

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** July 15, 2021

**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

**FROM:** Margarita Yglesias de Ayala, Public Utility Analyst II, Office of Industry Development and Market Analysis *MYA*

**RE:** Docket No. 20210000-OT – Undocketed Matters

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Attached is Advanced Telecommunication Network, Inc. Motion to approve compromise of controversy with Arnstein & Lehr LLP as filed in U.S. Bankruptcy Court, Middle District of Florida, Orlando Division, Chapter 11, Case No. 6:03-bk-00299-KSJ. Please file in the docket listed above.

Thank you

Attachment

RECEIVED-FPSC  
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COMMISSION  
CLERK

In re:

ADVANCED TELECOMMUNICATION  
NETWORK, INC.,

Chapter 11

Case No. 6:03-bk-00299-KSJ

Debtor.

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**MOTION TO APPROVE COMPROMISE OF CONTROVERSY  
WITH ARNSTEIN & LEHR LLP**

**NOTICE OF OPPORTUNITY TO  
OBJECT AND REQUEST FOR HEARING**

**IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PAPER YOU MUST FILE A RESPONSE WITH THE CLERK OF THE COURT AT GEORGE C. YOUNG FEDERAL COURTHOUSE, SUITE 5100, 400 W. WASHINGTON STREET, ORLANDO, FLORIDA 32801, AND SERVE A COPY ON THE MOVANT'S ATTORNEY, DANIEL R. FOGARTY, ESQUIRE, STICHTER, RIEDEL, BLAIN & POSTLER, P.A., 110 E. MADISON STREET, SUITE 200, TAMPA, FLORIDA 33602 AND ANY OTHER APPROPRIATE PERSONS WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF THE ATTACHED PROOF OF SERVICE, PLUS AN ADDITIONAL THREE DAYS IF THIS PAPER WAS SERVED ON ANY PARTY BY U.S. MAIL.**

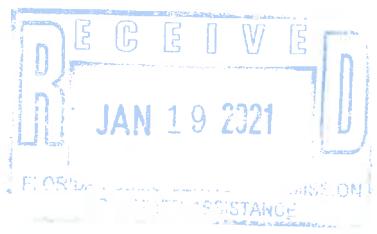
**IF YOU FILE AND SERVE A RESPONSE WITHIN THE TIME PERMITTED, THE COURT WILL EITHER NOTIFY YOU OF A HEARING DATE OR THE COURT WILL CONSIDER THE RESPONSE AND GRANT OR DENY THE RELIEF REQUESTED IN THIS PAPER WITHOUT A HEARING. IF YOU DO NOT FILE A RESPONSE WITHIN THE TIME PERMITTED, THE COURT WILL CONSIDER THAT YOU DO NOT OPPOSE THE RELIEF REQUESTED IN THE PAPER, AND THE COURT MAY GRANT OR DENY THE RELIEF REQUESTED WITHOUT FURTHER NOTICE OR HEARING.**

**YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY IF YOU HAVE ONE. IF THE PAPER IS AN OBJECTION TO YOUR CLAIM IN THIS BANKRUPTCY CASE, YOUR CLAIM MAY BE REDUCED, MODIFIED, OR ELIMINATED IF YOU DO NOT TIMELY FILE AND SERVE A RESPONSE.**

Advanced Telecommunication Network, Inc. ("ATN"), as the reorganized debtor, files this Motion to Approve Compromise of Controversy with Arnstein & Lehr LLP ("Arnstein") and states:

**Background**

- 1. ATN filed a voluntary Chapter 11 petition on January 10, 2003.



2. The Reorganized Debtor filed its Amended Plan of Reorganization Submitted by Advanced Telecommunication Network, Inc., dated March 11, 2004 (Doc. No. 153) (the “Plan”). On June 22, 2004, the Court entered its Order Confirming Amended Plan of Reorganization submitted by Advanced Telecommunication Network, Inc. (Doc. No. 215).

3. Among other things, the Plan contemplated the pursuit by ATN of Causes of Action (as defined in the Plan). The Plan further provides for distribution of recoveries from Causes of Action as “Extraordinary Income” which the Plan defines as “the net funds received from the Causes of Action after payment of: (i) all Administrative fees; (ii) all costs of the litigation, including attorneys’ fees and costs; and (iii) after a distribution to Reorganized Debtor equal to 20% of any recovery for marketing and operations.” Plan, Art 1, Doc. 153, 8-9.

4. In 2011, ATN filed Adversary Case Number 6:11-ap-00007 against Arnstein for liability under Bankruptcy Code Section 550.

5. The adversary case settled at a successful mediation on October 15, 2020. (Adv. Doc. 107, Mediator’s Report.)

6. As occurred in the last compromise approved for this bankruptcy estate, the Debtor will further memorialize the settlement terms in a more formal agreement, which includes non-monetary terms similar to other terms previously approved in this bankruptcy case.

