

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

<b>IN RE:</b>	§	
	§	
<b>EAGLE BROADBAND, INC.,</b>	§	<b>CASE NO. 07-80605</b>
	§	
<b>ATLANTIC PACIFIC COMMUNICATIONS, INC.</b>	§	<b>CASE NO. 07-80606</b>
<b>CLEARWORKS COMMUNICATIONS, INC.</b>	§	<b>CASE NO. 07-80607</b>
	§	
<b>CLEARWORKS HOME SYSTEMS, INC.</b>	§	<b>CASE NO. 07-80608</b>
	§	
<b>CLEARWORKS.NET INC.</b>	§	<b>CASE NO. 07-80609</b>
	§	
<b>DSS SECURITY D/B/A EAGLE BROADBAND SECURITY</b>	§	<b>CASE NO. 07-80610</b>
	§	
<b>EAGLE BROADBAND SERVICES, INC.</b>	§	<b>CASE NO. 07-80611</b>
	§	
<b>ETOOZ, INC.</b>	§	<b>CASE NO. 07-80612</b>
	§	
<b>LINK-TWO COMMUNICATIONS, INC.</b>	§	<b>CASE NO. 07-80613</b>
	§	
<b>NORTHPOINTE TELECOM SERVICES, LLC</b>	§	<b>CASE NO. 07-80614</b>
	§	
<b>UCGI CORPORATION</b>	§	<b>CASE NO. 07-80615</b>
	§	
<b>UNITED COMPUTING GROUP, INC.</b>	§	<b>CASE NO. 07-80616</b>
	§	
<b>Debtors.</b>	§	<b>CHAPTER 11</b>
	§	
	§	<b>JOINT ADMINISTRATION REQUESTED</b>
	§	

**MOTION FOR ADMINISTRATIVE ORDER UNDER 11 U.S.C. §§ 105(a) AND 331  
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND  
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE**

**MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY (20) DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Eagle Broadband, Inc. (“EBI”) files this Motion for Administrative Order under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the “Motion”). In support of this Motion, EBI respectfully shows as follows:

**RELIEF REQUESTED**

1. By this Motion, EBI requests the entry of an order authorizing and establishing procedures for compensating and reimbursing court-approved professionals (“Professionals”) on a monthly basis, comparable to those procedures established in other large chapter 11 cases filed in this district. Such an order will enable the Court and all other parties to more effectively monitor the professional fees and expenses generated in this case as they are incurred.

**JURISDICTION**

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Court may hear and determine this Motion under the standing order of reference issued by the United States District Court for the Southern District of Texas under 28 U.S.C. § 157. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b). Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

3. On the date hereof, EBI filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court.

4. On the date hereof, eleven wholly-owned subsidiaries of EBI (collectively “Subsidiaries” and together with EBI, the “Debtors”) also filed their voluntary petitions for chapter 11 relief. EBI filed a Notice of Designation as Complex Chapter 11 Bankruptcy Case, and a motion for joint administration is currently pending.

5. The Debtors remain in possession of their property and are operating their businesses as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No committee has been appointed in any of the Debtors’ cases at this time.

6. EBI is a provider of broadband, Internet Protocol and satellite communications technology and equipment with related software and broadband products. Eagle Broadband Services, Inc. (“EBS”) provides broadband services to residential and business customers in select communities.

7. D.S.S. Security, Inc. d/b/a Eagle Broadband Security (“DSS”) remains active to the extent necessary to pay a 36 month note expiring in February 2009 which facilitated the February 2006 sale of DSS’s assets and customer security accounts.

8. The remaining wholly-owned subsidiaries of EBI have ceased operations or are substantially inactive: Atlantic Pacific Communications, Inc.; Clearworks Communications, Inc.; Clearworks Home Systems, Inc.; Clearworks.Net, Inc.; EToolz, Inc.; Link-Two Communications, Inc.; Northpointe Telecom Services, LLC; UCGI Corporation; and United Computing Group, Inc.

## **BASIS FOR RELIEF REQUESTED**

9. EBI has incurred substantial losses and must reorganize under the Bankruptcy Code for the benefit of all its creditors and stakeholders.

