

WC 05-359

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READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB  
3060-0589  
Page 1 of 1

(1) LOCK BOX # <b>358115</b>		DEC 12 2005		SPECIAL USE ONLY	
				FCC USE ONLY	
<b>SECTION A - PAYER INFORMATION</b>					
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Bryan Cave LLP</b>			(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$895.00</b>		
(4) STREET ADDRESS LINE NO. 1 <b>1200 Main Street</b>					
(5) STREET ADDRESS LINE NO. 2 <b>Suite 3500</b>					
(6) CITY <b>Kansas City</b>		(7) STATE <b>MO</b>	(8) ZIP CODE <b>64105</b>		
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>816-374-3200</b>			(10) COUNTRY CODE (if not in U.S.A.)		
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>					
(11) PAYER (FRN) <b>0003765716</b>			(12) FCC USE ONLY		
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET					
(13) APPLICANT NAME <b>Epicus, Inc.</b>					
(14) STREET ADDRESS LINE NO. 1 <b>610 Crescent Executive Court</b>					
(15) STREET ADDRESS LINE NO. 2 <b>Suite 300</b>					
(16) CITY <b>Lake Mary</b>		(17) STATE <b>FL</b>	(18) ZIP CODE <b>32746</b>		
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>407-942-1234</b>			(20) COUNTRY CODE (if not in U.S.A.)		
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>					
(21) APPLICANT (FRN) <b>0004344719</b>			(22) FCC USE ONLY		
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET					
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>CUT</b>	(25A) QUANTITY <b>1</b>			
(26A) FEE DUE FOR (PTC) <b>\$895.00</b>	(27A) TOTAL FEE <b>\$895.00</b>	FCC USE ONLY			
(28A) FCC CODE 1		(29A) FCC CODE 2			
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY			
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY			
(28B) FCC CODE 1		(29B) FCC CODE 2			
<b>SECTION D - CERTIFICATION</b>					
CERTIFICATION STATEMENT I, _____, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.					
SIGNATURE _____			DATE _____		

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE (CONTINUATION SHEET)  
Page No. \_\_\_\_\_ of \_\_\_\_\_  
SPECIAL USE  
FCC USE ONLY

USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT  
SECTION BB - ADDITIONAL APPLICANT INFORMATION

(13) APPLICANT NAME  
**Epicus Communications Group, Inc.**  
(14) STREET ADDRESS LINE NO. 1  
**1750 Osceloa Drive**  
(15) STREET ADDRESS LINE NO. 2  
**West Palm Beach**  
(16) CITY  
**FL** (17) STATE | **33049** (18) ZIP CODE  
(19) DAYTIME TELEPHONE NUMBER (include area code) **407-942-1234**  
(20) COUNTRY CODE (if not in U.S.A.)  
FCC REGISTRATION NUMBER (FRN) REQUIRED

COMPLETE SECTION C FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE	(25A) QUANTITY	(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE	(28A) FCC CODE 1	(29A) FCC CODE 2
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	(28B) FCC CODE 1	(29B) FCC CODE 2
(23C) CALL SIGN/OTHER ID	(24C) PAYMENT TYPE CODE	(25C) QUANTITY	(26C) FEE DUE FOR (PTC)	(27C) TOTAL FEE	(28C) FCC CODE 1	(29C) FCC CODE 2
(23D) CALL SIGN/OTHER ID	(24D) PAYMENT TYPE CODE	(25D) QUANTITY	(26D) FEE DUE FOR (PTC)	(27D) TOTAL FEE	(28D) FCC CODE 1	(29D) FCC CODE 2
(23E) CALL SIGN/OTHER ID	(24E) PAYMENT TYPE CODE	(25E) QUANTITY	(26E) FEE DUE FOR (PTC)	(27E) TOTAL FEE	(28E) FCC CODE 1	(29E) FCC CODE 2
(23F) CALL SIGN/OTHER ID	(24F) PAYMENT TYPE CODE	(25F) QUANTITY	(26F) FEE DUE FOR (PTC)	(27F) TOTAL FEE	(28F) FCC CODE 1	(29F) FCC CODE 2



Brian M. Devling  
Direct: 816-374-3226  
Fax: 816-374-3300

December 20, 2005

**VIA FEDEX**

Federal Communications Commission  
c/o Mellon Bank/Client Services Center  
500 Ross Street  
Room 670  
Pittsburg, PA 15262-0001

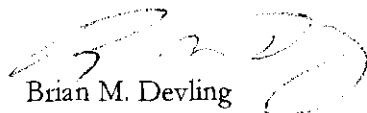
Re: Application of Epicus, Inc. and Epicus Communications Group, Inc.

