

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

In re:

**COMMERCECONNECT MEDIA HOLDINGS,
INC., et al.,¹**

Debtors.

)
) **Chapter 11**
)
) **Case No. 09-**
)
) **Joint Administration Pending**
)
)

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER
AUTHORIZING THE PAYMENT OF CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors” or “Cygnus”) file this motion (the “Motion”) for entry of interim and final orders, in substantially the form attached hereto as **Exhibit A** and **B** (collectively, the “Proposed Orders”), authorizing the Debtors to pay certain prepetition claims of critical vendors (“Critical Vendors”). In support of this Motion, the Debtors rely on the Affidavit of James Ogle in Support of First Day Motions (the “Ogle Affidavit”), filed contemporaneously with this Motion, and respectfully state as follows:

Jurisdiction

1. On the date hereof (the “Petition Date”), the Debtors commenced their respective bankruptcy cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the bankruptcy code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). No creditors’ committee has yet been appointed in the Chapter 11 Cases by the United States Trustee. The Debtors are continuing in possession of their respective properties and are operating their

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: CommerceConnect Media Holdings, Inc. (1749), Cygnus Business Media, Inc. (0832), Cygnus New Business Launches, Inc. (0713) and Cygnus Interactive New Business Launches, Inc. (1283). The address for each of the Debtors is: 1233 Janesville Avenue, Fort Atkinson, Wisconsin 53538.

respective businesses, as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

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

3. The statutory predicates for the relief sought herein are sections 105 and 363 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

Introduction

4. As described in more detail below, the Chapter 11 Cases have been commenced to effectuate a negotiated out-of-court restructuring plan that has previously been agreed to by all but one of the Debtors’ senior secured lenders, all of the Debtors’ junior secured lenders, the holders of all of CommerceConnect Media Holdings, Inc.’s (“CCMH”) Series A Preferred Stock and the holders of a majority in interest of CCMH’s voting equity. The Debtors do not intend the Chapter 11 Cases to have any effect on the allowed claims of general unsecured creditors, but rather, to permit such claims to effectively “ride through” the Chapter 11 process and be paid in full without any impact by the bankruptcy on the relative rights, obligations and defenses of the parties. While the Debtors had hoped to avoid the cost of the Chapter 11 Cases by restructuring consensually out-of-court, one (1) hold out senior lender has refused to consent, apparently seeking to extract further value from the companies or its co-lenders. For this reason, the Debtors were forced to modify the consensual restructuring into a prepackaged plan of reorganization (the “Plan”). Approximately 96% of the Debtors’ senior secured lenders and 100% of the Debtors’ junior secured lenders have voted in favor of the Plan, representing

approximately \$200 million of the approximately \$206 million in secured debt owed to these institutional creditors. The Debtors have therefore commenced these Chapter 11 Cases to confirm the Plan, and will be seeking to do so expeditiously.

A. The Debtors' Businesses.

5. Cygnus is a leading business-to-business ("B2B") publisher and communications company, distributing content to diverse audiences in the construction, public safety, industrial and manufacturing, security, technology, transportation and aviation industries. Cygnus employs approximately 680 people, including 430 salaried and hourly employees and 250 independent contractors, all of whose livelihoods depend in some significant measure upon the successful continuation of the Debtors' business enterprise. These employees and independent contractors are essential to the Debtors' business operations and perform a variety of critical functions.

6. Several magazines published by Cygnus have been published for more than 40 years. Cygnus' market-leading brands include *Qualified Remodeler*, *Firehouse*, *Equipment Today*, *Kitchen and Bath Design News*, and the *CPA Technology Advisor*. Cygnus' breadth of content is internationally-recognized, reaching millions of business professionals who rely on Cygnus' proprietary content to make critical business decisions. Cygnus reaches business professionals by utilizing three media platforms: publishing, interactive and expositions.

7. Publishing. Cygnus publishes 42 leading trade publications in 13 major markets, reaching over three million professionals, manufacturers and retail subscribers regularly. Cygnus' publications are staffed with award-winning, industry-recognized writers and editors.

8. Interactive. With 38 website destinations, Cygnus' interactive division is a leading online provider of essential news, information, utilities and e-commerce services to 13 unique markets, providing industry news and information to over two million B2B professionals annually. Cygnus offers its interactive customers a full complement of updated industry news

and award-winning editorial as well as video, webinars, online catalogs, e-newsletters and digital supplements and editions. In 2008, Cygnus interactive websites generated over 180 million page views with nearly two million unique visitors per month.

