

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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: Chapter 11  
*In re* :  
: Case No. 09-10138 (KG)  
Nortel Networks Inc., *et al.*,<sup>1</sup> :  
: (Jointly Administered)  
Debtors. :  
: **Hearing date: To be determined**  
: **Objections due: To be determined**  
: :  
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**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT  
TO 11 U.S.C. § 105, 363 AND 1108 AUTHORIZING THE DEBTORS  
TO TERMINATE THE DEBTORS' LONG-TERM DISABILITY PLANS  
AND THE EMPLOYMENT OF THE LTD EMPLOYEES**

PLEASE TAKE NOTICE that the debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned cases, have today filed the attached **Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 363 and 1108 Authorizing the Debtors to Terminate the Debtors' Long-Term Disability Plans and the Employment of the LTD Employees** (the "Motion").

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order approving the Motion must file a response or objection ("Objection") if any, to the Motion with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **A Date To Be Determined** (the "Objection Deadline").

At the same time, you must serve such Objection on counsel for the Debtors so as to be received by the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **A DATE TO BE DETERMINED** BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT

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<sup>1</sup> In addition to Nortel Networks Inc. ("NNI"), the Debtors in the Chapter 11 cases are: Nortel Networks Capital Corporation, Nortel Altsystems Inc., Nortel Altsystems International Inc., Xros, Inc., Sonoma Systems, Qtera Corporation, CoreTek, Inc., Nortel Networks Applications Management Solutions Inc., Nortel Networks Optical Components Inc., Nortel Networks HPOCS Inc., Architel Systems (U.S.) Corporation, Nortel Networks International Inc., Northern Telecom International Inc., Nortel Networks Cable Solutions Inc., and Nortel Networks (CALA) Inc. ("NN CALA"). Additional information regarding the Debtors can be found in their respective Chapter 11 petitions, which are available at <http://dm.epiq11.com/nortel>.



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*In re* : Chapter 11  
Nortel Networks Inc., *et al.*,<sup>1</sup> : Case No. 09-10138 (KG)  
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER  
PURSUANT TO 11 U.S.C. §§ 105, 363 AND 1108 AUTHORIZING THE  
DEBTORS TO TERMINATE THE DEBTORS’ LONG-TERM  
DISABILITY PLANS AND THE EMPLOYMENT OF THE LTD EMPLOYEES**

Nortel Networks Inc. (“NNI”) and certain of its affiliates, as debtors and debtors in possession, (collectively, the “Debtors”), hereby move this Court (the “Motion”), for the entry of an order substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a), 363(b) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), (i) authorizing the Debtors to terminate the LTD Plans (as defined herein) effective as of December 31, 2012 so as to cease providing employer-paid benefits, including for long-term disability income continuation benefits, to current and future participants as of that date, (ii) terminating the employment of the LTD Employees (as defined herein), and (iii) granting them such other and further relief as the Court deems just and proper. In support of this Motion, the Debtors rely

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286), Nortel Networks Cable Solutions Inc. (0567) and Nortel Networks (CALA) Inc. (4226). Addresses for the Debtors can be found in the Debtors’ petitions, which are available at <http://dm.epiq11.com/nortel>.

upon the declaration of John Ray, dated July 30, 2012, attached hereto as Exhibit B (the “Ray Declaration”), and respectfully represent as follows:

### **Preliminary Statement**

1. Since filing for chapter 11 protection over three and a half years ago, the Debtors have worked diligently to liquidate their assets, wind down operations and complete the transition services necessary to support the transfer of their business lines. Now that the Debtors’ operations have been reduced to only those most basic functions essential to the completion of the bankruptcy process, the Debtors have determined in an abundance of caution to move for relief under sections 105(a), 363(b) and 1108 of the Bankruptcy Code to terminate the employment of the LTD Employees and the LTD Plans before the end of the plan year on December 31, 2012. Recognizing the importance of the benefits provided to their LTD Employees under the LTD Plans (as defined below), the Debtors have worked tirelessly since the appointment of the LTD Committee almost one year ago to reach a consensual agreement regarding the plan termination process. To that end, the Debtors have provided significant information to the advisors to the LTD Committee, have exchanged multiple proposals and, in coordination with the Bondholder Group and UCC (each, defined below), have negotiated with the LTD Committee in good faith. When it became clear those negotiations were not progressing, the Debtors sought the appointment of a neutral third-party Mediator (as defined below) by this Court in April. Since that time, with the mediator’s assistance, the Debtors have continued to engage in negotiations with the LTD Committee in an effort to push toward a mutually agreeable solution. Indeed, despite the filing of this Motion, the Debtors remain open to reaching a settlement with the LTD Committee on reasonable terms. However, at this advanced stage in their restructuring process, where the Debtors have been unable to reach agreement with the LTD Committee after a year and the end of a plan year is quickly

approaching, the Debtors simply cannot allow time to continue to slip by hoping for a settlement, all the while continuing to expend substantial amounts of money providing Benefits (as defined below) to the LTD Employees (as defined below).

2. The Debtors therefore bring this Motion in an abundance of caution seeking Court approval to terminate the LTD Plans and the employment of the LTD Employees. The Debtors have the clear right to terminate the Benefits under both the law and the terms of the LTD Plan documents themselves. In addition, the LTD Employees are “at will” employees of the Debtors and may generally be terminated at any time without cause. Accordingly, the Debtors submit this Motion for authorization to terminate the LTD Plans and the employment of the LTD Employees effective as of December 31, 2012.

### **Jurisdiction**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b) and 1108 of the Bankruptcy Code.

### **Background**

5. On January 14, 2009 (the “Petition Date”), the Debtors, other than Nortel Networks (CALA) Inc.,<sup>2</sup> filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code, which cases are consolidated for procedural purposes only. The Debtors continue to operate as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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<sup>2</sup> Nortel Networks (CALA) Inc. filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 14, 2009, which was consolidated and is being jointly administered with the other Debtors’ chapter 11 cases for procedural purposes [D.I. 1098].

6. The Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) has appointed an Official Committee of Unsecured Creditors (the “UCC”) in respect of the Debtors [D.I.s 141, 142], and an ad hoc group of bondholders has been organized (the “Bondholder Group”).

7. On the Petition Date, the Debtors’ ultimate corporate parent Nortel Networks Corporation (“NNC”), NNI’s direct corporate parent Nortel Networks Limited (“NNL,” and together with NNC and their affiliates, including the Debtors, “Nortel”), and certain of their Canadian affiliates (collectively, the “Canadian Debtors”)<sup>3</sup> commenced a proceeding with the Ontario Superior Court of Justice (the “Canadian Court”) under the Companies’ Creditors Arrangement Act (Canada) (the “CCAA”), seeking relief from their creditors (collectively, the “Canadian Proceedings”) and a Monitor, Ernst & Young Inc. (the “Monitor”), was appointed by the Canadian Court. Also on the Petition Date, the High Court of England and Wales placed nineteen of Nortel’s European affiliates (collectively, the “EMEA Debtors”)<sup>4</sup> into administration (the “English Proceedings”) under the control of individuals from Ernst & Young LLP (collectively, the “Joint Administrators”). Other Nortel affiliates have commenced and in the future may commence additional creditor protection, insolvency and dissolution proceedings around the world.