To whom it may concern:

On December 12, 2005, Epicus, Inc. and Epicus Communications Group, Inc. filed an application for authority to complete a transfer of control pursuant to Section 214 of the Communications Act of 1934 (the "Application"). The Exhibit A to the Application was inadvertently left out of the Application. Attached hereto is the Confirmation Order which should have been attached as Exhibit A.

Thank you for your assistance in this regard. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Brian M. Devling

BMD/st/766171/0182895

cc: Renee Crittendon

**Bryan Cave LLP**  
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Shanghai  
St. Louis  
United Arab Emirates (Dubai)  
Washington, DC

*And Bryan Cave,  
A Multinational Partnership,  
London*

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED      DEC 12 2005

In the Matter of the Application of )  
 )  
EPICUS, Inc. and Epicus Communications Group, Inc. )  
 )  
For Grant of Authority Pursuant to Section 214 of the ) **File No. ITC-T/C-2005** \_\_\_  
Communications Act of 1934 and Sections 63.04 and 63.18 of )  
the Commission's Rules to Complete a Transfer of Control of ) **WC Docket No. 05-** \_\_\_  
Authorized International and Domestic Interstate Carriers )  
 )  
 )  
 )  
 )  
 )

Pursuant to Section 214 of the Communications Act, as amended, 47 U.S.C. § 214, and Sections 63.04 and 63.18 of the Commission's Rules, 47 C.F.R. §§ 63.04, 63.18, Epicus, Inc. ("Epicus"), and Epicus Communications Group, Inc. ("ECG") (collectively referred to as "Applicants"), by their attorneys, hereby respectfully request such authority as may be necessary or required to permit Applicants to consummate transactions in connection with a Chapter 11 Bankruptcy reorganization plan.

On October 25, 2004, ECG and Epicus filed for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Florida. Pursuant to the Bankruptcy Court's Findings of Fact, Conclusions of Law and Order Confirming Debtors First Amended Joint Plan of Reorganization (the "Confirmation Order") calls for the transfer of the assets and business operations of Epicus by a reorganized ECG. A copy of the Confirmation Order is attached hereto as Exhibit A. The Confirmation Order also provides for a

transfer of control of ECG through a reorganized capital structure as set forth below. Epicus, a wholly owned subsidiary of ECG, is an active reseller of local and long distance telecommunications services. Thus, Applicants request authority to transfer substantially all of the assets of Epicus in furtherance of ECG providing the same telecommunication services as presently being provide by Epicus. The reorganization pursuant to the Confirmation Order will be beneficial to the involved companies as well as the customers of Epicus. Approval of the transactions contemplated by the Confirmation Order will not in any way be detrimental to the public interests.

On December 7, 2005, ECG and Epicus consummated the transfer of assets and reorganized capital structure pursuant to the Confirmation Order (the "**Closing**"). Although the Applicants obtained the approvals of the applicable state regulatory agencies prior to the Closing, the Applicants did not obtain the approval of the FCC pursuant to Section 214. As a part of the Closing, new funding was provided to ECG to provide working capital for ongoing operations. Without the new funding, it is likely that the Applicants would have quickly exhausted their financial resources and ceased operations, thus, leaving many customers without telephone service. Therefore, considering the dire financial situation, the Applicants request that the FCC grant approval of this Application *nunc pro tunc* to December 7, 2005.

In support of this Application, the Applicants provide the following information:

**I. THE APPLICANTS**

**A. Epicus, Inc.**

Epicus is a privately held corporation with principal offices located at 610 Crescent Executive Court, Suite 300, Lake Mary, Florida 32746. Epicus is currently a non-facilities based reseller of local and long distance provider in the Alabama, Florida, Georgia, Kentucky,

Mississippi, North Carolina, and South Carolina. Epicus offers small businesses and residential consumers an integrated set of telecommunication products and services, including local exchange, local access, domestic and international long distance telephone, data and dial up access to the Internet.

**B. Epicus Communications Group, Inc.**

ECG is a publicly held Florida corporation with principal offices located at 1750 Osceola Drive, West Palm Beach, Florida 33409. As noted above, pursuant to the Confirmation Order, ECG will acquire the assets of Epicus and continue the services provided by Epicus. In addition, the capital structure of ECG will be reorganized so that Ocean Avenue Advisors, LLC owns 52.5% of the reorganized ECG's stock.

## II. ELIGIBILITY FOR STREAMLINED TREATMENT

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. § 63.03. This Application is eligible for streamlined processing because neither Applicant is a facilities-based carrier. 47 C.F.R. § 63.03(b)(1).

