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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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Arizona Corporation Commission  
**DOCKETED**

FEB 13 2003

DOCKETED BY	<i>CAR</i>
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In the Matter of e.spire Communications, Inc.,  
f/k/a American Communications Services, Inc.,  
ACSI Local Switched Services, Inc., d/b/a  
e.spire and American Communication Services o  
of Pima County, Inc. d/b/a e.spire

DOCKET NO. 01051B-02-0790

Complainants,

v.

Qwest Corporation, f/k/a U S West  
Communications, Inc. ,

Respondents.

**STIPULATION TO DISMISS COMPLAINT**

Qwest Corporation ("Qwest") and e.spire Communications, Inc. and its Arizona operating subsidiaries, ACSI Local Switched Services, Inc., d/b/a e.spire and American Communication Services of Pima County, Inc., d/b/a/ e.spire (collectively "e.spire"), through their undersigned counsel, stipulate that the above-captioned complaint be dismissed with prejudice, each party to bear its own costs and fees. The stipulation to dismiss is based on the following:

1. e.spire Communications, Inc. is the debtor and debtor-in-possession in a Chapter 11 bankruptcy case entitled *In re e.spire Communications, Inc. et al.*, filed in the United

States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), on March 22, 2001, at Case No. 01-974 JWV).

2. Qwest is a creditor in the bankruptcy proceeding.
3. Qwest and e.spire had reached an agreement resolving certain past outstanding issues between the companies within the context of the bankruptcy proceeding. A Settlement Agreement was approved by the Bankruptcy Court on December 3, 2002. Attached as Exhibit A is a copy of the Bankruptcy Court Order approving the Settlement Agreement and the supporting Motion for approval of the Settlement Agreement.
4. Counsel for both e.spire and Qwest have conferred with respect to this motion and the undersigned is authorized to sign this motion on behalf of e.spire. Qwest and e.spire are the only parties to this docket.

RESPECTFULLY SUBMITTED this 12th day of February 2003.

E.SPIRE COMMUNICATIONS, INC.

ACSI LOCAL SWITCHED SERVICES, INC.

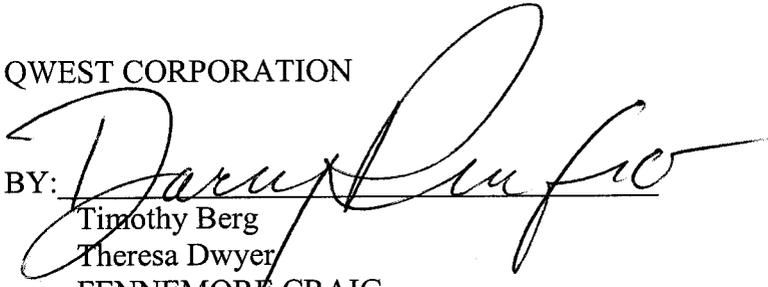
AMERICAN COMMUNICATIONS SERVICES  
OF PIMA COUNTY, INC.

BY: 

Michael W. Patten  
ROSHKA, HEYMAN & DEWULF  
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QWEST CORPORATION

BY:

  
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Theresa Dwyer

FENNEMORE CRAIG

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-and-

Mark E. Brown

QWEST CORPORATION

Staff Attorney – Arizona

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Phoenix, Az 85012

Tel. (602) 630-1181

Fax (602) 235-3501

ORIGINAL and 13 copies of the  
foregoing hand-delivered for  
filing this 13<sup>th</sup> day of February 2003 to:

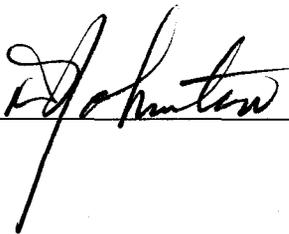
Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered  
this 13<sup>th</sup> day of February, 2003 to:

Chris Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Lyn Farmer, Chief Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington  
Phoenix, AZ 85007



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# EXHIBIT "A"

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
E.SPIRE COMMUNICATIONS, INC.,	)	Case No. 01-974 (JWV)
et al.,	)	
	)	Jointly Administered
Debtors.	)	
	)	Related to Docket No. <u>2138</u>
	)	

**ORDER APPROVING SETTLEMENT  
AGREEMENT AND RELEASE OF CERTAIN CLAIMS  
AGREEMENT BETWEEN DEBTORS AND QWEST CORPORATION**

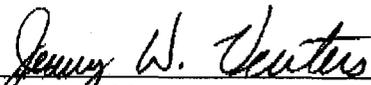
Upon the motion dated November 13, 2002 (the "Motion") of e.spire Communications, Inc. ("Communications") and its subsidiaries and affiliates, debtors and debtors-in-possession (collectively, the "Debtors"), for approval of Settlement Agreement and Release of Certain Claims between Debtors and Qwest Corporation; the Court having reviewed the Motion; it appearing to the Court that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court finding that notice of the Motion was sufficient under the circumstances; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion shall be, and hereby is, granted in its entirety.
2. The Court hereby approves the Agreement in its entirety. The Court finds that the Agreement is fair and reasonable in light of the costs, risks and uncertainties of attempting to resolve the disputed claims through litigation and the settlement is in the best interest of the estate.

