

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

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

**MOTION FOR ORDER AUTHORIZING
PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS**

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 Order Authorizing Payment of Prepetition Employee Obligations (“Motion”) pursuant to 11 U.S.C. §§ 105, 363, and 507, and Fed. R. Bankr. P. 9013, and in support thereof respectfully states:

JURISDICTION

1. 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

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. EBI has reduced its workforce by more than half over the past year with the most recent layoffs occurring within the week before filing bankruptcy. The remaining Employees are critical to the ongoing operations of the Debtors and cannot be replaced based on their knowledge of the Debtors and/or customers and/or their technical expertise. The remaining Employees are likely to leave the Debtors if not paid their pre-petition wages and benefits and serve in four areas of expertise necessary for the Debtors' reorganization: (1) senior management; (2) technical/engineering; (3) accounting/administration; and (4) sales/customer relations.

9. Senior management consists of five (5) employees that are crucial to the reorganization for knowledge of the Debtors and leadership during the reorganization process. Eight (8) of the employees are engineers or technicians that service the headends, the Debtors' most valuable hard assets, or install equipment for customers, which work accounts for more than 50% of EBI's revenue. Seven (7) of the employees perform sales and/or customer relations functions with large customers necessary for continued relationships with current customers and growth through more customers and projects. Accounting and administration employees consist of four (4) individuals that either support the above functions by, for example, managing the Grand Prairie and 11th Street office locations and/or are crucial for complying with Securities Exchange Commission filing requirements. Several of the Employees serve functions in more than one area.

RELIEF REQUESTED

10. As of the Petition Date, EBI had twenty-six (26) employees who are compensated at rates that are reasonably comparable within the industry. The Employees serve invaluable and essential functions for EBI, and EBI would find it difficult if not impossible given its bankruptcy filing to replace the highly experienced Employees or continue operations without the remaining Employees.

11. As of the Petition Date, the Employees had accrued wages, commissions, medical benefits and vacation for the two-week pay period of October 29, 2007 through November 11, 2007, plus November 12, 2007. As such, the Employees are owed pre-petition wages, commissions and benefits as shown on the attached Exhibit "A". The total amount of pre-petition wages and commissions for which authorization is sought is \$108,317.06, and except for

three senior management employees, no individual is due more than the priority amount under 11 U.S.C. § 507(a)(4) of \$10,950.

12. In addition, most of the Employees have accrued rights to vacation time pursuant to existing vacation pay plans, policies and procedures of the Debtors. The Debtors propose to honor, in the ordinary course of its business and in accordance with these existing plans, policies, and procedures, the Employees' entitled to vacation time that has accrued prior to the Petition Date and which becomes useable subsequent thereto, in order to preserve Employee morale. The continued honoring of such accrued vacation time generally does not involve any present cash outlay by the Debtors, but is merely an accrued right to future paid vacation leave; but if an employee were to resign or were to be terminated without cause, then he or she may merit pay for his or her accrued vacation time. Debtors estimate that the amount of vacation time earned but not taken by employees as of the Petitions Date is approximately \$59,995.57.

13. Further, Debtors have established various plans and policies to provide Employees with medical coverage ("Health Benefits"). The Debtors wish to provide uninterrupted Health Benefits to all current Employees in order to minimize any potential adverse impact of these Chapter 11 cases on the morale of the Employees. Debtors estimate that the accrued pre-petition Health Benefits, over an approximate two-week period, is \$8,487.50.

14. EBI requests authority to pay the Employees their prepetition accrued wages, commissions and benefits as set forth on Exhibit "A". Debtors do not seek authority to and nothing herein is meant to request any key employee intention programs.

ARGUMENT & AUTHORITIES

15. The total amount to be paid to the Employees for prepetition wages, commissions and benefits is *de minimus* compared to the cost associated with EBI losing its valued Employees.

16. This Court may authorize the payment of prepetition obligations when necessary. Southern District of Texas Bankruptcy Courts have approved payment of pre-petition claims for compensation, benefits and expense reimbursements on the grounds that the payment of such claims was necessary to effectuate a successful reorganization. *See, e.g., In re Equalnet Communications Corp.*, 258 B.R. 368 (Bankr. S.D. Tex. 2000); *In re Drypers Corp.*, Case No. 00-39360 (Bankr. S.D. Tex. 2000) (authorizing debtor to pay pre-petition obligations, administer and continue to pay claims under pre-petition workers compensation and general liability insurance policies).

