Primus Telecommunications Inc	MSA Contract	7901 Jones Branch DR McLean VA 22102	$4,651.56
RiverRock Systems, Ltd.	MSA Contract	14901 Quorum Drive Suite 250 Dallas, TX 75254	$56,517.84
Sarah L. Patnode	Agent Agreement	280 Island Avenue, Apt 907 Reno, NV 89501	
Source Communications	MSA Contract	1925 W John Carpenter Frwy Suite 500 Irving, TX 75063	
Source Communications of America, LLC	MSA Contract	1925 W. John Carpenter Frwy # 500, Irving, Texas 75063	
Southern Telcom Network, Inc.	MSA Contract	PO BOX 1161 Mountain Home AR 72654	
Southwestern Bell	MSA Contract	P O Box 650502, Dallas, TX 75265-0502	$2,136.11
Telcordia Technologies	MSA Contract	Church Street Station PO BOX 6334 New York, NY 10249	$1,072.77
Telogy	MSA Contract	3200 Whipple Rd Union City, CA 94587	$797.81
TexLink	MSA Contract	3201Cherry Ridge Dr Suite D-400 San Antonio TX 78230	
[redacted]	[redacted]	[redacted]	
Veraz Networks, Inc.	Maintenance Agreement	926 Rock Ave San Jose, CA 95131	
VeriSign	MSA Contract	PO BOX 849985 Dallas, TX 75284-9985	$40,239.18
Verizon	MSA Contract	P.O. Box 15124 Albany, NY 12212-5124	$61.44
Voex, Inc.	MSA Contract	Dept CH 17361 Palatine, IL 60055-7361	
			$137,897.78

EXHIBIT
tabbies 1-B

EXHIBIT 2

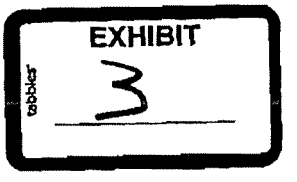
Transcom Enhanced Services, LLC
Projected Quarterly Revenues, Expenses & Cash Flows
Seven Quarters Ended December 31, 2007

	Qtr Ended Jun 30, 2006	Qtr Ended Sept 30, 2006	Qtr Ended Dec 31, 2006	Qtr Ended Mar 31, 2007	Qtr Ended Jun 30, 2007	Qtr Ended Sept 30, 2007	Qtr Ended Dec 31, 2007	Totals
Enhanced Services Revenues								
Net Revenues	$5,764,500	$6,615,000	$6,898,500	$7,085,625	$7,085,625	$7,085,625	$7,085,625	$47,620,500
Costs of Revenues								
Costs of Services Purchased	4,048,000	4,600,000	4,774,000	4,982,400	4,982,400	4,982,400	4,982,400	33,351,600
Gross Margin	1,716,500	2,015,000	2,124,500	2,103,225	2,103,225	2,103,225	2,103,225	14,268,900
Expenses								
Billing Fees	122,000	140,000	146,000	157,500	157,500	157,500	157,500	1,038,000
Contracted Services	60,000	60,000	60,000	63,000	63,000	63,000	63,000	432,000
Network Maintenance	120,000	120,000	120,000	126,000	126,000	126,000	126,000	864,000
NOC Services	118,050	118,050	118,050	123,953	123,953	123,953	123,953	849,962
Payroll	540,000	540,000	600,000	630,000	630,000	630,000	630,000	4,200,000
Office Rent	90,000	60,000	60,000	63,000	63,000	63,000	63,000	462,000
Insurance	79,000	81,000	81,000	85,050	85,050	85,050	85,050	581,200
Interest	66,000	84,000	84,000	84,000	84,000	84,000	84,000	570,000
Office Expenses	30,000	30,000	30,000	31,500	31,500	31,500	31,500	216,000
Sales Commissions	72,438	83,125	86,688	89,063	89,063	89,063	89,063	598,503
Switch Maintenance	170,616	170,616	170,616	179,146	179,146	179,146	179,146	1,228,432
Travel	45,000	45,000	45,000	47,250	47,250	47,250	47,250	324,000
Total Expenses	1,513,104	1,531,791	1,601,354	1,679,462	1,679,462	1,679,462	1,679,462	11,364,097
Earnings Before Taxes and Depreciation	$ 203,396	$ 483,209	$ 523,146	$ 423,763	$ 423,763	$ 423,763	$ 423,763	$ 2,904,803
Other Cash Outflows								
Payments to Unsecured Creditors		20,000	20,000	20,000	20,000	20,000	20,000	120,000
Contract Cure Payments		69,000	69,000					138,000
Attorney Fees	60,000	60,000	40,000					160,000
Trustee Fee	10,000	8,000						18,000
Capital Expenditures	50,000	150,000	200,000	200,000	200,000	200,000		1,000,000
Note Payments to Redwing	50,000	150,000	150,000	150,000	150,000	150,000		800,000
Total Other Cash Outflows	170,000	457,000	479,000	370,000	370,000	370,000	20,000	2,236,000
Net Cash Flow	$ 33,396	$ 26,209	$ 44,146	$ 53,763	$ 53,763	$ 53,763	$ 403,763	$ 668,803

EXHIBIT 3

Transcom Enhanced Services, LLC
Estimated Liquidation value of Assets
March 31, 2006

Asset	Estimated FMV	Basis of Valuation
Cash	$1,000	Estimated March 31,2006 bank balances
Office furnishings, computers and copiers	$10,000	$500 per office(10) plus $ 2,500 per copier(2)
IT Server	$2,000	Per Ebay comparable equipment sales
Trade Receivables at estimated net realizable value	$720,000	80% of estimated 3-31-06 balances
Network Equipment		
Veraz media gateway's	$1,504,500	50% of original cost
Cisco routers	$120,000	Per Ebay comparable equipment sales
Sun servers	$144,000	Per Ebay comparable equipment sales
Estimated net liquidation value	$2,501,500	



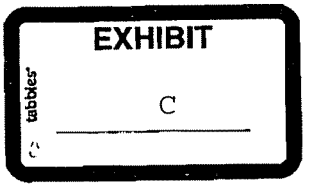
J. Mark Chevallier
State Bar No. 04189170
David L. Woods
State Bar No. 24004167
McGuire, Craddock & Strother, P.C.
3550 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
Telephone: (214) 954-6800
Facsimile: (214) 954-6868
ATTORNEYS FOR DEBTOR and DEBTOR-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED SERVICES, LLC	§	**CONFIRMATION HEARING**
	§	**& FINAL APPROVAL OF**
	§	**DISCLOSURE STATEMENT**
DEBTOR.	§	**SET FOR: 05/16/06 @ 10:00 A.M.**

CERTIFICATE OF SERVICE OF ORDER (1) CONDITIONALLY APPROVING DISCLOSURE STATEMENT IN SUPPORT OF JOINT PLAN OF REORGANIZATION OF DEBTOR AND FIRST CAPITAL; (2) SETTING DATE FOR CONFIRMATION HEARING AND FOR FINAL HEARING ON APPROVAL OF DISCLOSURE STATEMENT; (3) FIXING DEADLINES FOR VOTING ON AND OBJECTING TO THE PLAN; AND (4) APPROVING FORM OF SOLICITATION PACKAGE

