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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

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DRAGFORD, BOLTON

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RE: CONVERGENT COMMUNICATIONS,
INC.

EIN: 84-1337265

Debtor.

In re:

CONVERGENT COMMUNICATIONS
SERVICES, INC.

EIN: 84-1387594

Debtor.

Chapter 11

Case No. 01 15488 EEB

Chapter 11

Case No. 01 15489 ABC

**DECLARATION OF MARTIN E. FREIDEL IN SUPPORT OF FIRST-DAY
APPLICATIONS AND MOTIONS FILED BY CONVERGENT COMMUNICATIONS,
INC. AND CONVERGENT COMMUNICATIONS SERVICES, INC.**

I, Martin E. Freidel, declare under penalty of perjury as follows:

1. I am a United States citizen, and I reside in Evergreen, Colorado. I am the Executive Vice President, General Counsel and Secretary of Convergent Communications, Inc. ("CCI") and Convergent Communications Services, Inc. ("CCSI", collectively with CCI the "Debtors").

2. The Debtors are headquartered at 400 Inverness Drive South, Suite 400, Englewood, Colorado 80112 and have seven offices nationwide.

3. The Debtors employ approximately 180 employees.

4. The Debtors are a broadband networking and internet services provider

APP _____ with full-service data systems integration capabilities for small and medium sized businesses.
CAF _____
CMP _____
COM _____ The Debtors' range of products and services includes data networking and professional services;
CTR _____
FOR _____ internet services; security services, and broadband and voice services.
LEG _____
OPC _____
POT _____
RGO _____
SEC _____
TER _____
TOL _____

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PPSC-RECORDS-REPORTING

5. As reported in the Debtors' consolidated financial statements dated March 31, 2001, the Debtors, on a consolidated basis, held assets having a book value of approximately \$149 million (excluding goodwill) against liabilities of approximately \$245 million in secured and unsecured debt and \$175 million in preferred equity. For the twelve month period ended December 31, 2000, the Debtors generated consolidated net revenues for continued operations of approximately \$132 million and losses for continued operations of approximately \$178.9 million.

6. I have been associated with the Debtors in my current capacities since September of 1997, and I am familiar with the Debtors' day-to-day operations, business affairs, and books and records and with the Debtors' capital structure and financial condition.

7. On April 19, 2001 (the "Commencement Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors intend to continue in the possession of their properties and the management of their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. To enable the Debtors to operate effectively and to avoid the adverse effects of the chapter 11 filings, the Debtors are requesting various types of relief in the "first-day" applications described below. I have reviewed these applications. I believe that all of the relief requested therein is necessary and appropriate, and in the best interests of the Debtors' estates.

9. I submit this Declaration in support of, and to explain to the Court, the Debtors' need for the relief requested in the various first-day applications in the chapter 11 cases. Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in

the relevant first-day application. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, or my opinion, based upon my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration.

Facts Supporting The Debtors' First-Day Applications

10. An important element in the Debtors' ability to bring these Chapter 11 cases to a successful conclusion is approval of each of the Debtors' first-day applications. In furtherance of the objective of maximizing the value to parties in interest, through a chapter 11 plan or otherwise, the Debtors have requested that "first day" orders of the types mentioned below be entered. Factual information in support of such first day orders is provided below and in the applications filed concurrently herewith.

Joint Administration of Cases

11. CCI is a holding company, that owns the stock of CCSI. CCSI is an operating company and owns all of the Debtors' operating assets and employs substantially all of the Debtors' employees. The Debtors' business operations and organization are thus closely related as part of a complex corporate structure. Because of this relationship, most applications, motions and other documents filed herein will apply to both of the Debtors. Joint administration of these cases will permit the Debtors and other parties in interest to file one document instead of two substantially identical documents, and to otherwise avoid multiplication of effort by proceeding jointly with respect to both of the Debtors. I believe that this will greatly simplify and substantially reduce the costs of administering these chapter 11 cases.

12. The rights of the Debtors' respective creditors will not be adversely affected by joint administration of these cases. Each creditor may still file its claim against the particular estate that allegedly owes it money. During the pendency of these cases, the Debtors will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain books and records to reflect all inter-company and third-party transactions during the pendency of their chapter 11 cases.

Extension of Time to File Statements, and Schedules

13. I believe that cause exists in these cases to extend the filing deadline for Statements and Schedules required by the Bankruptcy Code and Bankruptcy Rules for an additional forty (40) days from the Commencement Date. Requiring the filing of Statements and Schedules by the initial fifteen (15) day deadline would subject the Debtors to potentially unnecessary burdens that would detract them from their goal of stabilizing the company and implementing a plan to maximize the value to parties in interest. This is particularly true given the nature and size of the Debtors' business and the complicating fact that in the week preceding the Commencement Date, the Debtors underwent significant corporate and personnel-related changes. CCSI closed half of its sales offices across the country and reduced its workforce by approximately seventy percent (70%). With the current reduction in workforce, the Debtors' remaining employees are fully occupied with their responsibilities of operating the company.

14. Under the circumstances, I estimate that the Debtors will require more time to prepare the Statements and Schedules than is permitted by the initial fifteen (15) day deadline, and that approximately forty (40) days from the Commencement Date is appropriate for that purpose. Finally, I believe that the relief requested in this application is in the best interests of the Debtors' estates and will not prejudice the rights of any parties herein.

Bank Accounts and Existing Checks and Other Business Forms

15. I have been advised that the Office of the United States Trustee (the "United States Trustee") has established certain operating guidelines for debtors in possession that are intended to facilitate the administration of chapter 11 cases consistent with the limitations contained in the Bankruptcy Code. These guidelines require debtors in possession to, among other things, close all existing bank accounts and open new debtor in possession bank accounts, and issue checks and utilize other business forms bearing a "debtor in possession" designation.

16. CCI's only cash account separate from CCSI was a payroll account through which all employees were paid. CCI intends to close this account and open a new debtor in possession account and order checks with the debtor in possession designation.

17. As of the Commencement date, CCSI had only one checking account that was utilized by the company to meet its current obligations. Debtor intends to close this checking account and is in the process of opening two new debtor in possession checking accounts; one for operating and one for payroll. CCSI has blank check stock that it will use with these two new checking accounts and will reprogram its check writing system to reflect that these accounts are debtor in possession accounts.

