

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

2001 AUG -6 AM 8:56

In re: _____)
_____))
ESSENTIAL.COM, INC. _____)
_____))
Debtor. _____)
_____)

DISTRIBUTION CENTER

Chapter 11
Case No. 01-15339 WCH

**NOTICE OF PRIVATE SALE OF ASSETS FREE AND
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, DEADLINE FOR
SUBMITTING OBJECTIONS AND COUNTEROFFERS, AND HEARING DATE**

To Creditors and Parties in Interest:

Notice is hereby given, pursuant to Sections 105, 363(b) and (f) and 365(a), (b) and (f) of the Bankruptcy Code, Fed. R. Bankr. P. 6004(c) and 6006(a) and MLBR 6004-1 and 6006-1 and the Order of the Court dated August 1, 2001 (the "Sale Procedures Order"), that, pursuant to *Motion to Amend Debtor's Emergency Motion (I) For Authority to Sell Debtors Assets by Private Sale Free and Clear of Liens, Claims, Encumbrances and Interests and for the Establishment of Sale and Bidding Procedures; Including Break Up Fees and Overbid Protection (II) For Authorization to Cease Providing Services; and (III) For the Granting Related Relief* (the "Sale Motion"), Essential.com, Inc., (the "Debtor") intends to sell to Broadview Networks, Inc. ("Broadview"), Zone Telecom, Inc. ("Zone") and Essex Communications, Inc., d/b/a eLEC Communications ("Essex") by private sale all of the Private Sale Assets (as defined below).

Pursuant to the Sale Motion, the Debtor hereby solicits counteroffers for the Private Sale Assets.

Pursuant to Section 363 of the Bankruptcy Code, the Private Sale Assets will be sold free and clear of all liens, claims, encumbrances and interests, including without limitation all consensual liens and security interests and all liens or claims arising by operation of law. Any and all such liens, claims, encumbrances and interests shall attach to the proceeds of sale of the Private Sale Assets to the same extent and priority as existed prior to the filing of the Debtor's bankruptcy proceeding. Nothing in this notice constitutes a waiver of the right to review and challenge the extent, priority or validity of any lien, claim, encumbrance or interest.

The Debtor has requested that the Bankruptcy Court determine, at the Private Sale Hearing (as defined below), that the successful bidder or bidders for the Private Sale Assets be deemed to be a "good faith" purchaser providing to the Debtor consideration for the Private Sale Assets that constitutes payment of "value" pursuant to Section 363(m) of the Bankruptcy Code (the "Section 363(m) Findings").

FILED
SEP 11 2001
CLERK OF COURT
FEDERAL BLDG
100 STATE ST
BOSTON MA 02109
TH
f Nonnye

DOCUMENT NUMBER 01-15339-0001

09497 AUG-6 01

FPSC-COMMISSION CLERK

Description of Private Sale Assets and Terms and Conditions of Sales of Assets¹

1. Proposed Sale to Broadview

The Debtor is seeking the authority to sell to Broadview parts of its customer database and its intellectual property consisting of the following (the "Broadview Assets"):

- a. That portion of the Customer Base consisting of approximately 18,796 customers of the Debtor who meet the criteria set forth on Exhibit A to the Broadview Agreement, other than those customers who (i) are reasonably determined by Broadview not to meet, as of June 30, 2001, the criteria set forth on Exhibit A to the Broadview Agreement or (ii) have terminated service by the Debtor prior to the closing of the sale of the Broadview Assets (the "Broadview Closing");
- b. To the extent assignable, all of the Debtor's trademarks (whether registered or unregistered) and service marks rights in the names "Essential.com" and "Essentials.com", all tradenames, brand names, domain names, logos, processes, methods, trade secrets, product specifications, designs and other technical information, websites, the URLs www.essential.com and www.essentials.com, and other related intellectual property;
- c. all account lists, sales records and correspondence with the customers to be purchased, as well as all historical information (including billing information) received, obtained or generated by the Debtor; and
- d. all letters of authorization and third-party verifications with respect to the customers to be purchased, in whatever form and media they are currently maintained.