This is to certify that a true and correct copy of the (a) Order (1) Conditionally Approving Disclosure Statement in Support of Joint Plan of Reorganization of Debtor and First Capital; (2) Setting Date for Confirmation Hearing and for Final Hearing on Approval of Disclosure Statement; (3) Fixing Deadlines for Voting on and Objecting to the Plan; and (4) Approving Form of Solicitation Package, (b) Ballot with Instructions, (c) Disclosure Statement for Joint Plan of Reorganization Proposed by the Debtor and First Capital Group of Texas, III, L.P. (d) First



Supplement to Disclosure Statement for Joint Plan of Reorganization of Debtor and First Capital, and (e) Modification to Joint Plan of Reorganization of Debtor and First Capital were served on all of the parties on the attached Service List by depositing the same into the United States Mail, postage prepaid, on the 12th day of April, 2006.

/s/ David L. Woods (04/12/06)
David L. Woods

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AT & T Corporation
One AT & T Way
Bedminster, NJ 07921

AT&T
P. O. Box 830022
Baltimore, MD 21283-0022

AT&T Corp
co Lisa McLain
1355 W University Dr
Mesa, AZ 85201

AT&T Corp.
% Andrew L. Stein, Senior Atty
55 Corporate Dr., Room 32D48
Bridgewater, NJ 08807-1265

AT&T Corp.
% Walter O. Theiss, Gen. Counsel
208 S. Akard, Room 3008
Dallas, TX 75202

AT&T Corp.
% William G. Whitehill
Gardere Wynne Sewell LLP
1601 Elm St., Ste 3000
Dallas, TX 75201-4761

Accu-Tech Corporation
Attn: Mike Akins
200 Hembree Park Dr
Goswell, GA 30076

Aries Freight Systems
P. O. Box 1265
Houston, TX 77210-1265

Arlington ISD, et al **(ECFemail - both)**
Attn: Elizabeth Banda & Rodric Bruce Medley
Perdue, Brandon, Fielder, Collins & Mott
P. O. Box 13430
Arlington, TX 76094-0430

BellSouth Telecommunications, Inc.
29EF1-301 West Bay Street
Jacksonville, Florida 32202

Broadvox
1228 Euclid Ave.,
Suite 390
Cleveland, OH 44115-1800

Broadwing Communications Services, LLC
Attn David Roberts, Esq.
1122 Capital of Texas Hwy South
Austin, TX 758746

Broadwing Communications
Services, Inc. Attn: William Marcinko
1122 Capital of Texas Hwy South
Austin, TX 758746

Broadwing Communications, LLC
Attn: C. Wade Cooper, Esq. **(Ecf eMail)**
JACKSON WALKER L.L.P.
100 Congress Ave., Suite 1100
Austin, TX 78701

Broadwing Communications, LLC.
Attn: David Mace Roberts, VP
1122 Capitol of Texas Hwy South
Austin, TX 78746-6426

Carrollton-Farmers Branch ISD
Attn: Laura Pendill Tax Ass/Col
1445 North Perry Rd.
P. O. Box 110611
Carrollton, TX 75011-0611

Carrollton-Farmers Branch ISD
c/o Andrea Sheehan **(Ecf eMail)**
Law Offices of Robert E. Luna, PC
4411 North Central Expressway
Dallas, TX 75205

Chuck Joyner
118 Ashford
Victoria, TX 77904

Cisco Systems Capital Corporation
Attn: Darrell Brinkman
170 W. Tasman Dr.,
Mailstop SJC 13/3
San Jose, CA 95134

Cisco Systems Capital Corporation
Attn: Patricia B. Tomasco, Esq. **(Ecf eMail)**
BROWN McCARROLL, L.L.P.
111 Congress Ave., Ste 1400
Austin, TX 78701

City of Fort Worth
c/o Perdue, Brandon, Fielder, et al.
Elizabeth Banda
PO BOX 13430
Arlington, TX 76094-0430

City of Irving
c/o Tally F. Parker **(Ecf eMail)**
Parker & Marks, P.C.
1333 Corporate Drive #209
Irving, TX 75038

Communication Management
Services, Inc.
701 Presidential Drive
Richardson, TX 75081

Cougar Run Consulting
co Ian B. Jaillet
21005 Woodlake Dr
Edmonds, WA 98026

Dallas County/Tarrant County
c/o Lauric A. Spindler **(ECFeMail)**
Linebarger Goggan Blair & Sampson LLP
2323 Bryan St., Ste. 1600
Dallas, TX 75201

Dallas County Tax Office
Records Building
500 Elm Street
Dallas, TX 75202-3504

EDS
Attn: Rishelle McKown
MS H3-3A-05
5400 Legacy Dr.
Plano, TX 75024

Electronic Data Systems Corporation
c/o Michael D. Warner **(Ecf eMail)**
Warner Stevens, L.L.P.
301 Commerce St., Suite 1700
Fort Worth, TX 76102

Rishelle McKown, Letigation Paralegal
EDS Legal Affairs, MS H3-3A-05
5400 Legacy Drive
Plano, TX 75024

Electronic Data Systems Corporation
5400 Legacy Drive
Real Estate H1-1F-45
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Electronic Data Systems Corporation
c/o Ayala A. Hassell (ayala.hassell@eds.com)
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Real Estate H3-3A-05
Plano, TX 75024

Express Link Communications
4013 Crestwood Dr.
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First Capital Group
of Texas III, L.P.
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Paul Nussbaum **(Email)**
Karen Moore **(Email)**
Whiteford, Taylor & Preston L.L.P.
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Baltimore, MD 21202

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Focal Communications Corporation
C. Wade Cooper **(Ecf eMail)**
Jackson Walker L.L.P.
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Fort Worth ISD
c/o Perdue, Brandon, Fielder, et al.
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IX-2 Networks
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Jan B. Jaillet
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Internal Revenue Service
Special Procedures - Insolvency
PO Box 21126
Philadelphia, PA 19114

KBA Group, LLP
14241 Dallas Parkway, Suite 200
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MJM Construction
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Long Beach, CA 90814

Mansfield ISD
c/o Perdue, Brandon, Fielder, et al.
Elizabeth Banda **(Ecf eMail)**
PO BOX 13430
Arlington, TX 76094-0430

Maskina Communications, Inc.
Attn: Jeff Becker
8445 Freeport Parkway, #650
Irving, TX 75063

NCIC
Attn: Bill Pope
1809 Judson Road
Longview, TX 75605

New Global Telecom, Inc.
600 12th Street,
Suite 200
Golden, CO 80401

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1100 Commerce, 3rd Floor
Dallas, TX 75242

Office of the U. S. Trustee
Attn: Victoria Tutterrow **(Ecf eMail)**
1100 Commerce Street, Rm 9C60
Dallas, TX 75242