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<sup>3</sup> The Canadian Debtors include the following entities: NNC, NNL, Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation.

<sup>4</sup> The EMEA Debtors include the following entities: Nortel Networks UK Limited, Nortel Networks S.A., Nortel Networks (Ireland) Limited, Nortel GmbH, Nortel Networks France S.A.S., Nortel Networks Oy, Nortel Networks Romania SRL, Nortel Networks AB, Nortel Networks N.V., Nortel Networks S.p.A., Nortel Networks B.V., Nortel Networks Polska Sp. z.o.o., Nortel Networks Hispania, S.A., Nortel Networks (Austria) GmbH, Nortel Networks, s.r.o., Nortel Networks Engineering Service Kft, Nortel Networks Portugal S.A., Nortel Networks Slovensko, s.r.o. and Nortel Networks International Finance & Holding B.V.

8. Since the Petition Date, Nortel has sold its business units and other assets to various purchasers. For further information regarding these chapter 11 cases, reference may be made to the Monthly Operating Reports filed by the Debtors and <http://dm.epiq11.com/nortel>.

### **Relief Requested**

9. By this Motion, the Debtors seek an order, pursuant to sections 105(a), 363(b) and 1108 of the Bankruptcy Code, (i) authorizing the Debtors to terminate the LTD Plans effective as of December 31, 2012 so as to cease providing employer-paid benefits, including for long-term disability income continuation benefits, for current and future participants as of that date, (ii) terminating the employment of the LTD Employees, and (iii) granting them such other and further relief as the Court deems just and proper. Although the terms of the LTD Plans authorize the Debtors to take such actions, the Debtors seek relief from this Court in an abundance of caution.

### **Facts Relevant to this Motion**

#### **A. THE LTD PLANS**

10. The Debtors historically have provided a number of benefits to their long-term disabled employees (the "LTD Employees") through benefit plans and other programs, including (as amended or modified from time to time) the Nortel Networks Inc. Long-Term Disability Plan, the Nortel Networks Inc. Medical Plan, the Nortel Networks Inc. Dental, Vision, and Hearing Care Plan, the Nortel Networks Inc. Life Insurance Plan, the Nortel Networks Inc. AD&D Insurance Plan, the Nortel Networks Inc. Health Care Reimbursement Account Plan, the Nortel Networks Inc. Dependent Day Care Reimbursement Account Plan, the Nortel Networks Inc. Long-Term Investment Plan,<sup>5</sup> predecessor plans and other formal or informal benefit plans,

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<sup>5</sup> The Nortel Networks Inc. Long-Term Investment Plan was terminated effective as of June 30, 2012, for all of the Debtors' employees. The Nortel Networks Inc. Health Care Reimbursement Account Plan and the Nortel

agreements, arrangements or programs (including plans, agreements, arrangements or programs that are funded through the purchase of insurance) or arrangements for disabled employees, their surviving spouses and eligible dependents, including for medical, surgical, or hospital care benefits, income continuation benefits or any other benefits in the event of sickness, accident, disability, or death (collectively, and in each case as such plans have been amended or modified from time to time, the “LTD Plans”).<sup>6</sup> These plans are offered to current employees of the Debtors, and the LTD Employees are treated as current employees as a condition to their continued eligibility to receive benefits under the LTD Plans. During the course of these chapter 11 cases, the Debtors have continued to provide certain benefits under the LTD Plans (the “Benefits”), including as authorized by this Court’s January 15, 2009 *Order Authorizing, But Not Directing, Debtors to Pay Certain Prepetition (I) Wages, Salaries and Other Compensation, (II) Reimbursable Expenses, and (III) Medical, Retirement and Similar Benefits* [D.I. 59]. While the Debtors rely on third party vendors to administer the LTD Plans, the plans are generally self-funded by the Debtors, such that the Debtors bear the economic risk of claims filed by the LTD Employees.

11. There are currently 215 LTD Employees receiving Benefits under the LTD Plans. As an administrative matter, and consistent with the terms of the LTD Plans, the Debtors list employees on long-term disability under the LTD Plan as “current” employees even though the

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Networks Inc. Dependent Day Care Reimbursement Account Plan were previously terminated for all of the Debtors’ employees, effective as of December 31, 2010.

<sup>6</sup> For retired employees of the Debtors (the “Retirees”), the Debtors maintain various benefit plans and other programs including (as amended or modified from time to time) the Nortel Networks Inc. Retiree Medical Plan, the Nortel Networks Inc. Retiree Life Insurance and Long-Term Care Plan, predecessor plans and other formal or informal benefit plans, agreements, arrangements or programs (including plans, agreements, arrangements or programs that are funded through the purchase of insurance) or arrangements for current or future retired employees, their surviving spouses and eligible dependents, including plans, arrangements, agreements or programs for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death (collectively and in each case as amended or modified from time to time, the “Retiree Welfare Plans”).

employees are not presently actively working full-time or part-time at the Debtors. Although there are currently 142 LTD Employees who are eligible to elect to retire and thus receive benefits under the Retiree Plans, those employees have not yet made such an election, which would entitle them to benefits under the Retiree Welfare Plans but cause them to lose their Benefits.

12. The Benefits currently enjoyed by the LTD Employees, such as income continuation, as well as the specific medical benefits provided under the LTD Plans, are not available to Retirees. In order for an individual to have been eligible to receive short-term and long-term disability benefits (and thus be eligible to receive Benefits under the LTD Plans), he or she would have to have been a “regular Employee working 20 or more hours per week” at the time of the disability. See, e.g., 2006 Nortel Networks Inc. Short-Term Disability and Long-Term Disability Plan Summary Plan Description, at 8, attached to the Ray Declaration as Exhibit 1. The LTD Plans further provide that the Benefits end when a person’s employment is terminated or the part of the plan providing the coverage ends. See, e.g., 2010 Nortel Networks Inc. Long-Term Disability Plan Summary Plan Description, at 12, attached to the Ray Declaration as Exhibit 2. Therefore, given the LTD Employees’ status generally as “at will” employees, the Debtors could terminate the employment of the LTD Employees at any time and such termination would result in the termination of the LTD Employees’ Benefits provided under the LTD Plans. However, upon termination of such employment, those LTD Employees eligible to receive Retiree benefits could elect to become “Retirees” for purposes of the Retiree Welfare Plans, to the extent those Retiree Welfare Plans have not been previously terminated.<sup>7</sup>

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<sup>7</sup> Contemporaneous with the filing of this Motion the Debtors have filed the *Debtors’ Motion for Entry of an Order Terminating Retiree Benefits and Approving a Settlement Proposal Pursuant to 11 U.S.C. § 1114*, to approve a settlement proposal (the “Proposal”) with the Retirees and to seek the termination of the Retiree Welfare Plans. Under the terms of the Proposal the Debtors propose, among other things, to give LTD Employees who are eligible

