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August 15, 2001

**BY HAND**

Clerk's Office  
United States Bankruptcy Court  
Thomas P. O'Neill Federal Building  
10 Causeway Street  
Boston, MA 02222-1074

010000

Re: **Essential.com, Inc.**  
**Chapter 11 Case No. 01-15339-WCH**

Dear Sir or Madam:

Enclosed for filing please find the following documents:

1. Motion by Debtor: (1) To Extend The Deadline Within Which To Assume Or Reject Lease Of Non-Residential Real Property; and (2) To Establish The Terms For Payment Of Post-Petition Rent;
2. Motion, Pursuant To MLBR 6006-1, For Emergency Hearing On Motion by Debtor: (1) To Extend The Deadline Within Which To Assume Or Reject Lease Of Non-Residential Real Property; and (2) To Establish The Terms For Payment Of Post-Petition Rent; and
3. Certificates of Service.

Kindly file these documents and return a time-stamped copy to the awaiting messenger. Thank you in advance for your assistance.

Very truly yours,

C. Nathan Dee

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:	)	
	)	
ESSENTIAL.COM, INC.,	)	Chapter 11
	)	Case No. 01-15339-WCH
Debtor.	)	

**MOTION BY DEBTOR: (1) TO EXTEND THE DEADLINE  
WITHIN WHICH TO ASSUME OR REJECT LEASE OF  
NONRESIDENTIAL REAL PROPERTY; AND (2) TO ESTABLISH  
THE TERMS FOR PAYMENT OF POSTPETITION RENT**

To the Honorable William C. Hillman, Chief United States Bankruptcy Judge:

Pursuant to 11 U.S.C. §§ 105 and 365 and Fed. R. Bankr. P. 6004, Essential.com, Inc., the debtor and debtor-in-possession (the "Debtor"), hereby files this motion (the "Motion") for entry of an Order:

- (i) extending the deadline within which the Debtor may assume or reject its lease of nonresidential real property for the Debtor's corporate headquarters at One Burlington Woods Drive, Burlington, Massachusetts, including but not limited to the Debtor's sub-lease to Nokia Systems Inc. ("Nokia") (the "Burlington Lease") for a period of thirty (30) days; and
- (ii) establishing a procedure for rejection of and terms for payment of postpetition rent, pending the Debtor's assumption or rejection, with respect to the Burlington Lease in order to minimize the Debtor's postpetition administrative costs.

In further support hereof, the Debtor states as follows:

## I. FACTUAL BACKGROUND

1. On June 29, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("Bankruptcy Code") in this Court.

2. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On July 18, 2001, the United States Trustee appointed an official committee of unsecured creditors (the "Committee").

4. The Debtor was in the business of reselling telecommunications services. As of the Petition Date, the Debtor had approximately 70,000 active subscribers in its customer base ("Customer Base") consisting predominately of households and small businesses.

5. On August 9, 2001, the Court approved the private sale ("Private Sale") of all of the Debtor's Customer Base, its trade names and URLs to United Systems Access, Inc. ("USA") for \$1,300,000. The Private Sale closed on August 10, 2001. Pursuant to the Private Sale, the Debtor will receive payments from USA for receivables generated, billed and unbilled, by the Debtor prior to the closing of the Private Sale

6. On August 8, 2001, the Debtor filed a *Debtor's Motion For An Order: (A) Authorizing The Public Auction Sale Of Furniture, Fixtures And Equipment Of The Debtor Free And Clear Of Liens, Claims, Interests And Encumbrances; And (B) Authorizing Solicitation Of Bids For The Debtor's Leasehold Interest In Nonresidential Real Property* ("Auction Motion"). Pursuant to the Auction Motion, the Debtor seeks authority to conduct a public auction of substantially all of its personal property and to solicit bids for the assignment of the Burlington Lease. A hearing on the Auction Motion is scheduled for September 5, 2001. The Auction is scheduled to take place on September 6, 2001 at its Burlington headquarters.

7. Through the Private Sale and the Auction Motion, the Debtor is proceeding with the orderly liquidation of its Estate.

## **II. DESCRIPTION OF BURLINGTON LEASE**

8. On about April 20, 2000, the Debtor entered into the Burlington Lease. The Burlington Lease provides for the Debtor to occupy approximately 58,551 square feet of commercial office space.

