

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In Re NORVERGENCE, INC.,

Debtor.

WANLAND & ASSOCIATES, INC., on  
behalf of itself and all others similarly  
situated,

Plaintiff,

v.

NORTEL NETWORKS LIMITED,  
NORTEL NETWORKS, INC., QWEST  
COMMUNICATIONS  
INTERNATIONAL INC., THOMAS N.  
SALZANO, ALEXANDER L. WOLF,  
and ROBERT J. FINE,

Defendants.

Case No. 04-32079 (RG)

Adv. Proc. No. 05-2439

**DECLARATION OF LISA J.  
RODRIGUEZ IN SUPPORT OF JOINT  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Lisa J. Rodriguez declares as follows:

1. I am an attorney at law of the State of New Jersey, and a member of the law firm of Schnader Harrison Segal & Lewis LLP,<sup>1</sup> one of the attorneys for plaintiff and the putative class in this matter. I have personal knowledge of the facts contained in this Declaration.

2. I offer this Declaration in support of the Parties' joint motion for preliminary approval of a classwide settlement between plaintiff Wanland &

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<sup>1</sup> The attorneys of Trujillo Rodriguez and Richards, LLC joined Schnader Harrison Segal & Lewis LLP, in 2013.

Associates, Inc. (“Plaintiff”) and defendants Nortel Networks Limited (“NNL”) and Nortel Networks, Inc. (“NNI” and, together with NNL, “the Nortel Defendants” or “the Settling Nortel Defendants”).

**A. The Lengthy History of This Case**

3. This matter has had a long and winding history, in three different courts. Plaintiff commenced this case on September 27, 2004 by filing it in the Superior Court of New Jersey, Law Division, Ocean County. Nortel Networks Corporation, which was then one of the named defendants, removed the case to the United States District Court for the District of New Jersey on February 28, 2005, where it was assigned to Hon. Mary L. Cooper, U.S.D.J., under Civil Action No. 3:05-cv-01191(MLC)(TJB). District Court ECF No. 1.<sup>2</sup>

4. On March 7, 2005, Nortel Networks Corporation filed a motion to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6). District Court ECF No. 2. Thereafter, on March 24, 2005, Plaintiff filed an Amended Complaint (“AC”), which remains the operative pleading. District Court ECF No.3. The AC named as defendants Qwest Communications International Inc. (“Qwest”), Thomas N. Salzano, Peter J. Salzano, Alexander L. Wolf, Robert J. Fine (all of whom were former executives of NorVergence), and the two Nortel Defendants, who replaced

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<sup>2</sup> “District Court ECF No. \_\_\_” refers to docket entries in Civil Action No. 3:05-cv-01191(MLC)(TJB). “ECF No.,” used below, refers to docket entries in this adversary proceeding.

Nortel Networks Corporation as defendants. *Id.* The AC asserted claims under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* (“NJCFA”) and consumer protection statutes of other jurisdictions, as well as theories of negligent misrepresentation and unjust enrichment. *Id.*

5. On March 28, 2005, Judge Cooper issued an Order to Show Cause as to why the case should not be remanded to the Superior Court due to lack of subject matter jurisdiction. District Court ECF No. 7. After parties made submissions that contended that the Court had subject matter jurisdiction under 28 U.S.C. §1334(b), because the AC was related to the NorVergence bankruptcy action, Judge Cooper issued a June 20, 2005 opinion that agreed that there was subject matter jurisdiction. District Court ECF No. 29. Judge Cooper terminated motions to dismiss that had meanwhile been filed and referred the AC to this Court as an adversary proceeding. District Court ECF Nos. 29, 30.

6. On April 13 and 14, 2006, respectively, the Nortel Defendants and Qwest filed motions to dismiss the AC. ECF Nos. 23, 25. Defendant Fine filed a motion for summary judgment on April 17, 2006. ECF No. 27. After the parties completed briefing on all three motions, this Court held a hearing on those motions on September 13, 2006. ECF September 13, 2006 minute entry. On February 28, 2008, this Court issued a 94-page opinion that denied the motions of Qwest and the Nortel Defendants, and found the record insufficient either to grant or deny Fine’s

motion. ECF No. 55. An Order embodying that opinion was entered on March 24, 2008. ECF No. 61.

7. On April 30, 2008, Qwest and the Nortel Defendants filed Answers to the AC. ECF Nos. 79, 81. Those Answers denied the material allegations of the AC, and asserted numerous affirmative defenses. In addition to merits defenses, defendants contended that no class could be certified in this matter.<sup>3</sup>

8. The Nortel Defendants sought leave to appeal to the District Court, under 28 U.S.C. §1292(b), the denial of their motion to dismiss. Plaintiff filed opposition. On December 8, 2008, Judge Cooper issued an opinion and an Order that denied the motion for leave to appeal. ECF Nos. 118, 119.

9. On December 16, 2008, following his deposition, defendant Fine was dismissed from this proceeding by stipulation. Settlement Agreement (“Settlement”), at 2, Recital J. A true copy of the Settlement and its exhibits is attached as Exhibit A.

10. On January 14, 2009, Plaintiff filed a motion for class certification. ECF No. 133. That motion never proceeded, however, because of bankruptcy proceedings filed that very same day.

11. On January 14, 2009, NNI and certain of its affiliates filed voluntary

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<sup>3</sup>The remaining defendants, Thomas N. Salzano, Peter J. Salzano, and Alexander J. Wolf, have not figured in this case. Wolf was never served, and the Salzanos, though served, never appeared. Settlement, at 2-3, Recital N. Plaintiff does not intend to pursue claims against any of those defendants. *Id.*

petitions for relief pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (“the Delaware Bankruptcy Court”), Case No. 09-10138 (KG) (“the Delaware Bankruptcy Proceedings”). Settlement, at 2, Recital K. Plaintiff filed a proof of claim in the Delaware Bankruptcy Action for \$360,000,000 (“the Delaware Bankruptcy Proof of Claim”). Settlement, at 3, Recital O. That figure resulted from Plaintiff’s most favorable view of the class size and potential damages and then trebling the resulting \$120,000,000 damage amount since the NJCFA affords treble damages.

