



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
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The following constitutes the order of the Court.

Signed May 10, 2004.


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: §
§
NUCENTRIX BROADBAND § CASE NO. 03-39123-HDH-11
NETWORKS, INC., *et al.* § (Chapter 11)
§ (Jointly Administered)
DEBTORS. §
§

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF
ORDER CONFIRMING FIRST AMENDED
PLAN OF LIQUIDATION AS MODIFIED**

Nucentrix Broadband Networks, Inc. ("Nucentrix") and its subsidiaries Arbuckle Cablevision, Inc., Cablemaxx, Inc., Cablemaxx (Texas), Inc., Central Oklahoma Wireless Cable, Inc., Country Wireless, Inc., Eastern Oklahoma Wireless Cable, Inc., Great Plains Wireless, Inc., Heartland Cable Television, Inc., Heartland Wireless – Des Moines, L.C., Heartland Wireless Illinois Properties, Inc., Heartland Wireless Texas Properties, Inc., Northern Oklahoma Wireless Cable, Inc., Nucentrix Internet Services, Inc., Nucentrix Spectrum Resources, Inc., Rural Wireless South, Inc., Southwest

Wireless Cable, Inc., Supreme Cable Metroplex, Inc., and Wireless Leasing, Inc., (collectively, the "Subsidiaries" and together with Nucentrix, the "Debtors"), having proposed that certain *First Amended Joint Plan of Liquidation* (Dkt #424 the "Amended Plan") dated March 22, 2004, as modified by the *Nonmaterial Modification of the First Amended Joint Plan of Liquidation* (Dkt #482, the "Amended Plan") filed on April 26, 2004 (the "Modification," and together with the Amended Plan, the "Plan"); the Court having conducted a hearing to consider confirmation of the Plan on May 3, 2004 (the "Confirmation Hearing"), and the Court having reviewed and considered the Plan, the Certificate of Service and Affidavit of Mailing of Plan Solicitation (Dkt #486), the *Affidavit Of Pamela Lewis Regarding Results Of Solicitation Of Confirmation Of The First Amended Joint Plan Of Liquidation For The Debtors* (Dkt #490, the "Ballot Report") wherein the votes are tabulated by Pamela Lewis (the "Balloting Agent"), as well as the testimony offered and adduced, the exhibits admitted into evidence, and the arguments of counsel presented at the Confirmation Hearing; and the Court having also considered all of the objections to confirmation of the Plan that had not been withdrawn, and the Court being familiar with the Plan, the history of the Debtors' above-captioned cases (the "Cases"), and all other relevant factors affecting the Cases, and the Court having taken judicial notice of the entire record of the Cases since the Petition Date, including, but not limited to, all pleadings filed by the Debtors and other parties in interest, all documentary evidence and testimony presented by the Debtors in the Cases before the Court, and, in particular, the Court having taken judicial notice of (i) the orders entered by the Bankruptcy Court on September 8, 2003, establishing the Bar Date (Dkt #17), (ii) the order granting complex chapter 11 bankruptcy case treatment, (iii) the notice of

hearing on the approval of the First Amended Disclosure Statement (the "Disclosure Statement"), (iv) the order of the Bankruptcy Court, entered on March 23, 2004 (Dkt #426), approving the Disclosure Statement and ballot tabulation and solicitation procedures and establishing various dates in connection with the solicitation of votes on and confirmation of the Plan; and based upon the entire record, in accordance with Bankruptcy Rules 7052 and 9014, the Court makes the following findings of fact and conclusions of law in support of Confirmation of the Plan (collectively, the "Findings").¹

I. JURISDICTION AND VENUE

1. Pursuant to 28 U.S.C. §§ 1334 and 157 and the Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings (Miscellaneous Order No. 33 of the District Court of this District), the Court has jurisdiction to hear and determine the confirmation of the Plan.

2. The Confirmation Hearing is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (L) and (O).

3. The Debtors are entities eligible for relief under Section 109 of Title 11 of the United States Code, as amended (the "Bankruptcy Code"). The Debtors filed the Cases in good faith.

4. The principal place of business of the Debtors is 17440 North Dallas Parkway, Suite 230, Dallas, Texas 75287-7397.

5. Venue in the Northern District of Texas for the Cases is proper.

¹ All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Plan or if not defined in the Plan, as defined in Title 11 of the United States Code (the "Bankruptcy Code").

II. BACKGROUND

1. On September 5, 2003 (the "Petition Date"), each of the Debtors filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court and thereby commenced the Cases.

2. On the Petition Date, the Debtors filed their consolidated "mailing matrix" listing the names and addresses of all creditors, equity security holders, and other parties in interest. The Court set the Bar Date (Dkt #17) for the filing of proofs of claim by all creditors (other than a governmental unit) for January 12, 2004, and set a special Bar Date for the filing of proofs of claim of Governmental Units for March 3, 2004.

3. Since the Petition Date, each of the Debtors has continued to operate its business and manage its properties as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. On September 12, 2003, the Bankruptcy Court ordered that the Cases be jointly administered pursuant to Bankruptcy Rule 1015 (Dkt #34).

5. On September 22, 2003, the Debtors served the Notice of Chapter 11 Bankruptcy Cases and Meeting of Creditors and Deadlines (the "Bar Date Notice") upon those creditors and equity holders reflected on the Creditor Matrix (Consolidated) (Dkt #28), as evidenced by the Certificate of Service (Dkt #95) filed on September 26, 2003.

6. On October 28, 2003, the Debtors served the Bar Date Notice upon numerous additional creditors, as evidenced by the Certificate of Service (Dkt #160) filed on October 28, 2003.

7. Also, on September 9, 2003, the Debtors filed a Motion to Establish Notice Procedures (Dkt #22, the "Notice Motion"), seeking to determine appropriate notice procedures during the Chapter 11 Case. The Notice Motion sought authority to

establish a master service list which would include and limit notice of all but certain specified major events to the United States Trustee, the Debtors, counsel for the Debtors, the Debtors' thirty (30) largest unsecured creditors, the members of any official committee and its counsel, any party whose interest was directly affected by a specific pleading, and parties or entities who might formally appear and request service pursuant to Bankruptcy Rule 2002 (the "Master Service List"). On September 12, 2003, the Bankruptcy Court approved the relief requested in the Notice Motion; including the Debtors' utilization of the Master Service List and the Debtors' proposed notice procedures.