Further, this Application is eligible for streamlined treatment according to 47 C.F.R. § 63.03(b)(2). First, the reorganization will result in the Applicants and their affiliates holding less than a ten percent (10%) share of the interstate interexchange market. Second, ECG will only provide competitive local exchange service in geographic areas served by a dominant local exchange carrier that is not a party to this transaction. Third, neither of the Applicants or their affiliates is dominant with respect to any U.S. domestic telecommunications service. Therefore, Applicants request that this Application be processed pursuant to the Commission's streamlined processing rules.

## III. DESCRIPTION OF THE REORGANIZATION AND TRANSFER OF CUSTOMERS

The Confirmation Order has been entered by the U.S. Bankruptcy Court for the Southern District of Florida. The transactions contemplated by the Confirmation Order will be accomplished through, among other things, a debenture sale to the NIR Group, LLC. Additionally, the Confirmation Order provides for the change of ECG's capital structure. The reorganized capital structure will be as follows:

<u>Party</u>	<u>Ownership</u>
Ocean Avenue Advisors LLC	52.5%
Haryman Parties (Gerard Haryman, Thomas Donaldson, Aptek, Inc. and	30.4%

each of their respective agents, affiliates, or entities under their control)

Existing ECG Stockholders (other than the Haryman Parties)	9.6%
Unsecured Creditors of EPICUS	7.5%

The proposed transfer of customers from Epicus to ECG will have no adverse impact on customers. After the effective date of the reorganization pursuant to the Confirmation Order, ECG will provide the same local and long distance telecommunication services to former customers of Epicus. Customers will continue to receive their existing services at the same rates, terms, and conditions.

#### **IV. PUBLIC INTEREST STATEMENT**

Grant of the instant application will serve the public interest, convenience, and necessity. The reorganization will serve to create a heightened level of operating efficiency which generally will serve to enhance the overall capacity of ECG to compete in the marketplace and to provide telecommunication services to consumers in this state at competitive rates. Applicants anticipate that customers will experience a seamless transition of service providers. Further these customers have been sufficiently notified of the reorganization and their rights. In sum, grant of this Application will serve the public interest by furthering competition in the telecommunication markets in which Applicants operate, as a result of the strengthened competitive position of ECG.

#### **V. INFORMATION REQUIRED BY SECTION 63.04**

In lieu of an attachment, pursuant to Commission Rule 63.04(a), 47 C.F.R. § 63.04(b), Applicants submit the following information in support of its request for domestic Section 214 authority in order to address the requirements set forth in Commission Rule 63.04(a):



1. Names, addresses and phones of applicants.

EPICUS COMMUNICATIONS GROUP, INC.,  
1750 Osceola Drive, West Palm Beach, Florida 33409  
(407) 942-1234.

EPICUS, INC.,  
610 Crescent Executive Court, Suite 300, Lake Mary, Florida 32746  
(407) 942-1234.

2. Each Applicant is a corporation organized under the laws of Florida.
3. Correspondence regarding this Application should be addressed to:

Joseph P. Dubinski  
Bryan Cave LLP  
1200 Main Street, Suite 3500  
Kansas City, Missouri 64105  
816-374-3383

4. The following entities own 10% or more of Epicus:

Name: Epicus Communications Group, Inc.  
Address: 1750 Osceola Drive, West Palm Beach, Florida 33409  
Citizenship: United States  
Principal Business: Holding Company  
% Equity: 100%

The following entities will own 10% or more of ECG:

Name: Ocean Avenue Advisors LLC  
Address:  
Citizenship: United States  
Principal Business: Management company  
% Equity: 52.5%

Name: Gerard Haryman & Aptek Communications  
Address: 1750 Osceola Drive, West Palm Beach, Florida 33409  
Citizenship: ~~United States~~  
Principal Business: Operator of Telecommunications Provider  
% Equity: 30.4%

5. ECG and Epicus each certify that it is not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998.
6. A description of the transaction is contained in Section III above.

7. ECG will provide non-facilities based competitive telecommunications services in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, and South Carolina.
8. This Application is appropriate for streamlined treatment as set forth in Section II above.
9. No other applications are being filed with the Commission with respect to this transaction.
10. Prompt completion of the proposed transactions is critical to ensuring that Applicants can obtain the benefits of the reorganization and acquire sufficient funding for ongoing operations.
11. Not applicable.
12. A statement of how granting this Application will serve the public interest, convenience and necessity is set forth in Section IV above.