9. Pursuant to the Burlington Lease, the Debtor is required to pay base rent to the landlord in the amount of \$129,300.25 per month. The Debtor is also required to pay certain charges related to electricity, real estate taxes and operating expenses.

10. On or about December 28, 2000, the Debtor entered into a sublease with Nokia, Inc. ("Nokia Sublease") to sublet approximately 16,200 square feet through November 30, 2001. Pursuant to the Nokia Sublease, Nokia pays the Debtor \$57,375 per month for rent. The Debtor remits approximately \$21,600 per month of the Nokia monthly rent payment to the landlord.

11. On August 2, 2001, the Court approved a Stipulation between the Debtor and the landlord for the Burlington Lease providing for, among other things, the Debtor to continue to comply with its obligations under the Burlington Lease and the Nokia Sublease.

## **III. RELIEF REQUESTED**

### **A. Extension of Deadline to Assume or Reject Burlington Lease**

12. Section 365(d)(4) of the Bankruptcy Code requires a debtor to assume or reject its interest in an unexpired lease of nonresidential real property within sixty (60) days of the petition date, unless such deadline is extended by order of the Court. The deadline in this case would otherwise expire on August 28, 2001.

13. In light of the Auction Motion and solicitation of bids for the Burlington Lease, the Debtor requests that this Court extend the deadline for the Debtor to assume or reject its interest in the Burlington Lease for thirty (30) days, through September 27, 2001.

14. As proposed herein, the Debtor shall continue to pay all postpetition obligations pursuant to the Burlington Lease pending assumption or rejection.

**B. Mechanism for Rejection of Burlington Lease**

15. As a result of the Auction Motion and solicitation of bids for the Burlington Lease, a mechanism should be created to ensure that the Burlington Lease can be rejected, and the property surrendered, in a timely manner in order to minimize any potential administrative costs against the estate.

16. Accordingly, pursuant to this Motion, in the event that the Debtor determines not to seek to assume and assign the Burlington Lease to a third party, the Debtor also requests that the Court enter an order facilitating the rejection of the Burlington Lease, including the following provisions:

- (i) the Debtor shall deliver a Notice of Surrender of Leased Premises ("Notice") to the landlord of the Burlington Lease by telecopier or Federal Express with a copy of the Notice delivered to counsel to the Committee. A copy of this Notice is attached as Exhibit A;
- (ii) the Debtor's obligations under the Burlington Lease shall terminate effective on the date ("Rejection Date") set forth in the Notice which date shall be not less than three (3) days after the date of delivery, inclusive of the date of delivery. The Debtor shall contemporaneously file a copy of the Notice with the Bankruptcy Court;
- (iii) until the Rejection Date, the Debtor shall continue to pay on a *per diem* basis to the landlord all sums due and accruing postpetition under the Burlington Lease;
- (iv) on the Rejection Date, any personal property remaining on the premises shall be considered abandoned by the Debtor; and

- (v) on the Rejection Date, the Debtor shall be deemed to have surrendered possession of the premises and the landlord shall be free to retake possession and relet the premises.

17. The terms set forth herein will preserve the reasonable expectations of the landlord for the Burlington Lease while minimizing the administrative expenses to the estate.

#### IV. NOTICE

11. Copies of this Motion have been served upon the United States Trustee, the secured creditors of the Debtor, counsel to the Creditors Committee, counsel to the landlord for the Burlington Lease, Nokia and all parties having filing notice of appearance in this case. The Debtor requests that such notice be deemed sufficient and appropriate notice.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order:

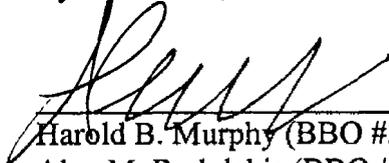
- (i) Extending the deadline for the Debtor to assume or reject leases of nonresidential real property for the Burlington Lease be extended until September 27, 2001;
- (ii) Approving the mechanism and procedures for the notice and surrender of the Burlington Lease as set forth herein;
- (iii) Authorizing the Debtor until the Rejection Date to continue to pay on a *per diem* basis to the landlord all sums due and accruing postpetition under the Burlington Lease;
- (iv) Authorizing the Debtor to abandon any personal property remaining on the premises on the Rejection Date; and

(v) Granting it such other relief as is just.