18. The Debtors maintain four other active accounts as follows:

- a. Investment account with Merrill Lynch (the "Investment Account") from which transfers are made to CCSI operating accounts as needed;
- b. Centralized operating account at Wells Fargo (the "Operating Account");
- c. Accounts payable account at Wells Fargo that is a zero balance account (the "Accounts Payable Account");

- d. Lock box account at Wells Fargo (the "Lockbox Account") into which CCSI's revenue receipts are deposited;
- e. Eurosweep account at Wells Fargo (the "Eurosweep Account").

When checks were written on the CCI payroll account or on the CCSI checking account, transfers were automatically made from the Investment Account and the Lockbox Account into the Operating Account and then transferred from the Operating Account into the CCSI checking account and the CCI payroll account to cover the disbursements from those accounts. Funds in the Operating Account were swept daily into the Eurosweep Account for investment purposes overnight and then returned to the Operating Account each morning.

19. CCSI does not make disbursements from the Investment Account, the Operating Account, the Lockbox Account or the Eurosweep Account other than to transfer money between the Debtors' various accounts. The Investment Account and the Eurosweep Accounts are kept for investment purposes only. The Operating Account is used to transfer sufficient funds to the Payables Account and the Payroll Account to cover the current disbursements. The Lockbox Account is used to receive accounts receivable from various customers, and unless notified otherwise, CCSI's customers will continue to make payments to this account. If allowed to maintain these accounts, the Investment Account, the Operating Account, the Lockbox Account and the Eurosweep Account will be set-up and operated in the same manner as these accounts did prior to the Commencement Date except that these accounts will be coordinated with CCSI's new debtor in possession accounts rather than the prepetition accounts.

20. I believe that allowing CCSI to maintain the Investment Account, the Operating Account, the Lockbox Account and the Eurosweep Account will provide for a smoother and more orderly transition and avoid the significant disruption and confusion that closing these bank accounts and opening new ones would necessarily create.

21. I believe that cause exists to allow Debtors to continue to use their business forms, including invoices, contracts and other forms. By virtue of the nature and scope

of the business in which the Debtors are engaged, the Debtors' estates would be burdened by expense and business disruption if the Debtors were not permitted to continue using their existing business forms without alteration or change.

Modification of Section 345 Requirements

22. The Debtors' cash deposits are located in the Investment Account at Merrill Lynch and the Operating Account, the Lockbox Account and the Eurosweep Account at Wells Fargo Bank, N.A.

23. I believe that cause exists to modify the Debtors' investment and deposit requirements under Bankruptcy Code section 345 for a period of ~~thirty~~ (30) days following the Commencement Date. The Investment and Operating Accounts hold the greatest portion of Debtors' cash. These accounts are maintained at Merrill Lynch and Wells Fargo respectively and the cash held in these accounts is currently above the FDIC insurable amount. The Debtors intend to promptly move the investments in the Investment Account to ensure compliance with the investment and deposit restrictions set forth in Bankruptcy Code Section 345 but may experience some difficulty and delay in establishing mechanisms for the investment of their cash which both yield the maximum net return on such cash and otherwise meet the safety requirements of section 345. I believe that 30 days will be sufficient time to allow the Debtors to meet the restrictions under Section 345.

Employee Retention Agreements

24. An important element in the Debtors' ability to successfully propose a plan to maximize the value of their estates is retaining current employees during their Chapter 11 cases. The Debtors intend to proceed with liquidating their assets during the Chapter 11 proceedings and believe that they will not emerge from bankruptcy as going concerns.

Therefore, the Debtors' employees are aware that it is likely they will not have future employment with the Debtors beyond the completion of the Chapter 11 cases. As a result, the bankruptcy filings have caused a high level of uncertainty for the employees, and the Debtors are concerned that key employees will start leaving the company further destabilizing the Debtors' business. Therefore it is in Debtors' judgment that it is in the best interest of their estates to adopt an employee retention plan to motivate employees to stay with the Debtors during their chapter 11 cases.

25. On April 17, 2001, the Debtors went through a significant down-sizing and as of the Commencement Date, the Debtors believe that all current employees are essential to maintain the Debtors' ongoing business. The Debtors have considered and have adopted an employee retention plan (the "Retention Plan"), a summary of which is attached to the Motion For Order Under Sections 105(a), 363 and 503 Of The Bankruptcy Code Approving The Debtors' Employee Retention Agreements, in an effort to stop their employees from immediately seeking employment elsewhere. The Debtors worked closely with Texas Pacific Group, CCI's preferred stock holders, and PricewaterhouseCoopers, LLP in formulating the Retention Plan. The Debtors also reviewed numerous employee incentive programs adopted by other distressed companies, both inside and outside of Chapter 11 bankruptcy. In finalizing the Retention Plan, the Debtors adopted retention bonuses and severance pay believed to be among the lower end of the plans reviewed and considered by the Debtors. Therefore, I believe the Retention Plan is reasonable in comparison to these other plans.

26. The Retention Plan has two separate elements (a) a retention bonus and (b) severance pay. The Debtors have decided not to make any further distributions to employee retirement plans. The Retention Plan separates the employees into groups based on their position with the company. The Retention Plan provides that certain groups of employees will be entitled to a retention bonus if they stay actively employed with the Debtors for a certain period of time. Generally, this time period is one month or four and one-half months. PricewaterhouseCoopers, LLP assisted the Debtors in determining the length of time for each employee group. In each

group, the retention bonus was determined as a percentage of each employee's salary. The percentage in each group is the same for all employees within a group. If all retention bonuses are paid, the Debtors estimate that the retention bonuses will be \$645,904. If an employee stays with the company after the required time set forth in the Retention Plan to receive such bonus, the employee will be entitled to his/her normal salary plus a percentage increase in the retention bonus based on the continued length of employment.

27. The Retention Plan also provides that employees who remain with the Debtors for the time period required under the Retention Plan will be entitled to severance pay. The total severance pay proposed to be paid under the Retention Plan is \$990,408.

28. The employees are very insecure regarding their future employment. If the Debtors are not able to provide the employees with some incentive to stay with the company, many of these employees will begin to spend their time and energy seeking other employment. The costs and expenses of replacing and training new employees would be substantial to the company. Therefore, it is vital that the Debtors retain current employees during the Chapter 11 cases. The Retention Plan was formulated and adopted based on sound business reasons and I believe that the Retention Plan proposed is fair and reasonable for the employees and in the best interests of the two estates.