13. The Debtors previously sought to terminate the Retiree Welfare Plans and LTD Plans by a motion filed in June 2010 (the “Plan Termination Motion”).<sup>8</sup> In connection with that proposed termination of the Retiree Welfare Plans and the LTD Plans, the Debtors had negotiated with a health insurance provider to provide the Retirees and LTD Employees with replacement medical coverage options not readily available on the open market. Shortly thereafter, the Nortel US Retirement Protection Committee, an ad hoc steering committee of retired executives of the Debtors (the “Ad Hoc Retiree Committee”), filed a motion seeking authorization to form a voluntary employee benefit association as an alternative option for providing health insurance (the “VEBA Motion”).<sup>9</sup> Based on discussions with counsel to the Ad Hoc Retiree Committee, their rejection of the alternative insurance and the Third Circuit’s ruling in IUE-CWA v. Visteon Corp. (In re Visteon Corp.), 612 F.3d 210 (3d. Cir. 2010), the Debtors ultimately withdrew the Plan Termination Motion without prejudice in July 2010 [D.I. 3651]. Thereafter, in October 2010, the Nortel US Retirement Protection Committee withdrew the VEBA Motion without prejudice [D.I. 4104].

14. While the Debtors historically have provided various welfare benefits to their LTD Employees, they have not committed themselves under the LTD Plans to provide such benefits indefinitely. On the contrary, the governing LTD Plans specifically reserve the Debtors’ right to amend or terminate the LTD Plans, including in circumstances such as the Debtors now face. For example, the 1989 Nortel Networks Inc. Group Benefits Plan provides:

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to receive Retiree benefits the opportunity to make an election to participate in the Retiree Welfare Plans for which they are eligible, and thus the Proposal, within thirty (30) days after the date on which an order approving the Proposal becomes final and non-appealable (the “Effective Date”). Any such election made from the Effective Date through December 31, 2012, shall be effective as of December 31, 2012.

<sup>8</sup> See Debtors’ Motion for Entry of an Order Authorizing Debtors to Terminate Certain Retiree and Long-Term Disability Plans, dated June 21, 2010 [D.I. 3204].

<sup>9</sup> See Motion for an Order Authorizing Formation of a Voluntary Employee Benefit Association to Provide Tax Credit-Eligible Retiree Benefits, dated July 16, 2010 [D.I. 3671].

While the employer intends to maintain this group benefits plan indefinitely, the employer has no obligation whatsoever to maintain the plan or to provide any benefits pursuant to the plan (including, but not limited to, medical expense benefits for retired employees) for any given length of time, and *reserves the right to amend the plan at any time or from time to time or to terminate the plan*. 1989 Nortel Networks Inc. Group Benefits Plan at 67 (emphasis added), attached to the Ray Declaration as Exhibit 3.

By further example, the 2004 Nortel Networks Inc. Medical Plan provides:

Although the benefits currently available (in the 2004 Plan Year) are described in this summary for the Company's Medical Plan, *the Company reserves the right to change or end the plan described in this summary at any time*. Any plan changes will result from actions taken and approved by the Company. *The Company may adopt such changes or terminate the plan at any time and for any reason*. The Company's practices, policies, and benefits are outlined here for your information as required by law. However, this does not constitute an implied or expressed contract or guarantee of employment. 2004 Nortel Networks Inc. Medical Plan Summary Plan Description at 92 (emphasis added), attached to the Ray Declaration as Exhibit 4.

While the precise language contained in the LTD Plan documents varies slightly across the years, the right to amend or terminate always existed.

**B. THE WIND DOWN OF THE DEBTORS' ESTATES**

15. In the several months following the Debtors' decision to postpone seeking termination of their LTD Plans, the Debtors worked diligently to wind down their remaining operations, including completion of the transition services provided to the buyers of the various businesses. The Debtors also undertook the sale of their patent portfolio which closed in July 2011, and have sought to advance the resolution of the other remaining material claims in their cases through the filing of various motions. During this time, the Debtors also sought to identify other possible alternative insurance arrangements for the LTD Employees.

16. The Debtors currently employ only eighteen active employees, other than the LTD Employees, and that number is expected to drop to approximately five employees by year-

end. As a result of the divestitures and wind down, it has become increasingly difficult to maintain and administer the LTD Plans and, once the Debtors dissolve as corporations, there will be no company even in name to continue the Benefits. Moreover, while the LTD Plans are administered by third-party vendors, the Debtors maintain the plans as self-insured plans and, as such, the Debtors bear the economic risk of the plans and the claims filed thereunder.

17. Over the last two years since July 2010, when the prior Plan Termination Motion was withdrawn, the Debtors have continued to provide benefits under the LTD Plans, at an approximate cost of \$21.1 million to their estates. The current cost to the Debtors of providing the Benefits under the LTD Plans is approximately \$800,000 to \$1,000,000 per month, although the costs could go up as the current population ages, if premiums were increased, if health care costs rise and/or if a greater number of claims were filed.

18. The Debtors also seek to terminate their LTD Plans at this time in order to be able to plan for the administrative process involved in winding down the LTD Plans. The Debtors will need to allow for time to notify the LTD Employees of the discontinuation of the LTD Plans, to work with the various vendors to terminate the LTD Plans and resolve any remaining liabilities thereunder, and to process and pay for the remaining claims submitted under the LTD Plans that were incurred but not reported prior to the termination of the LTD Plans. Moreover, it is important to the Debtors to be able to terminate the LTD Plans by year end to avoid the additional costs and risks associated with renewal of the LTD Plans for an additional year.

**C. NEGOTIATIONS WITH THE LTD COMMITTEE**

19. On June 3, 2011, several LTD Employees filed the *Motion for Entry of an Order Pursuant to Section 1102(a)(2) of the Bankruptcy Code Appointing an Official Committee of Long-Term Disability Plan Participants* [D.I. 5595] (the "LTD Committee Motion"). Although the Debtors believed then, as they do now, that the LTD Plans were terminable at will and that,

as current employees, the LTD Employees are not conferred with the protections afforded to retired employees under Bankruptcy Code section 1114, the Debtors did not oppose the LTD Committee Motion other than to seek to clarify the scope of the LTD Committee's appointment so that the Debtors could engage in discussions with the LTD Employees in the hope of reaching a consensual agreement regarding the modification or termination of their Benefits.

20. Thereafter, the Court issued an order directing the U.S. Trustee to appoint a committee of long-term disability participants for the sole purpose of serving as the authorized representative of the LTD Employees in connection with negotiations regarding the modification or termination of the LTD Plans, and for no other purpose (the "LTD Committee") [D.I. 5790]. On August 2, 2011, the U.S. Trustee appointed the members of the LTD Committee [D.I. 6073], as amended on August 4, 2011 [D.I. 6080].

21. Since the appointment of the LTD Committee last year, the Debtors have devoted significant resources and attention to negotiating in good faith with the LTD Committee to seek the termination of the LTD Plans and a settlement that would provide a fair and equitable resolution of any potential claims or rights held by the LTD Employees.