8. No Creditors Committee was appointed during the Cases.

III. HISTORY OF THE DEBTORS AND THEIR BUSINESSES AND NECESSITY FOR CHAPTER 11 RELIEF

A. GENERAL HISTORY AND BACKGROUND OF THE DEBTORS

1. General.

Nucentrix is a Delaware corporation. Nucentrix and its subsidiaries (collectively, the "Company" or, as previously defined, the "Debtors") have provided broadband wireless Internet and subscription television services using radio spectrum licensed by the FCC at 2.1 GHz and 2.5 GHz. This spectrum commonly is referred to as MDS (Multipoint Distribution Service), MMDS (Multichannel Multipoint Distribution Service) and ITFS (Instructional Television Fixed Service). On the Petition Date, the Company held the rights to an average of approximately 128 MHz of MDS, MMDS, and ITFS spectrum covering over 8 million households in over 90 primarily medium and small markets across Texas, Oklahoma, and the Midwest. This spectrum is collectively referred to as "MMDS." The Company also owned licenses for 20 MHz of WCS

(Wireless Communications Services) spectrum at 2.3 GHz covering over 2 million households, primarily in Texas.

2. Wireless Cable Services

Historically, the Company used its spectrum to provide wireless subscription television services, commonly referred to as “wireless cable.” However, as part of a long-term plan to shift the use of its spectrum from wireless cable to broadband Internet and other advanced wireless services, the Company (i) converted substantially all of its wireless cable television subscribers to programming provided by DIRECTV, Inc. (“DIRECTV”), Pegasus Satellite Television, Inc. (“Pegasus”), and an affiliate of Time Warner Cable, and (ii) in November 2003, completely discontinued its wireless cable business.

3. DIRECTV/Pegasus Sales Agent

In addition to its wireless cable service discussed above, the Company also formerly marketed and sold DIRECTV digital broadcast satellite programming as a commissioned sales agent of DIRECTV and Pegasus. The Company received residual commissions for DIRECTV subscriptions sold under agreements with DIRECTV and Pegasus. As of December 31, 2003, there were approximately 17,000 customers (excluding converted subscribers) who received DIRECTV programming sold by the Company under its sales commission agreements.

4. Transition From Wireless Cable to Broadband Wireless Internet

After the FCC authorized MMDS and ITFS spectrum for fixed, two-way digital data and voice services in 1998, the Company believed that the highest and best use of its spectrum would be for advanced wireless communications services. In 1998 and

1999, the Company launched high-speed wireless Internet service in Sherman-Denison and Austin, Texas on first-generation MMDS networks. In 2001, several equipment vendors began commercial testing of a second generation of technology for MMDS that was expected to mitigate the line-of-sight limitations of first generation networks, as well as provide portability, self-installation, and other important benefits. Also in 2001, after many months of proceedings to identify additional spectrum for 3G mobile services, the FCC decided not to relocate MMDS licenses to other frequency bands and added a flexible use authorization to MMDS, making the band available for mobile services. Accordingly, the Company's long-term business strategy was to maintain its core spectrum assets and pursue the deployment of fixed, portable, and, ultimately, mobile broadband wireless Internet access and other advanced wireless services in the Company's medium and small markets, where the Company believed a competitive advantage existed against other high-speed Internet providers such as cable and DSL. The Company continued to provide high-speed wireless Internet service on first generation networks to approximately 400 subscribers in Austin and Sherman-Denison. The Company plans to discontinue this service in the second quarter of 2004.

B. MANAGEMENT AND OWNERSHIP OF THE DEBTORS

1. Nucentrix Broadband Networks, Inc.

Carroll D. McHenry ("Mr. McHenry") serves as President, Chief Executive Officer, and Acting Chief Financial Officer. J. Curtis Henderson ("Mr. Henderson") serves as Senior Vice President, General Counsel, and Secretary. Brandon J. Bullis ("Mr. Bullis") serves as Vice President – Spectrum Resources. Mr. McHenry (Chairman) and Mr. Henderson serve on the board of directors.

Nucentrix Common Stock was listed on the NASDAQ national market (“NASDAQ”) under the symbol “NCNX”. Nucentrix voluntarily delisted its common stock from NASDAQ effective immediately prior to the opening of the market on August 14, 2003. Nucentrix Common Stock has been available for quotation on the Pink Sheets Electronic Quotation Service under the symbol “NCNXQ.PK”.

2. The Subsidiaries.

All of the Subsidiaries are wholly owned by Nucentrix except for COWC and NOWC, which are majority owned by Nucentrix. Mr. McHenry and Mr. Henderson compose the Boards of Directors and are the officers of the Subsidiaries.

IV. SIGNIFICANT EVENTS DURING THE COURSE OF THE CASES

A. Sale of Assets to Nextel.

1. On September 17, 2003, this Court entered the Order Approving (A) Notice and Bid Procedures and (B) Bid Protections, Including Expense Reimbursement, Break-Up Fee, Overbid Protections, and No-Solicitation Provisions in Connection with the Proposed Sale of Certain of the Debtors’ Assets (Dkt #67, the “Bid Procedures Order”). The Debtors served the Bid Procedures Order on September 16, 2003 to the parties on their master service list (Dkt #68). The Debtors served a Notice of the Proposed Sale of Assets to relevant parties on September 26, 2003 (Dkt # 94).

2. Pursuant to the Bid Procedures Order, an auction was commenced on November 4, 2003, at which Nextel Spectrum Acquisition Corp. was determined to have the highest and best bid. Subsequently, on November 12, 2003, this Court entered the Order (i) Approving the Sale of Certain Assets of Nucentrix Broadband Networks, Inc., et al. to Nextel Spectrum Acquisition Corp., Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a), 363(b), (f), (m) and 1146(c), and

FED. R. BANKR. P. 2002 and 6004, and (ii) Approving the Assumption and Assignment of Certain Licenses, Executory Contracts and Leases in Connection Therewith Pursuant to 11 U.S.C. § 365 and Bankruptcy Rule 6006 (Dkt #187, the "Sale Order"). The Debtors served the Sale Order upon their master service list on November 13, 2003 (Dkt #190).

3. The Sale Order, among other things, approved the Asset Purchase Agreement, by and among Nextel Spectrum Acquisition Corp. and Unrestricted Subsidiary Funding Company (collectively, "Nextel"), and Nucentrix Broadband Networks, Inc., Heartland Cable Television, Inc., Nucentrix Internet Services, Inc., and Nucentrix Spectrum Resources, Inc. (collectively, the "Sellers"), dated as of November 10, 2003 (the "APA"), pursuant to which the Sellers are selling certain assets (the "Assets") and are assuming and assigning certain executory contracts and unexpired spectrum and tower leases, to Nextel, free and clear of liens, claims, encumbrances and interests (except for certain express assumed liabilities and permitted liens), all as more fully set forth in the APA and subject to the approval of the Federal Communications Commission ("FCC"). The Debtors served their Supplemental Notice of Proposed Assumption and Assignment of Contract(s) to Nextel on December 1, 2003 (Dkt #252).