**VI. INFORMATION REQUIRED BY SECTION 63.18**

In lieu of an attachment, pursuant to Commission Rule 63.18, 47 C.F.R. § 63.18, Applicants submit the following information in support of its request for international Section 214 authority in order to address the requirements set forth in Commission Rule 63.18 (a-d) for both the transferor and transferee Rule 63.18 (e, g-p) for the transferee:

- A. Names, addresses and phones of applicants.

EPICUS COMMUNICATIONS GROUP, INC.,  
1750 Osceola Drive, West Palm Beach, Florida 33409  
(407) 942-1234.

EPICUS, INC.,  
610 Crescent Executive Court, Suite 300, Lake Mary, Florida 32746  
(407) 942-1234.

- B. Each Applicant is a corporation organized under the laws of Florida.
- C. Correspondence regarding this Application should be addressed to:

Joseph P. Dubinski  
Bryan Cave LLP  
1200 Main Street, Suite 3500

Kansas City, Missouri 64105  
816-374-3383

- D. Epicus and ECG are authorized to provide interstate services pursuant to blanket Section 214 authority and to provide international services pursuant to an international section 214 certificate of public convenience and necessity in ITC File No. IC-96-265 granted to Telephone Company of Central Florida, Inc. June 24, 1996.
- E. ECG is requesting authority to operate as a resale carrier pursuant to 47 C.F.R. § 63.18(e)(2). ECG lists no countries pursuant to 47 C.F.R. § 63.18(e)(2)(ii). ECG certifies that it will comply with the terms and conditions contained in 47 C.F.R. §§ 63.21 and 63.23.
- G. Not applicable.
- H. The following entities own 10% or more of Epicus:

Name: Epicus Communications Group, Inc.  
Address: 1750 Osceola Drive, West Palm Beach, Florida 33409  
Citizenship: United States  
Principal Business: Holding Company  
% Equity: 100%

The following entities will own 10% or more of ECG:

Name: Ocean Avenue Advisors LLC  
Address:  
Citizenship: United States  
Principal Business: Management company  
% Equity: 52.5%

Name: Gerard Haryman & Aptek Communications  
Address: 1750 Osceola Drive, West Palm Beach, Florida 33409  
Citizenship: United States  
Principal Business: Operator of Telecommunications Provider  
% Equity: 30.4%

- I. ECG certifies that it is not a foreign carrier or affiliated with a foreign carrier.
- J. ECG certifies that it does not seek to provide international telecommunications services to any destination country where:
1. ECG is a foreign carrier in that country; or
  2. ECG controls a foreign carrier in that country; or

3. Any entity that owns more than 25 percent of ECG, or that controls ECG, controls a foreign carrier in that country; or
4. Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate more than 25 percent of ECG and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

K. Not applicable.

L. Not applicable.

M. Not applicable.

N. ECG certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

O. ECG certifies that it is not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998.

P. ECG submits that this Application is eligible for streamlined treatment as set forth in Section II above.

## VII. CONCLUSION

For the reasons stated herein, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. Indeed, failure to grant it would directly harm the public interest. In light of the exigent circumstances and, in particular the need to ensure continuity of service to existing customers, Applicants respectfully request that the FCC grant this Application *nunc pro tunc* to December 7, 2005.

DATED this 8<sup>th</sup> of December, 2005.

Respectfully submitted,

**BRYAN CAVE LLP**

By



Joseph P. Dubinski  
Brian M. Devling

Megan J. Redmond  
3500 One Kansas City Place  
1200 Main Street  
Kansas City, Missouri 64105  
(816) 374-3200  
(816) 374-3300 (Facsimile)  
**Counsel for Epicus, Inc. and  
Epicus Communications Group, Inc.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

In re:

Chapter 11

EPICUS COMMUNICATIONS GROUP, INC.,  
Et al.  
Debtors.

CASE NO. 04-34915-BKC-PGH  
(Jointly Administered)

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING  
DEBTORS FIRST AMENDED JOINT PLAN OF REORGANIZATION

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I. BACKGROUND AND PROCEDURAL HISTORY

1. Epicus Communications Group, Inc. ("ECG") and Epicus, Inc. ("Epicus"), Debtors and Debtors-in-possession in these Chapter 11 Cases (collectively "Debtors"), filed with the Court on August 9, 2005, Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code," as amended, modified or supplemented, including the modification implemented pursuant to this Confirmation Order (the "Plan"), which is attached hereto as Exhibit 1 and incorporated herein by reference.<sup>1</sup>

2. On August 12, 2005, the Court approved the "Disclosure Statement Concerning the Debtor's Plan of Reorganization" (the "Disclosure Statement"). Voting on the Plan commenced on August 19, 2005, and concluded on September 20, 2005. See Certificate of Proponent of Plan, Report on Amounts to be Deposited, Certificate of Amount Deposited and Payment of Fees, dated as of September 27, 2005, a true and correct copy of which is on file with the Court.