9. Expositions. Cygnus' exposition division is a leader in producing industry expositions, consistently providing solutions for doing business successfully. It produces approximately 32 trade shows and events annually, managing hundreds of thousands of square feet for thousands of exhibitors and tens of thousands of attendees each year. Additionally, Cygnus is at the forefront in producing electronic show dailies which include broadcast components, and Cygnus also produces custom programming from expo clients for use at trade shows.

B. Economic Performance and Other Challenges.

10. Cygnus' capital structure is highly leveraged, with approximately \$206 million in total funded debt (inclusive of accrued interest) as of June 30, 2009. Cygnus' funded debt consists primarily of (i) not less than \$173 million of senior, first lien debt under a credit agreement (the "Prepetition Credit Agreement") dated as of July 13, 2004, having General Electric Capital Corporation ("GECC") as agent; and (ii) approximately \$33 million of junior, second lien debt under a term loan dated as of July 13, 2004, having Barclays Bank PLC ("Barclays") as agent. In addition, Cygnus has issued approximately \$81 million of Series A Redeemable Preferred Stock (as of June 30, 2009, including accretion), approximately \$109,820 of Series B Preferred Stock (as of June 30, 2009), and approximately \$4,252 of Series C Preferred Stock (as of June 30, 2009).

11. Based on 2008 EBITDA of \$23 million, the total leverage ratio (secured debt) is approximately 8.9x and the aggregate leverage is 12.5x (including Series A but excluding Series B and Series C Preferred Stock).

12. Since the second quarter of 2008, Cygnus has been unable to meet its total leverage ratio covenants and has been in default under its financing agreements. The result of the covenant default was that lenders denied the company use of the \$13 million of availability under the Prepetition Credit Agreement, and Cygnus' liquidity has become constrained. Cygnus has been unable to make regular debt service payments to either the senior secured lenders or junior secured lenders, and has been operating under a nonbinding forbearance from the lenders. Further, as a result of these events, Cygnus' credit rating has been downgraded by Moody's and Standard & Poor's.

13. Additionally, Cygnus faces certain challenges that are not specific to it, but rather are being seen across the B2B industry. In addition to decreased advertising arising from the current economic climate, the B2B industry specifically has undergone a fundamental change driven by enhanced functionality of online advertising and tools causing traditional advertisers to reduce their allocation of resources to B2B publications and increase spending in their marketing budgets on their own websites.

14. Finally, Cygnus has been negatively affected by the overall shift away from print media. Although Cygnus has three media platforms, the majority of the business is devoted to and revenue is derived from print media. The management team continues to believe that in order to be more successful, the Cygnus model needs to continue to shift toward interactive media and away from print, providing the most appropriate balance for Cygnus' advertisers.

C. Sale Efforts; Negotiations with Lenders.

15. More than three years ago, the Board of Directors of Cygnus engaged a well-known, leading investment bank to conduct a process to broadly market the company. This marketing process was unsuccessful in producing a credible bid that satisfied the Board of Directors. After a change in management teams and approximately twelve months later, the

Board of Directors retained a nationally recognized boutique investment bank focused on media companies to again market the company through a solicitation process where numerous parties were contacted. During this period Cygnus undertook a considerable internal restructuring designed to address the business challenges facing all print media companies.

16. The second marketing process concluded with the leading party providing a bid that failed to satisfy the secured creditors of the company and would not provide a recovery for other constituents. As noted above, the sale processes occurred at a time when print media businesses were (and continue to be) in considerable upheaval, and when the economy as a whole has been subject to considerable decline.

17. Due to these disappointing marketing process results, Cygnus engaged Miller Buckfire & Co., LLC ("Miller Buckfire") to assist the company's efforts to address its liquidity constraints and its overleveraged balance sheet. Miller Buckfire is an investment banking firm with considerable expertise in distressed scenarios, including ones such as those faced by the company where the value of a company is less than its secured debt.

18. Miller Buckfire has performed a number of tasks simultaneously, including resoliciting the leading bidder noted above, soliciting interest from potential investors and strategic partners and conducting negotiations with Cygnus' secured lenders and preferred equity holders regarding an internal restructuring of the company's balance sheet. There have been a number of sit down meetings with and/or management presentations to interested parties and extensive negotiations with the senior secured and junior secured lenders.