B. Other

1. By various motions heard and granted during the Cases, the Debtors have assigned and sold leases and other assets not contracted to be sold to Nextel.

2. On October 29, 2003, the Court entered the Order: (I) Approving Agreement to Assign Certain Basic Trading Area Licenses; (II) Authorizing Assumption of BTA Lease and Option Agreement; (III) Modifying the Automatic Stay; and (IV)

Assigning Assets of the Estates Free and Clear of Liens, Claims, and Encumbrances (Dkt #162). This Order authorized the Debtors to assume and assign to Nextel certain basic trading area licenses subject to approval by the FCC.

3. On January 28, 2004, the Court entered the Order: (I) to Approving Assignment Agreement to Assign Certain Spectrum Leases; (II) Authorizing Assumption of Certain Spectrum Leases; and (III) Assigning such Leases Free and Clear of Liens, Claims, and Encumbrances (Dkt #313) authorizing the Debtors to assume certain spectrum leases and assign such leases to ComSpec Corp.

4. On March 11, 2004, the Court entered the Order: (I) Approving Assignment Agreement with Gateway Access Solutions, Inc. to Assign Certain Leases and Equipment; (II) Authorizing Assumption of Certain Leases; and (III) Assigning Such Leases and Equipment Free and Clear of Liens, Claims, and Encumbrances (Dkt #389) authorizing the Debtors to assume certain ITFS, MMDS, and MDS leases and to assign such leases and the equipment associated with such leases to Gateway Access Solutions, Inc.

5. Also on March 11, 2004, the Court entered the Order: (I) Approving Assignment Agreement with Unison Wireless, Inc. to Assign Certain Leases and Equipment; (II) Authorizing Assumption of Certain Leases; and (III) Assigning Such Leases and Equipment Free and Clear of Liens, Claims, and Encumbrances (Dkt #388) authorizing the Debtors to assume certain ITFS, MMDS, and MDS leases and to assign such leases and the equipment associated with such leases to Unison Wireless, Inc.

6. On April 15, 2004, the Court entered the Order Approving Assignment Agreement with Sherwood Capital, LLC, and Approving Assignment of Certain

Contracts Free and Clear of Liens, Claims and Encumbrances (Dkt #456) authorizing the Debtors to assume certain sales agency agreements and to assign such agreements to Sherwood Capital, LLC.

7. On April 22, 2004, the Court entered the Order: (I) Approving Assignment Agreement with Unison Wireless, Inc. to Assign Certain Additional Leases and Equipment; (II) Authorizing Assumption of Certain Leases; and (III) Assigning Such Leases and Equipment Free and Clear of Liens, Claims and Encumbrances (Dkt #471) authorizing the Debtors to assume certain ITFS, MMDS, and MDS leases and to assign such leases and the equipment associated with such leases to Unison Wireless, Inc. in addition to the leases and equipment assigned to Unison Wireless Inc. in the transaction approved on March 11, 2004.

8. On April 12, 2004, the Debtors filed their *Motion: (I) to Approve Assignment Agreement with Digital Broadcast Corporation, Inc. to Assign Certain Leases and Equipment; (II) for Authorization to Assume Certain Leases; and (III) Assigning Such Leases and Equipment Free and Clear of Liens, Claims, and Encumbrances* (Dkt #451). A hearing on this motion is scheduled for May 10, 2004.

V. SOLICITATION PROCEEDINGS

A. Disclosure Statement Hearing.

1. On February 2, 2004, the Debtors filed their initial Disclosure Statement (Dkt #317). On the same date, the Debtors filed and served notice (Dkt #318) of the setting of the hearing for approval of the Disclosure Statement for March 8, 2004 (the "Disclosure Statement Hearing").

2. On March 8, 2004, the Court held the Disclosure Statement Hearing. On March 22, 2004, the Debtors filed the Amended Disclosure Statement (Dkt #405) and

the Amended Plan in order to incorporate certain changes announced in open court on March 8, 2004, and the Court entered the *Order (i) Approving the Disclosure Statement, (ii) Setting Hearing on Confirmation of Plan of Reorganization and (iii) Granting Other Relief Relating to Plan Solicitation and the Confirmation Hearing* (Dkt #426, the "Disclosure Statement Order") on March 23, 2004.

3. By the Disclosure Statement Order, the Bankruptcy Court approved the Disclosure Statement as containing adequate information of a kind and in sufficient detail as far as reasonably practicable in light of the nature and history of the Debtors, that would enable a hypothetical reasonable investor typical of the holders of claims and interest of the relevant impaired classes to make an informed judgment regarding the Plan pursuant to 11 U.S.C. § 1125(a)(1). The Disclosure Statement Order also found that the notice given by the Debtors of the hearing to approve the Disclosure Statement was given in compliance with the Bankruptcy Rules.

4. Under the Disclosure Statement Order, the hearing on confirmation of the Plan was set for May 3, 2003, at 1:30 p.m. Central Time, in the Courtroom of the Bankruptcy Court, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242 (the "Confirmation Hearing").

B. Solicitation.

1. As part of the Disclosure Statement Order, the Bankruptcy Court approved the forms of ballots submitted by the Debtors, solicitation and tabulation procedures, the documents that made up the Debtors' solicitation materials (the "Solicitation Package"), and the appointment of Pamela Lewis as Balloting Agent.

2. Pursuant to the Disclosure Statement Order, those entities that were holders of Claims and Interests on March 23, 2004, were the entities entitled to receive

the Solicitation Package and entitled to vote on the Plan. The Debtors were required to cause Solicitation Packages to be served upon each entity listed in the Debtors' Schedules and Statements of Financial Affairs, as amended, and to each entity having filed a Proof of Claim or Proof of Interest against the Debtors. In addition, the Debtors were required to cause a Solicitation Package to be served upon each holder of record, as of March 23, 2004 of the Securities of the Debtors and to provide Solicitation Packages to brokers or other nominee holders who hold such securities on behalf of beneficial holders. The Disclosure Statement Order provided that all ballots must be received by the Balloting Agent by 4:00 p.m., Central Time, on April 27, 2004 (the "Voting Deadline").