Payment of Prepetition Wages, Salaries, Commissions and Employee Benefits

29. Likewise, I believe to maintain employee morale the Debtors should be authorized to pay all prepetition wages, salaries and commissions due and owing to Debtors' current employees.

30. All employees dismissed on April 17, 2001 were paid all earned but unpaid wages, salaries and commissions, accrued vacation pay and two weeks severance pay. The Debtors do not believe that any other amounts are due and owing to these employees.

31. The Debtors' current employees have been paid through April 15, 2001 for wages, salaries and earned commissions and for all accrued vacation pay. These employees have

not been paid their wages, salaries and commissions earned from April 15, 2001 through the Commencement Date. The Debtors estimate that the wages and salaries owed to the approximate 180 current employees for prepetition work is approximately \$115,000 in the aggregate. At this time, Debtors have not calculated the earned but unpaid commissions but the Debtors believe they have paid all commissions earned through April 13, 2001. However, certain Retained Employees may be owed unpaid commissions if certain invoices were generated pre-petition after April 13, 2001 but not paid as of the Commencement Date. The Debtors believe such unpaid commissions amount to approximately \$100,000. In paying these wages, salaries and commissions, the Debtors are required to withhold certain amounts because of federal, state and local tax regulations and because of other federal and state withholding requirements. I believe that cause exists for the Court to authorize the Debtors to pay all prepetition earned but unpaid wages, salaries and commissions because if these wages were not paid, the employees may suffer personal hardship.

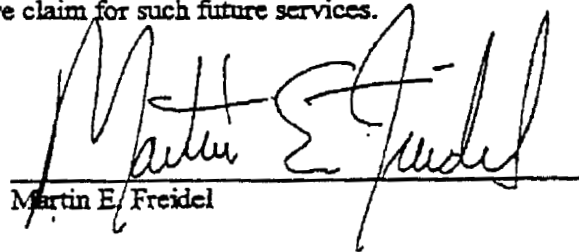
32. The Debtors also pay 80% of the employees' applicable insurance premiums under the Debtors' employee benefit packages. The Debtors are current on these payments as of the Commencement Date. The Debtors wish to pay these premiums as they come due postpetition even though a portion of the premium may be for coverage prior to the Commencement Date.

33. The Debtors estimate that approximately \$414,000 in checks have been issued to employees that have not cleared the Debtors' payroll account. To preserve the compensation and benefits intended to be conveyed on the employees, the Debtors believe that the Court should authorize the Debtors to honor such checks or to reissue the checks to current or past employees.

Motion Deeming Utilities Adequately Assured and Establishing Procedures for
Determining Adequate Assurance.

34. Because the Debtors are a business dependent upon telephone and other utility services, it would be devastating for the Debtors' operations if these services were interrupted. Generally, the Debtors were current on all utility payments prior to the Commencement Date.

35. The Debtors have significant unencumbered assets, including sufficient unencumbered cash to pay all reasonably anticipated administrative claims during their Chapter 11 cases and expect to propose a liquidating chapter 11 plan which makes payments to general unsecured creditors. Therefore, the Debtors believe that the Debtors' current utility companies are adequately assured of receiving payment for future utility services by providing such utility companies with an administrative claim for such future services.


Martin E. Freidel

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)	
)	
CONVERGENT COMMUNICATIONS,	)	Chapter 11
INC.)	
EIN: 84-1337265	)	Case No. 01-15488 EEB
)	
Debtor.)	
In re:)	
)	
CONVERGENT COMMUNICATIONS	)	Chapter 11
SERVICES, INC.)	
EIN: 84-1387594	)	Case No. 01-15489 ABC
)	
Debtor.)	

**MOTION FOR ORDER UNDER SECTIONS 105(a), 363 AND 503 OF THE
BANKRUPTCY CODE APPROVING THE DEBTORS'
EMPLOYEE RETENTION AGREEMENTS**

Convergent Communications, Inc. ("CCI") and Convergent Communications Services, Inc. ("CCSI", collectively with CCI, the "Debtors") move for an order under sections 363 and 503 of the Bankruptcy Code (the "Motion") authorizing the Debtors' entry into postpetition Employee Retention Agreements (the "Employee Retention Agreements"), and respectfully submit:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and General Procedural Order No. 1984-3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue of these cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a), 363 and 503 of title 11 of the United States Code (the "Bankruptcy Code").

GENERAL BACKGROUND

2. On the date hereof (the "Commencement Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code with this Court.

3. Each of the Debtors intends to operate its business and manage its properties as a debtor in possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtors are a broadband networking and internet services provider with full-service data systems integration capabilities for small and medium sized businesses. The Debtors' range of products and services includes data networking and professional services; internet services; and security services, broadband and voice services. The Debtors are headquartered in Englewood, Colorado, with seven offices nationwide. The Debtors collectively employ approximately 180 employees.

5. As reported in the Debtors' consolidated financial statements dated March 31, 2001, the Debtors, on a consolidated basis, held assets having a book value of approximately \$149 million (excluding goodwill) against liabilities of approximately \$245 million in secured and unsecured debt and \$175 million in preferred equity. For the twelve month period ended December 31, 2000, the Debtors generated consolidated net revenues for continued operations of approximately \$132 million and losses for continued operations of approximately \$178.9 million.

RELIEF REQUESTED

6. By this Motion, the Debtors seek authorization to execute and deliver Employee Retention Agreements to be entered into with employees needed to continue the Debtors' business uninterrupted. A summary of the terms of the Employee Retention Agreement

is provided below. The Employee Retention Agreements represent an effort by the Debtors to encourage key employees to continue in the Debtors' employ during these chapter 11 cases.

7. On April 16, 2001, the Debtors laid off all non-essential employees. The workforce of the Debtors was reduced from approximately 590 to approximately 180 employees. Each departing employee was offered a two-week severance package on April 17, 2001. If the remaining 180 employees were to leave, the Debtors would not be able to continue as an ongoing entity.

8. The commencement of a chapter 11 case, especially one that follows a large reduction in staff, creates a level of uncertainty and fear among a company's employees. Employees become preoccupied with thoughts of losing their jobs and can lose sight of the importance of continued diligence. Productivity also suffers. Employees have difficulty focusing fully on both short and long-term objectives because of uncertainty whether the business, and therefore their employment, will continue. Moreover, key employee departures can further destabilize the employer's business.