12. Also on January 14, 2009, Nortel Networks Corporation, NNL, and certain of their affiliates commenced a proceeding in the Ontario Superior Court of Justice (“the Ontario Court”) under the Companies’ Creditors Arrangement Act of Canada, styled *In the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation, et al.*, Case No. 09-CL-7950 (“the Canadian Insolvency Proceedings”). Settlement, at 2, Recital L. On that same date, Nortel Networks Corporation, NNL and certain of their affiliates filed petitions for relief and recognition in the United States of the Canadian Insolvency Proceedings pursuant to Chapter 15 of the United States Bankruptcy Code in the Delaware Bankruptcy Court, Case No. 09-10166 (KG) (“the Chapter 15 Proceedings”). Settlement, at 2, Recital M.

13. By virtue of the filing of the Delaware Bankruptcy Proceedings and

the Chapter 15 proceedings, this adversary proceeding was stayed as against NNI and NNL, respectively. Settlement, at 2-3, Recital N; ECF No. 143.

14. On February 9, 2011, Qwest was dismissed from this proceeding by stipulation. Settlement, at 3, Recital O. Functionally, therefore, the only remaining defendants are the Settling Nortel Defendants. *See supra* at 4 n.2 (describing Plaintiff's intent not to proceed against the individual defendants, who were not served or have not appeared). The docket reflects no substantive activity in this adversary proceeding since that date.

**B. The Settlement Between Plaintiff and the Nortel Defendants**

15. Plaintiff and the Settling Nortel Defendants have reached a Settlement that will allow all Settlement Class members, after more than twelve years of this litigation, to recover from the Settling Nortel Defendants and conclude this matter. The Settling Nortel Defendants continue to deny Plaintiff's allegations, as to both Plaintiff and the putative class. Settlement, at 3, Recital Q. Nonetheless, all parties believe that the Settlement is to their mutual benefit, Settlement, at 3, Recital R, and if approved, it would conclude this adversary proceeding.

16. The Settlement Class is defined as:

All persons, including businesses, in the United States of America and its territories who, between January 1, 2001 and June 30, 2004, entered into a written agreement with NORVERGENCE, INC. for the lease of one or more Matrix boxes, Matrix SoHo boxes, or other

network equipment provided by NORVERGENCE, INC. Excluded from the Settlement Class are the presiding judges in each of the New Jersey Federal Action, the NORVERGENCE Bankruptcy Proceeding, the Delaware Bankruptcy Proceedings, the Canadian Insolvency Proceedings, the staff of each of those presiding judges, Class Counsel, SETTling NORTEL DEFENDANTS' in-house and outside counsel and the respective immediate families of all persons listed above.

Settlement, at 4, ¶3(a). The Settlement Class will be based on a customer list obtained from the Trustee in the NorVergence bankruptcy. Settlement, at 5, ¶(c). Using that list, notice to Settlement Class members will be given by direct mail by a professional claims administrator (the "Claims Administrator") to be agreed upon by the parties and approved by the Court. Settlement, at 4-5, ¶3(b)-(c).

17. Under the Settlement, NNI was required to obtain an Order in the Delaware Bankruptcy Proceedings that lifts the bankruptcy stay and permits NNI to enter into this Settlement. Settlement, at 3, ¶1. NNI obtained that Order on October 24, 2016. Delaware Bankruptcy Court ECF No. 17299.

18. The Settlement provides that Plaintiff's claim in the Delaware Bankruptcy Proceedings will be reduced and allowed as a non-priority general unsecured claim against NNI in the amount of \$400,000 plus the amount of attorneys' fees and costs that this Court awards, if this Court approves the Settlement and awards fees and costs to Plaintiff's counsel. Settlement, at 6, ¶4(e).

Costs of notice and administration, as well as an incentive award for Plaintiff of \$10,000, will be deducted from the Wanland Settlement Claim Distribution before payments are made to Settlement Class members who file valid claims.

Settlement, at 6, ¶4(e).<sup>4</sup> A detailed and objective claims procedure, to be implemented by the claims administrator, ensures the proper processing of claims by Settlement Class members. Settlement, at 5-6, ¶4. Funds remaining after deduction of notice costs and the incentive award will be divided equally among all Settlement Class members who file valid claims with the Claims Administrator. Settlement, at 7, ¶4(e)(iii).

19. Pursuant to the Settlement and if approved by the Court, Plaintiff's counsel shall be entitled to receive a non-priority general unsecured claim against NNI for attorneys' fees and expenses of up to \$100,000, which will be in addition to the Wanland Settlement Claim Distribution described *supra*. Settlement, at 8-9, ¶6. The Settling Nortel Defendants have agreed not to oppose a fee and expense application for an allowed claim of up to \$100,000. Settlement, at 8, ¶6(a). The actual amount that Plaintiff's counsel will receive will depend on the ultimate distribution made in the Delaware Bankruptcy Proceedings. Settlement, at 8, ¶6(b). If unsecured creditors receive less than 100% of the amount of their allowed

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<sup>4</sup> NNI will advance up to \$41,500 of the reasonably anticipated costs of notice and administration, which amount is to be deducted from any distribution made on account of Plaintiff's claim in the Delaware Bankruptcy Proceedings that will be the source of the Wanland Settlement Claim Distribution. Settlement, at 5, ¶3(e).

claims, Plaintiff's counsel will not be able to seek or receive anything more than that percentage of any fee and expense award that this Court makes. *Id.*

20. In consideration of these Settlement benefits, Plaintiff and the putative class will releases all claims and potential claims against the Settling Nortel Defendants related to the Delaware Bankruptcy Proof of Claim, as described in additional detail in the Settlement. Settlement, at 9-10, ¶8.