The purchase price for the sale and transfer of the Broadview Assets is \$475,000.00 in cash, subject to an adjustment as follows. Three days prior to the Broadview Closing, the Debtor and Broadview will determine the number of customers who no longer meet the criteria described on Exhibit A to the Broadview Agreement. To the extent that the number of such non-qualifying customers is more than 3,500, Broadview will be entitled to a price reduction equal to \$25.00 for each such non-qualifying customer. Broadview has paid the Debtor a deposit (the "Broadview Deposit") in the amount of \$23,750, an amount equal to 5% of the purchase price. The Broadview Deposit will be held in an escrow account pending the closing of the sale of the Broadview Assets. The Broadview Deposit is forfeitable by Broadview if the proposed sale to Broadview is approved by the Court and Broadview fails, through no fault of the Debtor, to close on the transaction.

¹ The description of the Private Sales contained in this notice are not intended to be a substitute for the descriptions contained within the Broadview Agreement, the Zone Agreement and the Essex Agreement (collectively the "Agreements") which contain important additional terms and conditions. In the case of any conflict between this Notice and the Agreements, the terms of the Agreements shall govern. Parties in interest may request copies of the Agreements from the undersigned. Parties who submit counteroffers will be subject to the terms of either the Broadview Agreement, the Zone Agreement or the Essex Agreement, depending on the counteroffer submitted.

The Broadview Closing is required to be within one (1) business day of the entry of an order by the Bankruptcy Court approving the sale of the Broadview Assets. At the Broadview Closing, Broadview shall (a) assume and perform all of the obligations of the Debtor arising from the use of the purchased customers following the Broadview Closing and (b) assume the responsibility to obtain, and the liability, if any, for any failure to obtain, all necessary licenses, permits, consents or approvals of any Government or third party with respect to the execution, delivery and performance of the Broadview Agreement by Broadview, consummation of the transactions contemplated by the Broadview Agreement and the operation of the Broadview Assets following the Broadview Closing and that the failure to obtain such consents or approvals by Broadview or the Debtor shall not be a condition to the Broadview Closing. Broadview will not assume any other liabilities of the Debtor.

The Debtor's accounts receivable are not being sold to Broadview. All accounts receivable which accrue prior to the Broadview Closing will belong to the Debtor. Following the Broadview Closing, Broadview will collect all of the Debtor's accounts receivable generated prior to the Broadview Closing, with the exception of the accounts receivable being collected by Zone and Essex as described below. The terms and conditions of such collection efforts are described in the Broadview Agreement. The collection of the Debtor's accounts receivable by Broadview will be subject to a fee to Broadview of 14%.

2. Proposed Sale to Zone

The Debtor is seeking the authority to sell to Zone parts of its customer database consisting of: (i) the Debtor's end user long distance relationships with active customers as of the date of closing (the "Zone Closing"); (ii) all of the Debtor's rights under any agreements with such customers, including under user registration agreements; and (iii) a copy of all information the Debtor has as to such active customers, including: all customer lists, customer records, customer files, customer data, letters of agency, sub-CIC arrangements, computer data records, billing data, billing files and similar items related to the foregoing (the "Zone Assets").

The purchase price for the sale and transfer of the Zone Assets is \$325,000.00 in cash. Zone has paid the Debtor a deposit (the "Zone Deposit") in the amount of \$16,250. The Zone Deposit will be held in an escrow account pending the Zone Closing. The Zone Deposit is forfeitable by Zone if the proposed sale to Zone is approved by the Court and Zone fails, through no fault of the Debtor, to close on the transaction. The Zone Closing shall occur within one (1) business day of the entry of an order by the Bankruptcy Court approving the sale of the Zone Assets to Zone. At the Zone Closing, Zone shall assume and perform all the Debtor's obligations arising from the use of the Zone Assets following the Zone Closing.