10. EBI's financial situation has deteriorated due to several factors, including the substantial development costs associated with its Internet Protocol TV ("IPTV") business which failed to generate expected revenues because the U.S. market did not materialize as projected. Further, sales of equipment, including set-top boxes necessary for cable service and SatMAX components related to providing satellite phone services, have not met projections.

11. Additionally, in August 2006, H. Dean Cubley, a former director of EBI, filed a lawsuit against EBI. The lawsuit sought to enforce a promissory note entered into by him and EBI in December 2003. Creation of the promissory note was in lieu of the issuance of shares for stock options then held by Mr. Cubley. In June 2007, a final judgment was entered against EBI awarding Mr. Cubley the principal balance of \$1,923,053.00, interest of \$814,113.00 through March 1, 2007, additional interest at 18% from March 1, 2007 and attorneys fees and court costs of approximately \$53,000.00.

12. By this Motion, the Debtors request the entry of an order authorizing and establishing procedures for compensating and reimbursing court-approved professionals (the "Professionals") on a monthly basis, comparable to those procedures established in other large chapter 11 cases filed in this district. Such an order will enable the Court and all parties to more effectively monitor the professional fees and expenses generated in this case as they are incurred.

### **Monthly Interim Compensation and Reimbursement**

13. The Debtors propose that the payment of compensation and reimbursement of the Professionals on a monthly basis be structured as follows:

a. Every 20th day of each calendar month following the month for which compensation and/or reimbursement is sought (the “Statement Due Date”), and pending Court approval thereof under paragraph 14 below, each Professional (other than those subject to separate Court order) retained in this chapter 11 case pursuant to sections 327 and 1103 of the Bankruptcy Code seeking the interim payment of fees and reimbursement of expenses may:

i. Submit an itemized monthly fee and expense statement (the “Monthly Statement”) in compliance with the provisions of subparagraph 13(b) below setting forth the fees and expenses for which the payment is sought for the preceding month, with supporting detail; and

ii. Serve a copy of such Monthly Statement on the Debtors, bankruptcy counsel for the Debtors, counsel for the Committee of Unsecured Creditors, should one be appointed by the United States Trustee (collectively, the “Fee Parties”).

b. Each Monthly Statement shall include, as an exhibit, time records that itemize services. Monthly Statements must be actually received by the Fee Parties on or before the Statement Due Date. Any Monthly Statement received after the Statement Due Date shall be deemed served on the Statement Due Date the following month.

c. The Fee Parties shall have ten (10) days from the Statement Due Date to review the Monthly Statements. Any objections shall be served on the Fee Parties and the affected Professional or Committee Member no later than ten (10) days from the Statement Due Date; provided however, that all objections must be received by the Debtors’ bankruptcy counsel by the close of business on the 10th day following the

Statement Due Date (the “Objection Deadline”). After such review, and except as provided in subparagraph 13(d) below, the Debtors shall pay in the ordinary course of business (typically, within ten (10) days from the Objection Deadline):

- i. Eighty percent (80%) of the fees requested by a Professional; and
- ii. One Hundred percent (100%) of the expenses requested by a Professional or by a Committee Member

d. In the event that there are objections to any Monthly Statement submitted by a Professional, the objecting Fee Party shall, on or before the Objection Deadline, notify the Fee Parties and the affected Professional in writing of such objection. The objection shall specify in detail the nature and basis of the objection. Pending resolution of such objection, the Debtors shall promptly pay to the Professional, as to fees, the amount requested in the particular Monthly Statement less the greater of (i) the amount in dispute or (ii) the twenty percent holdback provided in subparagraph 13(c)(i) above and, as to expenses, the amount requested less the amount in dispute. The Professional and the objecting Fee Party shall endeavor to amicably resolve any objection within five (5) days after the Objection Deadline. If a resolution cannot be reached in that period, the Professional may request that the Court resolve the dispute at the next regularly scheduled fee application hearing. The failure of any Fee Party (or other interested party with standing to object) to object to the payment of any Monthly Statement within the ten (10) day period set forth above shall not be deemed to constitute a waiver of that party’s right to object to any interim or final fee application filed by any Professional or preclude any disgorgement of any fees paid.

e. The initial Monthly Statement shall be submitted and served in accordance with this paragraph on or before December 20, 2007, and shall cover the period from the later of (i) the Petition Date or (ii) the effective date of approval of the Professional's retention by the Court until November 30, 2007. Thereafter, each Monthly Statement shall be submitted and served in accordance with the terms set out above.