21. The Settlement was the result of extensive, arms-length negotiations between Plaintiff's counsel and counsel for the Settling Nortel Defendants. Plaintiff's counsel, who are all experienced in handling class action litigation on behalf of plaintiffs, believe that the Settlement is fair, reasonable, and adequate given the protracted nature of this case, the fact that a bankruptcy stay has been and continues to be in effect, thereby precluding this adversary proceeding from going forward, and the risks of litigation if and when the case were allowed to proceed.

22. Attached as Exhibit B are true copies of the firm resumes of Cafferty Clobes Meriwether & Sprengel LLP and Trujillo Rodriguez and Richards, LLC, the two law firms that have provided the vast majority of the legal services to Plaintiff in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 10, 2016 at Cherry Hill, NJ.



Lisa J. Rodriguez

Woodland Falls Corporate Park  
220 Lake Drive East, Suite 200  
Cherry Hill, NJ 08002-1165  
(856) 482-5222

**Exhibit A**

## **CLASS SETTLEMENT AGREEMENT**

This Class Settlement Agreement is made and entered into as of the date it is fully executed below by and between the putative representative Plaintiff WANLAND & ASSOCIATES, INC. (“Plaintiff”) in *Wanland & Associates, Inc. v. Nortel Networks Corp., et al.*, United States District Court for the District of New Jersey, Case No. 3:05-cv-01191-MLC-TJB, which action was originally filed in the Superior Court of the State of New Jersey for the County of Ocean under Civil Case No. OCN-L-2803-04, and which is now stayed before the United States Bankruptcy Court for the District of New Jersey as Adversary Proceeding Case No. 05-02439-RG, under the bankruptcy case NORVERGENCE, Inc. Bankruptcy Proceeding, Case No. 04-32079 (collectively, the “Wanland Litigation”), on behalf of itself and the putative class members, on the one hand, and Defendants NORTEL NETWORKS LIMITED (“NNL”) and NORTEL NETWORKS INC. (“NNI”) (all parties, at times, collectively, the “Parties”). Schnader Harrison Segal & Lewis LLP, Cafferty Clobes Meriwether & Sprengel LLP, and Rosenfeld Hafron Shapiro & Farmer are, collectively, counsel for Plaintiff and the putative class (“Class Counsel”).

### **RECITALS**

A. Plaintiff alleges that, beginning in 2001, NNL, NNI, QWEST COMMUNICATIONS INTERNATIONAL INC., THOMAS N. SALZANO, ALEXANDER L. WOLF and ROBERT J. FINE (collectively, at times, “Defendants”) and third party NORVERGENCE, INC. defrauded businesses by inducing them to purchase telecommunications services packages and to enter into certain equipment leases without disclosing that the leases purported to create an absolute obligation to pay regardless of services actually rendered though the value of the equipment was far less than leased price;

B. Defendants deny that they engaged in any such actions;

C. On June 30, 2004, certain of NORVERGENCE, INC.’s creditors filed an involuntary petition for relief under Chapter 11 of Title 11 of the U.S. Bankruptcy Code (“Chapter 11”) against NORVERGENCE, INC. in the United States Bankruptcy Court for the District of New Jersey, Case No. 04-32079 (RG) (“NORVERGENCE Bankruptcy Proceeding”);

D. On July 14, 2004, NORVERGENCE, INC. consented to entry of an order of relief pursuant to Chapter 11, which was on the same day converted to a Chapter 7 Liquidation Proceeding pursuant to 11 U.S.C. § 1112(b);

E. On September 27, 2004, Plaintiff WANLAND & ASSOCIATES, INC. (“Plaintiff”) commenced a purported class action against NORTEL NETWORKS CORPORATION, THOMAS N. SALZANO, PETER J. SALZANO, ALEXANDER L. WOLF and ROBERT J. FINE in the Superior Court of the State of New Jersey for the County of Ocean, entitled *Wanland & Associates, Inc., et al. v. Nortel Networks Corporation, et al.*, Civil Case No. OCN-L-2803-04 (“the New Jersey State Action”);

F. On February 28, 2005, former defendant NORTEL NETWORKS CORPORATION timely removed the New Jersey State Action to the United States District

Court for the District of New Jersey (the “New Jersey District Court”), where it was assigned Case No. 3:05-cv-01191-MLC-TJB (“New Jersey Federal Action”);

G. On March 24, 2005, Plaintiff filed an Amended Class Action Complaint in the New Jersey Federal Action, substituting NNL and NNI for NORTEL NETWORKS CORPORATION, adding as a defendant QWEST COMMUNICATIONS INTERNATIONAL INC., and alleging causes of action against all defendants for: Violation of the New Jersey Consumer Fraud Act (Count I); Negligent Misrepresentation (Count II); and Restitution, Disgorgement and Constructive Trust for Unjust Enrichment (Count III);

H. On June 20, 2005, the Court in the New Jersey Federal Action entered an order which found that “although the Court anticipates engaging in an eventual de novo review of the United States Bankruptcy Court’s proposed findings of fact and conclusions of law” the New Jersey Federal Action was related to the NORVERGENCE Bankruptcy Proceeding, and the Court therefore referred the New Jersey Federal Action to the United States Bankruptcy Court for the District of New Jersey (the “New Jersey Bankruptcy Court”) and the New Jersey Federal Action was closed (“New Jersey Federal Action Order & Judgment”);

I. On June 20, 2005, the New Jersey Federal Action Order & Judgment was filed in the New Jersey Bankruptcy Court and the matter of *Wanland & Associates, Inc., et al. v. Nortel Networks Corporation, et al.*, was thereby referred to the New Jersey Bankruptcy Court as Adversary Proceeding Case No. 05-02439-RG (the “Adversary Proceeding”), under the bankruptcy case, NORVERGENCE, Inc. Bankruptcy Proceeding, Case No. 04-32079;