The Debtor's accounts receivable are not being sold to Zone. All accounts receivable which accrue prior to the Zone Closing will belong to the Debtor. For a period of sixty (60) days following the Zone Closing, Zone will collect those accounts receivable generated prior to the Zone Closing by the customers being purchased by Zone. The collection of the Debtor's accounts receivable by Zone will be subject to further terms and conditions listed in the Zone Agreement and will be subject to a fee of 10% to Zone.

Zone acknowledges that it is assuming all responsibility to obtain, or for any failure by Zone to obtain, any consent or approval of this transaction from any Government or other Person and that the failure to obtain such consents or approvals by Zone or the Debtor shall not be a condition to the Zone Closing.

3. Proposed Sale to Essex

The Debtor is seeking the authority to sell to Essex (i) that portion of the Customer Base consisting of approximately 29,167 customers as of the date of closing (the "Essex Closing"); (ii) all of the Debtor's rights under any agreements with such customers, including under user registration agreements; and (iii) a copy of all information the Debtor has as to such active customers, including: all customer lists, customer records, customer files, customer data, letters of agency, sub-CIC arrangements, computer data records, billing data, billing files and similar items related to the foregoing.

The purchase price for the sale and transfer of the Essex Assets is \$125,000.00 in cash. Essex has paid the Debtor a deposit (the "Essex Deposit") in the amount of \$6,250. The Essex Deposit will be held in an escrow account by counsel to the Debtor pending the closing of the sale of the Essex Assets.

Pursuant to the Essex Agreement, the Essex Closing shall be within one (1) business day of the entry of an Order by the Bankruptcy Court approving the sale of the Essex Assets to Essex. At the Essex Closing, Essex shall assume and perform all of the Debtor's obligations arising from the use of the Essex Assets following the Essex Closing.

The Debtor is obligated to operate its business in the ordinary course consistent with current practice, including, without limitation, continuing to provide telecommunication services and customer services to that portion of the Customer Base being purchased by Essex.

Essex acknowledges that it is assuming all responsibility to obtain, or for any failure by Essex to obtain, any consent or approval of this transaction from any Government or other Person and that the failure to obtain such consents or approvals by Essex or the Debtor shall not be a condition to the Essex Closing.

The Debtor's accounts receivable are not being sold to Essex. All accounts receivable which accrue prior to the Essex Closing will belong to the Debtor. For a period of sixty (60) days following the Essex Closing, Essex will collect those accounts receivable generated prior to the Essex Closing by the customers being purchased by Essex. The collection of the Debtor's accounts receivable by Essex will be subject to a fee to Essex of 12%.

Bid and Sale Procedures

IN ACCORDANCE WITH THE SALE MOTION, BIDS FOR ALL OR PART OF THE PRIVATE SALE ASSETS ARE HEREBY SOLICITED. If you wish to bid on the Private Sale Assets, you must comply with the Sale Procedures Order, copies of which are available from Debtor's counsel. In summary, the Sale Procedures Order requires that any bids be accompanied by a cash deposit in the form of a wire transfer or certified check, payable to Hanify & King as counsel to Essential.com, Inc., in the respective amounts set forth herein, accompanied by a Qualified Bid (as defined below) in writing, to counsel for the Debtor, Harold B. Murphy, Esq., Hanify & King, Professional Corporation, One Federal Street, Boston, MA 02110, **so that it is received on or before 4:00 p.m. on August 7, 2001 (the "Bid Deadline").** A copy of any such bid must also be filed by the Bid Deadline with the Clerk of the Bankruptcy Court at Clerk's Office, United States Bankruptcy Court, 1184 Thomas P. O'Neill Federal

Building, 10 Causeway Street, Boston, MA 02222 (the "Clerk"); the Office of the United States Trustee, 1101 Thomas P. O'Neill Federal Building, 10 Causeway Street, Boston, MA 02222-1074 (the "Trustee"); counsel to the Creditors Committee, Alex Matera, Esq., Gadsby Hannah LLP, 225 Franklin Street, Boston 02110 (Creditor's Committee Counsel"); the counsel to Zone, Broadview and Essex, and all other parties having filed an appearance and request for notice (collectively, the Notice Parties).