3. The Court hereby retains jurisdiction over all disputes arising out of the Agreement.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2002

  
\_\_\_\_\_  
The Honorable Jerry W. Venters  
United States Bankruptcy Judge



At the same time, you must also serve a copy of the response upon movant's attorneys:

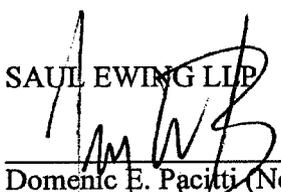
Domenic E. Pacitti, Esq.  
Maria Aprile Sawczuk, Esq.  
Jeremy W. Ryan, Esq.  
SAUL EWING LLP  
222 Delaware Avenue  
P.O. Box 1266  
Wilmington, DE 19899-1266

A HEARING ON THE MOTION WILL BE HELD ONLY IF OBJECTIONS ARE FILED AT A TIME AND PLACE TO BE DETERMINED BY THE COURT.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware  
November 13, 2002

SAUL EWING LLP



---

Domenic E. Pacitti (No. 3989)  
Jeremy W. Ryan (No. 4057)  
222 Delaware Avenue, Suite 1200  
P. O. Box 1266  
Wilmington, DE 19899-1266  
(302) 421-6800

- and -

Jeffrey C. Hampton  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102-2186  
(215) 972-7777

ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	<b>Chapter 11</b>
	)	
E.SPIRE COMMUNICATIONS, INC.,	)	<b>Case No. 01-974 (JWV)</b>
et al.,	)	
Debtors.	)	<b>Jointly Administered</b>
	)	<b>Obj. Deadline: November 20, 2002 @ 4:00 p.m.</b>
	)	<b>Hrg. Date: To Be Determined</b>
	)	<b>(Only if objections are filed.)</b>

**MOTION OF DEBTORS FOR APPROVAL OF SETTLEMENT  
AGREEMENT AND RELEASE OF CERTAIN CLAIMS  
BETWEEN DEBTORS AND QWEST CORPORATION**

e.spire Communications, Inc. ("Communications") and its subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession (collectively, the "Debtors" or "e.spire"), hereby move (the "Motion") for the Approval of the Settlement Agreement And Release Of Certain Claims (the "Agreement"), attached hereto as Exhibit "A," between the Debtors and Qwest Corporation ("Qwest"). In support of this Motion, the Debtors respectfully represent as follows:

**BACKGROUND**

**The Chapter 11 Filings**

1. On March 22, 2001 (the "Petition Date"), the Debtors each filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
2. On April 5, 2001, a general unsecured creditors' committee (the "Committee") was appointed in these cases by the Office of the United States Trustee.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

B. The Settlement with Qwest

5. Previously, the Court had issued an Order: (A) Granting Motion *In Limine* Of Qwest Corporation To Exclude Evidence Of Potential Set-Off; (B) Determining Amounts For Cure In Connection With Assumption And Assignment; And (C) Approving Settlement Relating To Relief From The Automatic Stay (the "Assumption and Assignment Order"), by which e.spire assumed and assigned the following Interconnection Agreements between e.spire and Qwest to Xspedius Management Co., LLC ("XMC"):

- (a) Agreement for Local Wireline Network Interconnection and Service Resale Between American Communications Services, Inc. and U S West Communications, Inc. For the State of Arizona (the "Arizona Interconnection Agreement")
- (b) American Communications Services, Inc. and U S West Communications, Inc. Interconnection Agreement for the State of Colorado (the "Colorado Interconnection Agreement")
- (c) Agreement for Local Wireline Network Interconnection and Service Resale Between American Communications Services, Inc. and U S West Communications, Inc. For the State of New Mexico (the "New Mexico Interconnection Agreement").

6. Pursuant to the Assumption and Assignment Order, after taking into consideration certain setoffs for undisputed reciprocal compensation charges Qwest owed to e.spire, the Bankruptcy Court ordered that e.spire's cure obligations pursuant to section 365 of the Bankruptcy Code was \$2,019,191.84 (the "Cure Amount"). e.spire was further required to pay the Cure Amount into a mutually agreed upon third-party escrow account, rather than directly to

Qwest, as e.spire had asserted rights of setoff against the Cure Amount for unpaid reciprocal compensation charges e.spire alleged Qwest owed to e.spire, including, but not limited to, the amounts sought by e.spire under the Arizona and Colorado Interconnection Agreements.

7. Pursuant to the Assumption and Assignment Order, e.spire initiated proceedings in Arizona and Colorado to recover reciprocal compensation charges on October 17, 2002 (the "Pending Actions"), seeking, in the aggregate, approximately \$1.7 million.

8. Rather than proceed with expensive, costly and time consuming litigation, e.spire and Qwest have agreed to settle the Pending Actions for the cumulative amount of \$1.05 million, payable by Qwest, which will be offset against the Cure Amount. Consequently, the Cure Amount will be reduced to \$969,191.84, plus interest from the date of the Assumption and Assignment Order. e.spire will be entitled to the remainder of the monies allocated to the Cure Amount.

#### **RELIEF REQUESTED**

9. By this Motion, the Debtors seek the approval of the Agreement.

10. Bankruptcy Rule 9019 provides, in part, that "[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). In order to approve a settlement, the Court must examine the settlement terms under Bankruptcy Rule 9019(a). "[T]he decision whether to approve a compromise under Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate." In re Louise's, Inc., 211 B.R. 798, 801 (D. Del. 1997) (declining to approve settlement Court found to be a *sub rosa* plan). See, e.g., In re Marvel Entertainment Group, Inc., 222 B.R. 243 (D. Del. 1998) (holding that proposed settlement was in the best interest of the estate); Protective Comm. of

Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968), on remand, TMT Trailer Ferry, Inc. v. Kirkland, 471 F.2d 10 (5th Cir. 1972); Continental Airlines, Inc. v. Air Line Pilots' Ass'n Int'l. (In re Continental Airlines, Inc.), 907 F.2d 1500, 1508 (5th Cir. 1990).