19. Unfortunately, the multiple sales processes did not produce a buyer who could or would purchase Cygnus for an amount necessary to satisfy even the company's senior secured debt. As a result, Miller Buckfire and Cygnus turned their attention to the various restructuring possibilities. After examining the options, including both a chapter 11 bankruptcy filing and an

out-of-court restructuring, Miller Buckfire and Cygnus concluded that an out-of-court restructuring presented the most viable option for the Debtors, as it likely would have the least impact on the Debtors' going concern value, the lowest cost of implementation and potentially could be consummated more quickly than the other alternatives. These factors translated into the best potential return for the Debtors' stakeholders.

20. The result is that Miller Buckfire and Cygnus developed, along with GECC, the other senior lenders, Barclays, the holders of the Series A Preferred Stock and the holders of a majority in interest of the Debtors' voting equity, a proposed restructuring that would convert a large portion of the existing senior secured debt, and all of the existing junior secured debt, into equity and warrants, respectively (the "Out-of-Court Restructuring").

D. Need for Relief.

21. The Out-of-Court Restructuring was intensely negotiated over a series of months, among the Debtors, GECC, the other senior lenders, Barclays, the holders of the Series A Preferred Stock and the holders of a majority in interest of the Debtors' voting equity. Throughout the process, each of GECC and Barclays has been in nearly constant contact with the registered holders of the senior secured debt and junior secured debt. Information and documentation has been made available in real time to all senior lenders, including, in the case of the senior secured lenders, through an on-line document database (*Intralinks*).

22. Until the week of July 13, 2009, the Out-of-Court Restructuring had been proceeding apace. As early as Monday of that week, all of the parties were hopeful that the Out-of-Court Restructuring would close on July 16, 2009, and in fact, the professionals had already begun to collect the signatures of the parties to the Out-of-Court Restructuring agreements when an unexpected obstacle arose.

23. On July 14, 2009, the Debtors were informed by GECC that one of the 21 holders of the not less than \$173 million of senior, first lien debt, may refuse to consent to the Out-of-Court Restructuring. That holder, Genesis CLO 2007-2 Ltd. ("Leichtman Fund"), a fund managed by Levine Leichtman Capital Partners ("Levine Leichtman"), holds approximately \$6.4 million of the not less than \$173 million of senior, first lien debt, which is less than 4% of the dollar amount of the claims in that class. Nonetheless, on an out-of-court basis, the Prepetition Credit Agreement requires unanimous consent of the holders to effectuate the transactions required. See Prepetition Credit Agreement, § 11.2(c).

24. Since that time, each of the Debtors, GECC and Barclays, and their respective professionals, have attempted to obtain Levine Leichtman's consent – with no success. Levine Leichtman's refusal to consent has therefore made an out-of-court solution impossible. Given the foregoing factors, the Debtors have determined that a chapter 11 prepackaged plan affords them the best option to preserve and realize upon the value of the companies and is the only remaining option to implement the agreed upon restructuring.

25. In consultation with their professionals, and after careful examination, the Debtors' Boards of Directors, the Debtors, GECC and Barclays have determined that chapter 11, combined with the prepackaged Plan, is the best and most efficient way to maximize a return for the Debtors, their estates, and all parties-in-interest. Additionally, the Debtors have entered into a cash collateral agreement with GECC which, subject to Bankruptcy Court approval, allows the Debtors' the use of cash collateral to ensure that the Debtors will have sufficient liquidity to complete the Chapter 11 process and effectuate the Plan.

26. Consistent with the terms of the Out-of-Court Restructuring previously agreed to by the Debtors, all but one of the holders of the senior, first lien debt and all of the holders of the junior, second lien debt, the Plan seeks to impair only the not less than \$173 million of senior,

first lien debt under a Prepetition Credit Agreement (Class 3), the approximately \$33 million of junior, second lien debt (Class 4), any intercompany obligations (Class 6) and the existing equity interests in the Debtors (Class 7 and 8). Holders of other secured claims and general unsecured claims will have their allowed claims reinstated, or, at the option of the Debtor, paid in full. The result is that the Plan provides for no impairment of virtually all the going-concern obligations of the Debtors, as well as the conversion of a large portion of the existing senior secured debt, and all of the existing junior secured debt, to equity and warrants, respectively. The conversion of debt to equity results in a greatly reduced debt service and a largely deleveraged balance sheet.