3. On and after March 29, 2004, the Debtors caused the Solicitation Package to be mailed to the record holders of Claims and of Securities.

4. The Debtors complied with the Disclosure Statement Order in providing notice of the Confirmation Hearing in the method and manner as prescribed in that order. All entities entitled to and required to receive notice of the Confirmation Hearing pursuant to the Bankruptcy Code, applicable non-bankruptcy law, and the Voting Procedures have received due, proper, and adequate notice of such hearings and have had an opportunity to appear at and be heard at such hearings. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, (1950).

VI. OBJECTIONS TO CONFIRMATION

A. Procedure on Objections to Confirmation.

1. The Disclosure Statement Order fixed April 27, 2004 (the "Objection Deadline"), as the last day for creditors and other parties in interest to file and serve objections to confirmation of the Plan.

2. By the Objection Deadline, objections to confirmation of the Plan were filed by (i) M. Susan Kimmons (“Kimmons”) (Dkt #359), (ii) Diocesan Telecommunications Corporation (“DTC”) (Dkt #478), and (iii) Elgin I.S.D., Tax Appraisal District of Bell County, County of Bosque, Clifton I.S.D., City of Clifton, County of Bowie, County of Burnet, County of Comanche, City of Comanche, City of DeLeon, DeLeon I.S.D., County of Coryell, County of Denton, Pilot Point I.S.D., County of Erath, County of Freestone, Teague I.S.D, County of Hill, City of Hillsboro, Aquilla I.S.D., Bynum I.S.D., Hillsboro I.S.D., Itasca I.S.D., Malone I.S.D., Abbott I.S.D., Riviera I.S.D., County of Lynn, City of Waco, Waco I.S.D., Midland Central Appraisal District, County of Taylor, County of Williamson, City of Leander and Leander I.S.D. (collectively, “Certain Taxing Authorities”) (Dkt #481).

3. After the deadline, Hispanic Information & Telecommunications Network, Inc. (“HITN”) filed its objection to the Plan (Dkt #485).

B. Resolution of Objections to Confirmation.

1. The objection of Kimmons was resolved by a compromise and withdrawn.

2. The objection of DTC was overruled because the objection of DTC is addressed by the procedure discussed in the hearing of April 26, 2004, for determining the amount of its cure payment and responsibility for payment of deferred amounts in connection with the assumption and assignment of its lease as a part of the Nextel Sale and by the Debtors’ stipulation that the Confirmation of the Plan will not adversely affect DTC’s rights and position with respect to its cure payments, even if such issues are resolved subsequent to Confirmation.

3. The objection of Certain Taxing Authorities was withdrawn.

4. The objection of HITN was overruled.

VII. VOTING

1. The Debtors, Bowne of Dallas, and All Sorts Mailing Services, Inc. acting for the Debtors, served Solicitation Packages in compliance with the Disclosure Statement Order.

2. Following the service of Solicitation Packages as provided by the Disclosure Statement Order, the Ballot Agent received the Ballots executed and returned by Claimants and Interest holders and prepared a tally of the votes. The Debtors introduced the Ballot Report into evidence at the Confirmation Hearing, and the Ballot Report was accepted and approved by the Court.

3. The Plan provides for payment of all Allowed Claims in full. Even so, in an abundance of caution, the Debtors have treated all Claims as impaired and have solicited all Claimants in light of certain reported cases holding that even full-payment treatment alters the legal, equitable, and contractual rights of holders of such Claims. See *Equitable Life Ins. Co. of Iowa v. Atlanta-Stewart Partners (In re Atlanta-Stewart Partners)*, 193 B.R. 79, 82 (Bankr. N.D. Ga. 1996) (“under § 1124 as amended, a class of creditors which will receive payment in full upon the effective date of the plan is impaired within the meaning of the Bankruptcy Code”); *In re Crosscreek Apartments, Ltd.*, 213 B.R. 521, 536 (Bankr. E.D. Tenn. 1997) (“In light of the deletion of subsection (3) to § 1124 of the Bankruptcy Reform Act of 1994, the court concludes that it is no longer a valid argument to assert that the plan proponent can render a claim unimpaired by paying the claim in full at confirmation.”); *In re Seasons Apartments, Limited Partnership*, 215 B.R. 953 (Bankr. W.D. La. 1997). But see *Solow v. PPI Enters. (U.S.) (In re PPI Enters. (U.S.))*, 324 F.3d 197, 206-07 (3d Cir. 2003).

4. Consequently, in an abundance of caution, in Article 5 of the Plan, the Debtors identify Classes 1 through 3 of Claims as impaired under Section 1124(1) (the

"Impaired Classes") and therefore entitled to vote to accept or reject the Plan. The Plan also identifies Class 4 and all of its subclasses of Interests as impaired. Accordingly, the Balloting Agent counted all Ballots received in all Classes of the Plan, and she counted and reported them both on a case-by-case basis and on a consolidated basis.

5. The Plan was unanimously accepted by all voting Claimants in all Classes in all Cases except that three Claimants cast rejection ballots in the Nucentrix case: DTC, HITN, and Smithco of Ft. Smith, Inc. and Smithco Investments of West Memphis, Inc. ("Smithco"). Thus, with respect to the Ballots cast in the Impaired Classes of Claims, when counted both on a consolidated and case-by-case basis, and counting the Ballots of DTC, HITN, and Smithco, each of the following classes has accepted the Plan unanimously by holders of Claims in each class actually voting, Classes 1, 2, and 3, except Class 3 in the Nucentrix Case and Class 3 on a consolidated basis.

6. With respect to Ballots cast in the Impaired Classes of Interests entitled to vote on the Plan, when counted both on a consolidated and case-by-case basis, each of the following classes have accepted the Plan by at least two-thirds in amount of Interests in each class actually voting: Subclasses 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4I, and 4J. Only one subclass of Class 4, Subclass 4H, failed to accept the Plan by the requisite two-thirds in amount of units.

7. The Debtors filed a Motion to Approve Ballot Report and Objection to Three Ballots (Dkt #489), by which they objected to the negative votes from Claimants and alternatively requested that the voters' claims be temporarily allowed for voting purposes in the amount of \$1,000: DTC, HITN, and Smithco. The Debtors have objected to the proof of claim of Smithco and thus it does not have an allowed claim

under Section 502 of the Bankruptcy Code and cannot vote under Section 1126(a). The Court sustained the Debtors' objection as to Smithco and overruled the Debtors' objection as to DTC and HITN.

