

to promote equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of a debtor's assets. The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the Petition Date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor-in-possession."

The consummation of a plan of reorganization is the principal objective of a Chapter 11 case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by the Bankruptcy Court makes the plan binding upon the debtor, any issuer of securities under the plan, any person or entity acquiring property under the plan and any creditor of or equity security holder in the Debtor, whether or not such creditor or equity security holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan. Subject to certain limited exceptions and other than as provided in the plan itself or within the order of the Bankruptcy Court confirming the plan pursuant to Section 1129 of the Bankruptcy Code, a confirmation order of the Bankruptcy Court discharges the debtor from any debt that arose prior to the date on which the clerk of the Bankruptcy Court enters such confirmation order on the docket of the Bankruptcy Court, substitutes the obligations specified under the confirmed plan and may terminate certain rights and interests of certain creditors and equity security holders.

#### **B. Creditors and Equity Interest Holders Entitled to Vote on the Plan**

As more fully described below, the Plan designates separate classes of Claims against and Interests in XO (other than Administrative Claims and Priority Tax Claims). If the Bankruptcy Court has granted the solicitation procedures order, in light of the fact that Classes 7, 8, 9, 10 and 11 will be deemed to have rejected both Alternatives under the Plan, only the Holders of Class 1 Senior Secured Lender Claims in XO, Class 5 General Unsecured Claims in XO and Class 6 Senior Note Claims will be solicited. In addition to Holders of Administrative Claims and Priority Tax Claims (which are not classified under either Alternative under the Plan), Holders of Claims or Interests in Classes 2, 3 and 4 are Unimpaired by both Alternatives under the Plan and, therefore, are not entitled to vote to accept or reject either Alternative under the Plan and are deemed to have accepted both Alternatives under the Plan.

Bankruptcy Rule 3018(b) prescribes the conditions that must be satisfied in order to count the Ballots solicited with respect to a plan of reorganization prior to the commencement of a Chapter 11 case. Bankruptcy Rule 3018(b) requires that (i) the plan must have been disseminated to substantially all impaired creditors and equity security holders in the class(es) entitled to vote, (ii) the time prescribed for voting on the plan must not have been unreasonably short and (iii) the solicitation must have been conducted in accordance with Section 1126(b) of the Bankruptcy Code, which requires that the solicitation be conducted in compliance with all applicable non-bankruptcy laws, rules and regulations or, if there are no such applicable laws, rules or regulations, that the disclosure with respect to the plan contains "adequate information" as defined in Section 1125(a) of the Bankruptcy Code. Section 1125(a) defines "adequate information" as information of a kind and in sufficient detail as far as is reasonably practicable in light of the nature and history of a company and the condition of such company's books and records, that would enable a hypothetical reasonable investor typical of Holders of Claims or Interests of the relevant class to make an informed judgment about the plan of reorganization.

The Debtor believes that all of the requirements of Bankruptcy Rule 3018(b) will be satisfied. This Disclosure Statement and the Plan, together with all of the accompanying materials, are being transmitted to Holders of Class 1 Senior Secured Lender Claims in XO, Holders of Class 5 General Unsecured Claims and Holders of Class 6 Senior Note Claims. XO believes that this Disclosure Statement contains adequate information (within the meaning of Section 1125(a)(1) of the Bankruptcy Code) for all Holders of such Claims.

**C. Certain Matters Regarding Classification and Treatment of Claims and Interests**

Section 1123 of the Bankruptcy Code provides that a plan of reorganization must classify the claims and interests of a debtor's creditors and equity interest holders. In accordance with Section 1123, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than Administrative Claims and Priority Tax Claims which, pursuant to Section 1123(a)(1), need not be and have not been classified). The Debtor is required, under Section 1122 of the Bankruptcy Code, to classify Claims against and Interests in the Debtor into Classes, each of which contain Claims and Interests that are substantially similar to the other Claims and Interests in such Class. The Debtor believes that both Alternatives under the Plan have classified all Claims and Interests in compliance with the provisions of Section 1122, but it is possible that a Holder of a Claim or Interest may challenge the Debtor's classification of Claims and Interests and that the Bankruptcy Court may find that a different classification is required for the an Alternative under the Plan to be confirmed. In that event, the Debtor intends, to the extent permitted by the Bankruptcy Code, the Plan and the Bankruptcy Court, to make such reasonable modifications of the classifications under the applicable Alternative under the Plan to permit confirmation and to use the acceptances of such Plan received prior to solicitation for purposes of obtaining the approval of the reconstituted Class or Classes of which each accepting Holder ultimately is deemed to be a member. Any such reclassification could adversely affect the Class in which such Holder initially was a member, or any other Class under such Plan, by changing the composition of such Class and the vote required of that Class for approval of such Plan. Furthermore, a reclassification of a Claim or Interest after approval of such Plan could necessitate a resolicitation of acceptances of such Plan.

The Debtor believes that the consideration, if any, provided under both Alternatives under the Plan to Holders of Claims and Interests (summarized below) reflects an appropriate resolution of their Claims and Interests, taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of Holders of Claims or Interests who are not entitled to vote on either Alternative under the Plan, or do not vote to accept either Alternative under the Plan, but who will be bound by the provisions of an Alternative under the Plan if it is confirmed by the Bankruptcy Court. The "cramdown" provisions of Section 1129(b) of the Bankruptcy Code, for example, permit confirmation of a Chapter 11 plan in certain circumstances even if such plan has not been accepted by all impaired classes of claims and interests. Although the Debtor believes that either of the Alternatives under the Plan could be confirmed under Section 1129(b), there can be no assurance that the requirements of such section will be satisfied. The classification of Claims and Interests and the nature of distributions to members of each Class are summarized below.

1. Fee Claims

Fee Claims are Administrative Claims under Sections 330(a), 331, 503, or 1103 of the Bankruptcy Code for compensation of Professionals or other entities for professional services rendered or expenses incurred in the Chapter 11 Case on or prior to the Effective Date. All payments to Professionals for Fee Claims will be made in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, the United States Trustee Guidelines and the Bankruptcy Court relating to the payment of interim and final compensation for services rendered and reimbursement of expenses. The Bankruptcy Court will review and determine all applications for compensation for services rendered and reimbursement of expenses.

In addition, Section 503(b) of the Bankruptcy Code provides for payment of compensation to (a) creditors, indenture trustees and other entities making a "substantial contribution" to a Chapter 11 case and (b) attorneys for and other professional advisors to such entities. The amounts, if any, which may be sought by entities for such compensation are not known by the Debtor at this time. Requests for compensation must be approved by the Bankruptcy Court after a hearing on notice at which the Debtor and other parties in interest may participate and, if appropriate, object to the allowance of any compensation and reimbursement of expenses.

2. Administrative Claims

Administrative Claims are Claims for costs and expenses of administration of the Chapter 11 Case Allowed under Section 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(1) of the Bankruptcy Code other than Fee Claims. Such Claims include (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Debtor's Estate and operating the businesses of the Debtor (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises), and Claims of governmental units for taxes (including tax audit Claims related to tax years commencing after the Petition Date, but excluding Claims relating to tax periods, or portions thereof, ending on or before the Petition Date) and (b) all fees and charges assessed against the Debtor's Estate under Section 1930, Chapter 123 of Title 28, United States Code.

Subject to the provisions of sections 330(a), 331 and 503(b) of the Bankruptcy Code, each Administrative Claim shall be paid by the Debtor, at its election, (a) in full, in Cash, in such amounts as are incurred in the ordinary course of business by the Debtor, or in such amounts as such Administrative Claim becomes an Allowed Claim by the Bankruptcy Court, (b) upon such other terms as may exist in the ordinary course of the Debtor's business, or (c) upon such other terms as may be agreed upon between the Holder of such Administrative Claim and the Debtor.

The Confirmation Order will establish an Administrative Claims Bar Date for filing Administrative Claims. Holders of Administrative Claims not paid prior to the Effective Date shall submit proofs of Claim on or before such Administrative Claims Bar Date or are forever barred from doing so. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 3020(c) and 2002(f) will set forth such date and constitute notice of this Administrative Claims Bar Date. The Debtor and Reorganized XO shall have thirty (30) days

(or such longer period as may be allowed by order of the Bankruptcy Court) following the Administrative Claims Bar Date to review and object to such Administrative Claims before a hearing for determination of allowance of such Administrative Claims.

3. Priority Tax Claims

The legal and equitable rights of the Holders of Priority Tax Claims are Unimpaired by the Plan. On, or as soon as reasonably practicable after the later of (i) the Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement and release of, and in exchange for such Allowed Priority Tax Claim, at the election of the Debtor, (A) deferred payments in Cash, over a period not exceeding six years after the date of assessment of such Allowed Claim, equal to the amount of such Allowed Priority Tax Claim; (B) such other treatment as to which the Debtor or Reorganized XO and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing; or (C) such other treatment so that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code; further provided, any Allowed Priority Tax Claim accruing or arising prior to the Confirmation Date but not due and owing on the Effective Date will be paid in accordance with the Plan when such Claim becomes due and owing.

4. Classes of Claims

a. Class 1—Senior Secured Lender Claims in XO

Class 1 consists of Senior Secured Lender Claims. The Senior Secured Lender Claims are Allowed as secured claims under 11 U.S.C. §§ 506(a) and 507(b) pursuant to the Plan in the aggregate amount of \$1 billion plus accrued and unpaid interest and Administrative Agent Fee Claims through the Effective Date. The legal, equitable and contractual rights of the Holders of Allowed Senior Secured Lender Claims are impaired by the Plan. Holders of Senior Secured Lender Claims shall be entitled to vote on the Plan. Subject to Section 3.7 of the Plan, Holders of Senior Secured Lender Claims shall receive the following treatment:

- i. *Treatment under the FL/Telmex Plan.* Under the FL/Telmex Plan, on the Effective Date, all Allowed Senior Secured Lender Claims (including all applicable security interests) shall remain outstanding subject to the terms of the Amended and Restated Senior Credit Facility. All interest that accrued prior to and remains unpaid as of the Effective Date shall be paid in Cash on the Effective Date or as soon as reasonably practicable thereafter. XO estimates the recovery for these Claims is 98.1% assuming \$20,000,000 of cash interest due to the Senior Secured Lender Claims is contributed to the Settlement Fund pursuant to the Shareholder Stipulation.