3. In support of confirmation of Plan, the Debtors have also filed with the Court the following:

- (a) Declaration of Gerard Haryman in Support of Confirmation of Debtors' Plan of Reorganization;
- (b) Declaration of Corey Ribotsky, Chairman of The NIR Group, LLC regarding Availability of Funds on the Effective Date;
- (c) Declaration of Lewis B. Freeman in Support of Confirmation of Plan;
- (d) Affidavit of Alvin Goldstein Certifying Voting on and Tabulation of Ballots Accepting and Rejecting the Plan of Reorganization (the "Ballot Report");
- (e) Plan Supplement Concerning Debtors' Plan of Reorganization dated September 9, 2005 (collectively with the Initial Plan Supplement, the "Plan Supplement"). The Plan Supplement contained, *inter alia*, the following documents:
  - (i) Schedule 5.06(A) Assignment of Transferred Assets
  - (ii) Schedule 5.15 Employment Contracts
  - (iii) Schedule 5.17 New Debenture Documents
  - (iv) Schedule 6.01 (A) Plan Trust Agreement
  - (v) Schedule 6.02 Plan Trustee Compensation Agreement
  - (vi) Schedule 9.01(A) List of Executory Contracts to be Assumed
  - (vii) Schedule 9.01(B) List of Unexpired Leases to be Assumed
  - (viii) Schedule 9.05 Agreements Regarding Cure of Default
  - (ix) Schedule 12.01 Confirmation Order
  - (x) Schedule 1.77 Amended and Restated By-Laws and Articles of Incorporation

Each of the documents referenced in this paragraph 3, and all other documents necessary to implement the Plan or executed in conjunction with or in contemplation of the Plan, and any substitutions, replacements, subsequent versions or amendments thereto, shall be collectively referred to as the "Confirmation Documents".

- 4. The following objections to Confirmation were filed:
  - (a) Texas Comptroller of Public Accounts
  - (b) State of North Carolina
  - (c) Universal Service Administrative Company ("USAC")

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<sup>1</sup>Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Plan.

5. **RESOLUTION OF OBJECTIONS TO CONFIRMATION**

- (a) The Texas Controller of Public Accounts objection to the confirmation of the Plan was resolved by the agreement of The NIR Group, LLC to purchase the claim of the Texas Controller of Public Accounts for \$1,695.74. The State of Texas then assigned their proof of claim to The NIR Group. The NIR Group then changed the ballot to an acceptance ballot and the Texas Controller of Public Accounts by and through Mark Browning withdrew the foregoing objection to confirmation.
- (b) The State of North Carolina's objection to confirmation was resolved by agreeing to include language in the confirmation order that allowed both their unsecured priority tax claim and their unsecured claim in full and language that the administrative claim of the State of North Carolina would be paid pursuant to the terms of the Plan.
- (c) The objection to confirmation of USAC was resolved by an agreement of the Debtor (i) admitting that the administrative claim owed by the Debtor to USAC is \$23,380.32 (the "Admitted USAC Administrative Claim") (ii) agreeing to pay the Admitted USAC Administrative Claim on the Effective Date, and (iii) agreeing to sign and return to USAC by October 21, 2005 an amended 2005 499A form, which is the USAC form reporting revenue information for calendar year 2004. The amended 2005 499A form will accurately reflect the results of the recent audit conducted by USAC which USAC has relied upon in determining its Administrative Claim.

6. On September 30, 2005, the Court conducted hearings (the "Confirmation Hearings") pursuant to Section 1128 of the Bankruptcy Code and Bankruptcy Rule 3020(b)(2) to consider confirmation of the Plan.

7. The Plan having been transmitted to creditors and equity security holders with respect to each impaired class of claims or interests, each holder of a claim or interest has accepted the Plan, or will receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtors were to liquidate under Chapter 7 of the Bankruptcy Code on such date. The Plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that are impaired under the Plan, and has not accepted the Plan, the remaining objections now being overruled, and no other party in interest having



objected to confirmation of the Plan, based on the Plan, the Confirmation Documents, evidence presented or proffered at the Confirmation Hearing, statements made in support of confirmation of the Plan at the Confirmation Hearing, and the entire record before the Court in these Chapter 11 Cases and otherwise being fully advised, the Court hereby makes the following findings of fact and conclusions of law and issues the following orders:

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

It having been determined after notice that:

**JURISDICTION AND VENUE**

8. The Court has jurisdiction over these Chapter 11 Cases under 28 U.S.C. §§157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this Court is proper under 28 U.S.C. § 1408 and 1409.