22. The Debtors also have acted diligently to provide the LTD Committee with all of the information necessary to evaluate the Debtors' settlement proposals. On September 12, 2011, the LTD Committee sent the Debtors initial broad requests for documents and information (the "Requests").<sup>10</sup> The Debtors began providing the requested documents and information to the LTD Committee on September 16, 2011. The Debtors regularly have sent additional documents and information to the LTD Committee over the last year. To date, the Debtors have provided the LTD Committee with various LTD Plan documents and other information regarding

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<sup>10</sup> Since receiving the Requests, the Debtors have received numerous additional requests from the LTD Committee, including requests received on November 9, 2011 and December 7, 2011.

the Debtors' employees and their estates, assets and claims, including by compiling various benefit-related information in response to the Requests. In addition, the Debtors' professionals and the LTD Committees' advisors have spent numerous hours on conference calls since the appointment of the LTD Committee discussing and clarifying the data that the Debtors have produced to the LTD Committee.<sup>11</sup>

23. Although the purpose for the formation of the LTD Committee was to facilitate the negotiation of settlements with the Debtors regarding the modification or termination of the LTD Plans, for the first six months after the appointment of the LTD Committee, only two substantive meetings took place between the Debtors and the LTD Committee, on October 6, 2011 and February 27, 2012. Both meetings were at the request and insistence of the Debtors.

24. At the October 6, 2011 meeting, the Debtors provided the LTD Committee with substantial financial information regarding the LTD Plans. Representatives of a potential alternative insurer also attended the meeting and were prepared to make a presentation on the insurance program they could offer, but the LTD Committee declined to meet with the insurer despite being informed that further delays would increase the cost of the replacement insurance because the insurance company would be unable to honor rates indefinitely.

25. On January 19, 2012, the Debtors provided a term sheet containing a settlement proposal to the LTD Committee and shortly thereafter sought to meet with the LTD Committee on January 31, 2012 regarding the Debtors' proposal. The meeting with the LTD Committee, attended by members of the LTD Committee and the Retiree Committee, their legal and financial advisors, the Debtors' professionals and advisors of the UCC and Bondholder Group, ultimately occurred on February 27, 2012. At the February 27, 2012 meeting, counsel to the LTD

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<sup>11</sup> Calls between the Debtors' professionals and the LTD Committee's professionals occurred on November 15, 2011, December 12, 2011, January 19, 2012, and March 12, 2012.

Committee stated that they were still unprepared to engage in substantive negotiations regarding the Debtors' proposals.

26. Frustrated by the slow progress of the negotiations and concerned that alternative benefit options could become more costly or unavailable over time, on March 28, 2012, the Debtors filed a motion (the "Mediation Motion"), seeking to have a mediator appointed to facilitate settlement discussions between the Debtors and the LTD Committee.<sup>12</sup> On April 18, 2012, the Court entered an order granting the Mediation Motion and appointed Richard Levin, Esq., of Cravath, Swaine & Moore LLP, as mediator (the "Mediator").<sup>13</sup> In connection with the appointment of the Mediator, the Debtors agreed to a further 60-day standstill during which they would not take any action to modify or terminate the Retiree Welfare Plans. That standstill expired on June 18, 2012.

27. Despite the best efforts of the Mediator, the Debtors and the LTD Committee still have been unable to reach an agreement on a consensual termination of the LTD Plans. The Debtors received the first written response to the Debtors' January 19, 2012 settlement proposal on May 9, 2012. Later, on June 4, 2012, the Debtors made a further settlement proposal in an attempt to continue to move the negotiations forward. The LTD Committee did not attend a mediation session scheduled for June 14, 2012 that went forward with the Retiree Committee, but the Debtors ultimately met with the LTD Committee on June 27, 2012 regarding the Debtors' June 4th proposal. Despite engaging in rigorous discussions with the Mediator and the LTD Committee at that meeting, the parties still were unable to reach a consensus. A further

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<sup>12</sup> See Motion for Entry of an Order (I) Appointing a Neutral Mediator Concerning the Modification or Termination of the Nortel Retiree Welfare Plans and the Nortel Long-Term Disability Plans; (II) Authorizing the Debtors to Pay the Costs of Engagement; and (III) Granting Related Relief [D.I. 7463].

<sup>13</sup> See Order (I) Appointing a Neutral Mediator Concerning the Modification or Termination of the Nortel Retiree Welfare Plans and the Nortel Long-Term Disability Plans; (II) Authorizing the Debtors to Pay the Costs of Engagement; and (III) Granting Related Relief [D.I. 7560].

negotiation was scheduled for July 19, 2012, as a final effort to reach settlement and with the intention that the parties actively engage in discussions before that date. Again, no agreement could be reached at that meeting.

28. At this time, almost a year to the day from the formation of the LTD Committee, over 100 days after the appointment of the Mediator and after several attempts, in conjunction with the Bondholder Group and the UCC, to negotiate a consensual settlement with the LTD Committee, the Debtors have concluded that it is necessary to seek formal termination of the LTD Plans, in order to ensure the plans will be terminated by December 31, 2012. While the Debtors would remain open to a settlement on reasonable terms, the Debtors have been unable to reach such an agreement despite devoting substantial time and resources in an effort to do so, and the Debtors now need certainty as to the future of the LTD Plans.

#### **Basis for Relief**

29. While the Debtors recognize the importance of the Benefits provided under the LTD Plans to their LTD Employees, the Debtors have determined that it is necessary to terminate the LTD Plans at this stage in the restructuring. Given that the LTD Employees are current employees of the Debtors, the Debtors also seek to terminate their employment in connection with the termination of the LTD Plans as of December 31, 2012.

#### **A. THE LTD PLANS ARE TERMINABLE AT WILL**

30. The LTD Plans are terminable at will by the Debtors because the Benefits are not vested benefits. The law is clear that benefits provided under welfare benefit plans (including all the Benefits at issue) do not vest pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. (“ERISA”), except as expressly provided under the terms of the LTD Plans. Here, the Debtors have provided the Benefits to the LTD Employees subject to the Debtors’ *express right to unilaterally amend or terminate* the various LTD Plans. As described

above, the Debtors specifically reserve in the various LTD Plan Documents the Debtors' unilateral right to amend or terminate the various LTD Plans at any time and for any reason. Because the Benefits have not vested pursuant to ERISA, the LTD Committee has the burden of proving by a preponderance of the evidence that the terms of the LTD Plans provide the Beneficiaries with vested benefits. They cannot do so.

(i) *WELFARE BENEFITS DO NOT VEST AS A MATTER OF LAW UNDER ERISA*

31. The Benefits have not vested pursuant to ERISA because the LTD Plans are “welfare benefit plans,” and such plans, unlike pension plans, are not subject to the vesting provisions of ERISA.