8. The Ballot Report is valid and correct as required under the Bankruptcy Code. The objections to the three negative votes will be sustained. As a result the Plan has been accepted in all voting Classes of Claims in all Cases.

9. In the alternative, due to payment in full of all Claims, including interest, the claims of Classes 1, 2, and 4 are not Impaired and the Ballots are therefore unnecessary.

10. Further, in the alternative, the Debtors have established the requirements for cramdown the Plan with respect to Class 3, both in the Nucentrix Case and on a consolidated basis, and also further with respect to Subclass H, as set forth hereinafter.

VIII. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

A. Section 1129(a)(1) -- Compliance of the Plan with the Applicable Provisions of the Bankruptcy Code.

1. The Court finds and concludes that the Plan satisfies all the applicable provisions of the Bankruptcy Code.

2. The Modification is not material. As so modified, the Plan continues to meet the requirements of Sections 1122 and 1123 of the Bankruptcy Code. The Modification satisfies Section 1127 of the Bankruptcy Code and is approved.

B. Section 1123(a)(1) -- Designation of Claims and Interests.

1. Section 1123(a)(1) of the Bankruptcy Code provides that a plan must designate classes of claims and interests. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Sections 3.2 through 3.5 of the Plan designate classes of Claims

against and Interests in the Debtors other than Administrative Expenses, Priority Claims, and Priority Tax Claims. Section 1123(a)(1) of the Bankruptcy Code does not require classification of Administrative Expenses, Priority Claims, and Priority Tax Claims. The Plan adequately and properly classifies all Claims against and Interests in the Debtors and, accordingly, satisfies Section 1123(a)(1) of the Bankruptcy Code.

C. Section 1122(a) -- Classifications.

1. Section 1122(a) of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class if such claim or interest is substantially similar to the other claims or interests of such class. A classification scheme satisfies Section 1122(a) of the Bankruptcy Code when a reasonable basis exists for the classification scheme, and the claims or interests within each particular class are substantially similar. See *In re Boston Post Road Ltd. Partnership*, 21 F.3d 477 (2d Cir. 1994), cert. denied, 130 L.Ed. 2d 782, 115 S.Ct. 897 (1995); *In re Jersey City Medical Ctr.*, 817 F.2d 1055, 1060-61. (3d Cir. 1987); *In re U.S. Truck Co.*, 800 F.2d 581, 586 (6th Cir. 1986); *In re LeBlanc*, 622 F.2d 872, 879 (5th Cir. 1980); *In re Bernhard Steiner Pianos USA, Inc.*, 292 B.R. 109, 113 (Bankr. N.D. Tex. 2002).

2. In accordance with Section 1122(a)(1) of the Bankruptcy Code, the Court concludes that the Plan properly classifies Claims against and Interests in the Debtors together with other Claims or Interests in the Debtors that are substantially similar to the other Claims or Interests of such class. The Plan accordingly satisfies Section 1122(a) of the Bankruptcy Code.

D. Section 1123(a)(2) -- Specification of Impaired Classes.

1. Section 1123(a)(2) of the Bankruptcy Code provides that a plan must specify any class of claims or interests that is impaired under a plan. The Plan identifies impaired classes of Claims and Interests and provides for their treatment.

2. Section 5.1 of the Plan identifies those Classes of Claims and Interests that are Impaired or that the Debtors deemed to be Impaired under the Plan. The Plan accordingly satisfies Section 1122(a)(2) of the Bankruptcy Code.

E. Section 1123(a)(3) -- Specification of Treatment of Impaired Classes.

1. Section 1123(a)(3) of the Bankruptcy Code provides that a plan must specify the treatment of each impaired class of claims and interests. Article IV of the Plan specifies the treatment of each impaired class of Claims and of Interests of the Debtors.

2. The Plan satisfies Section 1123(a)(3) of the Bankruptcy Code.

F. Section 1123(a)(4) -- Same Treatment Within Each Class Unless Holder Agrees to Different Treatment.

1. Section 1123(a)(4) of the Bankruptcy Code requires a plan to provide the same treatment for each claim or interest of a particular class, unless the holder of the claim or interest agrees to less favorable treatment of such particular claim or interest. With respect to each class of Claims and Interests under the Plan, the Plan provides the same treatment for each Claim or Interest of each Class.

2. The Plan satisfies Section 1123(a)(4) of the Bankruptcy Code.

G. Section 1123(a)(5) -- Means of Implementation.

1. Section 1123(a)(5) of the Bankruptcy Code provides that a plan must provide adequate means for its implementation.

2. Article VI of the Plan provides several means for its implementation. First, Section 6.1 appropriately provides that the Nextel Sale Approval Order and the APA are incorporated by reference and that nothing in the Plan shall be deemed to vary the provisions thereof. The Debtors advised the Court that FCC approval has been obtained, and the Nextel Sale is scheduled to close in early June 2004.

3. Section 6.2 of the Plan provides that the Debtors will liquidate and distribute the proceeds of their Assets in accordance with the Plan and, once that has been accomplished, will file a report of such activities, including receipts and disbursements, together with a request for a final decree.

4. Furthermore, Section 6.3 of the Plan provides for substantive consolidation of the Cases and Estates of the Debtors for the purpose of facilitating the Plan. Bankruptcy Code § 105(a), which provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title,” grants bankruptcy courts the power to substantively consolidate the assets and liabilities of one entity with those of another. See *In re Permian Producers Drilling, Inc.*, 263 B.R. 510, 517 (W.D. Tex. 2000); *In re DRW Property Co.*, 54 B.R. 489, 494 (Bankr. N.D. Tex. 1985); *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1145 n.2 (5th Cir. 1987). The determination of whether substantive consolidation should be granted is a “highly fact specific analysis that must be made on [a] case-by-case basis.” *Permian Producers*, 263 B.R. at 517. Although courts have considered a variety of factors in analyzing the merits of substantive consolidation in a particular case, no one factor or test is determinative.

Further, as an equitable remedy, courts use discretion in approving and determining the scope of substantive consolidation.

5. A number of factors support substantive consolidation of the Debtors' estates, including, but not limited to, the following:

- (i) the Plan gives notice to Claimants of the request for substantive consolidation;
- (ii) the Plan also proposes the merger of all Debtors, which is similar to substantive consolidation;
- (iii) no party in interest has objected to substantive consolidation as to merger of the Debtors;
- (iv) after disregarding the Ballots of DTC, HITN, and Smithco, all Classes of Claims in each of the individual Debtors' Cases have accepted the Plan and thereby approved substantive consolidation;
- (v) Nucentrix is the parent of all of the Debtors;
- (vi) the Debtors share common directors and officers;
- (vii) each of the Debtors has benefited from agreements made by other Debtors with third parties; and
- (viii) the Plan provides for payment of all Allowed Claims in full and the distribution of all other net proceeds of assets to the holders of Allowed Interests.