11. Courts should consider the following factors in determining whether to approve a proposed settlement:

- (a) the probability of success in litigation;
- (b) the likely difficulties in collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors.

See Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996); see also Protective Committee, 390 U.S. at 424-25; Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.), 68 F.3d 914, 917 (5th Cir. 1994); Jones v. Cage (In re W. J. Services, Inc.), 140 B.R. 190, 191 (S.D. Tex. 1991). This standard seeks to balance the risks and benefits associated with pursuing a potential claim against the costs associated with the proposed settlement.

12. The Agreement resolves many outstanding disputes between the parties relating to invoices issued by e.spire. Resolving these disputes allows the Debtors to receive payment on invoices issued to Qwest, in the form of an offset to the Cure Amount, which were previously unpaid because of pending disputes. Thus, the Agreement provides a direct financial benefit to the Debtors.

13. Although the Debtors felt strongly about their chances of success in the Pending Actions, there was no guarantee of success and Qwest might have prevailed entirely. Rather than risk such an outcome, the Debtors believe that it is better to secure a recovery.

14. The Pending Actions were extraordinarily complex and highly technical pieces of litigation which dealt with difficult issues of state and federal regulatory laws, as well as the interpretation of the Arizona and Colorado Interconnection Agreements, which are lengthy and complicated documents.

15. In addition, the nature of the litigation and the stakes involved for Qwest would likely have dictated that Qwest would have appealed any award in favor of the Debtors. Indeed, drawn out litigation and appeals over similar disputes was the norm in the history between the Debtors and Qwest. Therefore, the Debtors believe that continuing to litigate the Pending Actions would have been a lengthy, time consuming process.

16. Given the costs and risks inherent in proceeding with the Pending Actions, the Debtors believed that settling their claims against Qwest and being able to reduce the Cure Amount outweighed any potential benefit that might have been gained by continuing to litigate the Pending Actions.

17. For these reasons, the Debtors believe that the Agreement is fair, reasonable and in the best interests of the Debtors, their estates and their creditors.

#### **NOTICE**

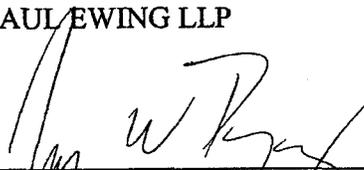
18. This Motion has been served by overnight courier or hand delivery on: (i) the United States Trustee; (ii) the Committee; (iii) counsel to the debtor-in-possession lender; (iv) counsel to the pre-petition bank group; (v) counsel to XMC; and (vi) counsel to Qwest.

19. No request for the relief sought herein has previously been made by the Debtors.

WHEREFORE, the Debtors respectfully request that this Court enter an order:  
(i) approving the Confidential Agreement; and (ii) granting such other and further relief as is just  
and proper.

Dated: Wilmington, Delaware  
November 13, 2002

SAUL EWING LLP



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Domenic E. Pacitti (No. 3989)  
Jeremy W. Ryan (No. 4057)  
222 Delaware Avenue  
P.O. Box 1266  
Wilmington, Delaware 19899-1266  
(302) 421-6800

Counsel for Debtors and Debtors-in-Possession

## SETTLEMENT AGREEMENT AND RELEASE OF CERTAIN CLAIMS

This Settlement Agreement and Release of Certain Claims ("Agreement") is made and executed on November \_\_, 2002 ("Execution Date"), by and between the following persons and entities, each of whom is referred to individually as a "Party", and both of whom are referred to collectively as the "Parties":

Qwest Corporation, a Colorado corporation ("Qwest"); and

e.spire Communications, Inc., a Delaware corporation, and its affiliates (collectively, "e.spire"), debtors and debtors-in-possession in chapter 11 bankruptcy cases entitled, In re e.spire Communications, Inc., et al., filed in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"), on March 22, 2001, as Case No. 01-974(JV) ("Bankruptcy Cases");

with respect to the following facts and circumstances (collectively, "Recitals"):

### RECITALS:

A. e.spire has initiated the following actions against Qwest in the states of Arizona and Colorado seeking to recover unpaid reciprocal compensation charges that e.spire alleges Qwest owes e.spire for telecommunications services rendered by e.spire to Qwest through and including May 31, 2002 (the "Pending Actions"):

(i) Proceedings entitled, "In the Matter of e.spire Communications, Inc., f/k/a American Communications Services, Inc., ACSI Local Switched Services, Inc., d/b/a e.spire and American Communication Services of Pima County, Inc., d/b/a e.spire, Complainants v. Qwest Corporation f/k/a U S West Communications, Inc.", as filed before the Arizona Corporation Commission as Docket No. 01051B-02-0790 ("Arizona Action");

(ii) Proceedings entitled, "In the Matter of American Communication Services of Colorado Springs, Inc., d/b/a e.spire and ACSI Local Switched Services, Inc., d/b/a e.spire and e.spire Communications, Inc., f/k/ American Communications Services, Inc., Complainants v. Qwest Corporation f/k/a US West Communications, Inc., Respondent", as filed before the Colorado Public Utilities Commission as Docket No. 02F-653T ("Colorado Action").

B. On June 7, 2002, the Bankruptcy Court entered an Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Rules 6004 and 6005 of the Federal Rules of Bankruptcy Procedure Approving (A) Asset Contribution Agreement and Related Agreements (collectively, the "ACA") with Thermo Telecom Partners LLC ("Thermo") and Xspedius Management Co., LLC ("XMC"); (B) Contribution of Certain Assets To XMC Free and Clear of all Liens, Claims, Encumbrances and Interest; and (c) Sale by the Debtors of a Certain Membership Interest to Thermo Upon Exercise of a Certain Put Right [Docket No. 1546] (the "Sale Order").