7. The Parties expect to memorialize such a formal agreement within the 30 days.

#### **Settlement Terms**

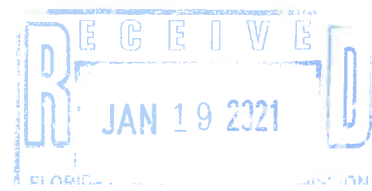
8. By this Motion, and to avoid continued expense of further litigation, ATN and Arnstein have agreed to a compromise whose terms are as follows:

- a. Arnstein shall pay a total of one-hundred ninety-five thousand dollars (\$195,000) to ATN within one week of a final, non-appealable order from the court approving the settlement.
- b. ATN shall provide a general release to Arnstein (and all affiliates, former and current agents, principals, attorneys, employees, and insurers).
- c. This proposed settlement and any acceptance by Defendants are conditioned upon Bankruptcy Court approval of the reimbursement of the legal expenses that ATN incurred to prosecute this case since the Court's approval of the previous compromise with Flaster Greenberg, P.C. et al. (Bankr. Case Doc. 432, Apr. 22, 2019 Order.) (Such reimbursement would be funded from the \$195,000 recovery described above.)
- d. If any person or entity successfully opposes any term or portion of this proposed settlement between the parties, Arnstein and ATN shall promptly withdraw their conditional acceptance of this proposed settlement.
- e. This compromise is conditioned upon the approval of:
  1. ATN's legal expense reimbursement as referenced above; and
  2. The entry of a final decree in this Bankruptcy Case (which now may be concluded) within 30 days of approval of this proposed compromise.

9. To the extent of a conflict between the Motion and the description of the settlement terms and the Settlement Agreement, the Settlement Agreement shall control.

#### Applicable Law

10. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). Pursuant to Federal Rule of Bankruptcy Rule 9019(a), approval of a compromise settlement is within the sound discretion of this Court. *In re Foster Mortg. Corp.*, 68 F.3d 914, 917 (5th Cir. 1995); *In re American Reserve Corp.*, 841 F.2d 159, 162 (7th Cir. 1987); *In re Walsh Construction, Inc.*, 669 F. 2d 1325, 1328 (9th



Cir. 1992). The standard for approval of a compromise settlement is whether the proposed settlement is “fair and equitable” and “in the best interest of the estate.” *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

Thus, when a bankruptcy court decides whether to approve or disapprove a proposed settlement, it must consider:

(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*In re Justice Oaks II, Ltd.*, 898 F. 2d 1544, 1549 (11th Cir. 1990). Moreover, to approve a compromise, the Court need not determine which party would ultimately prevail, but only that the matter was open to reasonable doubt. *Id.*

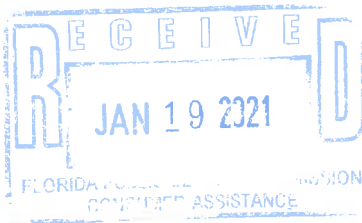
11. Here, the *Justice Oaks* factors weigh in favor of approving the Settlement Terms, and the compromise of disputes pursuant to the terms of the Compromise Motion is in the best interest of the estate.

12. This compromise resolves the lawsuit with Arnstein, without the need for further expense and delay. ATN believes strongly that it has a high probability of success in the litigation. But, the avoidance of additional expense at trial, and especially the benefit of satisfying or reimbursing the Litigation Costs now, with agreed-upon reductions described below as part of the overall Settlement Terms, weighs in favor of approving the compromise and the Settlement Terms. Finally, the terms of the Settlement Agreement favors the paramount interest of the creditors because it resolves long-standing litigation and frees money that will ultimately provide a recovery to creditors under the Plan.

13. As stated above, the costs to date of the bankruptcy litigation resulting in the Settlement Agreement have been significant. Those incurred costs have created the common fund available through the Settlement Agreement, subject to its terms and conditions. Ultimately, the Plan provides for payment of creditors from causes of action recoveries after payment of “(i) all Administrative fees; (ii) all costs of the litigation, including attorneys’ fees and costs; and (iii) after a distribution to Reorganized Debtor equal to 20% of any recovery for marketing and operations.” Plan, 8-9. To reach a settlement, ATN and various holders of the Litigation Costs have previously agreed as part of and contingent upon approval of the overall compromise to reduce and compromise their recovery related to the Litigation Costs to the extent necessary to reach the approximate the monetary recovery agreed upon in the Settlement Agreement.

14. ATN requests that as part of the order granting this motion the Court retain jurisdiction to interpret and enforce the Settlement Agreement.

**WHEREFORE**, ATN requests that this Court enter an order that (i) grants this motion to compromise controversy; and (ii) authorizes and directs the Parties to consummate settlement according to its terms.



/s/ Daniel R. Fogarty  
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Attorneys for Reorganized Debtor

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **MOTION TO APPROVE COMPROMISE WITH ARNSTEIN & LEHR LLP** was forwarded by CM/ECF on January 13, 2021, or U.S. Mail on January 14, 2021 to

All Creditors and Parties Listed on the Court's mailing matrix.

/s/ Daniel R. Fogarty  
Daniel R. Fogarty