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Buffalo, NY 14240-1283

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McLean, VA 22102

RiverRock Systems, Ltd.
14901 Quorum Drive, Suite 250
Dallas, TX 75254

SBC Southwest
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West Sacramento, CA 95798

Southwestern Bell
P. O. Box 650502
Dallas, TX 75265-0502

Southwestern Bell
P. O. Box 930170
Dallas, TX 75080-3380

Southwestern Bell
P. O. Box 940012
Dallas, TX 75394-0012

Southwestern Bell Telephone, L.P.
Attn: James D. Ellis
SBC Communications, Inc.
175 E. Houston
San Antonio, TX 78205

Southwestern Bell Telephone, L.P.
Attn: John F. Medler, Jr.
SBC Legal Department
One SBC Center Rm. 3558
St. Louis, MO 63101

Southwestern Bell Telephone, L.P.
Attn: Michael K. Kellogg
KELLOGG, HUBER, HANSEN et al.
1615 M. Street, N.W., Ste 400
Washington, DC 20036

State Comptroller of Public Account
Revenue Accounting Division
Bankruptcy Section
P. O. Box 13528
Austin, TX 78711

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The following constitutes the order of the Court.

Signed May 16, 2006 — **United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED	§	**CHAPTER 11**
SERVICES, LLC,	§	
	§	**CONFIRMATION HEARING:**
DEBTOR.	§	**MAY 16, 2006 @ 10:00 a.m.**

ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S
ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED

Came on for consideration on May 16, 2006 the Original Joint Plan of Reorganization Proposed by Transcom Enhanced Services, LLC (the "Debtor") and First Capital Group of Texas III, L.P. ("First Capital") filed on March 31, 2006 (the "Plan"). The Debtor and First Capital are collectively referred to herein as the "Proponents." All capitalized terms not defined herein have the meanings ascribed to them in the Plan. Just prior to the confirmation hearing, the Proponents filed their Modifications to Plan which relate to the Objections to Confirmation filed by Carrollton-Farmers Branch, Dallas County, Tarrant County and Arlington ISD, as well as the

comments of the United States Trustee and the Objection to Cure Amount in Plan filed by Riverrock Systems, Ltd. ("Riverrock"). The modifications comport with Bankruptcy Code 1127. In addition to the above objections, Broadwing Communications LLC ("Broadwing") and Broadwing Communications Corporation ("BCC") (collectively "Broadwing") filed its Objection to Final Approval of Disclosure Statement and Confirmation of Plan on May 11, 2006. Similar to the objections of Riverrock and the taxing authorities, and based upon an agreement reached between the Debtor and Broadwing, Broadwing withdrew its objection and amended its ballots to accept the Plan at the confirmation hearing. The Bankruptcy Court, having considered the Disclosure Statement, the Plan, the statements of counsel, the evidence presented or proffered, the pleadings, the record in this case, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

Findings of Fact

1. On February 18, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as debtor in possession.

2. The Debtor was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, the Debtor has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

3. The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

4. Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications). The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. In contested hearings held on or about April 14, 2005, the Debtor established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, Debtor's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.

5. On March 31, 2006, the Proponents filed their Original Plan of Reorganization (the "Plan") and Disclosure Statement for Plan (the "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement (the

"Motion for Conditional Approval"). On April 12, 2006, and over the objections of Broadwing and EDS Information Services, L.L.C. ("EDIS"), the Court entered its order granting the Motion for Conditional Approval and conditionally approving the Disclosure Statement (the "Conditional Approval Order"). Under the Conditional Approval Order, a final hearing to consider approval of the Disclosure Statement was combined with the confirmation hearing of the Plan, which hearings were set for May 16, 2006 at 10:00 a.m. (the "Combined Hearing"). Thereafter, and in accordance with the Conditional Approval Order, the Disclosure Statement was supplemented to address the concerns raised in the objections of both Broadwing and EDIS, the Plan and Disclosure Statement was distributed to creditors, interest-holders, and other parties-in-interest.

6. On or about April 10, 2006 and May 15, 2006, the Proponents filed non-material Modifications to the Plan pursuant to Bankruptcy Code § 1127 ("Plan Modifications").

7. The objections filed by Dallas County, Tarrant County, Carrollton-Farmers Branch ISD, Arlington ISD, Riverrock and Broadwing have been withdrawn.

8. The Proponents have provided appropriate, due and adequate notice of the Combined Hearing, the Disclosure Statement and Plan Supplements and the Plan Modifications, and such notice is in compliance with Bankruptcy Code § 1127 and Bankruptcy Rules 2002, 3019, 6006 and 9014. Without limiting the foregoing, as evidenced by certificates of service related thereto on file with the Court, and based upon statements of counsel, the Proponents have complied with the notice and solicitation procedures set forth in the April 12, 2006 Conditional Approval Order. No further notice of the May 16, 2006 Combined Hearing, the Plan, the Disclosure Statement or the Plan Modifications is necessary or required.

9. Class 1, consisting of the Pre-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

10. Class 2, consisting of the Post-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

11. Class 3, consisting of the Secured Claim on Redwing Equipment Partners Limited as successor-in-interest to Veraz Networks, Inc. ("Redwing"), is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

12. Class 4, consisting of the Secured Tax Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

13. Class 5, consisting of General Unsecured Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

14. Classes 6 and 7 of the Plan shall receive nothing under the Plan, and are deemed to reject the Plan.

15. Confirmation of the Plan is in the best interest of the Debtor, the Debtor's Estate, the Creditors of the Estate and other parties in interest.

16. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the assumption of the executory contracts and unexpired leases specifically identified in Article X of the Plan, including the Debtor's Customer Contracts under Plan Section 10.01 and Vendor Agreements under Plan Section 10.02 and specifically listed on Exhibit 1-B of the Plan. No cure payments are owed with respect to the Debtor's Customer Contracts; and the only cure payments owed with respect to the Vendor Agreements are specifically identified in

Exhibit 1-B of the Plan. No other arrearages are owed with respect to the Vendor Agreements. Unless otherwise provided in the Plan Modifications, the proposed cure amounts set forth in Section 10.02 satisfies, in all respects, Bankruptcy Code § 365. Furthermore, the Court finds that the Debtor has articulated good and sufficient business reasons justifying the rejection of all other executory contracts and unexpired leases of the Debtor.

17. The Proponents have solicited the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

Conclusions of Law

18. The Court has jurisdiction over this Chapter 11 Case and of the property of the Debtor and its Estate under 28 U.S.C. §§ 157 and 1334.

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

20. Good and sufficient notice of the Disclosure Statement, the Plan, solicitation thereof, the May 16, 2006 Combined Hearing and the Plan Modifications have been given in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Northern District of Texas and the April 12, 2006 Conditional Approval Order. The Plan Modifications that were filed with the Bankruptcy Court are non-material and do not require additional disclosure or re-solicitation of Plan acceptances and/or rejections.

21. Adequate and sufficient notice of the Plan Modifications has been provided to the appropriate parties which have agreed to the modifications. Pursuant to Bankruptcy Rule 3019, the Bankruptcy Court finds that the Plan Modifications do not adversely change the treatment of the holder of any Claim under the Plan, who has not accepted in writing the Plan Modifications.