9. Employees of the Debtors are faced with these same concerns. Filing these chapter 11 cases can be expected to exacerbate the anxiety and apprehension of the Debtors' employees. Before the commencement of the Debtors' chapter 11 cases, the Debtors' employees already suspected imminent financial problems that would threaten their jobs and the Debtors' ability to continue commercially. Many employees left the company because of these concerns. The Debtors' most experienced and qualified employees have been, and will continue to be, the first to find employment elsewhere. Losing additional key employees will seriously impact the Debtors' ability to function during the pendency of these chapter 11 cases.

10. After large reductions in staff, employees are insecure about their position in the Debtors' organization and of their continued employment. Also large downsizing tend to lower morale because of the above reasons. The Employee Retention Agreements would provide more certainty to the covered employees that their positions are secure for the term of the Employee Retention Agreements. The Employee Retention Agreements are designed to give incentives to the Employees to stay. Because of these incentives, the Debtors are assured that they will have the necessary employees to continue their business as a downsized going concern which can best preserve or enhance asset values for the benefit of the Debtors' creditors.

11. Any loss of productivity and destabilization of the Debtors' operations will substantially and adversely impact the Debtors' estates and the administration of these chapter 11 cases. To maximize the value of the Debtors' estates, the Debtors must alleviate employee anxiety and minimize employee departures.

12. Given the experience and knowledge of the Debtors' key employees, the Debtors' execution of the Employee Retention Agreements is in the best interest of the Debtors' estates. Failure to execute the Employee Retention Agreements would directly and substantially impact the value of the estates and reduce the distributions to their creditors and equity interest holders.

13. Accordingly, the Debtors respectfully request the entry of an Order pursuant to section 503 and 363 of the Bankruptcy Code approving the Debtors' Employee Retention Agreements.

THE EMPLOYEE RETENTION AGREEMENTS

14. The Debtors propose entry into and execution of the Employee Retention Agreements. The Debtors have made a substantial effort to identify the employees who are most

critical to the Debtors' continued operations. The Employee Retention Agreements are intended to induce employees who have superlative knowledge of the Debtors' businesses, transactions, personnel, and management to remain at their current positions. The Employee Retention Agreements will provide a stable work environment for these employees and improve morale and productivity.

15. The Employee Retention Agreements have four parts, summarized as follows:

(i) Approximately 100 employees which include the officers, vice presidents, directors, managers and certain individuals (the "Key Employees") will receive retention bonuses between 25% and 75% of their base salary in effect as of the date hereof, depending on their employment position with the Debtors (the "Key Employees Retention Bonus"). Joseph Zell, the Chief Executive Officer of the Debtors (the "CEO") will receive a retention bonus of \$173,077¹ (together with the Key Employees Retention Bonus, the "Retention Bonus"). All employees in each class listed on Exhibit A hereto will receive similar treatment. The total Retention Bonus would be paid to the CEO and each Key Employee in a lump sum upon the Employer Designated Termination Date (as defined in the Employee Retention Agreements), provided that the CEO or Key Employee is still employed by the Debtors and in good standing upon that date. Assuming the CEO and all of the Key Employees become entitled to receive the Retention Bonus, the total cost to the Debtors for such bonus would be approximately \$646,000.

(ii) If the Debtors request that the CEO or a Key Employee remain in his position after the Employer Designated Termination Date, the CEO or such Key Employee is entitled to receive the Retention Bonus and the severance payment on such date and shall receive additional payments equal to a pro rata portion of his Retention Bonus for each month that the CEO or such key Employee remains after the Employer Designated Termination Date until the date that the Debtors terminate such employment.

(iii) Each employee who remains employed as of the date hereof will be entitled to receive a severance payment if such employee

¹ Assuming this payment is earned and paid, Mr. Zell has agreed to waive a prepetition claim of \$125,000 that was due to Mr. Zell pursuant to the Company's Incentive Compensation Plan.

continues to be employed on the Employer Designated Termination Date and is in good standing (the "Severance Payment"). The amount of such Severance Payment will range from two to five weeks of the employee's base salary in effect as of the date hereof, depending on such employee's employment position with the Debtors. The Severance Payment would be paid on the Employer Designated Termination Date in a lump sum. Assuming all of the employees become entitled to receive the Severance Payments, the total cost to the Debtors would be approximately \$990,000.

(iv) Each employee will be entitled to continue to receive such employee's base salary in effect as of the date hereof until such employee's employment is terminated for any reason. Assuming that all Employees remain until the Employer Designated Termination Date, the total cost of such salaries would be approximately \$1.9 million.

16. Assuming that neither the CEO nor any Key Employee is asked to continue working after the Employer Designated Termination Date, the Debtors estimate that the maximum total amount of payments that will be made to employees under the Employee Retention Agreements would be approximately \$1.6 million over the base salaries. Attached as Exhibit A hereto is a summary of the above-described Retention Bonus and Severance Payments. Further attrition will likely occur in the normal course of business, thereby reducing (perhaps substantially) the total costs of the Employee Retention Agreements.

THE COURT SHOULD APPROVE THE DEBTORS' EMPLOYEE RETENTION AGREEMENTS

17. The Debtors request approval to adopt the Employee Retention Agreements pursuant to sections 105(a), 363, and 503 of the Bankruptcy Code. Section 363 of the Bankruptcy Code provides that a debtor in possession may use its property other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b). In addition, section 503(b)(1) of the Bankruptcy Code provides for the allowance of administrative expenses of chapter 11 cases including, among other things, "the actual, necessary costs and expenses of preserving the estate, *including wages, salaries, or commission for services rendered after the*

commencement of the case." 11 U.S.C. § 503(b)(1)(A) (emphasis added). Finally, pursuant to section 105(a), 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).

18. Courts have long applied the business judgment test and approved incentive programs necessary to attract and retain essential employees. Courts reviewing section 363(b) applications have typically required that a good business justification exist for the request. See *The Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147 (D. Del. 1999); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2nd Cir. 1983); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996). Furthermore, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtors' conduct." *Committee of Asbestos Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

19. Where a valid business justification exists, a debtor's decision to use property outside of the ordinary course of business is entitled to a strong presumption "that in making business decisions the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company." *In re Integrated Resources*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (quoting *Smith v. Van Gorkum*, 488 A.2d 858, 872 (Del. 1985)).

20. The Debtors have determined in the exercise of their reasonable business judgment that execution of the Employee Retention Agreements are in the best interests of the Debtors, their bankruptcy estates, and creditors. The Employee Retention Agreements will serve

to secure the continued services of the Debtors' retained employees in the performance of their duties. Particularly in light of the Debtors' small staff of senior managers, the Debtors' ability to retain employees is vital to their operations.