C. Pursuant to the Bankruptcy Court's Order: (A) Granting Motion *In Limine* Of Qwest Corporation To Exclude Evidence Of Potential Set-Off; (B) Determining Amounts For Cure In Connection With Assumption And Assignment; And (C) Approving Settlement Relating To Relief From The Automatic Stay (the "Assumption and Assignment Order"), e.spire assumed and assigned the following Interconnection Agreements between e.spire and Qwest to XMC:

(i) Agreement for Local Wireline Network Interconnection and Service Resale Between American Communications Services, Inc. and U S West Communications, Inc. For the State of Arizona (the "Arizona Interconnection Agreement")

(ii) American Communications Services, Inc. and U S West

Communications, Inc. Interconnection Agreement for the State of Colorado (the "Colorado Interconnection Agreement")

(iii) Agreement for Local Wireline Network Interconnection and Service Resale Between American Communications Services, Inc. and U S West Communications, Inc. For the State of New Mexico (the "New Mexico Interconnection Agreement")

D. Pursuant to the Assumption and Assignment Order, after taking into consideration certain setoffs for undisputed reciprocal compensation charges Qwest owed to e.spire, the Bankruptcy Court ordered that e.spire's cure obligations pursuant to section 365 of the Bankruptcy Code was \$2,019,191.84 (the "Cure Amount"). e.spire was further required to pay the Cure Amount into a mutually agreed upon third-party escrow account, rather than directly to Qwest, as e.spire had asserted rights of setoff against the Cure Amount for unpaid reciprocal compensation charges e.spire alleged Qwest owed to e.spire, including, but not limited to, the amounts sought by e.spire in the Pending Actions;

E. e.spire and Qwest have not yet come to mutually acceptable terms for the deposit of the Cure Amount into a third-party escrow, but e.spire has sufficient funds available to pay the Cure Amount.

F. Except as specifically noted in this Agreement, the Parties desire pursuant to this Agreement to once and forever settle and release any and all Claims against each other arising out of, or related to, the Arizona Interconnection Agreement, the Colorado Interconnection Agreement and New Mexico Interconnection Agreement for telecommunications services provided on or before May 31, 2002, except for the Claims of e.spire against Qwest for reciprocal compensation in New Mexico up to and including May 31, 2002.

G. The parties agree that e.spire retains the rights to reciprocal compensation against Qwest up to and including May 31, 2002 in New Mexico, and that XMC holds no claim against Qwest for reciprocal compensation for any period prior to June 1, 2002 in Arizona, Colorado and New Mexico. Moreover, nothing in this Stipulation in any way affect the rights between XMC and Qwest for the period of June 1, 2002 forward under the agreements assumed under the Assumption and Assignment Order.

THEREFORE, pursuant to the foregoing Recitals, and in consideration of the representations, warranties, covenants, agreements and declarations set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound by this Agreement, hereby represent, warrant, covenant, agree and declare as follows:

#### ARTICLE 1. DEFINED TERMS

1.1. Use of Defined Terms. Capitalized words and phrases will have the meaning assigned to them in this Agreement when used in this Agreement or any document delivered pursuant to this Agreement, unless the context in which such capitalized word or phrase is used reasonably prohibits the application of such meaning.

1.2. Defined Terms. The following words and phrases shall have the meanings ascribed to them below when used in a capitalized form in this Agreement:

- (a) "Agreement" is defined in the Introductory Paragraph.
- (b) "Appeal" is defined in Section 2.1.
- (c) "Approval Order" is defined in Section 2.1.
- (d) "Arizona Action" is defined in Recital "A".

- (e) "Bankruptcy Cases" is defined in the Introductory Paragraph.
- (f) "Bankruptcy Code" is defined in the Introductory Paragraph.
- (g) "Bankruptcy Court" is defined in the Introductory Paragraph.
- (h) "Business Day" will mean any day other than a Saturday or Sunday upon which a majority of federally insured banks are open for business in California.
- (i) "Claims" will mean any and all allegations, demands, assertions, allegations, rights, obligations, duties, debts, liens, encumbrances, levies, covenants, contracts, agreements, promises, understandings, warranties, representations, damages, injuries, losses, suits, actions, causes of action, choses in action, costs, expenses, charges, attorneys' fees, termination fees, judgments, orders, receivables, taxes, tariffs, credits, debits, refunds, rebates, backcharges, backbillings, offsets, rights of set off, rights of recoupment, adjustments, retroactive adjustments, amounts owed pursuant to the filed rates doctrine, rejection damages, abandonment damages, counter claims, cross claims and other claims and liabilities of any kind or nature, whether in law or equity, contingent or liquidated, known or unknown, and concealed or revealed, arising out of or related to the provision of telecommunications services, provided pursuant to the Arizona, Colorado and New Mexico Interconnection Agreements, on or before May 31, 2002. This definition shall specifically exclude any Claims arising out of or related to the provision of telecommunications services, provided pursuant to the Arizona, Colorado and New Mexico Interconnection Agreements, on or after June 1, 2002, and any claims by e.spire for reciprocal compensation in New Mexico up to and including May 31, 2002.
- (j) "Colorado Action" is defined in Recital "A".
- (k) "Dollars" or "\$" will mean the lawful currency of the United States of America.
- (l) "e.spire" is defined in the Introductory Paragraph.
- (m) "Execution Date" is defined in the Introductory Paragraph.
- (n) "FRBP" is defined in Section 2.1.
- (o) "Introductory Paragraph" is defined as the first paragraph of this Agreement, beginning with the words "This Settlement Agreement . . ." and ending with the words ". . . facts and circumstances (collectively, "Recitals"):".
- (p) "Notice" will mean any notice, consent, approval, disapproval, waiver or other communication of any kind given pursuant to this Agreement.
- (q) "Pending Actions" is defined in Recital "A".
- (r) "Party" and "Parties" are defined in the Introductory Paragraph.
- (s) "Qwest" is defined in the Introductory Paragraph.
- (t) "Recitals" is defined in the Introductory Paragraph.
- (u) "Settlement" is defined in Section 2.1.
- (v) "Settlement Hearing" is defined in Section 2.2.
- (w) "Settlement Motion" is defined in Section 2.2.
- (x) "Stay" is defined in Section 2.1.