- ii. *Treatment Under the Stand-Alone Plan.* Under the Stand-Alone Plan on the Effective Date, each Holder of an Allowed Senior Secured Lender Claim shall receive its pro rata share of:
- (1) the New Junior Secured Loans;
  - (2) (a) if two-thirds or more of the Unaffiliated Senior Note Claims voting with respect to the Stand-Alone Plan vote to approve it, and the Official Committee of Unsecured Creditors has recommended a vote in favor of confirmation of the Stand-Alone Plan and not withdrawn such recommendation, 90,250,000 shares of the New Reorganization Common Stock representing 95% of all issued and outstanding shares of New Reorganization Common Stock on the Effective Date, or (b) if less than two-thirds of the Unaffiliated Senior Note Claims voting with respect to the Stand-Alone Plan vote to approve its confirmation, 95,000,000 shares of the New Reorganization Common Stock representing 100% of all issued and outstanding shares of New Reorganization Common Stock on the Effective Date (in each case subject to dilution resulting from the exercise of the New Warrants, if any, allocated to the Senior Note Claims and General Unsecured Claims, issuance of shares pursuant to the Rights Offering and the exercise of New Options under the Management Incentive Program);
  - (3) the Nontransferable Rights, subject to redistribution pursuant to Sections 3.3(b), 3.3(c), 3.3(d), 3.4(a) and 3.4(b) of the Plan; and
  - (4) the Transferable Rights.

XO estimates the recovery for these Claims, if the events contemplated by paragraph (ii)(2)(a) above occur, is 88.4% or, if the events contemplated by paragraph (ii)(2)(b) above occur, is 93.4%, in each case depending on the level of participation in the Rights Offering.

b. Class 2—Other Secured Claims in XO

An Other Secured Claim in XO is a Claim that is secured by a lien on property in which XO's Estate has an interest or that is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to Section 553 of the Bankruptcy Code. The legal, equitable and contractual rights (including all applicable security interests) of the Holders of Allowed Other Secured Claims in XO are Unimpaired by the Plan

and all such Claims shall be Reinstated on the Effective Date. Each Holder of an Other Secured Claim with unique collateral or rights shall constitute its own subclass for classification purposes. Holders of Other Secured Claims in XO are not entitled to vote on the Plan. XO estimates the recovery for these Claims is 100%.

c. Class 3—Non-Tax Priority Claims in XO

A Non-Tax Priority Claim in XO means a Claim, other than an Administrative Claim or Priority Tax Claim in XO, that is entitled to priority in payment pursuant to Section 507(a) of the Bankruptcy Code. The legal and equitable rights of the Holders of Non-Tax Priority Claims in XO are Unimpaired by the Plan and all such Claims shall be Reinstated on the Effective Date. Holders of Non-Tax Priority Claims in XO are not entitled to vote on the Plan. XO estimates the recovery for these Claims is 100%.

d. Class 4—Convenience Claims in XO

A Convenience Claim in XO means a Claim that otherwise would be an Allowed General Unsecured Claim against XO as of the Voting Record Date in an amount (i) equal to or less than \$5,000, or (ii) greater than \$5,000 but which is reduced to equal or less than \$5,000 by an irrevocable written election of the holder of such Claim made on a validly executed and timely delivered Ballot. The legal and equitable rights of the Holders of Convenience Claims in XO are Unimpaired by the Plan and all such Claims shall be Reinstated on the Effective Date. Holders of Convenience Claims in XO are not entitled to vote on the Plan. XO estimates the recovery for these Claims is 100%.

e. Class 5—General Unsecured Claims in XO

Class 5 is impaired under the Plan and consists of General Unsecured Claims in XO. The Holders of General Unsecured Claims, as of the Voting Record Date, shall be entitled to vote on the Plan.

i. *Treatment Under the FL/Telmex Plan.* Under the FL/Telmex Plan, subject to Sections 7.2 and 8.3 of the Plan, on or as soon as reasonably practicable after the Distribution Date, each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, release, and discharge of its Allowed General Unsecured Claim, its pro rata share (based on a fraction, the numerator of which is the Face Amount of its Allowed General Unsecured Claim and the denominator of which is the aggregate Face Amount of all Allowed General Unsecured Claims) of the General Unsecured Claim Portion of:

- (1) 36,000,000 shares of New Common Stock representing 18% of the fully diluted common equity of Reorganized XO on the Effective Date (without giving effect to the New Common Stock issuable upon exercise of any options granted, or available for grant, to management or other

employees of the Company) to be issued on the Effective Date in accordance with the Plan; and

- (2) Two Hundred Million Dollars (\$200,000,000).

XO estimates the recovery for these Claims is 8.6%.

ii. *Treatment Under the Stand-Alone Plan.* Under the Stand-Alone Plan, subject to Sections 7.2 and 8.3 of the Plan, and depending upon the level of Senior Note Claim approval obtained for the Stand-Alone Plan, as set forth below, on or as soon as reasonably practicable after the Distribution Date, each Holder of an Allowed General Unsecured Claim shall receive in full satisfaction, release, and discharge of its Allowed General Unsecured Claim, all as a gift from the entitled distribution of Holders of Senior Secured Lender Claims:

- (1) if two-thirds or more of the Unaffiliated Senior Note Claims voting with respect to the Stand-Alone Plan vote to approve it, and the Official Committee of Unsecured Creditors has recommended a vote in favor of confirmation of the Stand-Alone Plan and not withdrawn such recommendation, its pro rata share (based on a fraction, the numerator of which is the Face Amount of its Allowed General Unsecured Claim, and the denominator of which is the aggregate Face Amount of all Allowed General Unsecured Claims) of the General Unsecured Claim Portion of:
  - (a) 4,750,000 shares of the New Reorganization Common Stock representing 5% of all issued and outstanding shares of New Reorganization Common Stock on the Effective Date (subject to dilution resulting from the exercise of the New Warrants, if any, allocated to the Senior Note Claims and General Unsecured Claims, issuance of shares pursuant to the Rights Offering and the exercise of New Options under the Management Incentive Program);
  - (b) New Series A Warrants to purchase 9,500,000 shares of New Reorganization Common Stock (representing 10% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan);

- (c) New Series B Warrants to purchase 7,125,000 shares of New Reorganization Common Stock (representing 7.5% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan);
  - (d) New Series C Warrants to purchase 7,125,000 shares of New Reorganization Common Stock (representing 7.5% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan); and
  - (e) 10% of the FL/Telmex Recovery.
- (2) if less than two-thirds of the Unaffiliated Senior Note Claims voting with respect to the Stand-Alone Plan vote to approve its confirmation, but the Official Committee of Unsecured Creditors has recommended a vote in favor of the Stand-Alone Plan, has not withdrawn such recommendation and the Debtor believes, in its reasonable judgment, that all of the members of such Committee have voted their Claims in favor of confirmation of the Stand-Alone Plan, its pro rata share (based on a fraction, the numerator of which is the Face Amount of its Allowed General Unsecured Claim, and the denominator of which is the aggregate Face Amount of all Allowed General Unsecured Claims) of the General Unsecured Claim Portion of New Series B Warrants to purchase 4,750,000 shares of New Reorganization Common Stock (representing 5% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan); and
- (3) regardless of any vote or recommendation with respect to the Plan, the Nontransferable Rights allocable to the Holders of General Unsecured Claims pursuant to Section 3.6 of the Plan.

Each Holder of an Allowed General Unsecured Claim not exceeding \$100,000 may elect on or before the Voting Deadline to have its Claim treated as a \$5,000 Convenience Claim in Class 4 (Convenience Class) under the Plan in lieu of treatment as a Class



5 Claim and in full satisfaction of any and all distributions to be made under the Plan.

XO estimates the recovery for Class 5, if the events contemplated by paragraph (ii)(1) above occur, is approximately 1.4% or, if the events contemplated by paragraph (ii)(2) occur, is approximately 0.2%, in each case based upon the assumed amount of such Claims and assuming at least a majority of Class 5 accepts the Stand-Alone Plan, but before any appreciation in any exercised Rights or in any shares issued pursuant to New Warrants.

f. Class 6— Senior Note Claims in XO

Class 6 is impaired under the Plan and consists of Senior Note Claims in XO. The Holders of Senior Note Claims, as of the Voting Record Date, shall be entitled to vote on the Plan. Pursuant to 11 U.S.C. § 510(b) all contractual subordination provisions in the Indentures shall be enforced for the purposes of all distributions under the Plan. Recoveries, if any, to Holders of Senior Note Claims under the Plan shall be subject to the Note Trustee Charging Lien.

i. *Treatment Under the FL/Telmex Plan.* Under the FL/Telmex Plan, subject to Section 7.2 of the Plan, on or as soon as reasonably practicable after the Distribution Date, each Holder of an Allowed Senior Note Claim shall receive, in full satisfaction, release, and discharge of its Allowed Senior Note Claim, its pro rata share (based on a fraction, the numerator of which is the Face Amount of its Allowed Senior Note Claim and the denominator of which is the aggregate Face Amount of all Allowed Senior Note Claims) of the Senior Note Claim Portion of:

(1) 36,000,000 shares of New Common Stock representing 18% of the fully diluted common equity of Reorganized XO on the Effective Date (without giving effect to the New Common Stock issuable upon exercise of any options granted, or available for grant, to management or other employees of the Company) to be issued on the Effective Date in accordance with the Plan; and

(2) Two Hundred Million Dollars (\$200,000,000).