Based on the foregoing, the substantive consolidation of the Debtors' Estates as proposed in the Plan is appropriate.

6. Section 6.4 of the Plan appropriately contains provisions to further effectuate, and to evidence for public records, the substantive consolidation of the Debtors. The Debtors will, on or before the Effective Date, file articles of merger and other corporate documents, as a result of which Nucentrix shall be Post-Confirmation Nucentrix. At the time of the final decree, Post-Confirmation Nucentrix shall dissolve.

7. Sections 6.5 and 6.6 of the Plan appropriately provide for the management of the Debtors and of Post-Confirmation Nucentrix by Carroll D. McHenry and J. Curtis Henderson.

8. Article VI provides adequate means for the implementation of the Plan, and the Plan satisfies Section 1123(a)(5) of the Bankruptcy Code.

H. Section 1123(a)(6) -- Prohibition Against the Issuance of Nonvoting Equity Securities.

1. Section 1123(a)(6) of the Bankruptcy Code requires a plan to provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation to which the debtor transfers all or any part of the debtor's estate or with which the debtor has merged or consolidated, of a provision prohibiting the issuance of non-voting equity securities.

2. The Plan provides that the Amended and Restated Certificate of Incorporation and By-laws of Post-Confirmation Nucentrix may be amended, if necessary, to satisfy Section 1123(a)(6) of the Bankruptcy Code. The Amended and Restated Certificate of Incorporation of Nucentrix currently satisfies Section 1123(a)(6) of the Bankruptcy Code.

3. The Plan satisfies Section 1123(a)(6) of the Bankruptcy Code.

I. Section 1123(a)(7) – Post-Confirmation Officers and Directors.

1. Section 1123(a)(7) of the Bankruptcy Code requires that the manner of selection of any director, officer, or trustee of the reorganized debtor, or any successor to such officer, director, or trustee, be consistent with the interests of creditors and interest holders and with public policy.

2. Sections 6.5 and 6.6 of the Plan provide for and identify the post confirmation board of directors and officers of the Post-Confirmation Nucentrix.

3. The designation of the Chief Executive Officer and Board of Directors of Post-Confirmation Nucentrix are consistent with the interests of creditors and interest holders and with public policy.

4. The Plan complies with Section 1123(a)(7) of the Bankruptcy Code.

J. Section 1123(b)(1) -- Impairment.

1. Article IV of the Plan designates as Impaired, or deems Impaired, each class of Claims against and Interests in the Debtors.

2. The Plan satisfies Section 1123(b)(1) of the Bankruptcy Code.

K. Section 1123(b)(2) -- Executory Contracts and Unexpired Leases.

1. The Debtors have engaged in a thorough review of the executory contracts and unexpired leases to which any of the Debtors is a party. Section 8.2 of the Plan provides for the rejection of executory contracts and unexpired contracts, unless the Debtors have expressly assumed such executory contract or unexpired lease by motion filed before the Confirmation Hearing.

2. The rejection of the executory contracts and unexpired leases is (i) in the best interests of the Debtors, their estates, and their creditors, (ii) based upon and within the Debtors' sound business judgment, and (iii) necessary to the implementation of the Plan.

L. Section 1123(b)(3) -- Retention, Enforcement, and Settlement of Claims Asserted Against and Held by the Debtors.

1. Pursuant to Section 1123(b)(3)(A), Article IX of the Plan provides for the retention and enforcement of the Debtors' causes of action.

2. After the Effective Date, the compromise and settlement by Post-Confirmation Nucentrix of any retained cause of action may be effected without necessity of Bankruptcy Court approval pursuant to Article 11.10 of the Plan.

M. Section 1123(b)(6) -- Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code.

1. The Plan includes additional appropriate provisions that are consistent with applicable provisions of the Bankruptcy Code, including:

a. Indemnification. Section 6.8 of the Plan properly provides for the survival of the Debtors' indemnifications of its directors and officers. No party has objected to such provision, and the provision has the beneficent purpose of assuring the directors and officers, as they wind down and complete the liquidation of estate assets and pay the proceeds to the Claimants and holders of Securities, that they will be defended and protected from claims to the same extent they were before the Petition Date.

b. Exculpation and Release. Section 10.4 of the Plan properly provides for limited exculpation of the Debtor's representatives and the Estate's professionals. The terms of the exculpation are appropriately limited to their activities in connection with the Plan and the Cases. The Court has observed the conduct of the Debtor's representatives and the Estate professionals throughout the Cases and finds that exculpation is appropriate.

c. Releases. Section 10.5 of the Plan provides that in satisfaction of the Claims of current and former directors and officers, and in the interest of finality and peaceful implementation of the Plan, the Debtors will grant a release of claims, if any, against present and past directors, officers, employees, members,

managers, servants, agents, representatives, financial advisors, accountants, attorneys, and other professional persons of the Debtors. Such release is limited to those claims that are property of the estates of the Debtors and is therefore appropriate.

d. Binding effect; injunction. In accordance with Section 1141 of the Bankruptcy Code, the Plan properly provides that the Plan will bind all Claimants and holders of Securities, whether or not they filed proofs of claim or proofs of interest and whether or not they voted on the Plan. Moreover, in furtherance of such effect, it is appropriate that the Confirmation Order contain injunctive provisions as set forth in Section 10.6 of the Plan. Bankruptcy Code § 105(a) provides, “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Because the injunctive provision is necessary to implement and effectuate the Plan, the provision should be approved pursuant to Bankruptcy Code §§ 105(a) and 1123(b).

N. Section 1129(a)(2) – compliance by the proponent of a plan with all of the applicable provisions of the Bankruptcy Code.

1. Section 1129(a)(2) of the Bankruptcy Code requires the proponent of a plan to comply with all of the applicable provisions of the Bankruptcy Code.

2. The Debtors have complied with the operating guidelines and financial reporting requirements enacted by the United States Trustee by (i) timely filing all monthly operating reports and consolidated financial statements and (ii) maintaining and providing proof of insurance. The Debtors have paid all statutory fees required to be paid during the Cases and filed all fee statements required to be filed.

3. The Debtors have timely filed with the Bankruptcy Court all required schedules, lists of executory contracts, and statements of financial affairs.