J. On December 16, 2008, Defendant ROBERT J. FINE was dismissed from the Adversary Proceeding by stipulation following his entry into an agreement and mutual release with Plaintiff;

K. On January 14, 2009, NNI and certain of its affiliates filed voluntary petitions for relief pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”), Case No. 09-10138 (KG) (the “Delaware Bankruptcy Proceedings”);

L. On January 14, 2009, NORTEL NETWORKS CORPORATION, NNL and certain of their affiliates commenced a proceeding in the Ontario Superior Court of Justice (the “Ontario Court”) under the Companies’ Creditors Arrangement Act of Canada, styled *In the Matter of a Plan of Compromise or Arrangement of Nortel Networks Corporation, et al.*, Case No. 09-CL-7950 (the “Canadian Insolvency Proceedings”);

M. On January 14, 2009, NORTEL NETWORKS CORPORATION, NNL and certain of their affiliates filed petitions for relief and recognition in the United States of the Canadian Insolvency Proceedings pursuant to Chapter 15 of the United States Bankruptcy Code in the Delaware Bankruptcy Court, Case No. 09-10166 (KG) (the “Chapter 15 Proceedings”);

N. The Adversary Proceeding was stayed with respect to NNI by the commencement of the Delaware Bankruptcy Proceedings and stayed with respect to NNL upon entry of the Delaware Bankruptcy Court’s Order dated February 27, 2009, recognizing the Canadian Insolvency Proceedings as foreign main proceedings under chapter 15 of title 11 of the United

States Code. At that time, THOMAS N. SALZANO, PETER J. SALZANO, ALEXANDER L. WOLF remained nominal defendants (both THOMAS N. SALZANO and PETER J. SALZANO had been served but failed to appear and Plaintiff was preparing to move for default judgment, while ALEXANDER L. WOLF had not been served), but Plaintiff does not intend to pursue its claims against them;

O. On September 28, 2009, Plaintiff filed a Proof of Claim on behalf of itself and the putative class in the sum of \$360,000,000 (“Claim No. 3911”) in the Delaware Bankruptcy Proceedings;

P. On February 9, 2011, Defendant Qwest Communications International, Inc. was dismissed from the Adversary Proceeding by stipulation following its entry into an agreement and mutual release with Plaintiff;

Q. NNI and NNL (collectively, the “SETTLING NORTEL DEFENDANTS”) deny Plaintiff’s allegations of liability on the claims asserted in the Wanland Litigation, both as to Plaintiff individually and as to the putative class;

R. The Parties have agreed it is to their mutual benefit to settle and resolve their outstanding differences regarding the claims and defenses asserted in, and relating to the subject matter of, the Wanland Litigation on the terms set forth in this Agreement;

THEREFORE, IT IS AGREED by and among the Parties that, subject to the approval of the New Jersey Bankruptcy Court (following entry of the Stay Relief Order, as defined below, by the Delaware Bankruptcy Court), the Wanland Litigation shall be fully and finally resolved on the following terms and conditions.

### **AGREEMENT**

1. **Authority for NNI To Enter Into This Agreement and Lifting of Automatic Stay.** Within 10 days after execution of this Agreement by all Parties, NNI shall file a motion with the Delaware Bankruptcy Court seeking an order: (i) authorizing NNI to enter into and be bound by this Agreement; and (ii) modifying the automatic stay in the Delaware Bankruptcy Proceedings for the limited purpose of allowing the New Jersey Bankruptcy Court and the Parties to effectuate the class action settlement which is the subject of this Agreement (the “Bankruptcy Approval and Stay Relief Order”). As further discussed below, NNI will request that the Bankruptcy Approval and Stay Relief Order: (a) authorize NNI to advance the reasonably anticipated cost of the notice and administration of this class action settlement to or on behalf of Plaintiff, in an amount not to exceed \$41,500; and (b) deem any judgment rendered by the New Jersey Bankruptcy Court awarding attorney’s fees and/or costs to Class Counsel in connection with the Wanland Litigation to be an allowed general unsecured claim against NNI, which claim shall constitute a portion of Claim No. 3911; provided, that to the extent such amount exceeds \$100,000, the allowed general unsecured claim against NNI in respect of such fees and/or costs shall be \$100,000 (the “Class Counsel Fees and Costs Claim” or Claim No. 3911.01), and Class Counsel shall have no other or further claims against NNI or otherwise in the Delaware Bankruptcy Proceedings. The settlement described herein is contingent upon entry

of the Bankruptcy Approval and Stay Relief Order, and this Agreement will be automatically void and of no force or effect if such order is not entered.

2. **Preliminary Approval of Settlement.** Within 15 days after entry of the Bankruptcy Approval and Stay Relief Order, and pursuant to Federal Rule of Civil Procedure 23(e), the Parties will file a motion with the New Jersey Bankruptcy Court for preliminary approval of the settlement set forth in this Agreement (the “Preliminary Approval Motion”), to be heard after entry of the Stay Relief Order, and for issuance of an order preliminarily approving this settlement (the “Preliminary Approval Order”). The Parties will request that the substantive terms of the Preliminary Approval Order be in substantial conformance with Exhibit A hereto. It is a condition of this Agreement that the Preliminary Approval Order will certify the Settlement Class as defined herein, and this Agreement will be automatically void and of no force or effect if the Settlement Class is not certified. For the avoidance of doubt, except as expressly set forth herein with respect to the Bankruptcy Approval and Stay Relief Order, the Parties specifically consent to the New Jersey Bankruptcy Court’s entry of final orders in connection with this Agreement and any matters relating to or arising from this Agreement or the implementation thereof.