All Creditors who have accepted the Plan without the Plan Modifications, are deemed to accept the Plan with the Plan Modifications.

22. The Plan complies with all applicable requirements of Bankruptcy Code §§ 1122 and 1123. Furthermore, the Plan complies with the applicable requirements of Bankruptcy Code §§ 1129(a) and (b), including, but not limited to the following:

a. the Plan complies with all applicable provisions of the Bankruptcy Code;

b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;

c. the Plan has been proposed in good faith and not by any means forbidden by law;

d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;

e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;

f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;

g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;

h. the Plan does not unfairly discriminate against dissenting classes;

i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;

j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;

k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;

m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;

n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

23. All requirements of Bankruptcy Code § 365 relating to the assumption, rejection, and/or assumption and assignment of executory contracts and unexpired leases of the Debtor have been satisfied. The Debtor has demonstrated adequate assurance of future performance with regard to the assumed executory contracts and unexpired leases of the Debtor.

24. The Redwing Settlement Agreement attached as Exhibit 1-A to the Plan is fair and equitable, and approval of the Redwing Settlement Agreement is in the best interests of the Debtor and its Estate.

25. All releases of claims and causes of action against non-debtor persons or entities that are embodied within Section 15.04 of the Plan are fair, equitable, and in the best interest of the Debtor and its Estate.

26. The Proponents and their members, officers, directors, employees, agents and professionals who participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be deemed to have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect thereto and are entitled to the rights, benefits and protections of Bankruptcy Code §§ 1125(d) and (e).

27. The Disclosure Statement contains "adequate information" as defined in 11 U.S.C. § 1125. All creditors, equity interest holders and other parties in interest have received appropriate notice and an opportunity for a hearing of the Plan and the Disclosure Statement.

28. The Plan and Disclosure Statement have been transmitted to all creditors, equity interest holders and parties in interest. Notice and opportunity for hearing have been given.

29. The requirements of §1129 (a) and (b) have been met.

30. The Plan as proposed is feasible.

31. All conclusions of law made or announced by the Court on the record in connection with the May 16, 2006 Combined Hearing are incorporated herein.

32. All conclusions of law which are findings of fact shall be deemed to be findings of fact and vice versa.

It is therefore,

ORDERED that the Disclosure Statement for Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, is hereby APPROVED; it is further

ORDERED that the Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, as modified, is hereby CONFIRMED; it is further

ORDERED that the Debtor and First Capital are authorized to execute any and all documents necessary to effect and consummate the Plan; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Customer Contracts, as specifically defined in Section 10.01 of the Plan, is hereby approved; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Vendor Agreements, as specifically defined in Section 10.02 of the Plan, is hereby approved; it is further

ORDERED that unless otherwise agreed to in writing by the Reorganized Debtor and the counter-party to the Vendor Agreement, the Reorganized Debtor shall cure the arrears

specifically listed in Exhibit 1-B of the Plan by tendering six (6) equal consecutive monthly payments to the Vendor Agreement counter-party until the arrears are paid in full; it is further

ORDERED that, except for the Customer Contracts, Vendor Agreements, and executory contracts or leases that were expressly assumed by a separate order, all pre-petition executory contracts and unexpired leases to which the Debtor was a party are hereby REJECTED effective as of the Petition Date; it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the Redwing Settlement Agreement is hereby APPROVED, and the Debtor may execute any and all documents required to carry out the Redwing Settlement, including, but not limited to the Redwing Settlement Agreement, and such agreement shall be in full force and effect; it is further

ORDERED that nothing contained in this Order or the Plan shall effect or control or be deemed to prejudice or impair the rights of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. or Redwing with respect to the dispute over the validity or extent of any license claimed by the Debtor in 15,000 ICE or logical ports currently utilized by the Debtor in connection with the operation of its network and each of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. and Redwing reserve all of their rights with respect to such issue; it is further

ORDERED that except as otherwise provided in Plan Section 15.03, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or

omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor's Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

*** END OF ORDER ***

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE	§	
	§	
TRANSCOM ENHANCED SERVICES, LLC	§	**CASE NO. 05-31929-HDH-11**
	§	
DEBTOR.	§	

CERTIFICATE OF SERVICE OF ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED

This is to certify that a true and correct copy of the Order Confirming Debtor's and First Capital's Original Joint Plan of Reorganization as Modified, attached as Exhibit "A" was served on all of the parties on the attached Service List by depositing the same into the United States Mail, postage prepaid, on the 18th day of May, 2006.

/s/ David L. Woods (05/18/06)
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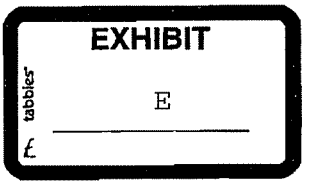

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EXHIBIT "A"

The following constitutes the order of the Court.

Signed May 16, 2006

Harlin DeWayne Hale
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED	§	**CHAPTER 11**
SERVICES, LLC,	§	
	§	**CONFIRMATION HEARING:**
DEBTOR.	§	**MAY 16, 2006 @ 10:00 a.m.**

ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S
ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED

Came on for consideration on May 16, 2006 the Original Joint Plan of Reorganization Proposed by Transcom Enhanced Services, LLC (the "Debtor") and First Capital Group of Texas III, L.P. ("First Capital") filed on March 31, 2006 (the "Plan"). The Debtor and First Capital are collectively referred to herein as the "Proponents." All capitalized terms not defined herein have the meanings ascribed to them in the Plan. Just prior to the confirmation hearing, the Proponents filed their Modifications to Plan which relate to the Objections to Confirmation filed by Carrollton-Farmers Branch, Dallas County, Tarrant County and Arlington ISD, as well as the

comments of the United States Trustee and the Objection to Cure Amount in Plan filed by Riverrock Systems, Ltd. ("Riverrock"). The modifications comport with Bankruptcy Code 1127. In addition to the above objections, Broadwing Communications LLC ("Broadwing") and Broadwing Communications Corporation ("BCC") (collectively "Broadwing") filed its Objection to Final Approval of Disclosure Statement and Confirmation of Plan on May 11, 2006. Similar to the objections of Riverrock and the taxing authorities, and based upon an agreement reached between the Debtor and Broadwing, Broadwing withdrew its objection and amended its ballots to accept the Plan at the confirmation hearing. The Bankruptcy Court, having considered the Disclosure Statement, the Plan, the statements of counsel, the evidence presented or proffered, the pleadings, the record in this case, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

Findings of Fact

1. On February 18, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as debtor in possession.

2. The Debtor was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, the Debtor has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

3. The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

4. Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications). The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. In contested hearings held on or about April 14, 2005, the Debtor established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, Debtor's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.