XO estimates the recovery for these Claims is approximately 9.8%.

ii. *Treatment Under the Stand-Alone Plan.* Under the Stand-Alone Plan, subject to Sections 7.2 and 8.3 of the Plan, and depending upon the level of Senior Note Claim approval obtained for the Stand-Alone Plan, as set forth below, on or as soon as reasonably practicable after the Distribution Date, each Holder of an Allowed

Senior Note Claim shall receive in full satisfaction, release, and discharge of its Allowed Senior Note Claim, all as a gift from the entitled distribution of Holders of Senior Secured Lender Claims:

- (1) if two-thirds or more of the Unaffiliated Senior Note Claims voting with respect to the Stand-Alone Plan vote to approve it, and the Official Committee of Unsecured Creditors has recommended a vote in favor of confirmation of the Stand-Alone Plan and not withdrawn such recommendation, its pro rata share (based on a fraction, the numerator of which is the Face Amount of its Allowed Senior Note Claim, and the denominator of which is the aggregate Face Amount of all Allowed Senior Note Claims) of the Senior Note Claim Portion of:
  - (a) 4,750,000 shares of the New Reorganization Common Stock representing 5% of all issued and outstanding shares of New Reorganization Common Stock on the Effective Date (subject to dilution resulting from the exercise of the New Warrants, if any, allocated to the Senior Note Claims and General Unsecured Claims, issuance of shares pursuant to the Rights Offering and the exercise of New Options under the Management Incentive Program);
  - (b) New Series A Warrants to purchase 9,500,000 shares of New Reorganization Common Stock (representing 10% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan);
  - (c) New Series B Warrants to purchase 7,125,000 shares of New Reorganization Common Stock (representing 7.5% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan);
  - (d) New Series C Warrants to purchase 7,125,000 shares of New Reorganization Common Stock (representing 7.5% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan); and

(e) 10% of the FL/Telmex Recovery.

- (2) if less than two-thirds of the Unaffiliated Senior Note Claims voting with respect to the Stand-Alone Plan vote to approve its confirmation, but the Official Committee of Unsecured Creditors has recommended a vote in favor of the Stand-Alone Plan, has not withdrawn such recommendation and the Debtor believes, in its reasonable judgment, that all of the members of such Committee have voted their Claims in favor of confirmation of the Stand-Alone Plan, its pro rata share (based on a fraction, the numerator of which is the Face Amount of its Allowed Senior Note Claim, and the denominator of which is the aggregate Face Amount of all Allowed Senior Note Claims) of the Senior Note Claim Portion of New Series B Warrants to purchase 4,750,000 shares of New Reorganization Common Stock (representing 5% of the New Reorganization Common Stock (but excluding any Rights Shares) issued and outstanding on the Effective Date of the Stand-Alone Plan); and
- (3) regardless of any vote or recommendation with respect to the Plan, the Nontransferable Rights allocable to the Holders of Senior Note Claims pursuant to Section 3.6 of the Plan.

XO estimates the recovery for Class 6, if the events contemplated by paragraph (ii)(1) above occur, is approximately 1.5% or, if the events contemplated by paragraph (ii)(2) occur, is approximately 0.2%, in each case based upon the assumed amount of such Claims and assuming at least a majority of Class 6 accepts the Stand-Alone Plan, but before any appreciation in any exercised Rights or in any shares issued pursuant to New Warrants.

g. Class 7— Subordinated Note Claims in XO

Class 7 is impaired under the Plan and consists of Subordinated Notes Claims. Pursuant to 11 U.S.C. § 510(b) all contractual subordination provisions in the Indentures shall be enforced for the purposes of all distributions under the Plan. Recoveries, if any, to Holders of Subordinated Note Claims under the Plan shall be subject to the Note Trustee Charging Lien.

- i. *Treatment Under the FL/Telmex Plan.* Under the FL/Telmex Plan, Holders of Subordinated Note Claims shall not receive or retain any distribution under the Plan and the Subordinated Note Claims will be cancelled and/or discharged. Holders of Claims in this Class are deemed to have rejected the FL/Telmex Plan. Therefore,

Class 7 is not entitled to vote to accept or reject the FL/Telmex Plan. XO estimates the recovery for these Claims is 0%.

- ii. *Treatment Under the Stand-Alone Plan.* Under the Stand-Alone Plan, Holders of Subordinated Note Claims shall not receive or retain any distribution under the Plan and the Subordinated Note Claims will be cancelled and/or discharged; provided, however, that each Holder of an Allowed Subordinated Note Claim shall be entitled to receive and retain as a redistribution gift from the Senior Secured Lenders its pro rata share (based on a fraction, the numerator of which is the Face Amount of the Allowed Subordinated Note Claim as established pursuant to Section 3.6 of the Plan, and the denominator of which is the aggregate Face Amount of all Subordinated Note Claims as established pursuant to Section 3.6 of the Plan), of the Nontransferable Rights allocable to the Holders of Subordinated Note Claims pursuant to Section 3.6 of the Plan. Holders of Claims in this Class are deemed to have rejected the Stand-Alone Plan. Therefore, Class 7 is not entitled to vote to accept or reject the Stand-Alone Plan. XO estimates the recovery for these Claims is 0% before any appreciation in any exercised Rights.

h. Class 8—Securities Claims in XO

Class 8 consists of Securities Claims. On the Effective Date of the Plan, such Securities Claims shall be discharged and the Holders of Securities Claims shall not receive or retain any distribution on account of such Securities Claims under the Plan. Holders of Claims in this Class are deemed to have rejected both Alternatives under the Plan. Therefore, Class 8 is not entitled to vote to accept or reject the FL/Telmex Plan or the Stand-Alone Plan. XO estimates the recovery for these Claims is 0%.

i. Class 9—Old Preferred Stock Interests in XO

Class 9 consists of Old Preferred Stock Interests.

- i. *Treatment Under the FL/Telmex Plan.* Under the FL/Telmex Plan, on the Effective Date of the Plan, Holders of Old Preferred Stock Interests shall not receive or retain any distribution under the Plan and the Old Preferred Stock Interests will be cancelled and/or discharged. Holders of Old Preferred Stock Interests in this Class are deemed to have rejected the FL/Telmex Plan. Therefore, Class 9 is not entitled to vote to accept or reject the FL/Telmex Plan. XO estimates the recovery for these Interests is 0%.
- ii. *Treatment Under the Stand-Alone Plan.* Under the Stand-Alone Plan, Holders of Old Preferred Stock Interests shall not receive or retain any distribution under the Plan and the Old Preferred Stock

Interest will be cancelled and/or discharged; provided, however, that each Holder of an Allowed Old Preferred Stock Interest shall be entitled to receive and retain as a redistribution gift from the Senior Secured Lenders its pro rata share (based on a fraction, the numerator of which is the liquidation preference of the Old Preferred Stock (as established by Section 3.6 of the Plan) that is the basis for the Allowed Old Preferred Stock Interest and the denominator of which is the liquidation preference of shares of the Old Preferred Stock (as established by Section 3.6 of the Plan) that is the basis for all Old Preferred Stock Interests), of the Nontransferable Rights allocable to the Holders of Old Preferred Stock Interests pursuant to Section 3.6 of the Plan. Holders of Old Preferred Stock Interests in this Class are deemed to have rejected the Stand-Alone Plan. Therefore, Class 9 is not entitled to vote to accept or reject the Stand-Alone Plan. XO estimates the recovery for these Interests is 0% before any appreciation in any exercised Rights.

j. Class 10—Old Common Stock Interests in XO

Class 10 consists of Old Common Stock Interests. Subject to the provisions of Section 3.7 of the Plan, Holders of Interests in Class 10 shall be treated as follows:

- i. *Treatment Under the FL/Telmex Plan.* Under the FL/Telmex Plan, on the Effective Date of the Plan, such Old Common Stock Interests will be cancelled and/or discharged and the Holders of Old Common Stock Interests shall not receive or retain any distribution on account of such Old Common Stock Interests under the Plan. Holders of Old Common Stock Interests in this Class are deemed to have rejected the FL/Telmex Plan. Therefore, Class 10 is not entitled to vote to accept or reject the FL/Telmex Plan. XO estimates the recovery for these Interests is 0%.
- ii. *Treatment Under the Stand-Alone Plan.* Under the Stand-Alone Plan, Holders of Old Common Stock Interests shall not receive or retain any distribution under the Plan and the Old Common Stock Interests will be cancelled and/or discharged; provided, however, that each Holder of an Allowed Old Common Stock Interests shall be entitled to receive and retain as a redistribution from the Senior Secured Lenders its pro rata share (based on a fraction, the numerator of which is the number of shares of Old Common Stock (as established by Section 3.6 of the Plan) that are the basis for the Allowed Old Common Stock Interest and the denominator of which is the aggregate number of shares of Old Common Stock (as established by Section 3.6 of the Plan) that are the basis for all Old Common Stock Interests), of the Nontransferable Rights allocable to the Holders of Old Common Stock Interests pursuant to Section

3.6 of the Plan. Holders of Old Common Stock Interests in this Class are deemed to have rejected the Stand-Alone Plan. Therefore, Class 10 is not entitled to vote to accept or reject the Stand-Alone Plan. XO estimates the recovery for these Interests is 0% before any appreciation in any exercised Rights.

k. Class 11—Other Old Equity Interests in XO

Class 11 is impaired under the Plan and consists of Other Old Equity Interests. On the Effective Date of the Plan, such Other Old Equity Interests will be cancelled and/or discharged and the Holders of Other Old Equity Interests shall not receive or retain any distribution on account of such Other Old Equity Interests under the Plan. Holders of Other Old Equity Interests in this Class are deemed to have rejected both Alternatives under the Plan. Therefore, Class 11 is not entitled to vote to accept or reject the FL/Telmex Plan or the Stand-Alone Plan. XO estimates the recovery for these Interests is 0%.

5. Special Provision Regarding Unimpaired Claims

Except as otherwise provided in the Plan, nothing shall affect the Debtor's or Reorganized XO's rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoff or recoupments against holders of Unimpaired Claims.