17. Payment of prepetition obligations is rooted in the common law “necessity of payment” doctrine, which courts have consistently applied when the failure to pay prepetition obligations posed a real and significant threat to a debtor’s reorganization. *See, e.g., In re Lehigh Valley Railroads, Co.*, 558 F.2d 137 (3d Cir. 1977); *In re Penn Central Transp. Co.*, 467 F.2d 100 (3d Cir. 1972).

18. Based upon section 105 and the necessity of payment doctrine, the court in *In re Just for Feet, Inc.*, 242 B.R. 821, 825-26 (D. Del. 1999), authorized the payment of prepetition claims “necessary to realize the goal of chapter 11 – a successful reorganization.” Accordingly, based upon the testimony of the debtor’s president that without new merchandise from the shoe manufacturers the debtor could not survive, the court found that “payment of the pre-petition claims of certain trade vendors . . . is essential to the survival of the debtor during the chapter 11

reorganization.” *Id.* at 826. The shoe manufacturers refused to supply new merchandise on credit without payment of their prepetition claims. As in *Just for Feet*, the Employees are essential to the Debtor’s survival and necessary to achieve a successful reorganization.

19. In *In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y. 1989), the court recognized that an order authorizing the debtor to pay certain prepetition wage, salary, medical benefit, and business expense claims was justified by the “necessity of payment” doctrine because such payments were necessary to preserve and protect the debtor’s business. *See id.* at 175-76. Similarly, in *In re Golfair, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989), the court found that payment of prepetition employee wage claims was essential to the debtor’s reorganization efforts because, without payment, many skilled employees would abandon the debtor’s operations. *Id.*; *see also In re Chateaugay*, 80 B.R. 279 (Bankr. S.D.N.Y. 1987); *In re Northern Pipeline Constr. Co.*, 2 C.B.C.2d 475 (Bankr. D. Minn. 1980).

20. Such is the case here. Without assurances that these prepetition claims for the Employees will be satisfied, EBI risks losing its valued workforce. The Employees may suffer personal hardship and, in many cases, may be unable to pay basic living expenses. This would destroy morale. Any deterioration in morale at this time will substantially and adversely impact EBI and its ability to successfully reorganize, thereby causing immediate and irreparable harm.

21. Further, Section 105(a) of the Bankruptcy Code authorizes the relief requested herein and provides, in pertinent part, that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Here, payment of the prepetition claims for the Employees is crucial to EBI preserving its assets, and as such, this Court has the authority to order such payment. This authorization was

recognized in *Ionosphere Clubs* where the court issued an order authorizing payment of prepetition wage, salary, medical benefit and business expense claims, noting that:

[T]he bankruptcy court's equitable power may be used to effectuate the purpose of chapter 11, which include the "restructuring of business" finances to enable it to operate productively, provide jobs for its employees, pay its creditors, and produce a return for its stockholders.

Ionosphere Clubs, 98 B.R. 15 177 (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 16 (1977)).

22. The Debtor seeks authority to pay the accrued, but unpaid, claims of its Employees in accordance with the policies, plans, and programs that were in place prior to the Petition Date. Such authorization, if granted, is not intended to and should not be deemed to constitute postpetition assumption or adoption of any policy, plan, program or executory contract.

WHEREFORE, the Debtor respectfully requests that this Court enter an order authorizing it to pay its Employees' prepetition wages and salaries and earnings and benefits, in the amounts and to the parties listed on the attached Exhibit "A," and granting such other and further relief, legal or equitable, special or general to which it may show itself justly entitled.

Dated: November 15, 2007.

Respectfully submitted,

HUGHESWATTERSASKANASE, LLP

/s/ Wayne Kitchens

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he conferred with Diane Livingstone of the Office of the United States Trustee on November 13, 2007 via telephone regarding the relief requested prior to filing the forgoing.

/s/ Wayne Kitchens

Wayne Kitchens