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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DISTRIBUTION CENTER  
10 FEB 16 AM 7:34

100000-01

STARVOX COMMUNICATIONS, INC.,  
A CALIFORNIA CORPORATION  
Employer's Tax ID No. 09-0211168

Case No. 08-51447-RLE-7

STARVOX COMMUNICATIONS, INC.,  
A DELAWARE CORPORATION  
Employer's Tax ID No. 84-1178691

Case No. 08-51450-RLE-7

CAPITAL TELECOMMUNICATIONS, INC.,  
A PENNSYLVANIA CORPORATION  
Employer's Tax ID No. 23-2217634

Case No. 08-51451-RLE-7

EASTERN TELEPHONE SYSTEMS, INC.,  
A DELAWARE CORPORATION  
Employer's Tax ID No. 23-2216998

Case No. 08-51452-RLE-7

CAPITAL TELECOMMUNICATIONS OF ERIE,  
INC., A PENNSYLVANIA CORPORATION  
Employer's Tax ID No. None-Inactive

Case No. 08-51453-RLE-7

STAR TEL OF VICTORIA, INC., A TEXAS  
CORPORATION  
Employer's Tax ID No. 74-2384891

Case No. 08-51454-RLE-7

STAR TEL TRANSMISSION CO., INC.,  
A TEXAS CORPORATION  
Employer's Tax ID. No. 74-2435874

Case No. 08-51455-RLE-7

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Debtors.

**NOTICE OF TRUSTEE'S INTENT TO  
COMPROMISE CONTROVERSY**  
(Verizon Services Corp.)

**TO CREDITORS AND PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE** that Carol Wu, Trustee in bankruptcy of the estate of the above-named Debtors, intends to compromise the estate's claims against Verizon Services Corp. ("Verizon") related to certain payments it received during the 90 days prior to the Debtors' bankruptcy filing.

**Background**

During the 90 days prior to the Debtor's bankruptcy filing, the Trustee learned that the debtor Starvox Communications, Inc. ("Starvox") and its wholly-owned subsidiary and one of the consolidated debtors, Capital Telecommunications, Inc. ("CTI"), made payments and/or caused to be made certain payments to Verizon totaling approximately \$2 million. Prior to this bankruptcy filing, CTI did business with Verizon. In or around August 2007, Verizon notified CTI of certain monetary defaults. As of September 19, 2007, CTI owed Verizon over \$1.8 million. CTI and Verizon entered into a forbearance agreement as of September 21, 2007, but CTI failed to make the payments under the forbearance agreement. At or around this time, CTI was negotiating a sale of assets to

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Manhattan Telecommunication Corporation ("MetTel"). On or about November 21, 2007, CTI and StarVox entered into a Asset Purchase Agreement with MetTel wherein MetTel purchased, among other things, certain business and residential lines within the Verizon territory which was to close in or around January 2008. In December 2007, CTI, StarVox, Verizon and MetTel entered into a Settlement Agreement. In the recitals of the Settlement Agreement, the parties assert that a condition of the Asset Purchase Agreement is that the business and residential lines being acquired by MetTel remain active, and that Verizon is willing to compromise the payments owed by CTI and to continue to provide services for the business and residential lines MetTel is purchasing. The Settlement Agreement provides for a schedule of payments from CTI and StarVox but also provides for payments directly from MetTel as a credit against the purchase price. On March 28, 2008, CTI and Starvox filed petitions under Chapter 7 of the Bankruptcy Code.

The Trustee alleges that the payments from Starvox, CTI and MetTel are avoidable and recoverable as preferences under Section 547 of the Bankruptcy Code. Verizon asserted several defenses to the Trustee's claims, including a new value defense of approximately \$517,000. After credit for new value, the total possible preference amount is \$1,620,011.30. Verizon's counsel also informed the Trustee's counsel that certain payments were not made on account of an antecedent debt. This brings down the possible preference amount to approximately \$1.4 million. Additionally, Verizon alleges a number of other defenses, including alleging that the Trustee does not have a prima facie case because the sale to MetTel would not have closed if the payments were not made to Verizon in order to keep the lines subject to the sale active. Verizon denies it has any preference liability. In addition, it asserted that it has an administrative claim of approximately \$128,073.92 for alleged services provided post-petition. The Trustee disputes that Verizon is entitled to an administrative claim. The Trustee and Verizon engaged in settlement discussions and exchanged several settlement offers.

### **The Settlement**

Subject to Bankruptcy Court approval, the Trustee agreed to accept \$250,000 from Verizon in full and complete satisfaction of her claims for avoidance and recovery of the alleged preferential transfers. In addition, as part of the settlement, Verizon agreed to waive any and all administrative or priority claims against the CTI and/or Starvox estates, including but not limited to the administrative claim of \$128,073.92 it asserts for post-petition services. The Trustee agreed that Verizon does not waive any general unsecured claims it has against the estate and, in addition, is entitled to file a general unsecured claim for the return of \$250,000. As part of the settlement, Verizon will be granted a general release.

The Trustee believes that the proposed compromise meets the standards of Martin v. Kane (In re A&C Properties, Inc.), 784 F.2d 1377 (9<sup>th</sup> Cir. 1986), cert. den. sub nom Martin v. Robinson, 479 U.S. 854 (1986). The Trustee has investigated the potential recovery against Verizon and believes that the settlement amount is reasonable in light of the facts of the case. Based on the applicable law, the Trustee believes that she may have some difficulty proving a prima facie case. Therefore, if the Trustee had to litigate the preference claim, success would be uncertain. The amount of the settlement appears to be a reasonable estimate of the likelihood of the Trustee succeeding on the merits. If the matter were litigated, the Trustee is not aware of any difficulties that would be encountered in collection. However, litigating this matter could be expensive, time-consuming and result in further delays. As a result, the Trustee believes that the proposed settlement is in the paramount interest of creditors.

### **Objections or Requests for Hearing**

**PLEASE TAKE FURTHER NOTICE THAT** Local Rule 9014-1 of the United States Bankruptcy Court for the Northern District of California prescribes the procedures to be followed with respect to any objection to the proposed compromise or any request for hearing thereon. Any objection to the proposed compromise or request for hearing must be filed with the United States Bankruptcy Court, San Jose Division, Third Floor, Room 3035, 280 South First Street, San Jose, CA 95113-3099, and served on counsel for the Trustee at the address noted below within 20-days from the mailing of this notice. Any request for hearing or objection to the proposed compromise must be accompanied by any declarations or memoranda of law that the party objecting or requesting wishes to present in support of its objection. If no party in interest timely objects to the requested relief or requests a hearing, the Trustee will seek entry of an order approving the compromise by default, without further notice and in the

absence of an actual hearing. If a timely objection or request for a hearing is made, counsel for the Trustee will give at least 10-days' written notice of the hearing to the objecting or requesting party.

**PLEASE TAKE FURTHER NOTICE THAT** as of January 1, 2005, the United States Bankruptcy Court for the Northern District of California has adopted mandatory electronic filing. If you are not currently qualified to file papers with the Court electronically, you should consult the Court's website ([www.canb.uscourts.gov](http://www.canb.uscourts.gov)).

DATED: February 10, 2010

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: /s/Nhung Le, Esq., CSBN 209552

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