6. Acceptance or Rejection of the Plan

a. *Classes Entitled to Vote.* Classes 1, 5 and 6 are Impaired and entitled to vote to accept or reject each of the FL/Telmex Plan and Stand-Alone Plan separately. By operation of law, each Unimpaired Class of Claims (i.e., Classes 2, 3 and 4) is deemed to have accepted each of the FL/Telmex Plan and Stand-Alone Plan and, therefore, is not entitled to vote to accept or reject either Alternative under the Plan. By operation of law, Classes 7, 8, 9, 10 and 11 are deemed to have rejected each of the FL/Telmex Plan and Stand-Alone Plan and are not entitled to vote on either Alternative under the Plan.

b. *Acceptance by Impaired Classes.* An Impaired Class of Claims shall have accepted the FL/Telmex Plan or Stand-Alone Plan, as applicable, if (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in amount of the Allowed Claims actually voting in such Class have voted to accept such Plan and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept such Plan. An Impaired Class of Interests shall have accepted the FL/Telmex Plan or Stand-Alone Plan, as applicable if the Holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in amount of the Allowed Interests actually voting in such Class have voted to accept such Plan.

c. *Cramdown.* To the extent necessary, the Debtor shall request Confirmation of either Alternative under the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code with respect to any Class which rejects, or is deemed to have rejected, such Plan. For more information, see "VII. The Plan – D. Confirmation and

Consummation Procedure – 2. Confirmation – b. Unfair Discrimination and Fair and Equitable Tests”

7. Method of Distribution Under the Plan

a. Sources of Cash for Plan Distributions

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for Reorganized XO to make payments under the Plan shall be obtained from existing Cash balances, Cash generated from operations and, (i) under the FL/Telmex Plan, the sale of shares of New Common Stock pursuant to the terms of the Investment Agreement and the Management Stock Purchase Agreement, or (ii) under the Stand-Alone Plan, the proceeds from the Exit Facility, the Rights Offering, New Warrants and New Options upon exercise.

b. Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Allowed Claims as of the Effective Date shall be made on the Distribution Date or as soon thereafter as is practicable. Any distribution to be made pursuant to the Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Claims or Interests that first become Allowed Claims or Interests after the Effective Date shall be made pursuant to Articles III, VI and VII of the Plan. Notwithstanding the date on which any distribution of securities is made to a Holder of a Claim that is an Allowed Claim on the Effective Date, as of the date of the distribution, such Holder shall be deemed to have the rights of a Holder of such securities distributed as of the Effective Date.

c. Interest on Claims

Unless otherwise specifically provided for or contemplated in the Plan or Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, other than (a) Other Secured Claims to the extent required by the applicable documents giving rise to such claims and (b) if the transactions contemplated in the Investment Agreement are consummated, Senior Secured Lender Claims as provided in the Senior Credit Facility.

d. Distributions by Reorganized XO

Reorganized XO or the Disbursing Agent shall make all distributions required to be distributed under the Plan. However, any distributions on account of Senior Secured Lender Claims shall be made to the Administrative Agent, and distributions on account of Senior Note Claims shall be made to the Senior Note Trustees. Reorganized XO may employ or contract with other entities to assist in or make the distributions required by the Plan.

- i. *Distribution by Senior Note Trustee.* The distributions to be made under the Plan to Holders of Senior Note Claims shall be made to the Senior Note Trustee, which, subject to any right of the Senior Note Trustee to assert its Note Trustee Charging Lien against the distributions, shall transmit the distributions to the Holders of such Senior Note Claims. All payments to Holders of Senior Note Claims shall be made only upon the Holder's compliance with the requirements set forth in Section 6.10(a) of the Plan, or in the event that such instrument is lost, stolen, mutilated or destroyed, upon the Holder's compliance with the requirements set forth in Section 6.11 of the Plan. As soon as practicable after surrender of the Senior Note instrument evidencing the Senior Note Claim, the Senior Note Trustee shall distribute to the Holder thereof such Holder's pro rata share of the distribution, but subject to any right of the Senior Note Trustee to assert its Note Trustee Charging Lien against such distribution.
  
- e. Delivery of Distributions and Undeliverable or Unclaimed Distributions
  - i. *Delivery of Distributions in General.* Distributions to Holders of Allowed Claims shall be made at the addresses set forth in the Debtor's records or as otherwise available to the Debtor, the Administrative Agent, the Senior Note Trustees, or any other agent or servicer, unless such addresses are superseded by any proofs of claim or transfers of claim that may be filed pursuant to Bankruptcy Rule 3001.
  
  - ii. *Undeliverable and Unclaimed Distributions.*
    - (1) Holding and Investment of Undeliverable and Unclaimed Distributions. If the distribution to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then current address.
  
    - (2) After Distributions Become Deliverable. Reorganized XO, the Administrative Agent, the Stock Agent or the Senior Notes Trustee, as applicable, shall make all distributions that have become deliverable or have been claimed since the Distribution Date as soon as practicable after such distribution has become deliverable.
  
    - (3) Failure to Claim Undeliverable Distributions. Any Holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable or unclaimed distribution



within one (1) year after the Effective Date shall be deemed to have forfeited its claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed distribution against the Debtor or its Estate, Reorganized XO, or its property. In such cases, any Cash for distribution on account of such claims for undeliverable or unclaimed distributions shall become the property of the Estate free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary, subject to liens to which Senior Secured Lenders may be entitled (if any). Any New Common Stock or Post-Termination Securities, as applicable, held for distribution on account of such Claim shall be canceled and of no further force or effect. Nothing contained in the Plan shall require any Disbursing Agent, including, but not limited to, Reorganized XO, to attempt to locate any Holder of an Allowed Claim.

f. Record Date for Distributions

As of the close of business on the Distribution Record Date, the transfer register for the Notes, Old Common Stock, Old Preferred Stock and the Other Old Equity, as maintained by XO, the Note Trustees, any other applicable trustee or their respective agents shall be closed and the transfer of such securities or any interest thereon prohibited. The Disbursing Agent will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim or Interest that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims or Interests who are Holders of such Claims or Interests, or participants therein, as of the close of business on the Distribution Record Date. The Disbursing Agent and Reorganized XO shall instead be entitled to recognize and deal for all purposes under the Plan with only those record holders stated on any official register as of the close of business on the Distribution Record Date.

g. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim or Interest entitled to a distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim or Interest first and then, to the extent the consideration exceeds the principal amount of the Claim or Interest, to the portion of such Claim or Interest representing accrued but unpaid interest.

h. Means of Cash Payment

Payments of Cash made pursuant to the Plan shall be in U.S. dollars and shall be made, at the option and in the sole discretion of Reorganized XO, by (a) checks drawn on or (b) wire transfer from a domestic bank selected by Reorganized XO. Cash payments to foreign

creditors may be made, at the option of Reorganized XO, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

i. Withholding and Reporting Requirements

In connection with the Plan and all distributions thereunder, Reorganized XO shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. Reorganized XO shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (i) each Holder of an Allowed Claim or Interest that is to receive a distribution of Cash, New Common Stock, and/or Post-Termination Securities, as applicable, shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution, and (ii) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to Reorganized XO for the payment and satisfaction of such tax obligations or has, to Reorganized XO's satisfaction, established an exemption therefrom. Any New Common Stock or Post-Termination Securities, as applicable, to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as undeliverable pursuant to Section 6.4 of the Plan.

j. Setoffs

Reorganized XO may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, but shall not be required to, set off against any Claim or Interest (other than a Director and Officer Claim) and the payments or other distributions to be made pursuant to the Plan in respect of such Claim or Interest, claims of any nature whatsoever that the Debtor or Reorganized XO may have against the Holder of such Claim or Interest; provided, however, that neither the failure to do so nor the allowance of any Claim or Interest hereunder shall constitute a waiver or release by Reorganized XO of any such claim that the Debtor or Reorganized XO may have against such Holder.

k. Surrender of Instruments or Securities

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim or Interest, the Holder of such Claim or Interest shall tender the applicable instruments, securities or other documentation evidencing such Claim or Interest to Reorganized XO, its Note Trustee or their agents, or the Administrative Agent, as applicable, unless waived in writing by Reorganized XO. Any New Common Stock or Post-Termination Securities, as applicable, to be distributed pursuant to the Plan on account of any such Claim or Interest shall, pending such surrender, be treated as an undeliverable distribution pursuant to Section 6.4(b) of the Plan. Nothing herein shall require the surrender of any documentation by the Senior Secured Lenders.

- i. *Notes.* Each Holder of a Note Claim shall tender its Notes relating to such Claim to its Note Trustee or their agents, as applicable, in accordance with written instructions to be provided to such Holders by Reorganized XO or its Note Trustee as promptly as practicable following the Effective Date. Such instructions shall specify that delivery of such instruments will be effected, and risk of loss and title thereto will pass, only upon the proper delivery of such instruments with a letter of transmittal in accordance with such instructions. All surrendered Notes shall be marked as cancelled.
- ii. *Old Preferred Stock and Old Common Stock.* Each Holder of an Old Preferred Stock Interest or Old Common Stock Interest shall tender its Old Preferred Stock or Old Common Stock instruments relating to such interest to Reorganized XO or its agents, as applicable, in accordance with written instructions to be provided to such Holders by Reorganized XO as promptly as practicable following the Effective Date. Such instructions shall specify that delivery of such instruments will be effected, and risk of loss and title thereto will pass, only upon the proper delivery of such instruments with a letter of transmittal in accordance with such instructions. All surrendered Old Preferred Stock or Old Common Stock instruments shall be marked as cancelled.
- iii. *Failure to Surrender Instruments.* Any Holder of a Claim or Interest that fails to surrender or is deemed to have failed to surrender the applicable instruments required to be tendered hereunder within one year after the Effective Date shall have its Claim or Interest and its distribution pursuant to the Plan on account of such Claim or Interest discharged and shall be forever barred from asserting any such Claim or Interest against Reorganized XO or its property. In such cases, any New Common Stock or Post-Termination Securities held for distribution on account of such Claim or Interest shall be disposed of pursuant to Section 6.4 of the Plan.

I. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under the Indentures or any other applicable agreement, any Holder of a Claim or Interest evidenced by an instrument that has been lost, stolen, mutilated or destroyed shall, in lieu of surrendering such instrument deliver to Reorganized XO or its Note Trustee or their agents, as applicable: (i) evidence reasonably satisfactory to Reorganized XO or its Note Trustee of the loss, theft, mutilation or destruction; and (ii) such security or indemnity as may be required by Reorganized XO or its Note Trustee to hold Reorganized XO and its Note Trustee harmless from any damages, liabilities or costs incurred in treating such individual as a Holder of an Allowed Claim or Interest. Upon compliance with Article VI of the Plan by a Holder of a Claim or Interest evidenced by a Note or

other instrument, such Holder shall, for all purposes under the Plan, be deemed to have surrendered such instrument.

m. Fractional Shares

No fractional shares of New Common Stock, Post-Termination Securities or Conversion Common Stock shall be distributed. The actual issuance shall reflect a rounding up (in the case of .5000 or more than .5000) of such fraction to the nearest whole New Common Stock, Post-Termination Securities or Conversion Common Stock share or a rounding down of such fraction (in the case of .4999 or less).