32. The Supreme Court has made clear that an employer is not required under ERISA to provide employee welfare benefits at all. See, e.g., Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 78 (1995) (“[W]e are mindful that ERISA does not create any substantive entitlement to employer-provided health benefits or any other kind of welfare benefits.”). Accordingly, when a company does choose to provide welfare benefits to its employees, the law does not create a vested entitlement to the continuation of such benefits. The Third Circuit has specifically addressed this issue and is clear on this point. For example, in In re Lucent Death Benefits ERISA Litig., 541 F.3d 250, 253 (3d Cir. 2008), plaintiffs, who were former employees of the defendants, argued that the defendants could not terminate a pensioner death benefit that had been provided to the plaintiffs. The Third Circuit held that because the death benefit was a welfare benefit and not a pension benefit, the benefit had not vested pursuant to ERISA, explaining that:

ERISA provides elaborate requirements for the vesting of pension benefits, but it does not provide automatic vesting of welfare benefits. An accrued pension benefit is protected by ERISA’s anti-cutback provision without any showing that it has vested. In contrast, a welfare benefit is protected from elimination only if the

plaintiff proves by a *preponderance of the evidence* that the plan provider had intended the welfare benefit to have vested (despite not being obligated to do so by ERISA). *Id.* at 253-54 (emphasis added) (citations omitted).

33. Because benefits provided under welfare benefit plans do not vest under ERISA, they are terminable at will unless the plans specifically provide otherwise. As the Third Circuit explained, “an employer’s commitment to vest such benefits is not to be inferred lightly and must be stated in clear and express language. . . [in the documents that provide] the employee welfare benefits.” Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Skinner Engine Co., 188 F.3d 130, 139 (3d Cir. 1999)(internal citations omitted). See also, DiFelice v. Aetna U.S. Healthcare, 346 F.3d 422, 455 (3d Cir. 2003) (Becker, A., concurring) (noting that welfare benefit plans are “exempt from the substantive vesting and funding requirements” of ERISA and that “[i]ndeed, courts have held that the absence of a vesting provision allows employers to amend their plans virtually at will, even in discriminatory fashion”); Skinner, 188 F.3d at 138 (employers are “generally free . . . for any reason at any time, to adopt, modify or terminate welfare plans’ . . . [unless they agree] to relinquish their right to unilaterally terminate those benefits and provide for lifetime vesting” (quoting Curtiss-Wright, 514 U.S. at 78); In re Unisys Corp. Retiree Med. Benefit “ERISA” Litig., 58 F.3d 896, 901 (3d Cir. 1995) (“In rejecting the automatic vesting of welfare plans, Congress evidenced its recognition of the need for flexibility with regard to an employer’s right to change medical plans”).

34. It is uncontroverted that the LTD Plans are welfare benefit plans and not pension plans, and therefore, the Benefits did not vest as a matter of law. Thus, in order for the LTD Committee to prevail on their argument that the Benefits have vested, the LTD Committee must

meet their burden of proving by a preponderance of the evidence that the Debtors intended the Benefits to have vested. As explained below, the LTD Committee cannot meet this burden.

(ii) *THE LTD PLANS PERMIT THE LTD PLANS TO BE TERMINATED*

35. The Benefits have not vested pursuant to the terms of the LTD Plans because the LTD Plan documents do not contain any provisions stating, or even suggesting, that any Benefits provided to the LTD Employees are vested or were intended to vest. Instead, each LTD Plan document expressly provides that the Debtors have the unilateral right to modify or terminate the LTD Plans at any time in the Debtors' sole discretion, using language similar to the below:

Although the benefits currently available (in the 2004 Plan Year) are described in this summary for the Company's Medical Plan, *the Company reserves the right to change or end the plan described in this summary at any time*. Any plan changes will result from actions taken and approved by the Company. *The Company may adopt such changes or terminate the plan at any time and for any reason*. The Company's practices, policies, and benefits are outlined here for your information as required by law. However, this does not constitute an implied or expressed contract or guarantee of employment. 2004 Nortel Networks Inc. Medical Plan Summary Plan Description at 92 (emphasis added).

36. Because a company's intent to provide vested benefits must be express, it is not enough to show that a company historically provided such benefits, or that it hoped to continue to do so in the future. Indeed, courts have specifically held that when a company reserves the right to change or terminate benefits, even those benefits promised for "life" are not vested. Unisys, 58 F.3d at 904 (explaining that a plan containing language both describing welfare benefits as being provided for "life" and a reservation of rights is not ambiguous or inconsistent because, "[a]n employer who promises lifetime medical benefits, while at the same time reserving the right to amend the plan under which those benefits were provided, has informed plan participants of the time period during which they will be eligible to receive benefits *provided* the plan continues to exist."); Vallone v. CNA Fin. Corp., 375 F.3d 623, 634 (7th Cir.

2004) (holding that a health care allowance benefit provided to encourage early retirement and described as a “lifetime” benefit was not vested because a reservation of rights clause in the plan documents allowed amendment or modification even after retirement). The court notes that, “[t]he language at issue here prevented CNA from amending its retirement plan to require retirees to pay back HCA allowances already paid out, or retroactively terminating coverage for a claim to medical benefits to avoid paying such a claim. The reservation of rights clauses, on the other hand, allow CNA to *prospectively* alter or amend its welfare benefits offered to retirees, even after retirement, and that is what it did.” Id. at 638.

37. Additionally, the LTD Committee has suggested that the Benefits may have vested because documents were provided to certain LTD Employees that were not clearly limited by an explicit right to modify or terminate. Whether or not such documents exist is of no significance because such documents cannot modify the LTD Plans. The Third Circuit has repeatedly held that ERISA precludes an employer from making “oral or informal amendments” to employee benefits plans and that the only way to effect a modification of such a plan is through a valid amendment executed “according to formal procedures.” See Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155, 1163 (3d Cir. 1990); Confer v. Custom Eng’g Co., 952 F.2d 41, 43 (3d Cir. 1991); Depenbrock v. CIGNA Corp., 389 F.3d at 78, 81 (3d Cir. 2004). Therefore, regardless of whether any such documents exist, they would not modify the express terms of the LTD Plan documents in which the Debtors clearly reserved their right to modify or terminate the LTD Plans.

38. Therefore, since the LTD Plans do not provide that the Benefits are vested, and the LTD Committee has failed to produce *any* evidence, much less a preponderance of evidence, that the Benefits have vested, the Benefits are not vested and thus they are terminable at will.

**B. SECTION 1114 OF THE BANKRUPTCY CODE IS INAPPLICABLE TO THE LTD PLANS BECAUSE THE LTD EMPLOYEES ARE NOT RETIREES**

39. Over the last year, the Debtors have exchanged information and engaged in settlement discussions with the LTD Committee in parallel to their negotiations with the Retiree Committee appointed under section 1114 of the Bankruptcy Code to represent the interests of the Retirees. Those discussions have not resulted in an agreement, and the Debtors now seek Court authorization for the termination of the LTD Plans. While the Debtors seek this relief in an abundance of caution, the Debtors are not required to prove compliance with the separate and additional requirements imposed by section 1114 because, simply put, the LTD Employees are current employees of the Debtors, not Retirees. Section 1114 by its terms only applies to “retiree benefits,” which is defined to mean “payments to any entity or person for the purpose of providing or reimbursement payments **for retired employees and their spouses and dependents.** . . .” 11 U.S.C. § 1114(a) (emphasis added).