27. On July 27, 2009, the Debtors solicited votes for or against the Plan from Class 3 and 4, the only Classes entitled to vote under the Plan. As noted above and contained in the voting affidavit of Garden City Group² filed contemporaneously herewith, approximately 95% in number and approximately 96% in dollar amount of Class 3 creditors (all but the Leichtman Fund) have accepted the Plan and 100% in number and dollar amount of Class 4 creditors have voted to accept the Plan. Class 7 and Class 8 creditors were not solicited as they are receiving no distributions on account of their claims/interests and are deemed to have rejected the Plan.

28. The existence of a Plan that has been overwhelmingly approved by the voting Classes, as well as the cash collateral agreement between GECC and the Debtors, will allow the Debtors to transition through bankruptcy as smoothly and as quickly as possible. The Debtors' publications, interactive web site and expositions should be virtually unaffected. Further, out of an abundance of caution, the Debtors seek approval as part of their "first day motions" relief which will allow the Debtors' obligations to employees and critical vendors to be honored in the ordinary course of business until such time as the Plan is confirmed and the obligations reinstated.

² The Garden City Group is the Debtors' proposed Claims, Noticing and Balloting Agent.

29. The Chapter 11 Cases have therefore been instituted to enable the Debtors to effectively take these steps and otherwise maximize the value of their assets.

Relief Requested

30. By this Motion, the Debtors seek authority to pay certain prepetition claims of approximately certain critical vendors (the “Critical Vendor Claims”) that are essential to the Debtors’ business operations in an aggregate amount not to exceed \$3,300,000 (the “Critical Vendor Cap”) ³, with \$2,800,000 being available on an interim basis, to the extent necessary to avoid any disruption of the Debtors’ ordinary course of business including the payment cycle which, if not approved, could significantly impede the Debtors’ restructuring (the “Interim Critical Vendor Cap”). The Debtors therefore seek (i) entry of an interim order (the “Interim Order”) authorizing the Debtors, in their sole discretion (to the extent necessary to preserve the value of the Debtors’ estates and their businesses), to pay Critical Vendor Claims up to the Interim Critical Vendor Cap, (ii) if any objections are received with respect to this Motion, scheduling of a final hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order”) and (iii) entry of the Final Order granting the above relief, including authority to pay, in their sole discretion, Critical Vendor Claims up to the Critical Vendor Cap (inclusive of those paid under the Interim Order).

31. As set forth above, the Debtors are not seeking authority to pay all their Critical Vendor Claims immediately. The Debtors seek, to the extent practicable, to pay the undisputed amounts of Critical Vendor Claims as they come due in the ordinary course of the Debtors’ business and on terms consistent with the Debtors’ prepetition practices. In light of the prepackaged nature of the Chapter 11 Cases, the Debtors expect to emerge from chapter 11 on an expedited basis. Thus, approval of this Motion merely affects the timing of such payments and

³ The Debtors reserve the right to seek to increase the Critical Vendor Cap at a later date if necessary, subject to this Court’s approval.

not the ultimate recovery of any creditors. The Plan – a product of arm’s length, good faith negotiations – is based on the primary negotiating parties’ own desire to minimize disruption in the Debtors’ business and maximize its enterprise value by providing full payment of the Critical Vendor Claims. These parties recognize that payment of the Critical Vendor Claims in the ordinary course of business is necessary to preserve the value of the Debtors’ business, and will ease the Debtors’ administrative burden during the limited period pending confirmation.

32. The Debtors submit that authority to satisfy the Critical Vendor Claims as provided herein should not, in the reasonable opinion of the Debtors, create an imbalance of their cash flows because the majority of these obligations have customary payment terms and are not payable immediately. Cash held by the Debtors and the cash generated in the ordinary course of business will provide sufficient liquidity for payment of the Critical Vendor Claims. The Debtors’ term loan lenders (who are substantially impaired under the Plan and are the future owners of the business) also support the relief requested herein.