8. Resolution of Disputed, Contingent and Unliquidated Claims and Interests

a. Objection Deadline; Prosecution of Objections

No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Debtor or Reorganized XO, as the case may be, shall file objections to Claims and Interests with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims and Interests to which objections are made, provided, however, that the Debtor and Reorganized XO shall not object to Claims Allowed pursuant to the Plan. Nothing contained herein, however, shall limit Reorganized XO's right to object to Claims or Interests, if any, filed or amended after the Claims Objection Deadline. The Debtor and Reorganized XO shall be authorized to, and shall, resolve all Disputed Claims or Disputed Interests by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having jurisdiction the validity, nature and/or amount thereof.

b. Reserve for Disputed Claims.

- i. *Establishment of Reserves.* Within ten (10) Business Days after the Effective Date, Reorganized XO shall establish a reserve (the "Disputed Claims Reserve") on account of the Disputed Claims in Classes 5 (General Unsecured Claims) and 6 (Senior Note Claims). Reorganized XO shall fund the Disputed Claims Reserve with (i) under the FL/Telmex Plan, all of the shares of the Note Common Stock and Cash or, (ii) under the Stand-Alone Plan, the New Warrants, in each case, that all Holders of Disputed General Unsecured Claims and Disputed Senior Note Claims would receive if all Disputed General Unsecured Claims and Disputed Note Claims were Allowed Claims immediately prior to the Distribution Date in an amount equal to the Face Amounts of such Disputed Claims. For purposes of calculating the distributions on the Distribution Date to Holders of Allowed Claims in Classes 5 (General Unsecured Claims) and 6 (Senior Note Claims) under Sections 3.3(c) and (d) of the Plan (including, without limitation, the calculation of General Unsecured Claim Portion and Senior Note Claim Portion), all Disputed General Unsecured Claims and

Disputed Note Claims shall be deemed to be Allowed Claims in amounts equal to the Face Amounts of such Disputed Claims.

- ii. *Distribution Upon Allowance of a Disputed Claim.* When a Disputed General Unsecured Claim or Disputed Senior Note Claim becomes an Allowed Claim, Reorganized XO shall distribute, on or as soon as practicable thereafter, to the Holder of such newly Allowed Claim from the Disputed Claims Reserve a distribution of (i) under the FL/Telmex Plan, the Note Common Stock and Cash equal to the number of shares and amount of Cash or (ii) under the Stand-Alone Plan, the New Warrants, if any, in each case, that would have been distributed to such Holder with respect to such Claim had such Claim been an Allowed Claim on the Distribution Date based on the Face Amount of such newly Allowed Claim; provided, however, that (i) under the FL/Telmex Plan, the aggregate number of shares and Cash distributed on account of the newly Allowed Claim may not exceed the total number of shares of Note Common Stock and amount of Cash reserved with respect to such Claim in the Disputed Claims Reserve and (ii) under the Stand-Alone Plan, the aggregate number of New Warrants distributed on account of the newly Allowed Claim may not exceed the total number of New Warrants reserved with respect to such Claim in the Disputed Claims Reserve.
- iii. *Final Distribution.* When all Disputed General Unsecured Claims and all Disputed Note Claims have become Allowed Claims or have otherwise been resolved by a Final Order and the applicable distributions have been made on account of such newly Allowed Claims in accordance with Section 7.2(b) of the Plan, (i) under the FL/Telmex Plan, any and all shares of Note Common Stock and Cash and (ii) under the Stand-Alone Plan, any and all New Warrants, remaining in the Disputed Claims Reserve (the "Remaining Reserve") shall be distributed, on or as soon as practicable thereafter, to the Holders of the Allowed General Unsecured Claims and Allowed Senior Note Claims as follows: (x) each Holder of an Allowed General Unsecured Claim shall receive its pro rata share (based on a fraction, the numerator of which is the Face Amount of the Allowed General Unsecured Claim and the denominator of which is the aggregate Face Amounts of all Allowed General Unsecured Claims) of the General Unsecured Claim Portion of the Remaining Reserve; and (y) each Holder of an Allowed Senior Note Claim shall receive its pro rata share (based on a fraction, the numerator of which is the Face Amount of the Allowed Senior Note Claim and the denominator of which is the aggregate Face Amounts of all Allowed Senior Note Claims) of the Senior Note Claim Portion of the Remaining Reserve.

c. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim or Interest unless and until all objections to such Disputed Claim or Disputed Interest have been settled or withdrawn or have been determined by Final Order and the Disputed Claim or Disputed Interest, or some portion thereof, has become an Allowed Claim or Allowed Interest.

9. Means for Implementation of the Plan

a. Continued Corporate Existence and Vesting of Assets in Reorganized XO

After the Effective Date, Reorganized XO shall continue to exist in accordance with the law in the jurisdiction in which it is incorporated and pursuant to its Certificate of Incorporation and Bylaws in effect prior to the Effective Date, except to the extent such Certificate of Incorporation and Bylaws are amended under the Plan. Except as otherwise provided in the Plan, on and after the Effective Date, all property of the Estate of the Debtor, including all claims, rights and causes of action and any property acquired by Debtor or Reorganized XO under or in connection with the Plan, shall vest in Reorganized XO free and clear of all Claims, liens, charges, other encumbrances and Interests other than (a) the liens of Holders of Other Secured Claims pursuant to applicable constituent documents and (b)(i) under the FL/Telmex Plan, the liens of the Senior Secured Lenders under the Amended and Restated Senior Credit Facility or (ii) under the Stand-Alone Plan, the liens under the Exit Facility and the New Junior Secured Loans. On and after the Effective Date, Reorganized XO may operate its business and may use, acquire and dispose of property and compromise or settle any Claims without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, Reorganized XO may pay the charges that it incurs on or after the Effective Date for Professionals' fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

b. Corporate Governance, Directors and Officers and Corporate Action

i. Certificates of Incorporation and Bylaws.

- (1) *Under the FL/Telmex Plan:* The Certificate of Incorporation and Bylaws of the Debtor shall be amended as necessary to satisfy the provisions of the Plan, the Bankruptcy Code, and the Investment Agreement and shall include, among other things, (i) pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) a provision under which Reorganized XO shall opt out of the provisions of Section 203 of the Delaware General Corporate Law; and (iii) authorization to issue New Class A Common Stock, New Class C Common

Stock, New Class D Common Stock, New Class E Common Stock, (including future issuances of Conversion Common Stock) in amounts not less than the amounts necessary to permit the distributions thereof required or contemplated by the Plan, the Investment Agreement and the Management Stock Purchase Agreement. After the Effective Date, Reorganized XO may amend and restate the Amended Certificates of Incorporation and Bylaws as permitted by applicable law.

- (2) *Under the Stand-Alone Plan:* The Certificate of Incorporation and Bylaws of the Debtor shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code, be in a form reasonably acceptable to the Administrative Agent and be consistent with the terms and conditions of the Stand-Alone Term Sheet and any related agreements and shall include, among other things, (i) pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) authorization to pay any amounts that are due or may become due pursuant to the Retention Bonus Plan; and (iii) authorization to issue the New Reorganization Common Stock pursuant to or upon exercise of the Post-Termination Securities, in amounts not less than the amounts necessary to permit the distribution thereof required or contemplated by the Plan. After the Effective Date, Reorganized XO may amend and restate the Amended Certificates of Incorporation and Bylaws as permitted by applicable law.

ii. *Directors and Officers of Reorganized XO.*

- (1) Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, as of the Effective Date, the initial officers of Reorganized XO shall be the officers of the Debtor on the Petition Date (or as otherwise agreed to by the Investors, if applicable, prior to the Confirmation Date).
  - (a) *Under the FL/Telmex Plan.* On the Effective Date, the Board of Directors of Reorganized XO will consist of up to twelve (12) members. The Forstmann Little Investors have the right to nominate ten (10) directors to Reorganized XO's Board of Directors, including up to five (5) independent directors nominated by Telmex to

Reorganized XO's Board of Directors. XO's current Chairman of the Board and Chief Executive Officer will continue to serve Reorganized XO in those capacities. XO's Bylaws will be amended pursuant to the terms of the Investment Agreement. Moreover, Reorganized XO's Certificate of Incorporation shall be amended, as required by the terms of the Investment Agreement, including to opt out of the provisions of Section 203 of the Delaware General Corporation Law. Pursuant to section 1129(a)(5) of the Bankruptcy Code, XO will disclose, on or prior to the Confirmation Date, the identity and affiliations of any other person proposed to serve on the initial Board of Directors of Reorganized XO, and, to the extent such person is an insider other than by virtue of being a director, the nature of any compensation for such person. The classification and composition of the Board of Directors of Reorganized XO shall be consistent with its Amended Certificate of Incorporation and Bylaws. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the Amended Certificate of Incorporation and Bylaws, the other constituent documents of Reorganized XO, and applicable law. The initial officers of XO shall be the officers of XO as of the Petition Date or such other officers as shall be reasonably acceptable to the Investors to the extent provided by the Investment Agreement.

- (b) *Under the Stand-Alone Plan:* On the Effective Date, the Board of Directors of Reorganized XO will consist of seven (7) members designated as follows: (i) two by Reorganized XO's senior management and (ii) five by the Holders of Allowed Senior Secured Lender Claims, provided that if the Rights Offering yields a more than \$150 million, then one member of the Board nominated by the Holders of Senior Secured Lender Claims shall resign and the remaining directors shall elect to fill the vacancy an individual nominated by one or more of the parties who exercised Rights. The Amended Certificate of Incorporation and Bylaws shall reflect the foregoing provisions.