A bid for all or any of the categories of the Private Sale Assets will be considered and will constitute a "Qualified Bid" only if the following requirements (the "Bid Requirements") are strictly complied with: (a) be an offer to purchase one or more of the Private Sale Assets for cash only, or such other consideration as the Debtor shall agree to, with the purchase price for each Private Sale Asset to be separately stated except for an Entirety Bid; (b) not be contingent on obtaining financing or other conditions to Closing; (c) be received by the Bid Deadline and the bid must include the amount being offered for the respective Private Sale Assets and must expressly state that the offer of the party submitting the Bid (the "Bidder") is irrevocable until the earlier to occur of: (i) the sale closing, or (ii) ten (10) days following the last date of the sale; (d) Any bid for the Broadview Assets, Zone Assets, Essex Assets or an Entirety Bid must be accompanied by a cash deposit in the form of a wire transfer or certified check, payable to Hanify & King as counsel to Essential.com, Inc, in an amount equal to five percent (5%) of the bid (the "Deposit"); counsel to the Debtor shall hold all Deposits in escrow pending the sale and, following the Private Sale, the counsel to the Debtor shall hold in escrow the Deposits of the first highest and best Bidder and of the second highest and best Bidder as to each Private Sale Asset until the earlier to occur of: (i) the sale's closing, or (ii) ten (10) days following the last date of the Sale Hearing, as adjourned; the Debtor shall return the Deposits of all other Bidders within five (5) business days after the Sale Hearing; (e) Bids for the Broadview Assets, the Zone Assets or the Essex Assets must be presented in the form of an offer on terms substantially similar to the Broadview Agreement, the Zone Agreement or the Essex Agreement, as the case may be (provided that such offer may contain provisions that are less burdensome to the Debtor than provisions contained in Broadview's, Zone's, or Essex's offer), and such other ancillary documents as may be required by the Broadview Agreement, Zone Agreement or the Essex Agreement; (f) Bids in the form of an Entirety Bid must be presented in the form of an offer on terms substantially similar to the Essex Agreement (provided that such offer may contain provisions that are less burdensome to the Debtor than provisions contained in Broadview's Zone's, or Essex's offer) and such other ancillary documents as may be required by the Essex Agreement; (g) the value of any bid submitted for the Broadview Assets must not be less than twelve and one half percent (12.5%) greater than the value of Broadview's offer price; (h) the value of any bid submitted for the Zone Assets must not be less than ten percent (10%) greater than the value of Zone's offer price; (i) the value of any bid submitted for the Essex Assets must not be less than eleven and one half percent (11.5%) greater than the value of Essex's offer price (j) an Entirety Bid must be at least eleven and one half percent (11.5%) higher than the aggregate of the value of Broadview's, Zone's, and Essex's offer price.

All Bids are subject to approval by the Bankruptcy Court. Bidding at the Sale Hearing shall be by sealed bids. Only Bidders that have submitted a Qualified Bid shall be eligible to participate in the Sale Hearing. To be a Qualified Bid eligible to participate in the Sale Hearing, a Bid shall: (a) include each of the Bid Requirements; and (b) each Bidder must be prepared to demonstrate to the Debtor its ability to consummate the purchase of any such Private Sale Asset and fulfill its obligations.

A Successful Bidder shall supplement its Deposit within one (1) business day of the Sale hearing so that, to the extent necessary, the Deposit is equal to five percent (5%) of its Bid. The balance of the purchase price shall be paid by the Successful Bidder by wire transfer or other immediately available funds.