14. If any party in interest contends that any Professional has a conflict of interest or other affiliation requiring disqualification resulting from matters reasonably disclosed in connection with the Professional's retention application or any amendment thereto, such party in interest shall immediately file an objection to the Professional's retention, detailing the alleged conflict or other disqualifying factors, and shall raise any such contention at the first hearing on interim compensation following such disclosure (unless an earlier hearing is scheduled by the Court in connection with the objection), or shall thereafter be estopped from doing so. Each Professional shall have a continuing obligation to disclose any matter that may affect qualification for court-approved employment under the Bankruptcy Code or disqualification from employment under any relevant ethical consideration.

#### Interim Fee Applications

15. The Debtors also request that the Court's order set certain procedures with regard to interim fee applications by a Professional in these chapter 11 cases. The Debtors propose that all interim fee applications cover the same periods and that all fee applications relating to a particular period be heard during the same hearing. Specifically, the Debtors propose the following:

a. The initial uniform period to be covered by interim fee applications will be from the Petition Date through December 31, 2007, and subsequent interim fee applications will cover each successive four-calendar-month period thereafter.

b. To be considered on an interim basis, an application would have to be timely filed and served within forty-five (45) days of the close of each interim fee period (the "Application Filing Period"). For example, applications for the first interim period, covering the months of November 2007 through December 2007, are to be filed and served no later than February 15, 2008. If not filed timely, an interim application would be considered during the next Application Filing Period.

c. Regardless of the date on which an interim fee application is filed, all objections to the interim fee application would be filed within twenty-three (23) days of such filing. For example, objections to the first interim fee applications, covering the months of November 2007 through December 2007, if filed as late as February 15, 2008, would be due no later than March 9, 2008.

d. Hearings on interim fee applications will be held on the next preset hearing date following the day on which objections were due.

16. The Debtors further request that the Court limit the notice of hearings to consider interim applications for compensation and reimbursement filed by a Professional to parties on the master service list maintained in these cases. Giving notice of the hearing to these entities should reach the parties most active in these cases and will save the expense of undue duplication and mailing.

17. The procedures outlined above will enable all interested parties to closely monitor the costs of administration in these chapter 11 cases. Moreover, they will permit the Debtors to maintain a more level cash flow and to implement more efficient case management procedures.

#### **AUTHORITY FOR RELIEF**

18. Section 331 of the Bankruptcy Code provides in the relevant part:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 321 or 1103 of this title may apply to the Court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

19. Section 105(a) of the Bankruptcy Code provides in relevant part:

The court may issue any order, process, or judgment that is necessary to appropriate to carry out the provisions of this title.

20. The proposed procedures for compensating and reimbursing court-approved professionals are consistent with those established in other chapter 11 cases in this district. Such procedures are needed to avoid having professionals fund the reorganization proceeding.<sup>1</sup> Appropriate factors to consider include “the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors.”<sup>2</sup> The Debtors submit that the procedures sought herein are appropriate in consideration of these factors.

WHEREFORE, the Debtors respectfully request this Court enter its order establishing procedures for interim compensation and reimbursement of expenses of professionals and grant such other and further relief as the Court may deem just and proper.

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<sup>1</sup> *In re Int'l Horizons, Inc.*, 10 B.R. 895 (Bankr. N.D. Ga. 1981) (court established procedures for monthly interim compensation).

<sup>2</sup> *Id.* at 897–98.

Dated: November 15, 2007.

Respectfully submitted,

**HUGHESWATTERSASKANASE, LLP**

*/s/ Wayne Kitchens*

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