- iii. *Corporate Action.* On the Effective Date, the adoption of the Amended Certificates of Incorporation and Bylaws or similar constituent documents, the selection of directors and officers for Reorganized XO, and all other actions contemplated by the Plan and the Investment Agreement shall be authorized and approved in all respects (subject to the provisions of the Plan). All matters provided for in the Plan involving the corporate structure of the Debtor or Reorganized XO, and any corporate action required by the Debtor or Reorganized XO in connection with the Plan, shall be deemed to have occurred and shall be in effect without any requirement of further action by the security holders or directors of the Debtor or Reorganized XO. On the Effective Date, the appropriate officers of Reorganized XO and members of the Board of Directors of Reorganized XO shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the Plan in the name of and on behalf of Reorganized XO.
  - iv. *Corporate Structure.* On the Effective Date (a) the Operating Subsidiaries may merge with or transfer assets to other Operating Subsidiaries, and (b) if the Stand-Alone Event occurs, a new corporation may be formed ("New XO"), and XO or Reorganized XO, as the case may be, may merge with and into New XO or a subsidiary of New XO or may transfer all of its assets (including the Operating Subsidiaries) to New XO or wholly owned subsidiaries of New XO; and the stock and securities to be issued under the Plan would be issued by New XO, and XO would dissolve.
- c. Issuance of New Securities
- i. *Under the FL/Telmex Plan:* On or as soon as reasonably practicable after the Effective Date, Reorganized XO, in accordance with the terms of the Plan, shall issue and exchange, as necessary, for the benefit of Holders of the General Unsecured Claims and Note Claims, such shares of New Common Stock as required by Sections 3.3(b) and (c) of the Plan. Also on the Effective Date, Reorganized XO shall issue to the Investors the New Investor Common Stock pursuant to the terms of the Investment Agreement. Further, on the Effective Date, Reorganized XO shall issue the Management Common Stock pursuant to the terms of the Management Stock Purchase Agreement. The issuance of the New Common Stock and the Conversion Common Stock is authorized without the need for any further corporate action.

ii. *Under the Stand-Alone Plan:* On or as soon as reasonably practicable after the Effective Date, Reorganized XO, in accordance with the terms of the Plan, shall (a) commence the Rights Offering as contemplated by the Stand-Alone Term Sheet and issue for the benefit of the persons exercising Rights such shares of New Reorganization Common Stock as are purchased upon exercise of the Rights and (b) issue and exchange, as necessary, for the benefit of Holders of the General Unsecured Claims and Note Claims, such New Warrants as required by Sections 3.3(b)(ii) and (c)(ii) of the Plan. Also on the Effective Date, Reorganized XO shall issue to Holders of Senior Secured Lender Claims the New Reorganization Common Stock as required by Section 3.3(a)(ii) of the Plan. The issuance of the New Reorganization Common Stock (including, without limitation, respecting the foregoing, the New Options under the Management Incentive Program and the Rights Offering) is authorized without the need for any further corporate action.

d. Amended and Restated Senior Credit Facility.

Under the FL/Telmex Plan, on the Effective Date, Reorganized XO is authorized and directed to execute and deliver the Amended and Restated Senior Credit Facility and such other agreements and instruments contemplated thereby.

10. Treatment of Executory Contracts and Unexpired Leases

a. Assumption of Executory Contracts and Unexpired Leases

On the Effective Date, all executory contracts or unexpired leases of Reorganized XO, except for any executory contract or unexpired lease that (i) has been assumed or rejected prior to the Confirmation Date or (ii) is identified on Schedule 8.1 of the Plan, which Schedule shall be in form and substance acceptable to the Investors to the extent required by the Investment Agreement and may be amended prior to the Confirmation Date, will be deemed assumed in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code. All executory contracts or unexpired leases of Reorganized XO set forth on Schedule 8.1 shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code and the Holder of any Rejection Claim shall file a proof of claim within thirty (30) days after the Confirmation Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed and/or assigned pursuant to Article VIII of the Plan shall remain in full force and effect and be fully enforceable by Reorganized XO in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable federal law. To the extent applicable, all executory contracts or unexpired leases of Reorganized XO assumed pursuant to Section 8.1 of the Plan shall be deemed modified such that the transactions contemplated by the Plan shall not be a "change of control" however such term

may be defined in the relevant executory contract or unexpired lease and any required consent under any such contract or lease shall be deemed satisfied by the confirmation of the Plan.

b. Cure of Defaults of Assumed Executory Contracts and Unexpired Leases

Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the later of (i) the Effective Date, (ii) as due in the ordinary course of business or (iii) on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (1) the amount of any cure payments, (2) the ability of Reorganized XO or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

c. Indemnification of Directors, Officers and Employees

The Director and Officer Claims, to the extent applicable, shall be deemed and treated as Claims arising under executory contracts that are assumed by Reorganized XO pursuant to the Plan and sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. In addition, to the extent such Claims are not included under assumed executory contracts, the Debtor's obligations with respect to such Claims shall be assumed by Reorganized XO and shall survive Unimpaired and unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

d. Compensation and Benefit Programs

Except as otherwise expressly provided hereunder, all Employment Contracts<sup>15</sup> are treated as executory contracts under the Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code excluding, however, any Employment Contract or portion thereof relating to Other Old Equity, such as those relating to the NEXTLINK Communications, Inc. Change of Control Retention Bonus and Severance Pay Plan, which plan the Company has already terminated. All Employment Contracts assumed pursuant to Section 8.4 of the Plan shall be deemed modified such that the transactions contemplated by the Plan shall not be a "change of control", however such term may be defined in the relevant Employment Contracts.

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<sup>15</sup> The definition of Employee Contracts expressly excludes the Concentric Network Corporation Executive Continuity Agreements identified on Exhibit B to the Plan. These contracts are not assumed under the Plan.

11. Compromise and Settlement of Shareholder Lawsuit.

The Plan contemplates the compromise and settlement of the Shareholder Lawsuit pursuant to the terms of the Shareholder Stipulation. In connection with confirmation of the Plan, the Debtor shall file a motion seeking approval of the Shareholder Stipulation by the Bankruptcy Court. The Shareholder Stipulation provides, among other things, that Holders of Old Class A Common Stock Interests shall be entitled to receive certain consideration as a gift from the Holders of the Senior Secured Lender Claims in exchange for settling the Shareholder Lawsuit. The Shareholder Stipulation provides, among other things, the following consideration to the Holders of Old Class A Common Stock Interests:

a. If the FL/Telmex Plan is consummated, the Holders of the Allowed Senior Secured Lender Claims waive their right to receive the first twenty million dollars (\$20,000,000) in cash interest otherwise payable to them pursuant to Section 3.3(a)(i) of the Plan and instead such amount shall be paid into escrow on behalf of the Holders of Old Class A Common Stock Interests within seven (7) days after the later of (x) the Effective Date and (y) the date such interest would otherwise be paid under the Plan; provided, that such amount, less any taxes, expenses, costs and attorneys' fees and expenses awarded by the court in which the Shareholder Lawsuit is pending or other court of competent jurisdiction shall be distributed on the Distribution Date or as soon thereafter as is practicable to Holders of Old Class A Common Stock Interests.

b. Under the Stand-Alone Plan,

i. In the event of a Successful Recovery in connection with any Investor Litigation not involving the receipt of Other Consideration by any party, XO or Reorganized XO, as applicable, shall pay or cause to be paid into escrow on behalf of Holders of Old Class A Common Stock Interests within seven (7) business days after XO's receipt of such Successful Recovery or any cash proceeds out of enforcing such Successful Recovery: (a) thirty-three and one-third percent (33 1/3%) of such Successful Recovery, up to a maximum Successful Recovery of sixty million dollars (\$60,000,000), for a maximum payment to Holders of Old Class A Common Stock Interests of twenty million dollars (\$20,000,000); and in addition (b) three percent (3%) of the gross value of any such Successful Recovery in excess of sixty million dollars (\$60,000,000) (collectively, the "Successful Recovery Fund"). The administration, distribution and tax payments on the Successful Recovery Fund shall be handled in the same manner as set forth above in connection with the Settlement Fund and distributions therefrom shall be made to Holders of Old Class A Common Stock Interests.

ii. In the event that a Successful Recovery involves the receipt of Other Consideration by any party, then two independent investment advisors selected by Plaintiffs and XO, respectively,

will agree on a value for the Successful Recovery. If no agreement can be reached between these two investment advisors, such advisors shall mutually agree upon and appoint a neutral advisor to value the Successful Recovery. After the agreement or neutral determination of the value of the Successful Recovery, any amounts owed to Holders of Old Class A Common Stock Interests shall be promptly liquidated (or, at XO's or Reorganized XO's election, the value thereof determined as described above shall be paid in cash by XO or Reorganized XO) and the proceeds of such liquidation or the value of such Other Consideration, as the case may be, together with that portion of the Successful Recovery that does not involve Other Consideration, shall be distributed in the same manner and to the same persons or entities as any cash consideration portion of a Successful Recovery; provided, however, that the amounts payable to Holders of Old Class A Common Stock Interests in respect of any Other Consideration portion of a Successful Recovery shall in no event exceed twenty million dollars (\$20,000,000).

All Holders of Claims against and Interests in XO shall be bound by the terms of the Shareholder Stipulation.

12. Confirmation and Consummation of the Plan

a. Conditions to Confirmation

The Bankruptcy Court shall not enter the Confirmation Order unless and until the Confirmation Order is reasonably acceptable in form and substance to the Debtor, the Administrative Agent and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement).

b. Conditions to Effective Date.

The following are conditions precedent to the occurrence of the Effective Date:

- i. The Confirmation Order confirming the Plan, as such Plan may have been modified, shall have been entered and become a Final Order in form and substance reasonably acceptable to the Debtor, the Administrative Agent, and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement) and shall provide that:

- (1) the Debtor and Reorganized XO are authorized to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents to be executed and/or delivered in connection with the Plan;

- (2) the provisions of the Confirmation Order are nonseverable and mutually dependent; and
  - (3) (x) under the FL/Telmex Plan, Reorganized XO is authorized to issue New Common Stock and is authorized to enter into the Amended and Restated Senior Credit Facility and other such agreements and instruments contemplated thereby or (y) under the Stand-Alone Plan and the Debtor files the Stand-Alone Notice with the Bankruptcy Court, Reorganized XO is authorized to issue the Post-Termination Securities and is authorized to enter into the Exit Facility and such other agreements and instruments contemplated by the Stand-Alone Term Sheet.
- ii. The following agreements or instruments, in form and substance reasonably satisfactory to Reorganized XO, the Administrative Agent and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement) and the Administrative Agent, shall be in full force and effect or shall become effective concurrently with the transactions contemplated on the Effective Date, and, if applicable, all conditions precedent contained therein shall have been satisfied:
- (1) If a Termination Even has not occurred, the Amended Certificates of Incorporation and Bylaws of Reorganized XO;
  - (2) If a Termination Even has not occurred, the Amended and Restated Senior Credit Facility and all similar documents provided for therein or contemplated thereby (to the extent required by the Investment Agreement);
  - (3) If a Termination Even has not occurred, the Management Stock Purchase Agreement and the ancillary agreements contemplated thereby, to the extent that the transactions contemplated by the Investment Agreement are to be consummated;
  - (4) If a Termination Even occurs and the Debtor files the Stand-Alone Notice, agreements and any other instruments that evidence the New Junior Loans, the Post-Termination Securities, the Exit Facility, if applicable, and such other agreements and instruments, to the extent required by the Stand-Alone Term Sheet.