4. The Debtors and their respective directors, officers, employees, agents and professionals have acted in "good faith" within the meaning of Sections 1125(e), 1126(e), and 1129(a)(3) of the Bankruptcy Code.

5. The Debtors have complied with the provisions of the Bankruptcy Code, the Bankruptcy Rules, applicable non-bankruptcy law, the Local Bankruptcy Rules, and the specific rules and orders of the Bankruptcy Court throughout the Cases.

6. The solicitation of votes from holders of Claims against and Interests in the Debtors was made following approval and dissemination of the Disclosure Statement to holders of Claims and Interests in classes that are impaired under the Plan and was made in good faith and in compliance with Sections 1125(b) and 1125(e) and all other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The ballots of holders of Claims and Interests entitled to vote on the Plan were properly solicited and tabulated.

7. The Debtors have complied with all orders of the Bankruptcy Court and have fulfilled all of the obligations and duties owed to their respective constituencies as required by and set forth in Sections 1107 and 1108 of the Bankruptcy Code.

8. The Debtors have complied with all applicable provisions of the Bankruptcy Code, as required by Section 1129(a)(2) of the Bankruptcy Code, including the provisions governing the notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, and all other matters considered by the Bankruptcy Court in connection with the Cases.

9. Good, sufficient, and timely notice of the Disclosure Statement Hearing, the Confirmation Hearing and all other hearings in the Cases has been given to all holders of Claims against and Interests in the Debtors and all other parties in interest to whom notice was required to have been given.

10. The Debtors have satisfied Section 1129(a)(2) of the Bankruptcy Code.

O. Section 1129(a)(3) -- Proposal of the Plan in Good Faith.

1. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be proposed in good faith and not by any means forbidden by law.

2. The Court has examined the totality of the circumstances surrounding the formulation of the Plan. The Plan has been proposed with the legitimate and honest purpose of liquidating certain assets of the Debtors, satisfying all Allowed Claims in full, and distributing the balance of the proceeds of the assets to the holders of Interests.

3. The Plan was proposed in good faith and not by any means forbidden by law, and the Debtors have thereby satisfied the requirements of Section 1129(a)(3) of the Bankruptcy Code.

P. Section 1129(a)(4) -- Bankruptcy Court Approval of Certain Payments as Reasonable.

1. Section 1129(a)(4) of the Bankruptcy Code requires that all payments made or to be made by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, have been approved by, or are subject to the approval of, the court as reasonable.

2. Pursuant to Section 2.2 of the Plan, each professional person whose retention with respect to the Debtors' cases has been approved by the Bankruptcy Court

and who holds, or asserts, an Administrative Claim that is a Fee Claim shall be required to file with the Bankruptcy Court a final fee application within forty-five days after the Effective Date (the “Post-Confirmation Bar Date”) and to serve notice thereof on all parties entitled to such notice. The failure to timely file the fee application shall result in the Fee Claim being forever barred and discharged.

3. Any other person or entity who claims to hold any other Administrative Claim shall be required to file with the Court an application on or before the Post-Confirmation Bar Date and to serve notice thereof on all parties entitled to such notice. The failure to file timely the application as required under the Plan shall result in the Claim being forever barred and discharged. An Administrative Claim with respect to which an application has been properly filed pursuant to the Plan, shall become an Allowed Administrative Claim to the extent such claim is allowed by Final Order.

4. The Plan provides for payment of the allowed amounts of such Administrative Claims in full by the Debtors or Post-Confirmation Nucentrix as soon as such amounts are allowed and as soon as practicable following the Effective Date. The Plan satisfies Section 1129(a)(4) of the Bankruptcy Code.

Q. Section 1129(a)(5) -- Disclosure of Identity and Affiliations of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy.

1. The Debtors have disclosed the identity of the individuals who will hold positions with the Debtors immediately after confirmation of the Plan, i.e. Mr. McHenry and Mr. Henderson, and have shown that the service of such individuals is consistent with the interests of creditors and with public policy.

2. The Plan satisfies Section 1129(a)(5) of the Bankruptcy Code.

R. Section 1129(a)(6) -- Approval of Rate Changes.

1. Section 1129(a)(6) of the Bankruptcy Code requires a debtor to obtain the approval of any governmental regulatory commission, with jurisdiction over the debtor, with respect to any rate changes provided for in the debtors plan of reorganization.

2. The Debtors do not assess rates that are subject to regulatory approval of any governmental agency.

3. Section 1129(a)(6) of the Bankruptcy Code is not applicable to the Plan.

S. Section 1129(a)(7) -- Best Interests of Creditors.

1. Section 1129(a)(7) of the Bankruptcy Code requires that each creditor or interest holder in an impaired class must either have voted to accept the plan of reorganization, or will receive or retain under such plan on account of such claim or interest property of a value, as of the effective date of such plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. With respect to each dissenting Claimant, the Plan provides more than such Claimant would receive in a Chapter 7 liquidation.

2. The Plan satisfies Section 1129(a)(7) of the Bankruptcy Code.

T. Section 1129(a)(8) Acceptance of the Plan by Each Impaired Class.

1. Section 1129(a)(8) of the Bankruptcy Code requires that, with respect to each class of claims or interests under a plan, such class has either accepted the plan or is not impaired under the plan.

2. All Classes of Claims against and Interests in the Debtors has voted to accept the Plan or are not impaired under the Plan, except Subclass H (Warrants), which rejected the Plan.

3. With respect to all Classes of Claims against or Interests in the Debtors, the Plan satisfies the requirements of Section 1129(a)(8) of the Bankruptcy Code.

U. Section 1129(a)(9) -- Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code.

1. Section 1129(a)(9) of the Bankruptcy Code provides for certain mandatory treatment of claims entitled to priority under the Bankruptcy Code.

2. Section 2.2 of the Plan provides that the Debtors will pay Administrative Claims in cash in full on the Initial Distribution Date, and Sections 2.4, 2.6 and 2.7 of the Plan provide that the Debtors will pay Priority Claims and Priority Tax Claims on the Initial Distribution Date.

3. The Debtors will have, on the Effective Date, sufficient cash to fund payments of all such priority Claims.

4. The Plan satisfies the requirements of Section 1129(a)(9) of the Bankruptcy Code.

V. Section 1129(a)(10) -- Acceptance by at Least One Impaired Class.

1. Section 1129(a)(10) of the Bankruptcy Code provides that at least one impaired class of claims must accept a plan of reorganization, determined without including any acceptance of such plan by any insider.

2. At least one Impaired class in the Plan has voted to accept the Plan determined without including any acceptance of the Plan by an insider holding a Claim in each such class.