9. The Court finds and concludes that the Court's retention of jurisdiction as set forth in Article XIII of the Plan comports with the parameters contained in 28 U.S.C. § 157.

**CONTENTS OF THE PLAN**

10. The Plan has been accepted in writing by the creditors and equity holders where acceptance is required by law. In accordance with Section 1123(a) of the Bankruptcy Code, the Court finds and concludes that the Plan: (a) designates classes of Claims and Equity Interests, other than claims of a kind specified in Sections 507(a)(1), 507(a)(2) and 507(a)(8) of the Bankruptcy Code; (b) specifies Classes of Claims and Equity Interests that are not impaired under the Plan; (c) specifies the treatment of Classes of Claims and Equity Interests that are impaired under the Plan; (d) provides the same treatment for each Claim or Equity Interest of a particular Class, unless the holder of a particular Claim or Equity Interest agrees to less favorable treatment of the particular Claim or Equity Interest; (e) provides for adequate means for the

Plan's implementation; (f) prohibits the issuance of non-voting equity securities in the Amended and Restated Certificate of Incorporation of Reorganized Epicus Communications filed as part of the Plan Supplement, and (g) contains only provisions that are consistent with the interests of Creditors and Equity Interest holders and with public policy with respect to the manner of selection of any officer or director of Reorganized Epicus Communications, and the proposed compensation, equity and indemnification arrangements for the officers and directors of Reorganized Epicus Communications.

11. As permitted by Section 1123(b) of the Bankruptcy Code, the Plan: (a) impairs or leaves unimpaired Classes of Claims and Equity Interests; (b) provides for the assumption, rejection or assignment of executory contracts and unexpired leases of the Debtors; (c) provides for the retention and enforcement of Causes of Action; (d) provides for the issuance of Newly Authorized Capital Stock to the holders of certain Claims; (e) modifies the rights of holders of some Classes of Claims, and leaves the rights of holders of other Classes of Claims unaffected; (f) provides for releases of and covenants not to sue various persons, exculpation of various persons and entities with respect to actions taken in furtherance of the Chapter 11 Cases, and preliminary and permanent injunctions against certain actions against the Debtors and their property; and (g) includes other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code.

#### **NOTICE, SOLICITATION AND ACCEPTANCE**

12. In accordance with Bankruptcy Rules 2002, 3019, 6006 and 9014, the Court finds and concludes that adequate notice of the time for filing objections to confirmation of the Plan and adequate notice of the Confirmation Hearing was provided to all Creditors and parties in interest entitled to receive such notice under the Bankruptcy Code and the Bankruptcy Rules. No

other or further notice of the Confirmation Hearing or confirmation of the Plan is necessary or required.

13. In accordance with Section 1126(b) of the Bankruptcy Code, the Court finds and concludes that: (a) the solicitation of votes to accept or reject the Plan complied with all applicable bankruptcy and nonbankruptcy law, rules and regulations governing the adequacy of disclosure in connection with the solicitation; and (b) the solicitation was conducted after disclosure of "adequate information" as defined in Section 1125(a) of the Bankruptcy Code.

14. The Court finds and concludes that the Debtors, the Committee and their respective attorneys and agents solicited votes to accept or reject the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and are, therefore, entitled to the rights, benefits and protections afforded by Section 1125(e) of the Bankruptcy Code.

15. The Court finds and concludes that: (a) Classes 1, 2, 3, 4, 5, 8, 9, 10, 11 and 13 have accepted the Plan by satisfying the voting requirements set out in Section 1126(c) of the Bankruptcy Code; (b) Classes 6 and 7 are deemed to have accepted the Plan without voting, pursuant to Section 1126(f) of the Bankruptcy Code; and (c) Class 12 is deemed to have rejected the Plan without voting, pursuant to Section 1126(g) of the Bankruptcy Code.

**COMPLIANCE WITH THE REQUIREMENTS OF  
SECTION 1129 OF THE BANKRUPTCY CODE**

16. In accordance with Section 1129(a)(1) of the Bankruptcy Code, the Court finds and concludes that the Plan complies with the applicable provisions of the Bankruptcy Code.

17. In accordance with Section 1129(a)(2) of the Bankruptcy Code, the Court finds and concludes that the Debtors, as proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code.