40. The Debtors maintain employees on long-term disability under the LTD Plans as “current” employees under the terms of the relevant plans, including for the purpose of eligibility of employee benefits. The Benefits currently enjoyed by the LTD Employees, such as income continuation, as well as the specific medical benefits provided under the LTD Plans, are not available to the Debtors’ Retirees. Indeed, the Retiree Welfare Plans are entirely separate and distinguishable from the LTD Plans in their terms and administration. In fact, numerous LTD Employees who are retirement-eligible have opted to not retire and receive benefits under the Retiree Welfare Plans, but instead to remain current employees of the Debtors in order to receive the additional benefits, such as income continuation payments, available only to LTD Employees.

41. In order for an individual to have been eligible to receive short-term and long-term disability benefits (and thus be eligible to receive Benefits under the LTD Plans), he or she would have to have been a “regular Employee working 20 or more hours per week” at the time of the disability. See 2006 Nortel Networks Inc. Short-Term Disability and Long-Term Disability Plan Summary Plan Description, at 8. Many of the LTD Plans further provide that the income continuation benefits end when a person’s employment is terminated or the part of the plan providing the coverage ends. See, e.g., 2010 Nortel Networks Inc. Long-Term Disability Plan Summary Plan Description at 12. Therefore, the provision of Benefits under the LTD Plans is directly tied to continued status as a “current” employee of the Debtors. Moreover, consistent with their classification as current employees, employees receiving disability benefits may actively return to work if their conditions improve and positions remain open. LTD Employees also are asked to provide information supporting their disabled status on an ongoing basis to continue receiving income continuation benefits, as in some cases an individual’s eligibility for LTD Benefits changes over time. See, e.g., 2004 Nortel Networks Inc. Short-Term Disability and Long-Term Disability Plan Summary Plan Description at 21, attached to Ray Declaration as Exhibit 5.

42. Accordingly, section 1114 is not applicable to the termination of the LTD Plans, because the LTD Employees are not “retired employees.”<sup>14</sup>

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<sup>14</sup> Although the Debtors were not required to comply with section 1114, the Debtors have negotiated with and provided information to the LTD Committee to the same extent that the Debtors have done so with the Retiree Committee. Therefore, the Debtors believe that they have met all requirements to modify the LTD Plans under section 1114 even if it were applicable, but it is not, and the Debtors expressly reserve all rights to submit supplemental evidence as to this matter.

C. **AS AT WILL EMPLOYEES OF THE DEBTORS, THE LTD EMPLOYEES MAY BE TERMINATED.**

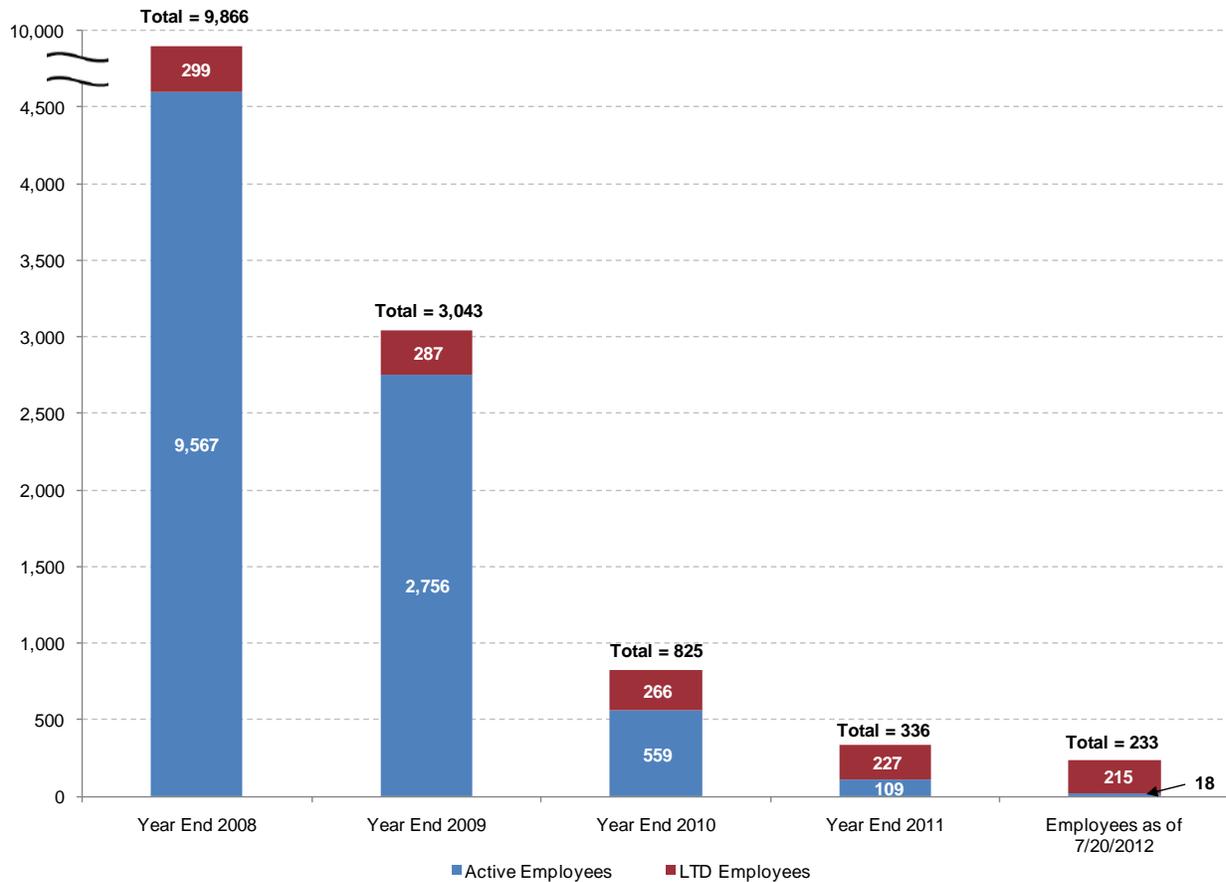
43. The LTD Employees are “at will” employees of the Debtors and thus their employment may be terminated at any time and for any reason without incurring liability to the Debtors. Indeed, to the best of the Debtors’ information and belief, upon commencing employment with the Debtors, each LTD Employee signed an agreement substantially similar to those attached as Exhibits 6, 7 and 8 to the Ray Declaration, specifically acknowledging his or her status as an “at will” employee. For example, the 2008 Nortel Employment Agreement signed by new employees required that each employee certify that: “[m]y employment with the Employer is one of employment at will and my continued employment is not for a definite period of time but instead may be terminated at any time and for any reason by the Employer or me.” See 2008 Nortel Employment Agreement ¶ 9. To the best of their knowledge, the Debtors are unaware of any employment agreements between the Debtors and an LTD Employee defining the terms of his or her employment as anything other than an at will arrangement.