1.3. Conventions. This Agreement assumes the following conventions:

- (a) The words "include", "includes" or "including" will be deemed to be followed by the words "without limitation".
- (b) Words or phrases denoting gender will include all genders including the masculine, feminine and neuter.
- (c) Words or phrases denoting the singular will be deemed to include the plural and words or phrases denoting the plural will be deemed to include the singular, unless applying this convention would be contrary to the obvious intent of this Agreement.
- (d) A reference to any Party, or any party to any other agreement or document, will include such person's or entity's successors.
- (e) A reference to any legislation or to any provision of any legislation will include any replacement, substitution, modification or re-enactment of such legislation, and all rules, regulations and statutory instruments issued pursuant to such legislation.

2. ARTICLE  
BANKRUPTCY COURT APPROVAL OF THIS AGREEMENT

(a) Binding Effect; Entry of Approval Order. Article 1, Article 2 and Article 5 are effective upon the Execution Date. Except for Article 1, Article 2 and Article 5, this Agreement will become effective only upon the entry by the Bankruptcy Court of a binding order ("Approval Order") approving this Agreement. The Approval Order will include a finding that the Agreement is fair and reasonable in light of the costs, risks and uncertainties of attempting to resolve the disputed Claims through litigation and that the Settlement is in the best interest of the estate. If an Appeal of the Approval Order is timely filed pursuant to FRBP 8002, and a Stay of the execution of the Approval Order is issued pursuant to FRBP 7062 prior to the consummation of the acts required of the Parties in this Agreement, then the Parties will in good faith seek to have the Stay lifted in order to effectuate this Agreement.

2.2. Obligation to Seek Approval Order. Promptly following the Execution Date, e.spire and Qwest will bring a motion on shortened time ("Settlement Motion") before the Bankruptcy Court seeking entry of the Approval Order. If an Appeal of the Approval Order is timely filed, then the Parties will exercise their good faith best efforts to have the Appeal dismissed or overruled and to have any the Stay of the Approval Order dissolved or vacated.

3. ARTICLE  
SETTLEMENT AND RELEASE

3.1 Payment of Settlement Consideration and Release of Trust Funds. Within three (3) Business Days following the date upon which the Approval Order is entered, in full satisfaction of the Cure Amount, e.spire will cause to be paid to Qwest the sum of \$969,191.84, plus interest at the prevailing three-month CD rate from the date of the entry of the Assumption and Assignment Order.

3.2 Release of Claims by e.spire. Except for: (i) the obligations of Qwest set forth in this Agreement; (ii) Claims arising on or after June 1, 2002; and (iii) Claims for reciprocal compensation against Qwest within the State of New Mexico up to and including May 31, 2002; e.spire, on behalf of itself and its successors, assigns and trustees, including any trustee in bankruptcy, hereby releases, waives, discharges and agrees not to sue Qwest or its successors or assigns, including any trustee in bankruptcy, with respect to, any Claims which e.spire now owns or holds or at any time prior hereto owned or held, against Qwest. Without affecting the limitations or generality of the preceding sentence, this release includes a release of all Claims relating to telecommunication services provided on or before May 31, 2002, in Arizona, Colorado and New Mexico, except for e.spire's Claims for New Mexico reciprocal compensation from Qwest through and including May 31, 2002. The Parties intend that this Agreement will be a complete and absolute bar to all such Claims.

3.3 Release of Claims by Qwest. Except for: (i) the obligations of e.spire set forth in this Agreement; (ii) Claims arising on or after June 1, 2002; and (iii) Claims relating to reciprocal compensation through and including May 31, 2002 provided within the State of New Mexico; Qwest, on behalf of itself and its successors, assigns and trustees, including any trustee in bankruptcy, hereby releases, waives, discharges and agrees not to sue e.spire or its successors or assigns, including any trustee in bankruptcy, with respect to, any Claims which Qwest now owns or holds or at any time prior hereto owned or held, against e.spire. Without affecting the limitations or generality of the preceding sentence, this release includes a release of all Claims relating to telecommunication services provided on or before May 31, 2002, in Arizona, Colorado and New Mexico, except for reciprocal compensation in New Mexico through and including May 31, 2002. The Parties intend that this Agreement will be a complete and absolute bar to all such Claims.

3.4 Dismissal of Arizona Action and Colorado Action With Prejudice. Within three (3) Business Days following the date upon which the Approval Order is entered, e.spire will withdraw its complaint in the Arizona Action and Colorado Action and cause the Arizona Action and Colorado Action to be dismissed with prejudice, and Qwest will cause to be dismissed with prejudice any cross claims or counter claims by Qwest in the Arizona Action or Colorado Action.

3.5 No Release of Claims By or Against Affiliates of Qwest. The Parties acknowledge that there may be relationships between e.spire and affiliates of Qwest including Qwest Communications Corporation, a Delaware corporation, and agree that this Agreement and the Settlement will not constitute a release or waiver of any Claims by or against any such affiliates of Qwest.