3. **Notice to the Settlement Class.**

(a) **The Settlement Class.** The “Settlement Class,” for purposes of this Agreement only, and with a reservation of all of the SETTLING NORTEL DEFENDANTS’ rights to object to certification of a class if this settlement is not granted preliminary and final approval in accordance with the terms of this Agreement, will be defined as:

All persons, including businesses, in the United States of America and its territories who, between January 1, 2001 and June 30, 2004, entered into a written agreement with NORVERGENCE, INC. for the lease of one or more Matrix boxes, Matrix SoHo boxes, or other network equipment provided by NORVERGENCE, INC. Excluded from the Settlement Class are the presiding judges in each of the New Jersey Federal Action, the NORVERGENCE Bankruptcy Proceeding, the Delaware Bankruptcy Proceedings, the Canadian Insolvency Proceedings, the staff of each of those presiding judges, Class Counsel, SETTLING NORTEL DEFENDANTS’ in-house and outside counsel and the respective immediate families of all persons listed above.

(b) **Claims Administrator.** Subject to the New Jersey Bankruptcy Court’s approval, the settlement notice, claim and class member payment process will be administered by an independent claims administrator (the “Claims Administrator”). The Claims Administrator will be Kurtzman Carson Consultants or such other independent claims administrator as agreed by the Parties.

(c) **Notice to Settlement Class Members.** Notice shall be provided to the Settlement Class, in substantially the form attached hereto, by direct mail to those parties set forth on a list of customers of NORVERGENCE, INC., which was obtained from the trustee appointed in the NORVERGENCE Bankruptcy Proceeding. Such notice shall be mailed by the Claims Administrator no later than 50 days following entry of the Preliminary Approval Order (the date such notice is mailed, the “Notice Date”).

(d) **CAFA Notice.** SETTling NORTEL DEFENDANTS, by and through the Claims Administrator, shall be responsible for timely compliance with all notice and settlement approval requirements of the Class Action Fairness Act of 2005 (“CAFA”). Within 10 days after the Preliminary Approval Motion is submitted to the New Jersey Bankruptcy Court, Plaintiff, by and through the Claims Administrator, will serve the CAFA notices required under 28 U.S.C. § 1715. The settlement may not be given final approval by the New Jersey Bankruptcy Court until 90 days after the CAFA notices are served.

(e) **Costs of Notice and Administration.** The Settlement Class shall bear all costs of notice and administration of the settlement described herein. Subject to entry of the Bankruptcy Approval and Stay Relief Order, NNI shall advance the reasonably anticipated cost of the notice and administration of this class action settlement to or on behalf of Plaintiff, in an amount not to exceed \$41,500 within 10 business days of entry of the Preliminary Approval Order. Any notice and administration costs so advanced by NNI shall be deducted dollar for dollar from any distribution made on account of Claim No. 3911.02 (as defined below), as reduced and allowed as described herein, such that the Settlement Class shall ultimately bear the costs of such notice and administration. In no event shall the Settlement Class be required to repay NNI any amounts advanced to cover costs of notice and administration.

4. **Claim Procedure, Objections to Claims by Defendants, Benefit Payments, and Payment of Claims.**

(a) **Claim Procedure.** In order to submit a valid claim and be entitled to receive the benefit payment described below, Settlement Class members will be required to provide an affirmation under penalty of perjury that (a) they entered into a written agreement with NORVERGENCE, INC., (b) that the written agreement was for the lease of one or more Matrix Boxes, Matrix SoHo boxes, or other network equipment, (c) that one or more lease payments were made by the Settlement Class member to NORVERGENCE, INC. pursuant to that written agreement, and (d) in the case of Settlement Class member who is not a natural person, that the person submitting the claim is authorized to do so on behalf of the Settlement Class member. Claims will be made through a web-based system operated by the Claims Administrator, with a toll-free number provided to those with questions or who do not have access to the internet so that other arrangements can be made for the submission of such Settlement Class members’ claims. The Claims Administrator’s web-based system and toll-free telephone number will be operational no later than the Notice Date. Counsel for the SETTling NORTEL DEFENDANTS and Class Counsel shall approve the text and functionality of the Claims Administrator’s web-based system and telephone voice script, and shall not unreasonably withhold such approval. Subject to Paragraph 3(c) of this Agreement, the period during which Settlement Class members may file claims under this Agreement (the “Claim Period”) will expire 90 days from the Notice Date (the “Claim Period Expiration Date”). Claims must be

postmarked (if mailed) or received by Claims Administrator (if submitted electronically) by the Claim Period Expiration Date.

(b) **Procedure for Claim Form Deficiencies.** The Claims Administrator will have 15 days from the close of the claim period to notify any claimants and Class Counsel of the nature of any procedural deficiencies in the submitted claims and to return a copy of the deficient claim form. The claimant and Class Counsel shall have 30 days from the Claims Administrator's sending of the deficiency notice and copy of the deficient form to cure the deficiency and/or re-submit his, her or its claim via the web-based system or as otherwise agreed by the Claims Administrator and the claimant.

(c) **Identification of Timely Filed Claims.** No later than 45 days after the Claim Period Expiration Date, the Claims Administrator shall provide the Parties with written notice of the names and addresses of the Settlement Class members who have submitted timely, valid claims. This list of claimants shall constitute the "Class Benefit Payees".

(d) **Accounting of Total Incurred and Estimated Costs for Class Notice and Administration.** No later than 45 days after the Claim Period Expiration Date, the Claims Administrator shall notify the Parties in writing of the total costs for notice and administration of the Settlement.