44. It is a matter of well-established law that “at will” employment may be generally terminated at any time by either the employer or the employee for either cause or no cause at all. An individual’s employment is generally governed by the state law of the state in which the employee provides services. Restatement (Second) of Conflict of Laws § 196 (2012). All of the states in which the Debtors maintained their primary operations have adopted the doctrine of at-will employment. See, e.g., Cal. Lab. Code § 2922 (West 2011) (“An employment, having no specified term, may be terminated at the will of either party on notice to the other.”); Wal-Mart Stores, Inc. v. Canchola, 121S.W.3d 735, 740 (Tex. 2003) (holding that employer could terminate disabled employee who was also an “at will” employee stating “[a]s long as its reason for terminating [employee] was not illegal, Wal-Mart could have fired [employee] . . . for no

reason at all”); Linafelt v. Bev, Inc., 662 So. 2d 986, 989 (Fla. Dist. Ct. App 1995) (“An employee may be terminated at will, without a showing of cause, where the employment contract between the parties is indefinite as to the period of employment”); Folmsbee v. Tech Tool Grinding & Supply, Inc., 630 N.E.2d 586, 590 (Mass. 1994) (“The general rule is that an employment-at-will contract can be terminated at any time for any reason or for no reason at all.”); Roberts v. Wake Forest Univ., 286 S.E.2d 120, 123 (N.C. Ct. App. 1982) (“It is a settled rule of law in North Carolina and other jurisdictions that employment for an indefinite term is regarded as an employment at will which may be terminated at any time by either party.”). An at will employee may be terminated without liability to his or her employer for such termination. See, e.g., Folmsbee, 630 N.E.2d at 590-91 (holding employer was not liable for terminating employment of “at will” employee).

45. The Debtors are permitted by applicable law to terminate the employment of the LTD Employees at any time and the Debtors must do so at this time. As this Court is well aware, at this stage in their restructuring, the Debtors have liquidated their operations and have already terminated virtually all of their non-LTD active employees. As the below chart indicates, the number of non-LTD active employees of the Debtors has sharply declined, while the number of LTD Employees has remained substantially the same.

*[Remainder of the page left intentionally blank.]*



The few remaining active employees are essential to completing the remainder of the Debtors’ wind down operations, including liquidation of remaining claims and completion of the Debtors’ bankruptcy cases. With all of the Debtors’ businesses divested, their other employees laid off and the Debtors’ relationships with their suppliers and customers long ago terminated, the Debtors can no longer justify continuing their operations solely to employ and provide Benefits to the LTD Employees. Therefore, the Debtors should be permitted to terminate the LTD Employees not only because the LTD Employees are at will employees, but also because such terminations are necessary.

**D. TERMINATING THE LTD PLANS AND THE LTD EMPLOYEES’ EMPLOYMENT SATISFIES THE BUSINESS JUDGMENT TEST**

46. Section 1108 of the Bankruptcy Code authorizes the Debtors to operate their businesses. 11 U.S.C. § 1108. Section 363(b)(1) of the Bankruptcy Code further permits a

debtor-in-possession to use property of the estate “other than in the ordinary course of business” after notice and a hearing. 11 U.S.C. § 363(b)(1). Although the Debtors believe that the exercise of their right to terminate the LTD Plans and the employment of the LTD Employees is in the ordinary course of their business, to the extent that such terminations are determined to be outside the ordinary course of business such that Court approval is required, then the Court should grant the requested relief under Section 363 of the Bankruptcy Code because the Debtors have demonstrated a sound business justification for the proposed transaction. See Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward), 242 B.R. 147, 155 (D. Del. 1999).

47. Relief is proper under section 363(b)(1) where the Debtors show a legitimate business justification for the proposed action. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983); In re Del. & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991) (noting that the Third Circuit has adopted the “sound business purpose” test for section 363(b)(1)). If a valid business justification exists, the law vests a debtor’s decision to use property out of the ordinary course of business with a strong presumption “that in making a business decision 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.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

48. After careful deliberation, the Debtors have determined, in the exercise of their reasonable business judgment, that at this time they must eliminate their current and future costs associated with non-essential wind-down personnel, including providing Benefits under the LTD

Plans in order to preserve and maximize the value of the Debtors' estates. Absent termination of the LTD Plans, the Debtors project they would spend approximately \$800,000 to \$1,000,000 per month providing Benefits under the LTD Plans, not including the additional costs of maintaining employees and data systems necessary to continue the administration of the LTD Plans. As discussed above, it is not at all certain that the Debtors will be able to find third-parties willing to administer the LTD Plans and, even if the Debtors could find such providers, the Debtors would face the risk of substantially increased premiums and other costs. The Debtors also would bear the economic risk of increased claims being filed in future periods, which risk becomes disproportionate when the LTD Employees predominate the Debtors' remaining workforce. Providing these benefits is a significant financial burden that does not provide any concomitant benefit to the Debtors' estates because the individuals currently receiving the benefits of such expenditures are not providing services to the Debtors. Furthermore, terminating the LTD Plans and the LTD Employees is also an important step forward in the Debtors' efforts to complete their bankruptcy cases and move closer to confirming a plan of reorganization. Given the lengthy process required to wind down the LTD Plans, as well as the uncertainty regarding the Debtors' ability to continue to provide Benefits into 2013 and beyond, the Debtors must end the LTD Plans now.

49. In order to advance the resolution of claims submitted under the LTD Plans, the Debtors further request the time period for making a claim for reimbursement for benefits covered by and approved pursuant to the relevant LTD Plans for claims incurred prior to December 31, 2012 be reduced to six months, commencing on December 31, 2012.

50. Thus, terminating the LTD Plans and the employment of the LTD Employees will generate significant cost savings for the Debtors. For the foregoing reasons, the Debtors submit

that the termination of the LTD Plans and the employment of the LTD Employees is appropriate and in the best interests of the Debtors, their bankruptcy estates and their creditors.

51. Notice of the Motion has been given via overnight mail to (i) the U.S. Trustee; (ii) counsel to the LTD Committee; (iii) the LTD Employees; (iv) counsel to the Bondholder Group; (v) counsel to the UCC; and (vi) the general service list established in these chapter 11 cases.

**No Prior Request**

52. Except as described therein, no prior request for the relief sought herein has been made to this or any other court.

*[Remainder of the page left intentionally blank.]*

WHEREFORE, the Debtors respectfully request that this Court (i) grant this Motion and the relief requested herein; (ii) enter the proposed order attached as Exhibit A hereto; (iii) authorize the Debtors to terminate the LTD Plans and the employment of the LTD Employees effective as of December 31, 2012 so as to cease providing employer-paid benefits, including for long-term disability income continuation benefits, for current and future participants as of that date; and (iv) grant such other and further relief as it deems just and proper.

Dated: July 30, 2012  
Wilmington, Delaware

CLEARY GOTTLIEB STEEN & HAMILTON LLP

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Lisa M. Schweitzer (admitted *pro hac vice*)  
One Liberty Plaza  
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Facsimile: (212) 225-3999

- and -

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Ann C. Cordo

Derek C. Abbott (No. 3376)  
Eric D. Schwartz (No. 3134)  
Ann C. Cordo (No. 4817)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, Delaware 19801  
Telephone: (302) 658-9200  
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*Counsel for the Debtors  
and Debtors in Possession*

**EXHIBIT A**



employment of the LTD Employees; and the Court having reviewed and considered the Motion, and after due deliberation thereon, and good cause appearing therefore:

**IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

A. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

B. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b) and 1108 of the Bankruptcy Code.