#### 4. ARTICLE REPRESENTATIONS AND WARRANTIES

4.1. Capacity to Contract. Each Party represents that, subject to the provisions of this Agreement relating to the entry of the Approval Order, it has the power, authority and legal capacity to make, execute, enter into and deliver this Agreement and to perform its obligations under this Agreement, and that neither this Agreement nor the performance by such Party of any obligation required under this Agreement will violate any contract, agreement, covenant, restriction or order by which such Party is bound.

4.2. No Prior Assignments. The parties represents that it has not pledged, transferred or assigned to any third party any Claim which arose prior to May 31, 2002 to be released or compromised pursuant to this Agreement, and will indemnify all other Parties from and against any third party claim asserting such a pledge, transfer or assignment of any such right, interest, claim or cause of action.

4.3. No Undisclosed Inducements. Each Party represents that it entered into this Agreement in reliance solely upon its own independent investigation and analysis of the relevant facts and circumstances, and that no representations or warranties other than those set forth in

this Agreement were made by any other Party or any employee, agent or attorney of any other Party to induce said Party to enter into this Agreement.

4.4. No Admission of Liability. The execution and delivery of this Agreement by any Party does not constitute, infer or evidence the truth of any claim, the admission of any liability, the validity of any defense, or the existence of any circumstance or fact which could constitute a basis for any claim, liability or defense, other than for the purpose of enforcing the provisions of this Agreement.

4.5. Representation by Legal Counsel. Each Party represents that it acted pursuant to the advice of legal counsel of its own choosing in connection with the negotiation, preparation and execution of this Agreement, or that it was advised to obtain the advice of such legal counsel, had ample opportunity to obtain the advice of such legal counsel and willfully declined to obtain the advice of such legal counsel.

4.6. Truth and Accuracy of Warranties and Representations. Each warranty and representation set forth in this Agreement will be, and the Party making the same will cause same to be, true and correct from the time of execution of this Agreement until the performance by such Party each and all of its obligations under this Agreement.

5. ARTICLE  
GENERAL PROVISIONS:

5.1. Integration. This Agreement is the sole and entire agreement between the Parties regarding the settlement and the release of Claims contemplated herein. All prior and contemporaneous negotiations and agreements between the Parties, oral or written, regarding the settlement and the release of Claims contemplated herein, are hereby superseded. No person or entity has the authority to orally modify this Agreement, or to make any oral representation or oral agreement regarding this Agreement or the settlement or the release of Claims contemplated herein.

5.2. Amendment. No modification of, deletion from, or addition to this Agreement will be effective unless made in writing and executed by each Party.

5.3. Construction. The provisions of this Agreement will be liberally construed to effectuate the settlement and releases of Claims contemplated herein. Article and Section headings are for convenience only and will not be given undue consideration in resolving questions of construction or interpretation. Each Party will be deemed to have had equal bargaining strength in negotiating this Agreement and equal responsibility for preparing this document and any exhibits or schedules hereto, such that neither this document, nor any exhibit or schedule hereto, nor uncertainty or ambiguity in this document or any such exhibit or schedule, will be construed or resolved against any Party pursuant to any authority or rule of construction to the effect that ambiguities in a document are to be construed against the drafter of the document.

5.4. Further Assurances. Each Party will promptly execute and deliver all documents and take all actions, including the payment of money, required of such Party to effectuate the Settlement and releases of Claims contemplated herein and to otherwise timely perform the Obligations of such Party pursuant to this Agreement.

5.5. No Obligations to Third Parties. This Agreement will not confer any rights upon any person or entity not a Party, nor will it obligate any Party to any person or entity not a Party. The parties explicitly acknowledge that this Agreement shall not have any effect upon any rights e.spire and/or its assigns, including XMC, may have in: (i) amounts allegedly owed by Qwest for the provision of telecommunications services by e.spire on or after June 1, 2002; or (ii) the Arizona, Colorado and New Mexico Interconnection Agreements pursuant Assumption and Assignment Order.

5.6. Time is of the Essence. With respect to all dates and time periods set forth or referred to in this Agreement, time is of the essence, such that each Party will perform all acts required of such Party pursuant to this Agreement by the date or within the time period required pursuant to this Agreement.

5.7. Performance Dates. If the date by which or upon which any obligation otherwise must be performed pursuant to this Agreement, or any Notice otherwise must be given pursuant to this Agreement, occurs on a day other than a Business Day, then the date by which or upon which such obligation must be performed or such Notice must be given will be deemed automatically extended until the next Business Day.

5.8. Governing Law. This Agreement is made under and will be construed in accordance with and governed by the Bankruptcy Code and the substantive laws of the State of Colorado, without giving effect to the principles of conflicts of law.

5.9. Jurisdiction and Venue. The Parties hereby acknowledge and consent to the exclusive jurisdiction of the Bankruptcy Court and to venue in the State of Delaware, for the purpose of resolving any claim, controversy or disagreement which may arise among the Parties with respect to this Agreement and the settlement and release of Claims contemplated by this Agreement. It will be a material breach of this Agreement to seek to resolve any such claim, controversy or disagreement in any other court or forum. However, nothing in this Section will constitute a waiver by any Party of the right to appeal any decision or action of the Bankruptcy Court.

5.10. Enforcement. Subject to the provisions of this Agreement including those which relate to venue, jurisdiction and the limitation of remedies or damages, each Party will have the right to enforce by proceedings at law or in equity all of the provisions of this Agreement, including the right to prosecute proceedings at law or in equity against any persons or entities who violate or attempt to violate any of such provisions, to enjoin any such persons or entities from doing so, to cause such violation to be remedied, and to recover damages for such violation.