(e) **Benefit Payments to Settlement Class Members.**

(i) **Bankruptcy Estate Assets Contributing to Class Settlement.** The Parties have agreed that, subject to Paragraph 3(e), above, the total funds for the Incentive Award (as defined below), the class benefit payments, and notice and administration costs shall be paid out of any monies distributed by NNI in the Delaware Bankruptcy Proceedings on account of Claim No. 3911.02 in such proceedings, as reduced and allowed as described herein, and the total funds for the Class Counsel Fees and Costs Claim shall be paid out of any monies distributed by NNI in the Delaware Bankruptcy Proceedings on account of Claim No. 3911.01. To that end, the Parties have agreed that, subject to the entry of the Bankruptcy Approval and Stay Relief Order, the Preliminary Approval Order and the Final Approval Order, Claim No. 3911 filed by Plaintiff in the Delaware Bankruptcy Proceedings shall be reduced and allowed as a non-priority general unsecured claim against NNI in the amount of \$400,000 ("Claim No. 3911.02") plus the amount of the Class Counsel Fees and Costs Claim. Any recovery on the Class Counsel Fees and Costs Claim shall be distributed to Cafferty Clobes Meriwether & Sprengel LLP on the same terms as similarly classified claims in accordance with NNI's court-approved Chapter 11 plan for division in accordance with Paragraph 6(c) of this Agreement. Any recovery on Claim No. 3911.02 shall be distributed to the Claims Administrator on behalf of the Plaintiff, on the same terms as similarly classified claims in accordance with NNI's court-approved Chapter 11 plan. Any distribution by the bankruptcy estate of NNI on Claim No. 3911.02 (the "Distributed Amount") shall be used to fund, the notice and administration costs of the settlement, the Incentive Award, and the class benefit payments described herein.

(ii) **Incentive Award.** The Parties have agreed that, subject to the approval of the New Jersey Bankruptcy Court and the Delaware Bankruptcy Court, an Incentive Award of \$10,000 from the Distributed Amount shall be paid to Plaintiff, the putative class

representative, in recognition of its services to the Class. The \$10,000 shall be paid from the funds distributed in connection with Claim No. 3911.02 as described herein.

(iii) **Calculation of Class Benefit Payment Fund and Amount of Each Class Benefit Payee's Benefit Amount.** All costs associated with the notice and administration of the settlement other than those advanced by NNI pursuant to Paragraph 3(e) above, as identified by the Claims Administrator (the "Total Administration Costs"), shall be deducted first from the Distributed Amount. After deduction of the Total Administration Costs, the Incentive Award shall be deducted from the Distributed Amount. Any funds remaining of the Distributed Amount following payment of the Total Administration Costs and the Incentive Award shall constitute the "Class Benefit Payment Fund", which shall be divided equally among the Class Benefit Payees (the "Individual Class Benefit Amounts").

(iv) **Timing Benefit Payments.** If the New Jersey Bankruptcy Court approves this settlement and enters an order finally approving the class settlement ("Final Approval Order") and the Delaware Bankruptcy Court approves one or more distributions from NNI's bankruptcy estate on Claim No. 3911.02 pursuant to a Chapter 11 Plan or otherwise, then within 30 days of the final distribution, the Claims Administrator shall mail checks to the Class Benefit Payees for Individual Class Benefit Amounts, if any, all in accordance with the terms of this Agreement. Payment checks will expire 90 days after a check is mailed to a class member (the "Benefit Check Expiration Date").

(v) **Uncashed Benefit Payments.** In the event that any payment check sent to a Settlement Class member is not cashed prior to the Benefit Check Expiration Date, any such unclaimed funds shall be distributed to a cy pres recipient. Such cy pres recipient will be selected by Class Counsel.

## **5. Opt Outs, Objections, and Final Approval.**

**a. Opt Outs.** Settlement Class members will have a right to opt out of the settlement. The Parties will request that the Preliminary Approval Order require that all opt out requests must be submitted in writing to the Claims Administrator by no more than 45 days after the Notice Date (the "Opt Out Deadline"). The SETTLING NORTEL DEFENDANTS expressly reserve all rights and defenses against any opt-out Settlement Class member, including without limitation, all defenses relating to the applicable deadlines for filing claims in the Delaware Bankruptcy Proceeding. Moreover, the Defendants will retain the right to dispute any claim asserted by any opt-out Settlement Class member in the future, including any objections that may be available based on the SETTLING NORTEL DEFENDANTS' bankruptcy proceedings. Opt Out requests must be postmarked (if mailed) or received by the Claims Administrator (if submitted electronically) by the Opt Out Deadline. This Agreement is voidable by NNI if more than thirty (30) Settlement Class members opt out, which right must be exercised by NNI in writing within 30 days after the Claims Administrator has provided counsel to NNI with a list of all Settlement Class members who opted out prior to the Opt Out Deadline.

**b. Objections and Comments.** The deadline for Settlement Class members to file with the New Jersey Bankruptcy Court, and serve upon Class Counsel and the SETTLING NORTEL DEFENDANTS' counsel, any objections to or other comments regarding the

settlement will be set by the New Jersey Bankruptcy Court in the Preliminary Approval Order. The Parties shall request that the Preliminary Approval Order require any objections to be filed and served no later than 45 days after the Notice Date. Settlement Class members who opt out of the settlement may not object or comment.

**c. Defendants' Responses to Objections.** The SETTLING NORTEL DEFENDANTS shall (individually or together) file with the New Jersey Bankruptcy Court any responses to filed objections and/or comments no later than 10 days prior to the hearing on the Final Approval Motion (as defined below).

**d. Final Approval Motion.** No later than 90 days after the Claim Period Expiration Date, the Parties shall file a motion for final approval of the settlement set forth in this Agreement (the "Final Approval Motion").

**e. Final Approval Hearing.** In order to comply with the CAFA notice required under 28 U.S.C. § 1715, the Parties will request that the date of the hearing on the Final Approval Motion (the "Final Approval Hearing") be no earlier than 100 days after the date on which the Preliminary Approval Motion was filed with the New Jersey Bankruptcy Court, and that at the Final Approval Hearing, and as a condition of this settlement, the New Jersey Bankruptcy Court issue an order granting final approval of the settlement described in this Agreement (the "Final Approval Order"). The Parties will request that the terms of the Final Approval Order be in substantial conformance with Exhibit C hereto. The Final Approval Order will provide that the New Jersey Bankruptcy Court, together with the Delaware Bankruptcy Court, will retain joint jurisdiction over the Parties to enforce the terms of this Agreement and those Courts' orders in connection herewith.