21. An established body of case law specifically approves of a debtor's use of retention plans and other incentives in order to give its key employees the financial incentive to remain with a debtor and help it move through the chapter 11 process as a valid exercise of its sound business judgment. *See, e.g., In re America West Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D. Ariz. 1994).

22. The terms and conditions of the Employee Retention Agreements are reasonable and fair to the estates and the creditors. The Employee Retention Agreements provide for the payment of the Retention Bonus and Severance Payments only if such employee remains in the Debtors' employment until the Employee Designated Termination Date and remains in good standing or if such employee's employment by the Debtors is ended, during such period by involuntary termination for other than cause. The cap on the amount of retention and severance benefits payable under the Employee Retention Agreements will also ensure that the amount of benefits paid is reasonable in light of the value of the Debtors' assets which require employees to preserve them and possibly the Debtors' going concern value. Accordingly, the Court should authorize the Debtors to execute the Employee Retention Agreements.

23. Although the Debtors do not know the exact amounts estimated below, CCI is a publicly traded company whose statements and schedules will be filed with the Court. Nevertheless, based on the preliminary work done by their accounts PricewaterhouseCoopers to date, the Debtors have a good faith basis to believe that the estimates below are reasonable. The Debtors only secured creditors are purchase money or capital lease financiers which affect only

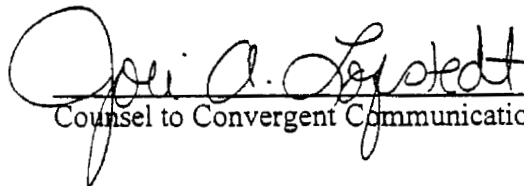
about half of the Debtors' tangible assets. The Debtors believe their unencumbered estate to be worth between \$15 and \$20 million based on how successful the Debtors are in liquidation. At this time, the Debtors have about \$5 million in unencumbered cash on hand.

24. Notice of this Motion has been given to the Office of the United States Trustee, and to each of the Debtors' twenty largest unsecured creditors. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto, (a) approving the Employee Retention Agreements under sections 363 and 503 of the Bankruptcy Code and (b) providing that the payments to be made by the Debtors under the Employee Retention Plan be accorded administrative priority under section 503(b) of the Bankruptcy Code, and grant the Debtors such other and further relief the Court deems appropriate.

Dated: April 19, 2001

CONNOLLY & LOFSTEDT, P.C.
Tom Connolly(#11689)
Joli Lofstedt (#21946)
287 Century Circle, Suite 200
Louisville, CO 80027
(303) 661-9292
(303) 661-9555 fax
tom@connollyandlofstedt.com
joli@connollyandlofstedt.com



Counsel to Convergent Communications Services, Inc.

GIBSON, DUNN & CRUTCHER LLP

George B. Curtis (#11729)

Jeffrey E. Oraker (#26893)

1801 California Street

Denver, CO 80202

(303) 298-5700

(303) 296-5310 fax

gcurtis@gibsondunn.com

joraker@gibsondunn.com


Counsel to Convergent Communications, Inc.

- and -

GIBSON, DUNN & CRUTCHER LLP

James P. Ricciardi, P.C.

200 Park Avenue

New York, New York 10166

(212) 351-4000

(212) 351-5223 fax

jricciardi@gibsondunn.com

Counsel to Convergent Communications, Inc.

EXHIBIT A

Proposed Provisions for Retention Agreements

	Number	Retention Period (months)	Retention Salaries (Aggregate)	Retention Bonus (Aggregate)	Weeks Severance	Severance Pay (Aggregate)	Retention Compensation (Aggregate)
CEO	1	1	48,077	173,077	5	48,077	269,231
Officers	5	1	99,519	74,639	5	99,519	273,678
VP's	10	1 to 4.5	180,602	108,361	5	124,881	413,844
Directors	15	1 to 4.5	244,373	97,749	5	148,436	490,558
Managers	18	1 to 4.5	282,304	84,691	5	130,636	497,631
Individuals	53	1 to 4.5	429,543	107,386	4	199,434	736,362
Branches	101	1	598,564	0	2	239,426	837,990
Total	203		1,882,982	645,904		990,408	3,519,294

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)	
)	
CONVERGENT COMMUNICATIONS,	)	Chapter 11
INC.)	
EIN: 84-1337265	)	Case No. 01-15488 EEB
)	
Debtor.)	
<hr style="border: 0.5px solid black;"/>		
In re:)	
)	
CONVERGENT COMMUNICATIONS	)	Chapter 11
SERVICES, INC.)	
EIN: 84-1387594	)	Case No. 01-15489 ABC
)	
Debtor.)	

**MOTION FOR ORDER UNDER SECTIONS 105(a), 363(b), 503(b)(1) AND 507(a)(3)-(4)
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO PAY
WAGES, SALARY AND OTHER COMPENSATION, EMPLOYEE
BENEFITS AND REIMBURSABLE EMPLOYEE EXPENSES**

Convergent Communications, Inc. ("CCI") and Convergent Communications Services, Inc. ("CCSI", collectively with CCI, the "Debtors") move for an order under sections 105(a), 363(b), 503(b)(1) and 507(a)(3)-(4) of the Bankruptcy Code authorizing the Debtors to pay wages, salary and other compensation, employee benefits and reimbursable employee expenses that accrued during the last payroll period prior to their chapter 11 cases (the "Motion"), and respectfully submit:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and General Procedural Order No. 1984-3. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A) and (O). Venue of these cases is proper in this Court pursuant to 28 U.S.C.

§§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 503(b)(1) and 507(a)(3)-(4) of title 11 of the United States Code (the "Bankruptcy Code").

GENERAL BACKGROUND

2. On the date hereof (the "Commencement Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code with this Court.

3. Each of the Debtors intends to operate its business and manage its properties as a debtor in possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtors are a broadband networking and internet services provider with full-service data systems integration capabilities for small and medium sized businesses. The Debtors' range of products and services includes data networking and professional services; internet services; security services, and broadband and voice services. The Debtors are headquartered in Englewood, Colorado, with seven offices nationwide. As of the Commencement Date, the Debtors collectively employ approximately 180 employees.