- iii. The Amended Certificates of Incorporation and Bylaws of Reorganized XO, as necessary, shall have been filed with the appropriate authority in accordance with such jurisdiction's corporation laws.
- iv. All actions, documents and agreements necessary to implement the Plan shall have been effected or executed and shall be reasonably acceptable to the Administrative Agent and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement).
- v. The new Board of Directors of Reorganized XO shall have been appointed.
- vi. If a Termination Event has not occurred, the Investors shall have made the Investment as required by the Investment Agreement.
- vii. If a Termination Event has not occurred, to the extent required by the Investment Agreement, all conditions precedent to the closing of the transactions under the Investment Agreement shall have been satisfied or waived in accordance with the terms thereof.
- viii. If a Termination Event occurs and the Debtor files the Stand-Alone Notice with the Bankruptcy Court, all conditions precedent to closing the Exit Facility (other than the occurrence of the Effective Date) shall have been satisfied or waived.
- ix. The Bankruptcy Court shall have approved the Shareholder Stipulation and all other conditions to the effectiveness of the Shareholder Stipulation shall have been satisfied.

c. Waiver of Conditions.

Each of the conditions set forth in Section 9.2 of the Plan may be waived in whole or in part by the Debtor (and with the prior written consent of the Administrative Agent which cannot be unreasonably withheld and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement)) without any other notice to parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor or Reorganized XO regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Debtor or Reorganized XO). The failure of the Debtor or Reorganized XO, the Investors (to the extent required by the Investment Agreement) or the Administrative Agent to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

d. Consequences of Non-Occurrence of Effective Date

If the Effective Date does not occur prior to March 15, 2003, or by such later date, after notice and hearing, as is proposed by the Debtor, then upon motion by the Debtor and upon notice to such parties in interest as the Bankruptcy Court may direct, the Debtor will seek an order of the Bankruptcy Court vacating the Confirmation Order; provided, however, that the Debtor shall not be precluded from seeking to vacate the Confirmation Order prior to such date; provided, further, however, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if the Effective Date occurs before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to Section 9.4 of the Plan, (a) the Plan shall be null and void in all respects; and (b) any settlement of Claims and Interests provided for hereby shall be null and void without further order of the Bankruptcy Court.

13. Effect of Plan Confirmation

a. **Binding Effect.** The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, Reorganized XO.

b. Discharge of Claims and Termination of Interests

i. Except as provided in the Confirmation Order, pursuant to section 1141(d) of the Bankruptcy Code, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for, and in complete satisfaction, discharge and release of, all Claims and termination of all Interests, including any interest accrued on Claims from the Petition Date. Except as provided in the Confirmation Order or the Plan, Confirmation shall (a) discharge the Debtor from all Claims and other debts that arose before the Confirmation Date and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (iii) the Holder of a Claim based on such debt has accepted the Plan; and (b) terminate all Interests and other rights of equity security holders in the Debtor; provided, however, all obligations under the Senior Credit Facility shall survive except to the extent expressly replaced by the Amended and Restated Senior Credit Facility.

ii. As of the Confirmation Date, except as provided in the Plan or the Confirmation Order, all entities shall be precluded from asserting against the Debtor, Reorganized XO, their successors or their property, any other or further claims, debts, rights, causes of action, liabilities or equity interests based upon any act, omission,



transaction or other activity of any nature that occurred prior to the Confirmation Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such claims and rights of equity security holders in the Debtor, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtor at any time to the extent that such judgment relates to a discharged Claim or Interest.

**c. Injunction**

- i. **Except as otherwise provided in the Plan, entities who have held, hold or may hold Claims against or Interests in the Debtor are (i) permanently enjoined from taking any of the following actions against the Estate or any of its property on account of any such Claims or Interests and (ii) permanently enjoined from taking any of the following actions against the Debtor, Reorganized XO, or their property on account of such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting or enforcing any lien or encumbrance; (D) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained herein shall preclude such persons from exercising their rights pursuant to and consistent with the terms of the Plan.**
- ii. **By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the injunctions set forth in the Plan.**

**d. Releases**

- i. ***Releases by the Debtor.* As of the Effective Date, the Debtor and Reorganized XO, in their individual capacities and as debtor in possession, will be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the rights of the Debtor or Reorganized XO to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents**

delivered thereunder) whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, Reorganized XO, the parties released pursuant to Section 10.4 of the Plan, the Chapter 11 Case, or the Plan or the Disclosure Statement, and that could have been asserted by or on behalf of the Debtor or its Estate or Reorganized XO, whether directly, indirectly, derivatively or in any representative or any other capacity, against (i) the current and former directors, officers and employees of the Debtor (other than for money borrowed from or owed to the Debtor or its subsidiaries by any such directors, officers or employees as set forth in the Debtor's books and records) and the Debtor's agent, and Professionals, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors, and Professionals of the foregoing; (ii) the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors and the Administrative Agent, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors (including any attorneys, financial advisors, investment bankers and other professionals retained by such persons) and professionals of the foregoing; and (iii) in the event the Investment Agreement is consummated, the Forstmann Little Entities and Telmex, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors, and Professionals of the foregoing.

ii. **Releases by Holders of Claims and Interests.**

- (1) Under the FL/Telmex Plan, on the Effective Date, all holders of Claims and Interests, in consideration for the obligations of the Debtor and Reorganized XO under the Plan, the obligations of the Investors under the Investment Agreement, and the Cash, New Common Stock and other contracts, instruments, releases, agreements or documents to be delivered in connection with the Plan, and each entity (other than the Debtor) that has held, holds or may hold a Claim or Interest, as applicable, will be deemed to forever release, waive and discharge all claims, demands, debts, rights, causes of action or liabilities (other than the right to enforce the Debtor's or Reorganized XO's obligations under the

Plan, and the contracts, instruments, releases, agreements and documents delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement against (i) Forstmann Little Entities, (ii) Telmex, (iii) the current and former directors, officers and employees of the Debtor, (iv) the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors and the Administrative Agent and (v) the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors (including any attorneys, financial advisors, investment bankers and other Professionals retained by such persons), and Professionals of the foregoing. The releases and injunctions provided in Sections 10.4, 10.5 and 10.6 of the Plan are an integral part of the Plan and are supported by the consideration provided hereunder and under the Investment Agreement.

- (2) Under the Stand-Alone Plan, on the Effective Date, (i) each Holder of a Claim or Interest that voted to accept the Plan and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Holders of Claims and Interests, in consideration for the obligations of the Debtor and Reorganized XO under the Plan, and the New Warrants, New Reorganization Common Stock and other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, and each entity (other than the Debtor) that has held, holds or may hold a Claim or Interest, as applicable, will be deemed to forever release, waive and discharge all claims, demands, debts, rights, causes of action or liabilities (other than the right to enforce the obligations of any party under the Plan, the Investment Agreement, if applicable, and the contracts, instruments, releases, agreements and documents delivered under or in connection with the Plan), whether liquidated or unliquidated, fixed or contingent, matured or

unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement against (i) the current and former directors, officers and employees of the Debtor and such Professionals' affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors, and Professionals (but in all events excluding the Investors with respect to any breach by either of them under the Investment Agreement); (ii) the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors and the Administrative Agent, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors (including any attorneys, financial advisors, investment bankers and other professionals retained by such persons), and professionals of the foregoing (but in all events excluding the Investors with respect to any breach by either them under the Investment Agreement); and (iii) the Investors excluding with respect to any breach by either of the Investors under the Investment Agreement.

- (3) Notwithstanding anything to the contrary contained herein, except to the extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, the releases provided for in Section 10.4(b) of the Plan shall not release any non-Debtor entity from any liability arising under (x) the Internal Revenue Code or any state, city or municipal tax code, (y) the environmental laws of the United States or any state, city or municipality, or (z) any criminal laws of the United States or any state, city or municipality.

e. **Exculpation and Limitation of Liability**

- i. Under the FL/Telmex Plan, none of the Debtor, Reorganized XO, the Administrative Agents, the Forstmann Little Entities, Telmex, the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors, the Administrative Agents, the entities participating as lenders under the

Amended and Restated Senior Credit Facility, nor any of their respective current or former members, partners, officers, directors, employees, affiliates, agents and advisors (including any attorneys, financial advisors, investment bankers and other Professionals retained by such persons) shall have or incur any liability to any Holder of any Claim or Interest for any act or omission in connection with, or arising out of the Debtor's restructuring, the Plan, the Chapter 11 Case, this Disclosure Statement, the Investment Agreement, the Bank Plan Support Agreement, the Amended and Restated Senior Credit Facility, the Stockholders Agreement, any agreements relating to the foregoing or to the transactions contemplated by the Stand-Alone Term Sheet, the solicitation of votes for and the pursuit of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all prepetition activities leading to the promulgation and confirmation of the Plan except willful misconduct or gross negligence as determined by a Final Order of the Bankruptcy Court. The foregoing parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