D. Notice of the Motion has been provided to (i) the U.S. Trustee; (ii) counsel to the LTD Committee; (iii) the LTD Employees; (iv) counsel to the Bondholder Group; (v) counsel to the UCC; and (vi) the general service list established in these chapter 11 cases.

E. No further or other notice beyond that described in the forgoing paragraph is required in connection with the Motion.

F. The Debtors have demonstrated compelling and sound business justifications for termination of the LTD Plans, including the Benefits provided thereunder.

G. The LTD Employees are not retired employees of the Debtors governed by section 1114 of the Bankruptcy Code.

H. Termination of the LTD Plans, including the Benefits provided thereunder, is in the best interests of the Debtors and the Debtors' estates and creditors.

I. The Debtors may terminate the LTD Plans and the employment of the LTD Employees in the ordinary course of business.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

J. The LTD Employees do not have a vested right to continue to receive the Benefits, and therefore do not have a claim for lost Benefits based on termination of the LTD Plans.

K. The Debtors unambiguously reserved their right to amend or terminate the LTD Plans and the Benefits provided thereunder in the various LTD Plans.

L. The LTD Employees are at will employees of the Debtors.

M. The Debtors no longer will sponsor or provide any employee benefits, including without limitation, any health, medical or surgical benefits for employees after the termination of the LTD Plans.

N. The LTD Plans are terminable at will by the Debtors; and it is therefore:

**ORDERED ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED and any objections thereto are OVERRULED.

2. The Debtors are authorized to terminate the LTD Plans and, for the avoidance of doubt, all coverage and benefits thereunder, effective as of December 31, 2012. After December 31, 2012, the Debtors will cease to sponsor or provide any Benefits under the LTD Plans, including the Nortel Networks Inc. Medical Plan, to any of their employees.

3. Any and all proofs of claim filed by LTD Employees on account of claims arising under or relating to the LTD Plans, including, but not limited to, claims arising from the termination of the LTD Plans or for future benefits, shall be disallowed and expunged from the Debtors' claims register on or after December 31, 2012, solely with respect to the portion of the proof of claim relating to claims arising under or relating to the LTD Plans.

4. Notwithstanding the foregoing, nothing contained herein shall: (i) waive the rights of any LTD Employee to pursue any timely filed proofs of claim in the Debtors' chapter 11 cases

for any matter other than an LTD Claim; or (ii) relieve the Debtors of any obligations to pay for professional fees and/or expenses of the LTD Committee's retained professionals in accordance with a final order of this Court; (iii) waive or limit defenses available against a proof of claim filed against the Debtors based on a failure to timely file such claim on or before the applicable bar date.

5. The Debtors are authorized to terminate the employment of the LTD Employees as of December 31, 2012.

6. This Order shall not result in the loss or waiver of any right of current employees of the Debtors as of date of this Order, including the LTD Employees, or former employees of the Debtors to participate in the Retiree Welfare Plans and/or any settlement made with respect to the termination of the Retiree Welfare Plans (whether consensual or pursuant to section 1114(g)), which right to participate and receive benefits or payments thereunder shall be based on the individual's eligibility to receive benefits under the Retiree Welfare Plans as of the date that an order regarding the termination of the Retiree Welfare Plans becomes final and non-appealable, provided that in order to preserve any such right, such employees must make an election to participate in the Retiree Welfare Plans for which they are eligible within thirty (30) days after the date that an order regarding the termination of the Retiree Welfare Plans becomes final and non-appealable.

7. LTD Employees may submit a claim for reimbursement for benefits covered by and approved pursuant to the relevant LTD Plans for claims incurred prior to the date of this Order on or before June 30, 2013.

8. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its

entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2012  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
*In re* : Chapter 11  
Nortel Networks Inc., *et al.*,<sup>1</sup> : Case No. 09-10138 (KG)  
Debtors. : Jointly Administered  
: :  
: :  
-----X

**DECLARATION OF JOHN J. RAY III IN SUPPORT OF  
DEBTORS’ MOTION FOR ENTRY OF AN ORDER  
PURSUANT TO 11 U.S.C. §§ 105, 363 AND 1108 AUTHORIZING THE  
DEBTORS TO TERMINATE THE DEBTORS’ LONG-TERM  
DISABILITY PLANS AND THE EMPLOYMENT OF THE LTD EMPLOYEES**

I, John J. Ray III, declare under penalty of perjury as follows:

1. On January 6, 2010, upon the motion of Nortel Networks Inc. (“NNI”) and the other above-captioned debtors (together, the “Debtors”), I was appointed by this court as Debtors’ Principal Officer, *nunc pro tunc* to December 7, 2009. I am also Senior Managing Director and the sole member of Avidity Partners, LLC.

2. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, information supplied to me by other members of the Debtors’ management and professionals based on, among other things, a review of the Debtors’ files, books and records, or learned from my review of relevant documents or are based upon my

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286), Nortel Networks Cable Solutions Inc. (0567) and Nortel Networks (CALA) Inc. (4226). Addresses for the Debtors can be found in the Debtors’ petitions, which are available at <http://chapter11.epiqsystems.com/nortel>.

opinion, which is founded upon my experience and knowledge of the Debtors' operations. 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.

3. I submit this declaration in support of the Debtors' motion (the "LTD Plan Termination Motion")<sup>2</sup> for an order (i) authorizing the Debtors to terminate the LTD Plans effective as of December 31, 2012 so as to cease providing employer-paid benefits, including for long-term disability income continuation benefits, to current and future participants as of that date, (ii) terminating the employment of the LTD Employees, and (iii) granting them such other and further relief as the Court deems just and proper.

4. True and complete copies of the following documents cited in the LTD Plan Termination Motion are attached to this declaration:

- Exhibit 1:** 2006 Nortel Networks Inc. Short-Term Disability and Long-Term Disability Plan Summary Plan Description
- Exhibit 2:** 2010 Nortel Networks Inc. Long-Term Disability Plan Summary Plan Description
- Exhibit 3:** 1989 Nortel Networks Inc. Group Benefits Plan
- Exhibit 4:** 2004 Nortel Networks Inc. Medical Plan Summary Plan Description
- Exhibit 5:** 2004 Nortel Networks Inc. Short-Term Disability and Long-Term Disability Plan Summary Plan Description
- Exhibit 6:** 1998 Nortel Networks Inc. Employment Agreement
- Exhibit 7:** 2004 Nortel Networks Inc. Employment Agreement
- Exhibit 8:** 2008 Nortel Network Inc. Employment Agreement

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the LTD Plan Termination Motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: July 30, 2012

Location: Chicago, IL

  
\_\_\_\_\_  
John J. Ray III

**Due to their size, the Exhibits to this declaration are available on request to counsel to the Debtors.**

**Debtors' counsel may be contacted as follows:**

**Robert Ryan, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
212-225-2602**

**The Exhibits are also available on the Nortel case docket maintained by Epiq at:  
<http://dm.epiq11.com/nortel>**