5. On March 31, 2006, the Proponents filed their Original Plan of Reorganization (the "Plan") and Disclosure Statement for Plan (the "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement (the

"Motion for Conditional Approval"). On April 12, 2006, and over the objections of Broadwing and EDS Information Services, L.L.C. ("EDIS"), the Court entered its order granting the Motion for Conditional Approval and conditionally approving the Disclosure Statement (the "Conditional Approval Order"). Under the Conditional Approval Order, a final hearing to consider approval of the Disclosure Statement was combined with the confirmation hearing of the Plan, which hearings were set for May 16, 2006 at 10:00 a.m. (the "Combined Hearing"). Thereafter, and in accordance with the Conditional Approval Order, the Disclosure Statement was supplemented to address the concerns raised in the objections of both Broadwing and EDIS, the Plan and Disclosure Statement was distributed to creditors, interest-holders, and other parties-in-interest.

6. On or about April 10, 2006 and May 15, 2006, the Proponents filed non-material Modifications to the Plan pursuant to Bankruptcy Code § 1127 ("Plan Modifications").

7. The objections filed by Dallas County, Tarrant County, Carrollton-Farmers Branch ISD, Arlington ISD, Riverrock and Broadwing have been withdrawn.

8. The Proponents have provided appropriate, due and adequate notice of the Combined Hearing, the Disclosure Statement and Plan Supplements and the Plan Modifications, and such notice is in compliance with Bankruptcy Code § 1127 and Bankruptcy Rules 2002, 3019, 6006 and 9014. Without limiting the foregoing, as evidenced by certificates of service related thereto on file with the Court, and based upon statements of counsel, the Proponents have complied with the notice and solicitation procedures set forth in the April 12, 2006 Conditional Approval Order. No further notice of the May 16, 2006 Combined Hearing, the Plan, the Disclosure Statement or the Plan Modifications is necessary or required.

9. Class 1, consisting of the Pre-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

10. Class 2, consisting of the Post-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

11. Class 3, consisting of the Secured Claim on Redwing Equipment Partners Limited as successor-in-interest to Veraz Networks, Inc. ("Redwing"), is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

12. Class 4, consisting of the Secured Tax Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

13. Class 5, consisting of General Unsecured Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

14. Classes 6 and 7 of the Plan shall receive nothing under the Plan, and are deemed to reject the Plan.

15. Confirmation of the Plan is in the best interest of the Debtor, the Debtor's Estate, the Creditors of the Estate and other parties in interest.

16. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the assumption of the executory contracts and unexpired leases specifically identified in Article X of the Plan, including the Debtor's Customer Contracts under Plan Section 10.01 and Vendor Agreements under Plan Section 10.02 and specifically listed on Exhibit 1-B of the Plan. No cure payments are owed with respect to the Debtor's Customer Contracts; and the only cure payments owed with respect to the Vendor Agreements are specifically identified in

Exhibit 1-B of the Plan. No other arrearages are owed with respect to the Vendor Agreements. Unless otherwise provided in the Plan Modifications, the proposed cure amounts set forth in Section 10.02 satisfies, in all respects, Bankruptcy Code § 365. Furthermore, the Court finds that the Debtor has articulated good and sufficient business reasons justifying the rejection of all other executory contracts and unexpired leases of the Debtor.

17. The Proponents have solicited the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

Conclusions of Law

18. The Court has jurisdiction over this Chapter 11 Case and of the property of the Debtor and its Estate under 28 U.S.C. §§ 157 and 1334.

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

20. Good and sufficient notice of the Disclosure Statement, the Plan, solicitation thereof, the May 16, 2006 Combined Hearing and the Plan Modifications have been given in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Northern District of Texas and the April 12, 2006 Conditional Approval Order. The Plan Modifications that were filed with the Bankruptcy Court are non-material and do not require additional disclosure or re-solicitation of Plan acceptances and/or rejections.

21. Adequate and sufficient notice of the Plan Modifications has been provided to the appropriate parties which have agreed to the modifications. Pursuant to Bankruptcy Rule 3019, the Bankruptcy Court finds that the Plan Modifications do not adversely change the treatment of the holder of any Claim under the Plan, who has not accepted in writing the Plan Modifications.

All Creditors who have accepted the Plan without the Plan Modifications, are deemed to accept the Plan with the Plan Modifications.

22. The Plan complies with all applicable requirements of Bankruptcy Code §§ 1122 and 1123. Furthermore, the Plan complies with the applicable requirements of Bankruptcy Code §§ 1129(a) and (b), including, but not limited to the following:

a. the Plan complies with all applicable provisions of the Bankruptcy Code;

b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;

c. the Plan has been proposed in good faith and not by any means forbidden by law;

d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;

e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;

f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;

g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;

h. the Plan does not unfairly discriminate against dissenting classes;

i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;

j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;

k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;

m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;

n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

23. All requirements of Bankruptcy Code § 365 relating to the assumption, rejection, and/or assumption and assignment of executory contracts and unexpired leases of the Debtor have been satisfied. The Debtor has demonstrated adequate assurance of future performance with regard to the assumed executory contracts and unexpired leases of the Debtor.

24. The Redwing Settlement Agreement attached as Exhibit 1-A to the Plan is fair and equitable, and approval of the Redwing Settlement Agreement is in the best interests of the Debtor and its Estate.

25. All releases of claims and causes of action against non-debtor persons or entities that are embodied within Section 15.04 of the Plan are fair, equitable, and in the best interest of the Debtor and its Estate.

26. The Proponents and their members, officers, directors, employees, agents and professionals who participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be deemed to have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect thereto and are entitled to the rights, benefits and protections of Bankruptcy Code §§ 1125(d) and (e).

27. The Disclosure Statement contains "adequate information" as defined in 11 U.S.C. § 1125. All creditors, equity interest holders and other parties in interest have received appropriate notice and an opportunity for a hearing of the Plan and the Disclosure Statement.

28. The Plan and Disclosure Statement have been transmitted to all creditors, equity interest holders and parties in interest. Notice and opportunity for hearing have been given.

29. The requirements of §1129 (a) and (b) have been met.

30. The Plan as proposed is feasible.

31. All conclusions of law made or announced by the Court on the record in connection with the May 16, 2006 Combined Hearing are incorporated herein.