- ii. Under the Stand-Alone Plan, none of the Debtor, Reorganized XO, the Investors (except with respect to any breach by either of the Investors under the Investment Agreement), the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors, the Administrative Agents, nor any of their respective current or former members, partners, officers, directors, employees, affiliates, agents and advisors (including any attorneys, financial advisors, investment bankers and other Professionals retained by such persons), but in all events excluding the Investors with respect to any breach by either of them under the Investment Agreement, shall have or incur any liability to any Holder of any Claim or Interest for any act or omission in connection with, or arising out of the Debtor's restructuring, including without limitation the negotiation and execution of the Investment Agreement or any agreements relating thereto or to the transactions contemplated by the Stand-Alone Term Sheet, the Plan, the Chapter 11 Case, this Disclosure Statement, the Bank Plan Support Agreement, the solicitation of votes for and the pursuit of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, including, without limitation, all documents ancillary thereto, all

decisions, actions, inactions and alleged negligence or misconduct relating thereto and all prepetition activities leading to the promulgation and confirmation of the Plan except willful misconduct or gross negligence as determined by a Final Order of the Bankruptcy Court. The foregoing parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

f. **Injunction Related to Releases and Exculpation**

The Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan, including but not limited to the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in Sections 10.4 and 10.5 of the Plan.

g. **Preservation of Rights of Action; Settlement of Litigation Claims**

i. *Preservation of Rights of Action.* Except as otherwise provided in the Plan, the Confirmation Order, or in any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Debtor and its Estate shall retain the Litigation Claims. Reorganized XO, as the successor in interest to the Debtor and its Estate, may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Litigation Claims.

ii. *Cancellation of Note Claims held by Company.* Any Note Claims, Old Preferred Stock Interests and Old Common Stock Interests held by the Company shall be deemed cancelled and released and no distributions shall be made on account of such Claims.

iii. *Settlement of Litigation Claims.* At any time after the Confirmation Date and before the Effective Date, notwithstanding anything in the Plan to the contrary, Reorganized XO may settle any or all of the Litigation Claims with the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

h. **Termination of Subordination Rights and Settlement of Related Claims**

i. The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, if any, whether arising by contract, under the Indentures or under general principles of equitable subordination, section 510(b) or 510(c) of the Bankruptcy Code, or otherwise.

- ii. Pursuant to Bankruptcy Rule 9019 and in consideration of the distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the subordination rights that a Holder of a Claim may have or any distribution to be made pursuant to the Plan on account of such Claim. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, Reorganized XO, their respective properties, and Holders of Claims and Interests, and is fair, equitable and reasonable.

- i. Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

#### 14. Retention of Jurisdiction

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- a. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

- b. Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor or Reorganized XO may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

- c. Ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan;

- d. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date;

- e. Enter such order as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

- f. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents including, without limitation, the Shareholder Stipulation;
- g. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan or vacate the Confirmation Order;
- h. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), and 1103 of the Bankruptcy Code, provided, however, that from and after the Effective Date, the payment of fees and expenses of Reorganized XO, including counsel fees, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;
- i. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;
- j. Hear and determine causes of action by or on behalf of the Debtor or Reorganized XO;
- k. Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- l. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;
- m. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order including, without limitation, the Shareholder Stipulation;
- n. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;
- o. Hear and determine all matters related to (i) the property of the Estate from and after the Confirmation Date and (ii) the activities of Reorganized XO;



p. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;

q. Hear and determine any and all matters, claims or disputes arising from or relating to any contract, instrument, release, agreement, or document executed and delivered under or in connection with the Plan; and

r. Enter an order closing the Chapter 11 Case.

#### 15. Summary of Other Provisions of the Plan

The following paragraphs summarize certain other significant provisions of the Plan. The Plan should be referred to for the complete text of these and other provisions of the Plan.

##### a. Exemption from Transfer Taxes.

Pursuant to section 1146(c) of the Bankruptcy Code, (a) the issuance, transfer or exchange of notes or equity securities under the Plan; (b) the creation of any mortgage, deed of trust, lien, pledge or other security interest; (c) the making or assignment of any lease or sublease; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, any merger agreements; agreements of consolidation, restructuring, disposition, liquidation or dissolution; deeds; bills of sale; and transfers of tangible property, will not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. Any transfers from the Debtor to Reorganized XO or otherwise pursuant to the Plan shall not be subject to any such taxes, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Unless the Bankruptcy Court orders otherwise, any and all of the foregoing transactions whether taken on or after to the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

##### b. Cancellation of Notes, Other Old Equity, Old Common Stock and Old Preferred Stock.

On the Effective Date, except as otherwise provided for herein, (i) the Notes, Other Old Equity, Old Common Stock, Old Preferred Stock, and any other notes, bonds (with the exception of surety bonds outstanding), indentures or other instruments or documents evidencing or creating any indebtedness or obligations of, or interests in, the Debtor, except such notes or other instruments evidencing indebtedness or obligations of the Debtor that are Unimpaired, Reinstated, or amended and restated under the Plan (including, if applicable upon implementation of the transactions contemplated under the Investment Agreement, the Senior Secured Lender Claims), shall be cancelled, and (ii) the obligations of the Debtor under any agreements, Indentures or certificates of designation governing the Notes, Other Old Equity, Old Common Stock, Old Preferred Stock, and any other notes, bonds (with the exception of surety bonds outstanding), indentures or other instruments or documents evidencing or creating any

indebtedness or obligations of, or interests in, the Debtor, except such notes or other instruments evidencing indebtedness or obligations of the Debtor that are Unimpaired, Reinstated or amended and restated under the Plan (including, if applicable upon implementation of the transactions contemplated under the Investment Agreement, the Senior Secured Lender Claims), as the case may be, shall be discharged; provided, however, that the Notes and Indentures shall continue in effect solely for the purposes of (i) allowing the Holders of the Senior Note Claims to receive their distributions hereunder, (ii) allowing the Senior Note Trustee to make the distributions to be made on account of the Senior Notes, and (iii) permitting the Senior Note Trustee, as it may choose, to assert any Note Trustee Charging Lien it may have against such distributions for payment of the Note Trustee Fees.

c. Effectuating Documents and Further Transactions.

Each of the Debtor or Reorganized XO, as appropriate, is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and any notes or securities issued pursuant to the Plan.

d. Revocation, Withdrawal or Non-Consummation.

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtor revokes or withdraws the Plan, or if Confirmation or consummation does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other person, (ii) prejudice in any manner the rights of the Debtor or any other person, or (iii) constitute an admission of any sort by the Debtor or any other person.

e. Bar Date for Administrative Claims

The Confirmation Order will establish an Administrative Claims Bar Date for filing Administrative Claims. Holders of Administrative Claims not paid prior to the Effective Date shall submit proofs of Claim on or before such Administrative Claims Bar Date or are forever barred from doing so. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 3020(c) and 2002(f) will set forth such date and constitute notice of this Administrative Claims Bar Date. The Debtor and Reorganized XO shall have thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) following the Administrative Claims Bar Date to review and object to such Administrative Claims before a hearing for determination of allowance of such Administrative Claims.

f. Payment of Statutory Fees.

All fees payable pursuant to Section 1930 of Title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date.

g. Severability of Plan Provisions.

Subject to the terms and conditions of the Investment Agreement (including, without limitations, Section 5.2(m) thereof), if, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

h. Amendment or Modification of the Plan.

Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123 and 1125 of the Bankruptcy Code, the Debtor reserves the right (with the prior written consent of the Investors, to the extent required by the Investment Agreement) to alter, amend or modify the Plan at any time prior to or after the Confirmation Date but prior to the substantial consummation of the Plan. A Holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

i. Plan Supplement.

The Plan Supplement, which shall include certain exhibits, lists, schedules, or documents to be executed in connection with the Plan, shall be filed with the Bankruptcy Court not later than five (5) days prior to the Confirmation Hearing. Upon its filing, the Plan Supplement may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Interests may obtain a copy of the Plan Supplement upon written request to the Debtor. The documents contained in the Plan Supplement shall be reasonably acceptable to the Investors and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

j. Controlling Documents.

To the extent there is any inconsistency or ambiguity between any term or provision contained in the Plan or the Investment Agreement, on the one hand, and the Disclosure Statement, the Bank Plan Support Agreement or any other agreement or document

executed or delivered in connection therewith, on the other, the terms and provisions of the Plan or Investment Agreement, as applicable, shall control; provided that, to the extent there is any inconsistency or ambiguity between any term or provision contained in the Plan and the Investment Agreement, the terms and provisions of the Investment Agreement shall control.

#### **D. Confirmation and Consummation Procedure**

The Bankruptcy Court may confirm an Alternative under the Plan only if it determines that such Plan complies with the technical requirements of Chapter 11, including, among other things, that (a) the Plan has properly classified Claims and Interests; (b) the Plan complies with applicable provisions of the Bankruptcy Code; (c) the Debtor has complied with applicable provisions of the Bankruptcy Code; (d) the Debtor has proposed the Plan in good faith and not by any means forbidden by law; (e) disclosure of "adequate information", as required by Section 1125 of the Bankruptcy Code, has been made; (f) the Plan has been accepted by the requisite votes of all Classes of creditors and Interest Holders (except to the extent that "cramdown" is available under Section 1129(b) of the Bankruptcy Code; (g) the Plan is in the "best interests" of all Holders of Claims or Interests in an Impaired Class; and (h) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date. Under the Bankruptcy Code, the following steps must be taken to confirm the Plan.

##### **1. The Confirmation Hearing**

The Bankruptcy Court has scheduled a hearing on the confirmation of one of the Alternatives under the Plan for August 26, 2002, at 9:30 a.m. At that hearing, the Bankruptcy Court will consider whether such Plan satisfies the various requirements of the Bankruptcy Code, including whether such Plan is feasible and whether such Plan is in the best interests of the Creditors and Holders of Interests in the Debtor. At that time, the Debtor will submit a report to the Bankruptcy Court concerning the votes for acceptance or rejection of such Plan by the parties entitled to vote thereon.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the applicable Alternative under the Plan. Any objection to confirmation of such Plan must be made in writing and filed with the Bankruptcy Court and served on all required parties by the objection deadlines set by the Bankruptcy Court. Unless an objection to confirmation is timely served and filed, it may not be considered by the Bankruptcy Court.

##### **2. Confirmation**

a. At the Confirmation Hearing, the Bankruptcy Court will confirm an Alternative under the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of either Alternative under the Plan are:

- i. Such Plan complies with the applicable provisions of the Bankruptcy Code.