Critical Vendor Claims

33. The Debtors believe that payment of the Critical Vendor Claims is not only critical to the Debtors’ reorganization efforts, but immediately necessary in light of the industry in which the Debtors operate. The Critical Vendors generally consist of the parties that supply, either directly or as a distributor, vital raw materials, supplies and services for the Debtors’ operations. Any interruption in the supply of such materials and services will affect the Debtors’ ability to deliver its products to their customers. Given the highly competitive market in which the Debtors operate, this disadvantage would lead to an immediate erosion in customer confidence which would be difficult, if not impossible, to restore. Furthermore, if there is an interruption in the supply of certain materials and services, the Debtors would not be able to fulfill their obligations to their advertisers, who require timely delivery of their often time-

sensitive advertisements. For these and the other reasons stated herein and in the Ogle Affidavit, the Debtors believe that the relief requested herein is necessary to avoid immediate and irreparable harm. See Fed. R. Bankr. P. 6003(b).

34. The Critical Vendors provide the materials, supplies and services that are absolutely critical to the Debtors' ability to sustain their operations. The Debtors believe that the failure to pay the Critical Vendor Claims would, in the Debtors' business judgment, result in the Critical Vendors refusing to provide goods or services to the Debtors postpetition which could have an immediately devastating effect on the Debtors' ability to operate their businesses. Moreover, the delay attendant to the Debtors changing from a Critical Vendor to another vendor of similar products (assuming one could be located) would likely have a similarly devastating effect on the Debtors' operations.

35. The Debtors and their advisors have examined whether the payment of Critical Vendor Claims is necessary, will ameliorate immediate and irreparable harm to the Debtors' business operations and ensure that the Debtors have access to adequate trade credit postpetition. The Debtors have developed certain procedures described below (for which they seek this Court's approval) that, when implemented, will ensure that the Debtors derive value for payments to Critical Vendors such that vendors receiving payment of Critical Vendor Claims will continue to supply trade credit necessary to the Debtors' operations on a postpetition basis.

36. After consulting with the appropriate members of their management team to identify those Critical Vendors that are most essential to the Debtors' operations, the Debtors (1) determined which of the Critical Vendor Claims the Debtors would seek relief to pay pursuant to this Motion and (2) estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors.

37. In making these determinations and estimations, the Debtors used the following criteria: (a) whether the Critical Vendor in question is a “sole-source” or “limited source” provider, (b) whether the Debtors receive advantageous pricing or other terms from a Critical Vendor such that replacing the Critical Vendor postpetition would result in significantly higher costs to the Debtors, (c) the overall impact on the Debtors’ operations if the particular Critical Vendor ceased or delayed shipments, including whether the Critical Vendor possesses any extraordinary rights (e.g., rights of setoff, recoupment, freeze, possessory liens, reclamation) that, if exercised, would be unduly disruptive to the Debtors’ reorganization efforts, (d) the likelihood that a Critical Vendor would extend trade terms postpetition despite the Debtors’ failure to pay such Critical Vendor’s prepetition outstanding trade debt, (e) whether the Critical Vendor is or is not obligated to continue to perform services for the Debtors after the commencement of the Chapter 11 Cases, and (f) whether the Critical Vendor would be paid in full under the proposed restructuring.

38. The Debtors propose to condition the payment of Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and services to the Debtors on terms that are consistent with the historical trade terms between the parties (the “Customary Trade Terms”). However, the Debtors reserve the right to negotiate different trade terms with any Critical Vendor, as a condition to payment of any Critical Vendor Claim, to the extent the Debtors determine that such trade terms are necessary to procure essential goods or services or are otherwise in the best interests of the Debtors’ estates.

39. The Debtors propose that upon the request by a Critical Vendor for payment, the Debtors will determine in their sole discretion whether such payment should be made. If so, (i) the Debtors shall provide the Critical Vendor with a copy of the Proposed Orders and (ii) the amount of such Critical Vendor’s estimated prepetition claim, after accounting for any setoffs,

other credits and discounts thereto, shall be mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Proposed Orders and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court). The Critical Vendor will be informed that by accepting payment from the Debtors pursuant to the Proposed Orders, the Critical Vendor will be bound by the following terms:

- (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Interim Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The Critical Vendor agrees to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one hundred twenty days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
- (c) The Critical Vendor agrees to provide goods or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- (d) The Critical Vendor agrees not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's agreement not to seek any right of setoff, recoupment, freeze or reclamation or assert any claim for immediate payment under sections 502, 503 or 507 of the Bankruptcy Code against or from any of the Debtors, their estates or any of their respective assets or property (real or personal) related in any way to any remaining prepetition

amounts allegedly owed to the Critical Vendor by the Debtors arising from goods or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously sought such redress, the Critical Vendor shall immediately take all necessary actions to withdraw it; and