## **6. Class Counsel Fees and Costs.**

**a. Amount.** Plaintiff will seek approval in the Adversary Proceeding of attorney's fees and costs in connection with the Wanland Litigation in an amount not to exceed \$100,000 by filing a motion for the Class Counsel Fees and Costs Claim with the New Jersey Bankruptcy Court concurrently with the filing of the Preliminary Approval Motion. The SETTLING NORTEL DEFENDANTS will not oppose such request. If Plaintiff seeks attorney's fees and costs in excess of \$100,000, the SETTLING NORTEL DEFENDANTS reserve the right to oppose the request to the extent it seeks fees and costs in excess of \$100,000.

**b. Amount Allocated to Class Counsel Fees and Costs in the Delaware Bankruptcy Proceeding Is Final and Binding.** Plaintiff and Class Counsel acknowledge and agree that any distribution in the Delaware Bankruptcy Proceedings on account of the Class Counsel Fees and Costs Claim is the final amount due and owing to Class Counsel by the SETTLING NORTEL DEFENDANTS. Even if unsecured creditors in the Delaware Bankruptcy Proceedings receive less than 100% of the amount of their allowed claims, Class Counsel shall accept the distribution on account of the Class Counsel Fees and Costs Claim as the final amount due and owing to Class Counsel by the SETTLING NORTEL DEFENDANTS, and Class Counsel shall have no other or further rights or claims against the SETTLING NORTEL DEFENDANTS on account of attorney's fees and costs.

**c. Division of Fees and Costs Among Class Counsel Firms.** Any attorney's fees and costs awarded by the New Jersey Bankruptcy Court and distributed to Cafferty Clobes Meriwether & Sprengel LLP on account of the Class Counsel Fees and Costs Claim shall be divisible among the firms identified above as constituting Class Counsel, and any other counsel who claims a right to share in the fee and cost award in any of the state civil, federal civil or bankruptcy proceedings identified herein, subject to their own mutual agreement, and SETTLING NORTEL DEFENDANTS will be held harmless by Class Counsel from any disputes between Class Counsel, including any other counsel who claims a right to share in the fee and cost award in the Wanland Litigation, as to the allocation among each of them of the fees and costs awarded by the New Jersey Bankruptcy Court.

**7. Judgment In the Action.** At or after the Final Approval Hearing, the Parties will request that the New Jersey Bankruptcy Court enter a judgment in the Adversary Proceeding in substantial conformance with Exhibit D attached hereto resolving all claims which were asserted or could have been asserted in the Wanland Litigation by reason of, or arising out of, the alleged written lease agreements entered into by the Settlement Class Members with NORVERGENCE, INC. for the lease of one or more Matrix boxes, Matrix SoHo boxes, or other network equipment provided by NORVERGENCE, INC. between January 1, 2001 and June 30, 2004, and finally terminating the Wanland Litigation ("Judgment"). The Parties intend that the principles of res judicata, including issue and claim preclusion, shall apply to the Judgment. The Judgment must be consistent with all terms of this Agreement, including but not limited to the releases and protections provided to SETTLING NORTEL DEFENDANTS herein.

**8. Release**

Plaintiff and all members of the Settlement Class, for themselves and their predecessors, heirs, executors, administrators, legal representatives (not including Class Counsel), successors, and assigns (collectively, "Releasing Parties"), forever release and discharge SETTLING NORTEL DEFENDANTS, and each of their present and former parents, subsidiaries, divisions and affiliates, and each of their respective current and former officers, directors, employees, agents, insurers, and attorneys (and the predecessors, heirs, executors, administrators, legal representatives, authorized representatives, successors, and assigns of each of the foregoing entities and individuals) (collectively, "Released Parties") from all causes of action, claims, judgments, liens, indebtedness, costs, damages, obligations, attorney's fees, losses, liabilities, and demands of whatever kind, source or character, whether arising under federal law or under the law of any of the 50 states, the District of Columbia, or any United States territory, or under the federal laws of Canada or any province or territory thereof, whether intentional or non-intentional, matured or unmatured, liquidated or unliquidated, arising on or before the date of this Agreement, and including but not limited to the Plaintiff's claims under the New Jersey Consumer Protection Act, any other state consumer protection statutes, claims for restitution, disgorgement and unjust enrichment, and claims for negligent misrepresentation, all of which are, were, or could have been asserted against any of the Released Parties by reason of, or arising out of, or otherwise related or connected to the alleged written lease agreements entered into by the Settlement Class Members with NORVERGENCE, INC. for the lease of one or more Matrix boxes, Matrix SoHo boxes, or other network equipment provided by NORVERGENCE, INC. between January 1, 2001 and June 30, 2004, whether or not any such claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of

other persons or entities in the New Jersey Federal Action, the New Jersey State Action, the Adversary Proceeding or any other proceeding (collectively, "Released Claims").

In connection with the foregoing release, the Releasing Parties specifically intend to and do include all Released Claims, whether known or unknown, suspected or unsuspected, contingent or noncontingent, and without regard to the later discovery of other, additional, different, or currently unknown or unanticipated facts relating to the Released Claims, including but not limited to facts at odds with those which the Releasing Parties now believe to be true. The Parties agree that this waiver of known or unknown, suspected or unsuspected, contingent or noncontingent claims is sufficient under all federal laws and the laws of any other state or territory.

**9. General Provisions.**

**a. Court Approval.** This settlement is subject to preliminary and final court approval and a determination of fairness by the New Jersey Bankruptcy Court, and the entry of the Bankruptcy Approval and Stay Relief Order. The Parties will jointly support the entry of such orders and determinations based on the terms set forth in this Agreement.

**b. No Evidence or Admission of Liability.** In no event shall this Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as or deemed to be an admission of liability or be used as evidence of any kind in the Wanland Litigation, in any other action, or in any judicial, administrative, regulatory or other proceeding, except that the Agreement may be used to obtain court approval of this settlement or in a proceeding to enforce this Agreement. This Agreement is a settlement of disputed claims. This provision shall survive the termination of this Agreement.