5. As reported in the Debtors' consolidated financial statements dated March 31, 2001, the Debtors, on a consolidated basis, held assets having a book value of approximately \$149 million (excluding goodwill) against liabilities of approximately \$245 million in secured and unsecured debt and \$175 million in preferred equity. For the twelve month period ended December 31, 2000, the Debtors generated consolidated net revenues for continued operations of approximately \$132 million and losses for continued operations of approximately \$178.9 million.

RELIEF REQUESTED

6. In the operation of their businesses in the ordinary course, the Debtors currently employ approximately 180 people. The majority of the Debtors' employees are paid on a bimonthly basis. The employees were last paid on April 12p, 2001 for all wages and salaries earned through the period ending April 15, 2001.

7. On or about April 17, 2001, the Debtors dismissed approximately 410 employees (the "Dismissed Employees"). The Debtors did not dismiss the approximately 180 remaining employees (the "Retained Employees"). The Debtors paid the Dismissed Employees all unpaid wages, accrued vacation pay, and two weeks' severance pay on the date of dismissal.

8. With regard to the Retained Employees, the Debtors are filing herewith a motion for authority to pay to the Retained Employees' postpetition wages, compensation, and benefits in accordance with an Employee Retention Plan to be filed with this Court.

9. On the commencement date, most if not all Retained Employees were paid through April 15, 2001. Debtors are seeking authority to pay the pre-petition wages earned after April 15, 2001 by the Retained Employees in the next compensation check. The total amount of such unpaid prepetition wages and salaries is approximately \$115,000, not including a minimal amount of unpaid overtime earned in the last two weeks.

10. The Debtors offer a broad benefits package to their employees (the "Employee Benefits"). The package includes medical insurance, dental insurance, term life insurance, and worker's compensation benefits. In addition, certain employees of the Debtors are eligible for short and long-term disability insurance. The combined monthly cost of these programs for February 2001 was \$261,655 for all employees. Because of the recent large reduction in employees, the Debtors anticipate that the future monthly cost of these programs will be substantially reduced. The Debtors pay approximately 80% of the applicable insurance

premiums for the employees themselves only. Employees pay 100% of the cost of dependent coverage. Virtually all of the Debtors' full time employees are covered by these benefit plans. The Debtors believe that they are substantially current on any premium payment obligations with respect to the various insurance policies maintained for the benefit of the Retained Employees. Nevertheless, to the extent a payment is owing, the Debtors seek authority to make such payments as are necessary to ensure that prepetition wages, compensation, medical, and dental claims of the Retained Employees are satisfied. In addition, the Debtors seek authority to honor payroll checks in the approximate aggregate amount of \$414,012 that likely have not cleared as of the Commencement Date.

11. Certain employees earn commissions as part of their compensation. The Debtors' commission policy provided, in general, that such employees earn a commission when an invoice is generated on account of a sale. Once earned, the commission is included in the employee's next compensation check. The Debtors believe they have paid all commissions earned through April 13, 2001. However, certain Retained Employees may be owed unpaid commissions if certain invoices were generated pre-petition on April 16 through April 18, 2001 but not paid as of the Commencement Date. To the extent Retained Employee commissions are earned yet remain unpaid as of the Commencement Date, the Debtors seek authority to pay such earned commissions to certain of the Retained Employees in their next compensation check.

12. As part of the Debtors' regular payroll procedures, the Debtors withhold certain amounts from employee wages because of federal, state, and local tax regulations and because of other federal and state withholding requirements. The Debtors believe they are current on all prepetition taxes. Nevertheless, to the extent a payment is owing, the Debtors seek authority to

make such payments as are necessary to ensure that prepetition federal, state, and local withholding requirements are satisfied.

13. Prior to the Commencement Date, the Debtors had the discretion to match employee 401(k) plan contributions with a 1:1 contribution in company stock up to 6% of an employee's base salary per year. The Debtors make the decision whether to match employee 401(k) contributions on a quarter-by-quarter basis. The Debtors have exercised their discretion against any further 401(k) matching.

14. All accrued vacation time for all Dismissed and all Retained Employees was paid on April 17, 2001. Therefore, Debtors are not requesting authority to pay any accrued vacation.

15. As a result of the commencement of the chapter 11 cases, absent an order of this Court, the Debtors would be precluded from paying and performing their obligations to employees for wages, salaries and Employee Benefits to the extent that such obligations arose prior to the Commencement Date. In many cases, the inability of the Debtors to pay such amounts would cause undue hardship to the Debtors' employees, which likely would adversely affect the employees' morale and dedication. Employee attendance could decrease and destabilize the Debtors' operations. To facilitate administration of the Debtors' chapter 11 cases, to preserve and enhance asset values, and to implement the policies underlying the Bankruptcy Code, the Debtors request authority to pay prepetition wages, salaries, and other amounts owing to their current employees and to perform their obligations under prepetition Employee Benefit plans and policies.

16. As a result of the commencement of the chapter 11 cases, certain prepetition checks and electronic fund transfers regarding prepetition wages, salaries and other compensation, business expenses (including expenses incurred ordinarily through the use of

corporate credit cards, with respect to which the Debtors and their employees may be liable), and Employee Benefits may be dishonored or voided. To preserve the compensation and benefits the Debtors intended to convey on their employees, the Debtors further request that the Court authorize and direct the banks in which the Debtors maintain their payroll and other bank accounts to honor such checks and electronic fund transfers—or, in the alternative, if more administratively efficient, to permit the debtors to reissue such checks or reinstate such fund transfers.

**PAYMENT OF PREPETITION WAGES, SALARIES
AND EMPLOYEE BENEFITS IS NECESSARY TO
FACILITATE THE DEBTORS' CHAPTER 11 PLAN
AND SHOULD BE AUTHORIZED AND APPROVED**

17. Under section 503(b)(1) of the Bankruptcy Code, a debtor in possession may incur, and the court, after notice and hearing, shall allow as administrative expenses, among other things, "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1). In addition, under section 363(b) of the Bankruptcy Code, a trustee or debtor in possession may, in the exercise of its sound business judgment, and after notice and a hearing, use property of the estate outside of the ordinary course of business. 11 U.S.C. § 363(b). To supplement these powers, section 105(a) of the Bankruptcy Code further authorizes the Court to 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).