- (f) The Critical Vendor agrees that if it has received payment of a prepetition claim but subsequently refuses to supply goods or services to the Debtors on Customary Trade Terms, that any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

40. To the extent agreed to and accepted by a Critical Vendor, such terms shall constitute the agreement between the parties that governs their postpetition trade relationship (the "Trade Agreement"). The Debtors hereby seek authority to enter into Trade Agreements with the Critical Vendors if the Debtors determine, in their discretion, that such an agreement is necessary (i) their continued postpetition operations and (ii) a successful reorganization. In the event that the Debtors are unable to enter into a Trade Agreement with any Critical Vendor, however, the Debtors nevertheless seek authority to pay such vendor's Critical Vendor Claim if the Debtors determine, in their sole discretion and business judgment, that failure to make such payment is likely to result in significant harm to the Debtors' business operations.

41. For those Critical Vendors who have agreed to provide goods or services to the Debtors on terms different from their Customary Trade Terms, the Debtors reserve the right to seek written acknowledgment of such terms on a case-by-case basis.

42. If a Critical Vendor refuses to supply goods or services to the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim, or fails to comply with any Trade Agreement it entered into with the Debtors, the Debtors hereby seek authority to, in their discretion and without further order of the Court, (i) declare that any Trade Agreement

between the Debtors and such Critical Vendor is terminated (if applicable), and (ii) declare that any payments made to such Critical Vendor on account of its Critical Vendor Claim, whether pursuant to a Trade Agreement or otherwise, be deemed to have been in payment of then-outstanding postpetition claims of such Critical Vendor.

43. In the event the Debtors exercise either of the rights set forth in the preceding paragraph, the Debtors request that the Critical Vendor against which the Debtors exercise such rights be required to immediately return to the Debtors any payments made on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owed to such Critical Vendor, without giving effect to any rights of setoff or reclamation. In essence, the Debtors seek to return the parties to their respective positions immediately prior to entry of the Proposed Orders in the event a Trade Agreement is terminated or a Critical Vendor refuses to supply goods or services to the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim.

Basis for Relief

44. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)). Under section 105(a), a court "can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) ("To invoke the necessity of payment doctrine, a debtor must show

that payment of the prepetition claims is critical to the debtor's reorganization.") (internal quotation omitted).

45. Section 363(b)(1) of the Bankruptcy Code authorizes the trustee 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). Pursuant to Bankruptcy Rule 6003(b), authorization to utilize property of the estate, "including a motion to pay all or part of a claim that arose before the filing of the petition . . .", may not be granted in the first twenty days of a bankruptcy case, except "to the extent that relief is necessary to avoid immediate and irreparable harm" Fed. R. Bankr. P. 6003(b).

46. The "necessity of payment" rule further supports the relief requested in this Motion. See, e.g., In re Just for Feet, Inc., 242 B.R. at 826 (authorizing payment of prepetition claims of trade creditors that continue customary trade terms). The "necessity of payment" doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." Ionosphere Clubs, 98 B.R. at 176; In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). This rule is consistent with the paramount goal of chapter 11, i.e., "facilitating the continued operation and rehabilitation of the debtor . . ." Ionosphere Clubs, 98 B.R. at 176.

47. Further, the relief requested in this Motion is relief with which this Court is very familiar. Recently this Court granted virtually identical critical vendor relief to that proposed in this Motion. See In re The Fairchild Corporation, Case No. 09-10899 (CSS) (Bankr. D. Del. Mar. 20, 2009).

48. The Debtors believe that obtaining immediate authorization to pay Critical Vendor Claims is vital to their continued viability. Specifically, the Debtors believe that any delay or interruption in supply of the goods and services provided by the Critical Vendors,

however temporary it might be, would immediately jeopardize the Debtors' continued ability to operate its business and generate revenues.

49. In light of these considerations, it is clear that the relief requested herein is essential to the success of these Chapter 11 Cases. Indeed, unless authorized to pay the Critical Vendor Claims, the Debtors' business operations would likely be significantly threatened by immediate shut down which could immediately and irreparably jeopardize the Debtors' restructuring efforts.

50. Based on the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interest of their estates and creditors, and should be granted in all respects.

51. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

52. To successfully implement the foregoing, the Debtors seek a waiver of notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay under Bankruptcy Rule 6004(h).