**c. Entire Agreement.** This Agreement is the entire agreement among the Parties. This Agreement supersedes any prior agreements or understandings, whether written or oral, between and among the Parties, or any of them, regarding the subject matter of the Wanland Litigation or this Agreement. This Agreement shall not be modified in any respect except by a writing executed by the Parties or their counsel, as applicable. No delay or omission on the part of any party in exercising any right shall operate as a waiver of any such right or any other right. A waiver on one occasion shall not be construed as a bar to or waiver of any right on any further occasion.

**d. Reservation of Rights.** Notwithstanding any other provision of this Agreement, each of the other Parties agrees and acknowledges that: (a) NNL is entering into this Agreement solely for the purpose of taking the benefit of the release and other benefits conferred upon it hereunder and that NNL shall have no liability or obligation whatsoever under this Agreement, including, without limitation, any liability or obligation to (i) pay or reimburse any amount to any other Party or other person in connection with the settlements contemplated hereby (whether in cash, by way of a claim in the Canadian Insolvency Proceedings or in any other form), or (ii) take any step, pay any money or incur any liability in connection with seeking approval of the settlements contemplated hereby, it being agreed and acknowledged by the

Parties that NNL's consent to the settlement of the Wanland Litigation on the terms contemplated hereby shall constitute good and sufficient consideration for the release and other benefits conferred upon it hereunder; and (b) nothing herein shall, or shall be deemed to, constitute a waiver of the jurisdiction of the Ontario Court over NNL, including, without limitation, the jurisdiction of the Ontario Court to determine claims against NNL and other matters related to NNL. Pursuant to paragraph 14 of the Initial Order of the Ontario Court dated January 14, 2009 (as amended and restated) (the "Initial Order"), NNL and the Monitor consent to the motions to the New Jersey Bankruptcy Court contemplated hereby seeking the Preliminary Approval Order, the Final Approval Order and the Judgment, it being understood that such consent is granted: (a) on the basis of the foregoing sentence; and (b) solely in relation to the aforementioned motions and not for any other matter or purpose and all rights of NNL and the Monitor under the Initial Order be and are hereby fully reserved.

**e. Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

**f. Governing Law.** This Agreement shall be construed under the laws of the State of Delaware, without regard to its choice of law rules.

**g. Jurisdiction.** The New Jersey Bankruptcy Court and the Delaware Bankruptcy Court shall have joint jurisdiction over the implementation of this Agreement and the determination of any matters relating to or arising from this Agreement or the implementation thereof.

**h. Severable Agreement.** Except as provided herein, the provisions of this Agreement are intended to be severable. If any provision is found illegal, invalid or unenforceable by any court of competent jurisdiction for any reason, it shall be severable from this Agreement, and the remainder of this Agreement shall be read as if it did not contain such provision.

**i. Authority to Sign.** The individuals signing this Agreement represent and warrant that they are authorized to do so.

**j. Cooperation.** At any time and from time to time after the execution of the Agreement, each party shall execute such additional instruments and take such actions as may be reasonable necessary or requested by any other party to carry out the intent and purposes of this Agreement.

**k. No Assignment.** The Parties warrant and represent to each other that they have not assigned or transferred or purported to assign or transfer any agreement, claim, demand, or cause of action with or against any Party that is the subject of this Agreement to any third party.

**l. Counterparts.** This Agreement may be executed in counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**m. Representation by Counsel.** The Parties have each been represented by

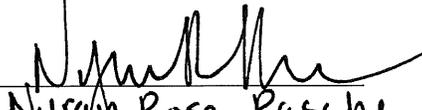
legal counsel of their choice and have had the opportunity to solicit and obtain counsel as to their legal rights regarding the matters addressed in this Agreement. By execution of this Agreement, the Parties represent that they have consulted with legal counsel of their choice.

**n. Headings.** Headings contained in this Agreement are for convenience and reference only and are not intended to alter or vary the construction and meaning of this Agreement.

[Remainder of page intentionally left blank; signature pages follow]

WHEREFORE, the Parties agree to the terms hereof and execute this Agreement on and as of the date shown next to their signatures.

WANLAND & ASSOCIATES, INC.

By   
Its Counsel

Dated: 10/06/16

NORTEL NETWORKS INC.

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

NORTEL NETWORKS LIMITED

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

ACKNOWLEDGED BY:

Ernst & Young Inc. in its capacity  
as Monitor of the Canadian Debtors  
and not in its personal capacity

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

WHEREFORE, the Parties agree to the terms hereof and execute this Agreement on and as of the date shown next to their signatures.

**WANLAND & ASSOCIATES, INC.**

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

**NORTEL NETWORKS INC.**

\_\_\_\_\_  
By  J. Roy III  
Its Principal officer

Dated: October 6, 2016

**NORTEL NETWORKS LIMITED**

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

**ACKNOWLEDGED BY:**

Ernst & Young Inc. in its capacity  
as Monitor of the Canadian Debtors  
and not in its personal capacity

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

WHEREFORE, the Parties agree to the terms hereof and execute this Agreement on and as of the date shown next to their signatures.

**WANLAND & ASSOCIATES, INC.**

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

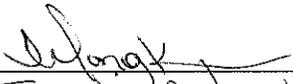
Dated: \_\_\_\_\_

**NORTEL NETWORKS INC.**

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

**NORTEL NETWORKS LIMITED**

  
\_\_\_\_\_  
By Taneda Wongken  
Its Authorized Representative

Dated: October 4, 2016

**ACKNOWLEDGED BY:**

Ernst & Young Inc. in its capacity  
as Monitor of the Canadian Debtors  
and not in its personal capacity

  
\_\_\_\_\_  
By Tom Ayres  
Its Sr. Vice President

Dated: October 14, 2016

**Exhibit A**

**Wanland Settlement Agreement**