Respectfully submitted,

ESSENTIAL.COM, INC.,

By its counsel,



Harold B. Murphy (BBO #362610)

Alex M. Rodolakis (BBO #567781)

C. Nathan Dee (BBO #646621)

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Dated: August 15, 2001

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:	)	
	)	
ESSENTIAL.COM, INC.,	)	Chapter 11
	)	Case No. 01-15339-WCH
Debtor.	)	

**MOTION, PURSUANT TO MLBR 6006-1, FOR EMERGENCY HEARING ON  
MOTION BY DEBTOR: (1) TO EXTEND THE DEADLINE WITHIN WHICH TO  
ASSUME OR REJECT LEASE OF NONRESIDENTIAL REAL PROPERTY; AND  
(2) TO ESTABLISH THE TERMS FOR PAYMENT OF POSTPETITION RENT**

To the Honorable William C. Hillman, Chief United States Bankruptcy Judge:

Pursuant to MLBR 6006-1, Essential.com, Inc., the debtor and debtor-in-possession (the "Debtor"), hereby moves this Court to schedule an emergency hearing on the *Motion By Debtor: (1) To Extend The Deadline Within Which To Assume Or Reject Lease Of Nonresidential Real Property; And (2) To Establish The Terms For Payment Of Postpetition Rent* ("Motion to Extend") on or before August 28, 2001 or, in the alternative, to extend the deadline for the Debtor to assume or reject the its leases of non-residential real property until such date as the Court can schedule a hearing on the Motion to Extend.:

In further support hereof, the Debtor states as follows:

**I. FACTUAL BACKGROUND**

1. On June 29, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("Bankruptcy Code") in this Court.
2. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On July 18, 2001, the United States Trustee appointed an official committee of unsecured creditors (the "Committee").

## II. RELIEF REQUESTED

4. Pursuant to MLBR 6006-1, a movant is required to file a motion for an emergency hearing in the event that an extension is requested within fifteen (15) days of the expiration of the applicable period to assume or reject.

5. Pursuant to the Motion to Extend, the Debtor seeks an extension of the current deadline within which to assume or reject its unexpired leases of nonresidential real property. Absent the requested extension, the deadline for assumption or rejection would expire on August 28, 2001.

6. By this Motion, the Debtor requests that the Court (i) schedule an emergency hearing on the Motion to Extend on or before August 28, 2001; or, in the alternative, (ii) extend the deadline for the Debtor to assume or reject its unexpired lease of nonresidential real property until the Court (a) can schedule a hearing on the Motion to Extend or (b) has otherwise acted on the Motion to Extend.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order:

(i) Scheduling an emergency hearing on the Motion to Extend on or before August 28, 2001; or, in the alternative,

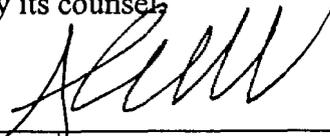
(ii) Pursuant to MLBR 6006-1, extending the deadline for the Debtor to assume or reject its unexpired lease of nonresidential real property until the Court (i) can schedule a hearing on the Motion to Extend or (ii) has otherwise acted on the Motion to Extend; and

(iii) Granting it such other relief as is just and proper.

Respectfully submitted,

ESSENTIAL.COM, INC.,

By its counsel,



Harold B. Murphy (BBO #362610)

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Dated: August 15, 2001

::ODMA\PCDOCS\DOCS\311667\1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:	)	
	)	
ESSENTIAL.COM, INC.	)	Chapter 11
	)	Case No. 01-15339-WCH
Debtor.	)	
	)	
	)	
	)	

**CERTIFICATE OF SERVICE**

I, C. Nathan Dee, hereby certify that on August 15, 2001, I caused to be served a copy of the *Motion by Debtor: (1) To Extend The Deadline Within Which To Assume Or Reject Lease Of Non-Residential Real Property; and (2) To Establish The Terms For Payment Of Post-Petition Rent and Motion, Pursuant To MLBR 6006-1, For Emergency Hearing On Motion by Debtor: (1) To Extend The Deadline Within Which To Assume Or Reject Lease Of Non-Residential Real Property; and (2) To Establish The Terms For Payment Of Post-Petition Rent* by first class mail, postage prepaid mail, unless otherwise indicated, to the parties listed on the attached list.



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Dated: August 15, 2001  
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