In the event the party who submits the highest and best bid for the Broadview Assets, Zone Assets, Essex Assets or an Entirety Bid fails to close on the sale through no fault of the Debtor, the Deposit submitted by such party shall be forfeited to the Debtor. To the extent that a party submitting the highest and best offer fails to close on the sale of the Broadview Assets, Zone Assets, Essex Assets or an Entirety Bid, the Debtor may sell the Broadview Assets, Zone Assets or the Essex Assets to the party submitting the second highest or best offer without further Court approval.

Additional Deadlines and Sale Hearing Date

ANY OBJECTIONS to the Sale Motion, including any objection to the Section 363(m) Findings, must be stated in writing and filed with the Clerk, on or before **4:00 p.m. on August 7, 2001** ("Objection Deadline"). A copy of any objection must be served upon the counsel to the Debtor so as actually to be received **by 4:00 p.m. on the Objection Deadline**. A copy of any such objection must also be served by the Objection Deadline on the Notice Parties. Any objection must state with particularity the grounds for the objection and why the sale of the Private Sale Assets should not be authorized. Any objection to the Amended Private Sale Motion shall be governed by Fed. R. Bankr. P. 9014. Absent a timely objection, the Bankruptcy Court may enter an Order binding upon all parties approving the sale of the Private Sale Assets.

A HEARING on the Sale Motion ("Sale Hearing"), any objections thereto, and any bids to purchase the Private Sale Assets is scheduled to take place on **August 9, 2001, at 10:00 a.m.** before Chief Bankruptcy Judge William C. Hillman, United States Bankruptcy Court, Eleventh Floor, Thomas P. O'Neill Federal Building, 10 Causeway Street, Boston, Massachusetts 02222. Any party that files an objection or a bid or bids for the Private Sale Assets is expected to be present at the Sale Hearing, failing which the objection shall be overruled or the bid stricken. If more than one bid is submitted for all or any portion of either the Private Sale Assets, then further bidding among the parties Qualified Bids will be permitted by sealed bid. If no objection to the Sale Motion is timely filed, the Bankruptcy Court, in its discretion, may approve the Sale Motion and the sale of either the Private Sale Assets to the party or parties submitting the highest and best bids.

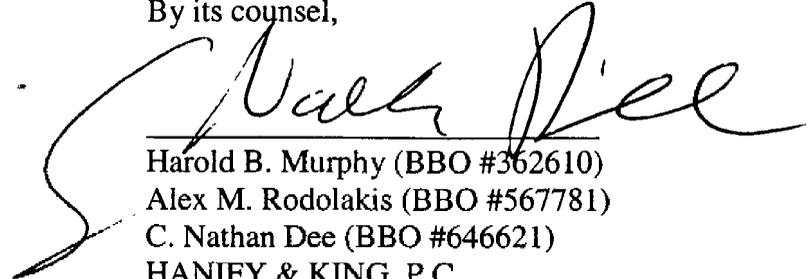
Any questions concerning the Sale Motion should be addressed to the undersigned counsel to the Debtor. The Sale Motion and the Sale Procedures Order are on file at the Clerk's Office of the United States Bankruptcy Court, Thomas P. O'Neill Federal Building, 11th Floor, 10 Causeway Street, Boston, Massachusetts 02222 and are available for inspection during regular business hours; copies may also be obtained, upon request, from the undersigned counsel to the Debtor.

For further information respecting the proposed sale, please contact counsel to the Debtor.

Respectfully submitted,

ESSENTIAL.COM, INC.,

By its counsel,

A handwritten signature in black ink, appearing to read "Nathan Dee", is written over a horizontal line. The signature is fluid and cursive.

Harold B. Murphy (BBO #362610)

Alex M. Rodolakis (BBO #567781)

C. Nathan Dee (BBO #646621)

HANIFY & KING, P.C.

One Federal Street

Boston, MA 02110

(617) 423-0400

Fax: (617) 556-8985

Dated: August 1, 2001