32. All conclusions of law which are findings of fact shall be deemed to be findings of fact and vice versa.

It is therefore,

ORDERED that the Disclosure Statement for Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, is hereby APPROVED; it is further

ORDERED that the Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, as modified, is hereby CONFIRMED; it is further

ORDERED that the Debtor and First Capital are authorized to execute any and all documents necessary to effect and consummate the Plan; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Customer Contracts, as specifically defined in Section 10.01 of the Plan, is hereby approved; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Vendor Agreements, as specifically defined in Section 10.02 of the Plan, is hereby approved; it is further

ORDERED that unless otherwise agreed to in writing by the Reorganized Debtor and the counter-party to the Vendor Agreement, the Reorganized Debtor shall cure the arrears

specifically listed in Exhibit 1-B of the Plan by tendering six (6) equal consecutive monthly payments to the Vendor Agreement counter-party until the arrears are paid in full; it is further

ORDERED that, except for the Customer Contracts, Vendor Agreements, and executory contracts or leases that were expressly assumed by a separate order, all pre-petition executory contracts and unexpired leases to which the Debtor was a party are hereby REJECTED effective as of the Petition Date; it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the Redwing Settlement Agreement is hereby APPROVED, and the Debtor may execute any and all documents required to carry out the Redwing Settlement, including, but not limited to the Redwing Settlement Agreement, and such agreement shall be in full force and effect; it is further

ORDERED that nothing contained in this Order or the Plan shall effect or control or be deemed to prejudice or impair the rights of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. or Redwing with respect to the dispute over the validity or extent of any license claimed by the Debtor in 15,000 ICE or logical ports currently utilized by the Debtor in connection with the operation of its network and each of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. and Redwing reserve all of their rights with respect to such issue; it is further

ORDERED that except as otherwise provided in Plan Section 15.03, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or

omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor's Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

*** END OF ORDER ***

PREPARED BY:

By /s/ David L. Woods (5.16.06)
J. Mark Chevallier
State Bar No. 04189170
David L. Woods
State Bar No. 24004167
MCGUIRE, CRADDOCK & STROTHER, P.C.
ATTORNEYS FOR DEBTOR and
DEBTOR-IN-POSSESSION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

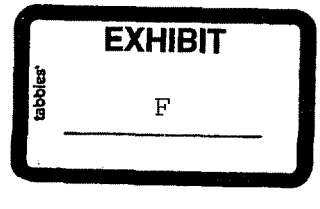
AT&T CORP. AND SBC TELCOS,	§	
	§	
Appellants,	§	
	§	
v.	§	CIVIL ACTION NO. 3: 05-CV-1209-B
	§	
TRANSCOM ENHANCED SERVICES, LLC, et al.,	§	
	§	
	§	
Appellees.	§	

MEMORANDUM ORDER

Before the Court is Appellant AT&T Corp.'s Motion to Dismiss Appeal and Vacate Bankruptcy Court Order ("Motion to Dismiss") (no. 27), filed August 26, 2005. For the reasons stated below, the Court GRANTS the motion.

I. Factual and Procedural Background

To put AT&T's motion to dismiss in perspective, a brief description of the parties in this case and the events that have transpired in the bankruptcy court is in order. Appellee Transcom is a wholesale transmission services provider of an Internet Protocol-based network which allows its customers – mainly long-distance voice and data carriers – to transmit long distance calls. (April 28, 2005 Memorandum Opinion ["MO"] at 1-2). On July 11, 2003, Transcom entered into a "Master Agreement" with AT&T, a local exchange and long distance voice and data carrier, whereby AT&T was to provide local termination services to Transcom. (*Id.* at 3; AT&T Appellant's Brief ["AT&T App. Brief"] at 2-3). Appellants the SBC Telcos are local exchange carriers that originate and terminate long distance voice calls for carriers who do not have direct connections to end users.



(MO at 3). The SBC Telcos assess access charges for their services. "Enhanced Service Providers" ("ESP"), however, are exempt from such charges.[1]

On April 21, 2004, in a separate declaratory proceeding involving AT&T and SBC, the FCC entered an order declaring that a certain type of telephone service provided by AT&T did not qualify as an "enhanced service", thus rendering AT&T liable for access charges. (MO at 3). AT&T contends that the order makes clear that the FCC's ruling applies not only to AT&T, but to other parties providing similar phone services. (AT&T App. Brief at 3). Based on the FCC's order, AT&T decided to discontinue its service to Transcom, asserting that Transcom's services, which it believes are substantially similar to its own, are also subject to access charges. (MO at 3). In making the decision to suspend service to Transcom, AT&T relied on a provision in the Master Agreement purportedly allowing AT&T to discontinue service reasonably believed to be in violation of any laws and regulations. (*Id.*). For its part, Transcom maintains that it qualifies as an ESP, and is thus exempt from paying access charges, because it provides "enhanced" information services as opposed to basic telecommunication services.

On February 18, 2005, Transcom filed for Chapter 11 bankruptcy in the Northern District of Texas. Soon thereafter Transcom moved to assume the Master Agreement in the bankruptcy court. AT&T did not oppose the assumption provided that Transcom pay an appropriate "cure amount" and that the bankruptcy court not decide the question of whether Transcom qualifies as an ESP. According to AT&T, that issue is instead reserved for the courts of New York to decide

---

[1] The FCC has distinguished between "basic service" and "enhanced service." "A basic service is transmission capacity for the movement of information without net change in form or content. By contrast, an enhanced service contains a basis service component but also involves some degree of data processing that changes the form or content of the transmitted information." (FCC Order, WC Docket No. 02-361, at 3).

pursuant to a forum selection clause contained in the Master Agreement.

The bankruptcy court entered a Memorandum Opinion and Order Granting Debtor's Motion to Assume on April 28, 2005. In its ruling the bankruptcy court examined whether Transcom met the requirements of 11 U.S.C. § 365. Under 365(b)(1), a debtor that has previously defaulted on an executory contract may not assume the contract unless the trustee:

> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365. Because only Transcom offered any evidence of a cure amount, totaling $103,262.55, the bankruptcy court accepted that amount, stating that "upon payment of the Cure Amount Debtor's Motion [to Assume] should be approved by the Court, provided the Debtor can show adequate assurance of future performance." (MO at 5). AT&T maintains that the bankruptcy court should have stopped there. The bankruptcy court, however, went further, concluding that it must also determine whether, in assuming the Master Agreement, Transcom was exercising proper business judgment. The bankruptcy court's concern was that Transcom's assumption of the contract could expose it to certain administrative claims AT&T had threatened to file to recover access charges allegedly owing under the Master Agreement should Transcom fail to qualify as an ESP.

The bankruptcy court proceeded to find that Transcom's "service is an 'enhanced service' not subject to the payment of access charges" and that, therefore, "it is within [Transcom's] reasonable business judgment to assume the Master Agreement." (MO at 12). It is this finding that is the subject of the present appeal to this Court. AT&T and the SBC Telcos each filed separate

appeals of the bankruptcy court's order in early May 2005. Those appeals were consolidated on July 6, 2005. Both AT&T and the SBC Telcos ask this Court to vacate the bankruptcy court's ruling to the extent it determined that Transcom is an ESP, claiming that the bankruptcy court lacked jurisdiction to decide that issue.[2]

On August 26, 2005, AT&T filed a motion to dismiss the appeal of the bankruptcy court's order on the ground that it is now moot because Transcom failed to pay the Cure Amount within the 10-day time frame established by the bankruptcy court's Memorandum Opinion and order. Because, under the bankruptcy court's rulings, Transcom's entitlement to assume the Master Agreement was dependent on the payment of the Cure Amount, AT&T contends that Transcom's failure to timely make payment prevents assumption and extinguishes any live controversy presented by its appeal. Transcom filed an opposition to AT&T's Motion to Dismiss. The SBC Telcos filed a response to AT&T's motion setting forth its agreement with AT&T that, should this Court find the present appeal moot, it should vacate the bankruptcy court's order.