5.11. Waiver of Contract Provisions. The failure by any Party to enforce any provision of this Agreement will not constitute a waiver of the right to enforce the same provision, or any other provision of this Agreement, thereafter. No waiver by any Party of any provision of this Agreement will be deemed or constitute a waiver of any other provision of this Agreement, whether or not similar, nor will any such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

5.12. Severability. In the event that any provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, then the remaining portions of this Agreement will nonetheless remain in full force and effect, unless the portion of this Agreement found to be illegal, invalid or unenforceable is so material and so central to the settlement intended by this Agreement that its deletion would violate the obvious primary purpose and intent of the Parties.

5.13. Litigation Costs and Attorneys' Fees. If any Party commences legal proceedings against any other Party to enforce the provisions of this Agreement or to declare any rights or obligations under this Agreement, then each Party will bear its own costs and expenses of litigation, including attorneys' fees, regardless of the outcome of such proceedings.

5.14. Expenses of Negotiation, Documentation and Performance. Regardless of whether the Settlement is consummated, each Party will bear all costs incurred by such Party in connection with the negotiation and documentation of this Agreement and in the performance of its obligations under this Agreement.

5.15. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which is an original, and all of which together will constitute one and the

same agreement. In proving this Agreement, it will not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

5.16. Electronic Execution. Delivery of an executed counterpart of a signature page to this Agreement by telecopy, electronic facsimile or other electronic transmission will be as effective as physical delivery of an executed counterpart of this Agreement.

5.17. Survival. Each statement, certification, representation, warranty, covenant, disclosure, disclaimer, waiver and agreement contained in this Agreement will survive the execution of this Agreement, the entry of any order approving this Agreement, the payment of any consideration provided for in this Agreement, the dismissal of any action referenced in this Agreement, the confirmation of any plan of reorganization or liquidation in the Bankruptcy Case, the appointment of a trustee in bankruptcy, the dismissal of the Bankruptcy Case or the conversion of the Bankruptcy Case from Chapter 11 to Chapter 7.

5.18. Inurement. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors, , grantees, administrators and trustees, including any trustee in bankruptcy.

5.19. Notices. Any Notice by any Party to any other Party pursuant to this Agreement must be made in writing and delivered to the other Party at the address shown below, until written notice of a different address is given by the other Party pursuant to this Section. Payments to be made pursuant to this Agreement will be deemed made only upon actual receipt. Notices given by personal service will be deemed received upon delivery. Notices given by first class mail, postage prepaid, addressed to the address required by this Section, will be deemed received three (3) Business Days following the deposit thereof with the United States Post Office. Notices given by overnight courier service will be deemed received on the date of delivery confirmed by the courier service. Notices given by electronic facsimile transmission will be deemed received on the date upon which the recipient's facsimile machine confirms electronically the receipt of the Notice, provided that a copy of any Notice given by facsimile transmission must also be sent to the recipient by first class mail, postage prepaid, addressed to the address required by this Section. The rejection by a Party of a Notice, the refusal by a Party to accept a Notice, or the inability of another Party to deliver a Notice because of a change of address of a Party of which no Notice of change of address is given pursuant to this Agreement, will constitute delivery of the Notice. Telephone numbers, if listed, are listed for convenience purposes only and not for the purpose of giving Notice pursuant to this Agreement.

Qwest:  
Qwest Corporation  
Attention: Legal Department/Jane Frey, Esq.  
1801 California Avenue - 49th Floor  
Denver, Colorado  
Telephone: (303) 672-5832  
Facsimile: (303) 292-4666

A copy of any Notice to Qwest must also be sent to Qwest's legal counsel at:

Albert, Weiland & Golden, LLP  
Attention: Evan D. Smiley, Esq.  
650 Town Center Drive - Suite 950  
Costa Mesa, California 92626  
Telephone: (714) 966-1000  
Facsimile: (714) 966-1002

e.spire:  
e.spire Communications, Inc.  
Attention: Sean Scarlis  
7125 Columbia Gateway Drive  
Columbia, Maryland 21046  
Telephone: ( ) - -  
Facsimile: ( ) - -

A copy of any Notice to e.spire must also be sent to e.spire's legal counsel at:

Saul Ewing, LLP  
Attention: Jeremy Ryan, Esq.  
222 Delaware Avenue  
Wilmington, Delaware 19801-1611  
Telephone: (302) 421-6800  
Facsimile: (302) 421-5861

[SIGNATURE PAGE(S) ATTACHED]

THE UNDERSIGNED PARTIES made, executed, entered into and delivered this Agreement on the Execution Date.

Qwest Corporation,  
a Colorado corporation

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(typed or printed name)

Its: \_\_\_\_\_  
(title or capacity)

e.spire Communications, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(typed or printed name)

Its: \_\_\_\_\_  
(title or capacity)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	<b>Chapter 11</b>
	)	
E.SPIRE COMMUNICATIONS, INC.,	)	<b>Case No. 01-974 (JWV)</b>
et al.,	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Related to Docket No. ____</b>

**ORDER APPROVING SETTLEMENT  
AGREEMENT AND RELEASE OF CERTAIN CLAIMS  
AGREEMENT BETWEEN DEBTORS AND QWEST CORPORATION**

Upon the motion dated November 13, 2002 (the "Motion") of e.spire Communications, Inc. ("Communications") and its subsidiaries and affiliates, debtors and debtors-in-possession (collectively, the "Debtors"), for approval of Settlement Agreement and Release of Certain Claims between Debtors and Qwest Corporation; the Court having reviewed the Motion; it appearing to the Court that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court finding that notice of the Motion was sufficient under the circumstances; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion shall be, and hereby is, granted in its entirety.
2. The Court hereby approves the Agreement in its entirety. The Court finds that the Agreement is fair and reasonable in light of the costs, risks and uncertainties of attempting to resolve the disputed claims through litigation and the settlement is in the best interest of the estate.