18. In accordance with Section 1129(a)(3) of the Bankruptcy Code, the Court finds and concludes that: (a) the Debtors have proposed the Plan in good faith and not by any means forbidden by law; (b) the Debtors have acted, and are presently acting, in good faith in conjunction with all aspects of the Plan and in the conduct of the Chapter 11 Cases; and (c) all transactions contemplated by the Plan were negotiated and consummated at arm's length, without collusion, and in good faith.

19. All payments made or promised by the Debtors or by a person issuing securities or acquiring property under the Plan, or by any other person for services or for costs and expenses in, or in connection with, the Plan and incident to the case, have been fully disclosed to the Court and are reasonable or, if to be fixed after confirmation of the Plan, will be subject to approval of the Court.

20. In accordance with Section 1129(a)(5) of the Bankruptcy Code, the Court finds and concludes that: (a) the Debtors (as proponents of the Plan) have disclosed the identity and affiliations of all individuals initially proposed to serve, after the Effective Date of the Plan, as directors and key officers of Reorganized Epicus Communications; (b) the appointment to such offices of these individuals is consistent with the interests of the Creditors and the Equity Interest holders and with public policy; and (c) the Debtors (as proponents of the Plan) have disclosed the identity of insiders that will be employed by Reorganized Epicus Communications and the nature of compensation for such insiders.

21. In accordance with Section 1129(a)(6) of the Bankruptcy Code, the Court finds and concludes that the Debtors are not subject to any governmental regulation of any rates.

22. In accordance with Section 1129(a)(7) of the Bankruptcy Code, the Court finds and concludes that with respect to impaired Classes of Claims (*i.e.*, Classes 1, 2, 3, 4, 5, 8, 9, 10,

11 and 13, each holder of a Claim or Equity Interest (a) has accepted the Plan, or (b) will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

23. In accordance with Section 1129(a)(8) of the Bankruptcy Code, the Court finds and concludes that: (a) Classes 1, 2, 3, 4, 5, 8, 9, 10, 11 and 13 have accepted the Plan and (b) Classes 6 and 7 are not impaired under the Plan. With respect to Class 12, which is deemed to have rejected the Plan, the Court finds and concludes that, pursuant to Section 1129(b)(1) of the Bankruptcy Code, the Plan does not discriminate unfairly, and is fair and equitable, pursuant to Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) of the Bankruptcy Code, because no holders of junior Claims or Equity Interests will receive or retain any property under the Plan.

24. The Court finds and concludes that the Plan's treatment of Claims that, pursuant to Section 1123(a)(1) of the Bankruptcy Code, are not classified satisfies the requirements set forth in Section 1129(a)(9) of the Bankruptcy Code and; therefore, the Plan satisfies Section 1129(a)(9) of the Bankruptcy Code.

25. In accordance with Section 1129(a)(10) of the Bankruptcy Code, the Court finds and concludes that at least one Class of Claims that is impaired under the Plan has voted to accept the Plan, without including any acceptance of the Plan by any insider.

26. In accordance with Section 1129(a)(11) of the Bankruptcy Code, the Court finds and concludes that confirmation of the Plan is not likely to be followed by the need for further financial reorganization or liquidation of Reorganized Epicus Communications. The Court further finds that the Plan is feasible in that it provides sufficient capital for the Debtors to continue operating its businesses or to make all payments required under the Plan, as appropriate.

27. In accordance with Section 1129(a)(12) of the Bankruptcy Code, the Court finds and concludes that, to the extent that all fees payable to the United States Trustee under 28 U.S.C. § 1930(a)(6) have not been paid, the Plan provides for the payment of all such fees on the Effective Date of the Plan and as they come due after the Effective Date.

28. The Court finds and concludes that no retiree benefits, as that term is defined in Section 1114 of the Bankruptcy Code, exist in these Chapter 11 Cases, making Section 1129(a)(13) of the Bankruptcy Code inapplicable.

29. In accordance with Section 1129(b), the Court finds and concludes that the Plan should be approved because it does not discriminate unfairly and is fair and equitable with respect to the class of interest that is impaired under, and has not accepted, the Plan pursuant to Section 1129(b)(1)(2)(C)(ii), the Plan is fair and equitable because no holder of any interest that is junior to the interest of Classes 11 and 12 will receive or retain any interest under the Plan on account of such junior interest in any property.

30. The Court finds and concludes that the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, and there has been no objection filed by any governmental unit asserting such avoidance. The Plan, therefore, complies with Section 1129(d) of the Bankruptcy Code.

#### **SATISFACTION OF CONDITIONS TO CONFIRMATION**

31. The Court finds and concludes that the conditions to Confirmation have been or will be met upon entry of this Confirmation Order.