II. Analysis

The United States Constitution empowers federal courts to hear only live cases and controversies. U.S. CONST. art. III, § 2; In re *Sullivan Cent. Plaza, I, Ltd.*, 914 F.2d 731, 735 (5th Cir. 1990). "An appeal is properly dismissed as moot when . . . an appellate court lacks the power to provide an effective remedy for an appellant should it find in his favor on the merits." *Id.* Federal courts must eschew rendering advisory opinions. *C&H Nationwide, Inc. v. Norwest Bank Texas NA*, 208 F.3d 490, 493 (5th Cir. 2000); 13A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND

[2] The SBS Telcos also argue that the bankruptcy court, assuming it had jurisdiction to decide the question, erred in finding that Transcom qualifies as an ESP.

PROCEDURE § 3533 ("Courts do not wish to make law nor to waste their limited resources, simply to satisfy curiosity or a naked desire for vindication.").

AT&T argues that a live controversy no longer exists between it and Transcom because Transcom forfeited its right to assume the Master Agreement by failing to pay the Cure Amount within 10 days of the bankruptcy court's order, as directed by the bankruptcy court. There is no question that the bankruptcy court's decision to grant Transcom's motion to assume was conditioned upon the payment of the Cure Amount to AT&T, as its rulings are fraught with conditional language. *See e.g.* Order Granting Debtor's Motion to Assume ("Debtor may assume the Master Agreement *upon the payment* of the Cure Amount"); MO at 12-13 ("*To assume* the Master Agreement, the Debtor must pay this Cure Amount to AT&T within 10 days of the entry of the Court's order on this opinion."); MO at 5 ("*[U]pon payment* of the Cure Amount Debtor's Motion [to Assume] *should be approved* by the Court, *provided* the Debtor can show adequate assurance of future performance.") (emphasis added). These statements plainly demonstrate that payment of the Cure Amount was a condition precedent to Transcom's assumption of the Master Agreement. The fulfillment of that condition was no idle requirement – payment of the Cure Amount necessarily played an integral part of the bankruptcy court's finding that Transcom had met the statutory requirements to assume the contract. Section 365(b)(1) provides that a debtor cannot assume an executory contract unless it either cures its default or provides adequate assurance that such default will promptly be cured. Transcom's failure to pay the Cure Amount within the time frame specified by the bankruptcy court undermines the satisfaction of those requirements. Although the bankruptcy court did not specify the exact consequences that would result if Transcom failed to timely pay the Cure Amount, one thing is certain – under the bankruptcy court's rulings and § 365,

Transcom has not assumed the contract, nor can it at this time.[3] Its inability to do so renders moot the primary issue made the basis of the present appeal – whether the bankruptcy court exceeded its jurisdiction in deciding that Transcom is an ESP – for the bankruptcy court's resolution of that issue was necessarily predicated on its assumption that Transcom would be able to cure its default in accordance with § 365. *See* In re *Burrell*, 415 F.3d 994, 996-97 (9th Cir. 2005) (holding appellant's claims for denial of discharge of debt mooted by bankruptcy court's denial of discharge during pendency of appeal before the district court). At this point any opinion by this Court on the question of whether the bankruptcy court acted correctly in examining Transcom's ESP status would constitute nothing more than an impermissible advisory opinion.

Transcom contends that it was not obligated to comply with the bankruptcy court's order to pay the Cure Amount within 10 days because that order was appealed.[4] Not so. As AT&T points out, "[t]he taking of an appeal does not by itself suspend the operation or execution of a district-court judgment or order during the pendency of an appeal." 16A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3954. If Transcom desired to suspend the operation of the bankruptcy court's order it could have moved for a stay of that order, but it did not.

Having found that the subject of the present appeal is moot, the Court will now examine whether it should vacate the bankruptcy court's order.[5] "The Supreme Court has recognized that

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[3] The Court has no opinion on whether Transcom could assume the Master Agreement upon potential re-application to do so before the bankruptcy court.

[4] The Court notes that Transcom does not argue that any of the recognized exceptions to the mootness doctrine apply.

[5] Although Transcom challenged AT&T's argument that this appeal is moot, it offered no argument or authority showing that vacatur of the bankruptcy court's order would be improper in the event the Court found the appeal moot.

because of the unfairness of the enduring preclusive effect[6] of an unreviewable decision in the case of a civil action that has become moot on appeal, '[t]he established practice of the Court . . . is to reverse or vacate the judgment below and remand with a direction to dismiss.'" In re *Burrell*, 415 F.3d at 999 (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)). Vacatur is a creature of equity, and, as such, it may be inappropriately applied where the appellant causes the dismissal of the appeal through his own actions. *Id.* On the other hand, vacatur may be appropriate "when mootness results from unilateral action of the party who prevailed below." *U.S. Bancorp Mortgage Co. v. Bonner Mall P'Ship*, 513 U.S. 16, 25 (1994). Here it was Transcom, not the Appellants, that rendered the appeal moot by failing to comply with the bankruptcy court's order. In re *Burrell*, 415 F.3d at 998 (vacating bankruptcy court judgment where appellee, not appellant, rendered appeal moot by its failure to comply with settlement conditions). Thus, because Transcom caused this appeal to become moot and because the bankruptcy court's order, even if not preclusive, is prejudicial to AT&T, the Court finds that the bankruptcy court's Memorandum Opinion and order should be vacated. *Mississippi Power & Light Co. v. Fed. Energy Regulatory Comm'n*, 724 F.2d 1197, 1198 (5th Cir. 1984) (directing Federal Energy Regulatory Commission to vacate order "as moot so that it will spawn no further legal consequences or prejudice the rights of the parties in future litigation.").

III. Conclusion

For the reasons stated above, the Court GRANTS AT&T's Motion to Dismiss. The appeal from the Bankruptcy Court for the Northern District of Texas, Dallas Division, No. 3:05-CV-1209-B

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[6] This Court does not opine on whether the bankruptcy court's rulings have any preclusive effect.

is accordingly DISMISSED as moot. The bankruptcy court's Memorandum Opinion and Order Granting Debtor's Motion to Assume, both entered April 28, 2005, are VACATED.

SO ORDERED.

SIGNED January 20th , 2006

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AT&T CORP. AND SBC TELCOS,	§	
	§	
Appellants,	§	
	§	
v.	§	CIVIL ACTION NO. 3: 05-CV-1209-B
	§	
TRANSCOM ENHANCED SERVICES, LLC, et al.,	§	
	§	
	§	
Appellees.	§	

JUDGMENT

In accordance with the Court's memorandum order granting Appellant AT&T Corp.'s Motion to Dismiss Appeal and Vacate Bankruptcy Court Order, entered January 20, 2006, it is ORDERED, ADJUDGED, and DECREED that this appeal from the bankruptcy court be, and it is hereby, DISMISSED as moot. It is further ORDERED, ADJUDGED, and DECREED that the bankruptcy court's Memorandum Opinion and Order Granting Debtor's Motion to Assume, both entered April 28, 2005, be, and they are hereby, VACATED. Each party shall bear its own costs.