3. The Court hereby retains jurisdiction over all disputes arising out of the Agreement.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2002

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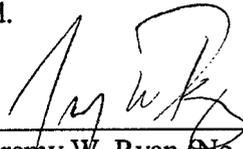
The Honorable Jerry W. Venters  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
E.SPIRE COMMUNICATIONS, INC.,	)	Case No. 01-974 (JWV)
et al.,	)	
	)	
Debtors.	)	Jointly Administered
	)	
	)	

CERTIFICATE OF SERVICE

I, Jeremy W. Ryan, Esquire, do hereby certify that on November 13, 2002, I caused a copy of the foregoing **Motion of Debtors for Approval of Settlement Agreement and Release of Certain Claims between Debtors and Qwest Corporation** to be served upon the parties on the attached service list in the manner indicated.

  
\_\_\_\_\_  
Jeremy W. Ryan (No. 4057)  
222 Delaware Avenue, Suite 1200  
P. O. Box 1266  
Wilmington, DE 19899-1266  
(302) 421-6800

**VIA HAND DELIVERY:**

Mark D. Collins, Esquire  
Richards Layton & Finger  
One Rodney Square  
P.O. Box 551  
Wilmington, DE 19899

Mark Kenney, Esquire  
United States Trustee  
844 King Street, Suite 2313  
Lockbox 35  
Wilmington, DE 19801-3519

Francis A. Monaco, Jr., Esquire  
Walsh, Monzack & Monaco PA  
1201 Orange Street, Suite 400  
Wilmington, DE 19801

Michael Temin, Esquire  
Wolf Block Schorr & Solis-Cohen LLP  
920 King Street, Suite 300  
Wilmington, DE 19801

**VIA FEDERAL EXPRESS:**

Frederic L. Ragucci, Esquire  
Schulte, Roth & Zavel LLP  
900 Third Avenue  
New York, NY 10022

Richard Mason, Esquire  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019

Thomas Kent, Esquire  
Orrick Herrington & Sutcliffe LLP  
666 Fifth Avenue  
New York, NY 10103-0001

Evan D. Smiley  
Albert, Weiland & Golden, LLP  
650 Town Center Drive  
Suite 950  
Costa Mesa, California 92626

**File a Motion:**

01-00974-JWV E.SPIRE COMMUNICATIONS, INC.

Notice of Electronic Filing

The following transaction was received from Ryan, Jeremy W. entered on 11/13/2002 at 5:43 PM EST and filed on 11/13/2002

**Case Name:** E.SPIRE COMMUNICATIONS, INC.  
**Case Number:** 01-00974-JWV  
**Document Number:** 2138

**Docket Text:**

Motion to Approve *Motion of Debtors for Approval Of Settlement Agreement and Release of Certain Claims Agreement Between Debtors and Qwest Corporation* Filed by E.SPIRE COMMUNICATIONS, INC.. Objections due by 11/20/2002. (Attachments: # (1) Notice # (2) Exhibit A# (3) Proposed Form of Order # (4) Certificate of Service) (Ryan, Jeremy)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**M:/01-974/467328.1/MOTION TO APPROVE.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=11/13/2002] [FileNumber=1088450-0] [7aa0e4f6946686ddfdcd486cca41b8e5e771361eb3f6d1f47fa286f60d75dee4850a100d7efe50c854b89aab47ec1de2b674ef5fde6a689334ae166bbea25907f]]

**Document description:**Notice

**Original filename:**M:/01-974/467328.1/NOTICE.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=11/13/2002] [FileNumber=1088450-1] [143b4159b7fd4622cab29405832194f8226ecbbbfbfb0e6d60137c2682ce4b2680e9a1b1ca22054047f78f1a19f1875f86ea886d0a2ec931973d87bead184f]]

**Document description:**Exhibit A

**Original filename:**M:/01-974/467352.1/SETTLEMENT AGREEMENT AND RELEASE.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=11/13/2002] [FileNumber=1088450-2] [638a6d2980fdbebbd646b62bb18bd7627f0bdf628accb2dbc4fff42a0315080a88a2dd8c111a3b27ad670a5781554889f770b7ba59ea3bb7f1b65487a0a5914c]]

**Document description:**Proposed Form of Order

**Original filename:**M:/01-974/467328.1/ORDER.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=11/13/2002] [FileNumber=1088450-3] [35cf867d0a90164eeddbd29c4a7e231adffe9007c4e21dc95e1be0d47b1480fe2550fb8fcf3deadda4277e84636cf8efe0aeacf96d45ea0b1e6f1eca00ee0546]]

**Document description:**Certificate of Service

**Original filename:**M:/01-974/467328.1/COS.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=11/13/2002] [FileNumber=1088450-4] [0d956aeffd736b0d944aa42d74284ada52b35feeadea33f13ee66dd4bc1a5f2043cf9be904bfa59deef67c4ea2a8b636570c31727f6f66297e7c5504ed93cab]]

**01-00974-JWV Notice will be electronically mailed to:**

Elio Battista Jr. [battista@blankrome.com](mailto:battista@blankrome.com)

Joseph J. Bodnar [jbodnar@walmon.com](mailto:jbodnar@walmon.com)