3. The Plan satisfies the requirements of Section 1129(a)(10) of the Bankruptcy Code.

W. Section 1129(a)(11) -- Feasibility of the Plan.

1. Section 1129(a)(11) of the Bankruptcy Code requires that a plan be "feasible" and that the debtor or its successor under such plan is not likely to require liquidation or further financial reorganization, except as provided under such plan.

2. On the basis of the information presented in the Plan and the record of the Confirmation Hearing, the Court concludes that liquidation of the Debtors is properly provided for under the Plan.

3. Moreover, the amount of consideration payable to the Debtors under the Nextel Sale is adequate and will provide most of the funds from which Claims will be paid in full, with the residual distributions to go to the holders of Securities pursuant to the Plan. The FCC has approved the Nextel Sale and it is scheduled to close in early June 2004.

4. The Plan satisfies the requirements of Section 1129(a)(11) of the Bankruptcy Code.

X. Section 1129(a)(12) -- Payment of Bankruptcy Fees.

1. Section 1129(a)(12) of the Bankruptcy Code requires either that all fees payable under 28 U. S. C. § 1930, as determined by the court at the hearing on confirmation of the plan, have been paid or that the plan provides for the payment of all such fees on the effective date of the plan.

2. Section 2.5 of the Plan provides that all fees payable pursuant to 28 U.S.C. § 1930 shall be paid by the Debtors on and after the Effective Date.

3. The Plan satisfies the requirements of Section 1129(a)(12) of the Bankruptcy Code.

Y. Section 1129(a)(13) -- Retiree Benefits.

1. Section 1129(a)(13) of the Bankruptcy Code requires the continuation of payment of all retiree benefits, at the level established pursuant to Section 1114 of the Bankruptcy Code at any time prior to confirmation of the plan, for the duration of the period for which the debtor has obligated itself to provide such benefits.

2. The Debtors have no retiree benefit plan.

3. The Plan satisfies the requirements of Section 1129(a)(13) of the Bankruptcy Code.

Z. Cramdown Pursuant to Section 1129(b)

1. Against the possibility that the Plan did not obtain requisite voting majority in Class 3, the Debtor proceeded to confirm the Plan by way of cramdown under Section 1129(b) of the Code. Section 11.1 of the Plan contains such request.

2. First, the Plan does not unfairly discriminate against and is fair and equitable with respect to Class 3. The Plan provides for payment in full of the Allowed Amount of all Claims in Class 3, and no Claimant can legitimately ask for or expect more.

3. Second, the Plan satisfies the absolute priority rule of Section 1129(b)(2)(B) of the Code. That section requires that, if a senior class rejects the plan, a junior class may receive or retain no value under the plan on account of its claims or interests. Here, the Plan provides for payment in full of all Allowed Claims in Class 3, and thus the junior class, Class 4 and its subclasses, may appropriately receive and retain the value that the Plan provides.

4. With respect to the rejection of the Plan by Class H, the Plan provides appropriate treatment for the Warrants, preserving their holders' ability to exercise them

and to acquire shares of Nucentrix Common Stock, which shall be treated with and on the same basis as all other shares of such stock in Class I. No class of Interests is junior to the Warrants and the Warrants are receiving everything to which they are entitled.

5. Accordingly, the Debtors have established all requirements for confirmation of the Plan by way of cramdown.

AA. Bankruptcy Rule 3016(b).

1. The Plan is dated and identifies the entities that have proposed and submitted the Plan.

2. The Plan satisfies Bankruptcy Rule 3016(b).

BB. Section 1129(d) -- Tax Avoidance.

1. Section 1129(d) of the Bankruptcy Code provides that a court may not confirm a plan if the principal purpose is the avoidance of taxes or the avoidance of the requirements of Section 5 of the Securities Act of 1933, as amended.

2. No objection has been filed by any governmental unit or any party in interest alleging that the principal purpose of the Plan is avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, as amended.

3. The principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, as amended.

4. The Plan satisfies Section 1129(d) of the Bankruptcy Code.

IX. DISTRIBUTIONS

A. Distributions.

1. Article VII of the Plan contain the provisions governing distributions under the Plan, and such distributions are fair and reasonable.

X. PLAN MODIFICATIONS

1. On April 26, 2004, the Debtors filed the Modification, which effected certain clarifications and technical amendments to the Plan and resolved certain potential objections to confirmation of the Plan.

2. The Modification does not adversely change the treatment of the claim of any creditor or the right of holders of interests. The Modification merely clarifies certain provisions of the Plan. The Modification complies in all respects with Section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and all other provisions of the Bankruptcy Code. No additional disclosure under Section 1125 of the Bankruptcy Code is required with respect to the Plan Modifications.

3. At the Confirmation Hearing, the Court approved the Modification, and, pursuant to Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims and Interests that have accepted or are conclusively presumed to accept the Plan are deemed to have accepted the Modification.

XI. SECTION 1146(c) – EXEMPTION OF THE TRANSFER OF PROPERTIES UNDER THE PLAN FROM CERTAIN TAXES

1. Section 1146(c) of the Code provides that any and all transfers under the Plan shall not be subject to taxation under state or local law imposing a stamp, transfer, or similar tax.

XII. BURDEN OF PROOF

1. The burden of proof is upon the proponent of a plan to establish that the applicable standards of the Bankruptcy Code have been satisfied by a preponderance of the evidence. *Heartland Fed. Sav. Ass'n v. Briscoe Ent., Ltd. (In re Briscoe Fed. Sav. Ass'n)*, 994 F.2d 1160, 1163 (5th Cir.), cert. denied, 510 U.S. 992 (1993).

2. The record of the Confirmation Hearing demonstrates that the Debtors produced evidence on each applicable standard. Such evidence was clear, on point, and persuasive, and there was no contradicting proof. Accordingly, the Debtor has carried its burden, and the Plan should be confirmed.

XIII. CONCLUSION

The foregoing constitutes the Court's findings of fact and conclusions of law. And finding of fact that constitutes a conclusion of law shall be so construed and vice versa.

Based thereon, the Court will separately enter an order confirming the Plan.

*** * * END OF ORDER * * ***

Submitted by:

Josiah M. Daniel, III, SBT #05358500

Todd C. Crosby, SBT #24036420

VINSON & ELKINS L.L.P.

2001 Ross Avenue

3700 Trammell Crow Center

Dallas, Texas 75201

Tel: (214) 220-7700

Fax: (214) 220-7716

ATTORNEYS FOR THE DEBTORS

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