18. As recognized by the United States Supreme Court, chapter 11's fundamental purpose is "to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). Consistent with this fundamental policy, courts have authorized the trustee or debtor in possession to expend estate funds to pay prepetition claims when the payments are essential to

the debtor's continued operations. See *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) ("While pre-petition claims are normally disposed of in a plan of reorganization and in accordance with statutory priorities, there are well-established 'necessity of payment' and similar exceptions."); see also *Miltenberger v. Logansport Ry.*, 106 U.S. 286, 311-12 (1882); *Matter of Lehigh & New England Ry.*, 657 F.2d 570, 581 (3d Cir. 1981); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945).

19. Prepetition wages, salaries, and benefits receive special treatment under the Bankruptcy Code. Section 507(a) of the Bankruptcy Code states such employee-related claims are priority unsecured claims. 11 U.S.C. § 507(a)(3)-(4). Subsection (a)(3) gives a priority of up to \$4,650 (as adjusted for CPI) of employees' prepetition wages, salaries, and commissions. 11 U.S.C. § 507(a)(3). Subsection (a)(4) gives priority to employee benefit plans pursuant to a formula contained therein. 11 U.S.C. § 507(a)(4). Most importantly, all creditors will benefit if the Debtors are able to remain in business, retain their going concern value, and generate income to fund a Chapter 11 plan. The retention of the Debtors' employees is critical to any realistic chance for the sale of all or part of the Debtors' businesses as going concerns.

20. In practice, bankruptcy courts authorize trustees and debtors in possession to pay prepetition wages, salaries, and benefits and perform all of their obligations under prepetition employee benefit plans and programs, without interruption, after the commencement of a chapter 11 case. See, e.g., *Crafts Precision Indus. v. U.S. Healthcare, Inc. (In re Crafts Precision Indus.)*, 244 B.R. 178, 179 (Bankr. 1st Cir. 2000) (stating that the court approved the debtor's emergency motion seeking authority to pay prepetition wage related claims).

21. If the Debtors were unable to pay prepetition wages, salaries, and other compensation and benefits the Debtors' employees likely would suffer extreme personal hardship and likely would be unable to pay daily living expenses. Such actions would adversely affect the morale of the Debtors' employees. A significant deterioration in morale of the Debtors' current employees at this critical time would have a substantial adverse impact on the Debtors' ability to administer their chapter 11 cases successfully. As a result, the value of the Debtors' assets and businesses would be in jeopardy.

22. The payment of all prepetition wages, salaries and other compensation, the reimbursement of all business expenses, and the payment of all Employee Benefits in accordance with current practice is in the best interests of all parties and will enable the Debtors to continue to operate their businesses without disruption. These payments and the continuation of the Employee Benefit programs and policies will be crucial to the well-being of the Debtors' employees, who are vital to the completion of any chapter 11 plan. The total amount of unpaid prepetition wages is \$115,000, not including a minimal amount of unpaid overtime earned in the two weeks prior to the Commencement Date. The Debtors propose to pay any unpaid postpetition wages to the Retained Employees pursuant to the Employee Retention Plan to be filed with the Court.

23. In the normal course of business, the Debtors maintain accurate and complete records of all wages, salaries, compensation, reimbursable business expenses, and Employee Benefits. The Debtors will continue to maintain such records on an ongoing basis.

24. The Debtors currently have, or will deposit, sufficient funds to meet current compensation, expense reimbursement, and Employee Benefit obligations.

25. No trustee, examiner or creditors' committee has been appointed in any of the Debtors' chapter 11 cases.

26. Notice of this motion has been given to the Debtors' twenty largest unsecured creditors, Wells Fargo Bank, and the Office of the United States Trustee. In light of the emergency nature of the relief requested herein, the threat of hardship to the Debtors' current employees, and the irreparable harm to the Debtors that would ensue if the relief requested herein were not immediately granted, the Debtors respectfully submit that no further notice need be given.

WHEREFORE the Debtors respectfully request that the Court enter an order (I) authorizing the Debtors to (A) pay prepetition wages, salaries and other compensation, (B) pay to the applicable governmental unit taxes withheld from employees' compensation, (C) reimburse employees for all proper business expenses incurred prior to the Commencement Date, and (D) pay all Employee Benefits in accordance with their prepetition employee benefit and programs and policies, and (II) directing the Debtors' banks to honor all checks and electronic funds transfers relating thereto or, in the alternative, if more administratively efficient, to permit the debtors to reissue such checks or reinitiate such fund transfers, and (III) grant the Debtors such other relief as the Court deems appropriate.

Dated: April 19, 2001


CONNOLLY & LOFSTEDT, P.C.
Tom Connolly (#11689)
Joli Lofstedt (#21946)
287 Century Circle, Suite 200
Louisville, CO 80027
(303) 661-9292
(303) 661-9555 fax
tom@connollyandlofstedt.com
joli@connollyandlofstedt.com



Joli A. Lofstedt

Counsel to Convergent Communications Services, Inc.

GIBSON, DUNN & CRUTCHER LLP
George B. Curtis (#11729)
Jeffrey E. Oraker (#26893)
1801 California Street
Denver, CO 80202
(303) 298-5700
(303) 296-5310 fax
gcurtis@gibsondunn.com
joraker@gibsondunn.com



Jeffrey E. Oraker

Counsel to Convergent Communications, Inc.

- and -

GIBSON, DUNN & CRUTCHER LLP
James P. Ricciardi, P.C.
200 Park Avenue
New York, New York 10166
(212) 351-4000
(212) 351-5223 fax
jricciardi@gibsondunn.com

Counsel to Convergent Communications, Inc.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)	
)	
CONVERGENT COMMUNICATIONS,	)	Chapter 11
INC.)	
EIN: 84-1337265	)	Case No. 01 15488 EEB
)	
Debtor.)	
In re:)	
)	
CONVERGENT COMMUNICATIONS	)	Chapter 11
SERVICES, INC.)	
EIN: 84-1387594	)	Case No. 01 15489 ABC
)	
Debtor.)	

**MOTION OF THE DEBTORS FOR AN ORDER
MODIFYING THE DEBTORS' OBLIGATIONS UNDER
SECTION 345 OF THE BANKRUPTCY CODE**

Convergent Communications, Inc. ("CCI") and Convergent Communications Services, Inc. ("CCSI", collectively with CCI, the "Debtors") request by this motion (the "Motion") an order under sections 105(a) and 345 of the Bankruptcy Code modifying the Debtors' Obligations for a period of thirty (30) days from strict compliance with sections 345(b)(1) and (2) of the Bankruptcy Code, and respectfully submit:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and General Procedural Order No. 1984-3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue of these cases is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein is section 366 of title 11 of the United States Code (the "Bankruptcy Code").