#### **MODIFICATIONS TO THE PLAN**

32. The Court finds and concludes that all modifications made to the Plan, including modifications to any Schedules or Exhibits to the Plan, after solicitation of votes on the Plan had

commenced, as reflected in this Confirmation Order, as set forth in the record at the Confirmation Hearings, or as reflected in the Confirmation Documents, satisfy the requirements of Sections 1122, 1223, and 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, are non-material, and do not adversely affect the treatment and rights of the holders of any Claims or Equity Interests under the Plan who have not otherwise accepted, in writing, such modifications. Accordingly, (a) the Debtors (as proponent of the modifications) have satisfied Sections 1125 and 1127(c) of the Bankruptcy Code and Bankruptcy Rule 3019 with respect to the Plan, as modified; and (b) holders of Claims or Equity Interests that have accepted or rejected the Plan (or are deemed to have accepted or rejected the Plan) are deemed to have accepted or rejected, as the case may be, the Plan as modified on the date of this Confirmation Order, pursuant to Section 1127(d) of the Bankruptcy Code and Bankruptcy Rule 3019.

#### **EXEMPTIONS**

33. The Court finds and concludes that, in accordance with Section 1145 of the Bankruptcy Code, (a) the issuance of New Debentures to the NIR Group and the issuance of Newly Authorized Capital Stock to the Haryman Parties, Old Equity and Class 9 under the Plan, is pursuant to a plan of reorganization, and as such, is a distribution in exchange for Claims against or Equity Interests in the Debtors, or principally in such exchange and partly for cash or property, and therefore is exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended, or any other applicable federal law, and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of or broker dealer in such securities; and (b) the issuance of Newly Authorized Capital Stock to OAA is pursuant to the private placement exemption provided by Section 4(2) of the Securities Act of 1933, as amended. Neither the Debtors nor Reorganized Epicus

Communications is an underwriter within the meaning of Section 1145 (b) of the Bankruptcy Code.

34. The Court finds and concludes that, in accordance with Section 1146(c) of the Bankruptcy Code: (a) the issuance, distribution, transfer or exchange of the New Debentures; (b) the issuance of Newly Authorized Capital Stock; (c) the creation, modification, consolidation or recording of any deed of trust or other security interest, the securing of additional indebtedness by such means or by other means in furtherance of, or connection with, this Plan or the Confirmation Order; (d) the transfer of assets of Epicus to Reorganized Epicus Communications pursuant to Section 5.01 of the Plan; (e) the making, assignment, modification or recording of any lease or sublease; or (f) the making, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, the Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to, the foregoing shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment and the appropriate federal, state or local government officials or agents shall be directed to forego the collection of any such tax or assessment and to accept for filing or recordation any of the foregoing instruments or other documents without the payment of any such tax or assessment.

#### **TRANSACTIONS PURSUANT TO THE PLAN**

35. The Court finds and concludes that pursuant to Bankruptcy Rule 9019 and in consideration of the distributions and other benefits provided under the Plan, the provisions of the Plan, including the releases and discharges of claims and causes of action and exculpations



and limitations of liability described in Articles V and XI of the Plan, constitute a good faith compromise and settlement of all Claims against and Equity Interests in the Debtors.

36. The Court finds and concludes that the Debtor's issuance of the New Debentures and Newly Authorized Capital Stock to the holders of certain Claims in accordance with the provisions of the Plan is reasonable and necessary.

37. The terms of the New Debentures, to be executed on or about the Effective Date, and such other instruments, documents, certificates, opinions and assurances made in connection with funding the loans thereunder, are in the best interests of the Debtors, their Estates, and Reorganized Epicus Communications, have been negotiated in good faith and at arm's length and without intent to hinder, to delay or to defraud any creditor of the Debtors or Reorganized Epicus Communications, and the transactions contemplated thereunder shall be deemed to have been entered into in good faith, for good and valuable consideration, and in exchange for reasonably equivalent value.

38. The Court finds and concludes that the assumption and rejection of executory contracts and unexpired leases pursuant to the Plan is a reasonable exercise of the Debtors' business judgment, is in the best interests of the Debtors and their Estates and will aid in the Debtors' reorganization efforts. The Court further finds that (i) the Debtors and Reorganized Epicus Communications have cured or will promptly cure, any defaults in the Assumed Executory Contracts and Leases listed in Schedules 9.01(A) and 9.01(B) to the Plan; (ii) Reorganized Epicus Communications will cure any defaults in the BellSouth Interconnection Agreements in accordance with Sections 4.01 and 9.06 of the Plan; and (iii) Reorganized Epicus Communications has demonstrated adequate assurance of future performance under the BellSouth Interconnection Agreements and Assumed Executory Contracts and Leases.