SO ORDERED.

SIGNED February 9, 2006

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

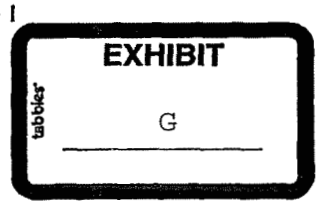
IN RE:	:	
COMPLAINT OF	:	
BELLSOUTH TELECOMMUNICATIONS	:	**DOCKET NO.: 11-00119**
LLC D/B/A AT&T TENNESSEE	:	
V.	:	
HALO WIRELESS, INC.	:	

AFFIDAVIT OF ROBERT JOHNSON

1. "My name is Robert Johnson. I am the President of Ameliowave, Inc., a consulting firm responsible for developing and maintaining network architecture for Transcom Enhanced Services, Inc. f/k/a Transcom Enhanced Services, LLC ("Transcom"), including, but not limited to, Transcom's enhanced services platform. I am over the age of 21 years and fully competent to make this affidavit. The statements made in this affidavit are true and correct and are within my personal knowledge.

2. I have reviewed the three opinions issued by United States Bankruptcy Judge Harlan D. Hale regarding Transcom's status as an enhanced services provider, as defined by the F.C.C. ("ESP"), including that certain Order Confirming Plan of Reorganization dated May 16, 2006 entered in United States Bankruptcy Case No. 05-31929-HDH-11 (the "Confirmation Order"). I am familiar with the operation of Transcom's enhanced services platform as it has existed since July 2005. I am familiar with any and all modifications, improvements and other changes made to that platform since July 2005. In addition, I am familiar with the operation of the platform today.

3. Transcom's enhanced services platform continues to provide the same enhanced services, and to make the same changes of content, that it was providing and making since July



2005 including when the May 16, 2006 Confirmation Order was entered. Any modifications, improvements or changes made since May 16, 2006 have only improved the capability of the platform to provide such services or to make such changes in content.

FURTHER, AFFIANT SAYETH NOT.

Robert Johnson

SUBSCRIBED and SWORN to before me by Robert Johnson, this 13 day of January, 2012.

NOTARY PUBLIC, STATE OF TEXAS

The following constitutes the ruling of the court and has the force and effect therein described.

Harlin DeWayne Hale

Signed September 20, 2007 — **United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CASE NO. 05-31929-HDH-11**
	§	
DEBTOR.	§	
	§	
TRANSCOM ENHANCED SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§	**ADVERSARY NO. 06-03477-HDH**
	§	
Defendants.	§	
	§	

ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER

GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§
Third Party Plaintiffs,	§
v.	§
TRANSCOM ENHANCED SERVICES, LLC and TRANSCOM COMMUNICATIONS, INC.,	§
Third Party Defendants.	§

ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER

On this date, came on for consideration the Motion For Partial Summary Judgment On Counterplaintiffs' Sole Remaining Counterclaim Based On The Affirmative Defense That Transcom Qualifies As An Enhanced Service Provider (the "Motion") filed by Transcom Enhanced Services, Inc. ("Transcom" or "Counterdefendant"), in which Transcom seeks summary judgment on the sole remaining counterclaim (the "Counterclaim") asserted by Counterplaintiffs' Global Crossing Bandwidth, Inc. ("GX Bandwidth") and Global Crossing Telecommunications, Inc. ("GX Telecommunications") (collectively, "GX Entities" or "Counterplaintiffs") based on the affirmative defense that Transcom qualifies as an enhanced service provider.

Twice previously, this Court has ruled that Transcom qualifies as an enhanced service provider, and therefore is not obligated to pay access charges, but rather must pay end user charges. In filing the motion, Transcom relied heavily on the evidence previously presented to this Court in contested hearings (the "ESP Hearings") involving the SBC Telcos (collectively, "SBC") and AT&T

Corp. ("AT&T") along with Affidavits from a principal of Transcom and one of Transcom's expert witnesses establishing that Transcom's system has not changed since the time of the ESP Hearings, that the services provided to the GX Entities by Transcom are the same as the services provided to all other Transcom customers, and that Transcom's expert witness is still of the opinion that Transcom's business operations fall within the definitions of "enhanced service provider" and "information service."

In response to the Motion, Counterplaintiffs have asserted that they neither oppose nor consent to the relief sought in the Motion. In their responses to Transcom's interrogatories, however, Counterplaintiffs asserted that Transcom did not qualify as an enhanced service provider because its service is merely an "IP-in-the-middle" service, which Transcom asserts is a reference to the FCC's Order, *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges,* 19 FCC Rcd 7457, Release Number FCC 04-97, released April 21, 2004 (the "AT&T Order").

During the ESP Hearings, a number of witnesses testified on the issue of whether Transcom is an enhanced service provider and therefore exempt from payment of access charges. The transcripts and exhibits from those hearings have been introduced as summary judgment evidence in support of the Motion. That record establishes by a preponderance of the evidence that the service provided by Transcom is distinguishable from AT&T's specific service (as described in the AT&T Order) in a number of material ways, including, but not limited to, the following:

(a) Transcom is not an interexchange (long distance) carrier.

(b) Transcom does not hold itself out as a long distance carrier.

(c) Transcom has no retail long distance customers.

(d) The efficiencies of Transcom's network result in reduced rates for its customers.

(e) Transcom's system provides its customers with enhanced capabilities.

(f) Transcom's system changes the content of every call that passes through it.

On its face, the AT&T Order is limited to AT&T and its specific services. This Court therefore holds again, as it did at the conclusion of the ESP hearings, that the AT&T Order does not control the determination of whether Transcom qualifies as an enhanced service provider.

The term "enhanced service" is defined at 47 C.F.R. § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services.* (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the summary judgment evidence, the Court finds that Transcom's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Transcom's system falls outside of the definition of "telecommunications service" because Transcom's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not

necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Transcom's service is not a "telecommunications service" subject to access charges, but rather is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to Transcom, that DataVoN provided "enhanced information services." *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. Transcom now uses DataVoN's assets in its business.

In the Counterclaim, paragraph 94 makes the following assertion:

> Under the Communications Agreement, the Debtor asserted that it was an enhanced service provider. Not only did the Debtor make this assertion, it agreed to indemnify GX Telecommunications in the event that assertion proved untrue.

The Counterclaim goes on to allege that Transcom failed to pay access charges, and that Transcom is therefore liable under the indemnification provision in the governing agreement to the extent that it does not qualify as an enhanced service provider. In response to the Counterclaim, Transcom asserted the affirmative defense that it does indeed qualify as an enhanced service provider, and therefore has no liability under the indemnification provision. The Motion seeks summary judgment on that specific affirmative defense.

The Court has previously ruled, and rules again today, that Transcom qualifies as an enhanced service provider. As such, it is the opinion of the Court that the Motion should be granted.

It is therefore ORDERED that the Motion is GRANTED, and Transcom is awarded summary judgment that the GX Entities take nothing by their Counterclaim.

###END OF ORDER###