GENERAL BACKGROUND

2. On the date hereof (the "Commencement Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code with this Court.

3. Each of the Debtors intends to operate its business and manage its properties as a debtor in possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtors are a broadband networking and internet services provider with full-service data systems integration capabilities for small and medium sized businesses. The Debtors' range of products and services includes data networking and professional services; internet services; security services, and broadband and voice services. The Debtors are headquartered in Englewood, Colorado, with seven offices nationwide. The Debtors collectively employ approximately 180 employees.

5. As reported in the Debtors' consolidated financial statements dated March 31, 2001, the Debtors, on a consolidated basis, held assets having a book value of approximately \$149 million (excluding goodwill) against liabilities of approximately \$245 million in secured and unsecured debt and \$175 million in preferred equity. For the twelve month period ended December 31, 2000, the Debtors generated consolidated net revenues for continued operations of

approximately \$132 million and losses for continued operations of approximately \$178.9 million.

RELIEF REQUESTED

6. Section 345 of the Bankruptcy Code provides, in part:

(a) A trustee in a case under this title may make such deposit or investment of the money of the estate for which such trustee serves as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment

(b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested --

(1) a Bond --

(A) in favor of the United States;

(B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and

(C) conditioned on --

(i) a proper accounting for all money so deposited or invested and for any return on such money;

(ii) prompt repayment of such money and return; and

(iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 9303 of title 31;

unless the court for cause orders otherwise.

CCI's Bank Accounts

7. Prior to the Commencement Date, CCI's only cash account separate from CCSI

has been the payroll account (the "CCI Payroll Account") through which all CCSI employees are paid. The CCI Payroll Account is a zero balance account and therefore no funds are maintained in this account. The CCI Payroll Account is funded as needed from the CCSI Operating Account described below. CCI has not maintained any additional cash accounts separate from CCSI because CCI has had no revenue separate from CCSI and its other non-debtor subsidiaries, and CCSI makes disbursements on behalf of CCI from the accounts described below. The Debtors' accounting records reflect any intercompany obligations generated as a result of this cash management system. These records are adjusted to reflect any changes in the outstanding amount of intercompany obligations. As of the Commencement Date, CCI has opened its own debtor in possession account with Wells Fargo to serve as a depository account during its bankruptcy case.

CCSI's Bank Accounts

8. CCSI currently maintains an investment account with Merrill Lynch (the "Investment Account"), from which transfers are made to CCSI's operating account as needed for various disbursements. Cash held in the Investment Account represents the remaining proceeds from the recent private placement of CCI preferred stock. All of CCSI's other bank accounts are maintained at Wells Fargo. CCSI maintains a centralized operating account (the "Operating Account"), a zero balance accounts payable account (the "A/P Account"), a lock box account into which CCSI's revenue receipts are deposited (the "Lockbox Account"), and a Eurosweep account (the "Eurosweep Account"). All cash maintained in these accounts (other than the Investment Account) is generated from CCSI's operations. Transfers are made from the Investment Account and the Lockbox Account into the Operating Account as needed to meet CCSI's payment obligations. Transfers are then made from the Operating Account to the A/P

Account and the CCI Payroll Account in order to meet payable and payroll obligations, respectively. Funds in the Operating Account are swept daily into the Eurosweep Account for investment purposes overnight and then returned to the Operating Account each morning.

9. As of the Commencement Date, the Debtors expect to have a substantial amount of cash in their primary cash accounts in excess of the limits on bank account insurance imposed by the Federal Deposit Insurance Corporation ("FDIC"). The Debtors' Investment and Operating Accounts, which hold the greatest portion of the Debtors' cash, are maintained at Merrill Lynch and Wells Fargo, respectively. The Eurosweep Account, to which no more than \$2 million is transferred on a nightly basis from the Operating Accounts, is likewise maintained at Wells Fargo. The Debtors submit that it is unlikely, given the size and understood solvency of such entities, that these financial institutions will fail, thereby putting the Debtors' funds in jeopardy.

10. The Debtors intend promptly to ensure compliance with the requirements for the investment of their cash balances set forth in section 345(b)(1) and (2) of the Bankruptcy Code. However, the Debtors may experience some difficulty and delay in establishing mechanisms for the investment of their cash which both yield the maximum net return on such cash and otherwise meet the safety requirements of section 345. Accordingly, the Debtors' request that strict compliance with section 345's investment guidelines be waived for a period of thirty (30) days following the Commencement Date. The Debtors reserve the right to seek further relief from this Court.

11. No trustee, examiner or creditors' committee has been appointed in any of the Debtors' chapter 11 cases.

12. Notice of this Motion has been given to the Debtors' twenty largest unsecured creditors, and the Office of the United States Trustee. In light of the nature of the relief herein

requested, the Debtors respectfully submit that no further notice need be given.

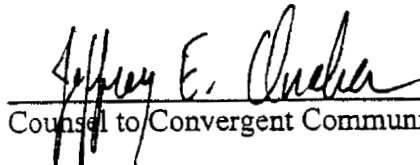
WHEREFORE the Debtors respectfully request that the Court enter an order excusing the Debtors, for a period of thirty (30) days following the Commencement Date, from complying with the requirements set forth in section 345(b)(1) and (2) of the Bankruptcy Code concerning the investment of the Debtors' cash balances, and grant them such other and further relief as is just.

Dated: April 19, 2001

CONNOLLY & LOFSTEDT, P.C.
Tom Connolly (#11689)
Joli Lofstedt (#21946)
287 Century Circle, Suite 200
Louisville, CO 80027
(303) 661-9292
(303) 661-9555 fax
tom@connollyandlofstedt.com
joli@connollyandlofstedt.com


Counsel to Convergent Communications Services, Inc.

GIBSON, DUNN & CRUTCHER LLP
George B. Curtis (#11729)
Jeffrey E. Oraker (#26893)
1801 California Street
Denver, CO 80202
(303) 298-5700
(303) 296-5310 fax
gcurtis@gibsondunn.com
joraker@gibsondunn.com


Counsel to Convergent Communications, Inc.

- and -

GIBSON, DUNN & CRUTCHER LLP
James P. Ricciardi, P.C.
200 Park Avenue
New York, New York 10166
(212) 351-4000
(212) 351-5223 fax
jricciardi@gibsondunn.com

Counsel to Convergent Communications, Inc.