Notice

53. The Debtors shall provide notice of this Motion by facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) counsel to the Debtors' prepetition secured lenders; (iv) the Department of Justice; and (v) the Internal Revenue Service. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Del. Bankr. L.R. 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the

relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

No Prior Application

54. No prior application for the relief requested herein has been made to this Court or any other court.

Conclusion

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, substantially in the form attached hereto as Exhibit A and B, respectively: (i) authorizing the Debtors to pay certain prepetition claims of Critical Vendors and (ii) granting such other and further relief as may be just and proper.

Dated: August 3, 2009
Wilmington, Delaware

Respectfully submitted,



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Debtors and Debtors-in-Possession*

EXHIBIT A

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

In re:

**COMMERCECONNECT MEDIA HOLDINGS,
INC., et al.,¹**

Debtors.

)
) **Chapter 11**
)
) **Case No. 09-**
)
) **Jointly Administered**
)
) **Re: Docket No. ____**

**INTERIM ORDER AUTHORIZING DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (“Cygnus” or the “Debtors”) for entry of an order (this “Interim Order”) authorizing the Debtors, in their discretion, to pay the prepetition claims of certain critical vendors and service providers; and upon the Affidavit of James Ogle in Support of First Day Motions; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and due and proper notice of this Motion having been provided; and after due deliberation and sufficient cause appearing therefor;

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: CommerceConnect Media Holdings, Inc. (1749), Cygnus Business Media, Inc. (0832), Cygnus New Business Launches, Inc. (0713) and Cygnus Interactive New Business Launches, Inc. (1283). The address for each of the Debtors is: 1233 Janesville Avenue, Fort Atkinson, Wisconsin 53538.

² Unless stated otherwise, all capitalized terms not defined herein shall have the same meanings as set forth in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. This Interim Order shall remain in full force and effect until such time as this Court enters an order ruling on the Motion on a final basis.
3. The Debtors are authorized, but not required, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition claims of certain Critical Vendors (the "Critical Vendor Claims") subject to the conditions set forth in this Interim Order.
4. Pending the entry of the Final Order, the Debtors may not make payments in excess of the Interim Critical Vendor Cap on the Critical Vendor Claims.
5. The Debtors shall undertake all appropriate efforts to cause each Critical Vendor to enter into an agreement with the Debtors (the "Trade Agreement"), including, but not limited to, the following terms:
 - (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Interim Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
 - (b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
 - (c) The Critical Vendor's agreement to provide goods or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;

- (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's agreement not to seek any right of setoff, recoupment, freeze or reclamation or assert any claim for immediate payment under sections 502, 503 or 507 of the Bankruptcy Code against or from any of the Debtors, their estates or any of their respective assets or property (real or personal) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods or services provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously sought such redress, the Critical Vendor shall immediately take all necessary actions to withdraw it; and
- (f) The Critical Vendor's agreement that it has received payment of a prepetition claim but subsequently refuses to supply goods or services to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

6. The Debtors are authorized, in their sole discretion, to make payments on account of Critical Vendor Claims, even in the absence of a Trade Agreement, if the Debtors determine, in their sole discretion and business judgment, that failure to pay such Critical Vendor Claim is likely to result in significant harm to the Debtors' business operations.

7. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Interim Order, on the date the Debtors deliver notice to the Critical

Vendor that the Critical Vendor has not complied with the terms and provisions of the Trade Agreement or has failed to continue to provide Customary Trade Terms to the Debtors.

8. If a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods to the Debtors on Customary Trade Terms during the pendency of these chapter 11 cases, the Debtors may, in their discretion, declare that provisional payments made to the Critical Vendor on account of prepetition Trade Claims be deemed to have been in payment of then outstanding postpetition amounts owed to such Critical Vendor without further order of the Court or action by any person or entity. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation, it being the express intention of this Court to return the parties to the status quo in effect as of the date of entry of this Interim Order with respect to all prepetition claims if a Trade Agreement is terminated.

9. The existence a Trade Agreement with the Debtors and/or the payment of a Critical Vendor Claim shall not be declared a waiver of any other cause of action, including avoidance actions, that may be held by the Debtors.

10. Any objections or responses (each an "Objection") to the Motion and the Critical Vendor Claims shall be filed and served upon the Notice Parties and on those parties as required by Local Rule 9006-1(c)(ii), so that it is actually received by the date that is earlier of (i) fifteen (15) days after the entry of this Interim Order; or (ii) five (5) business days before the Final Hearing.

11. A Final Hearing, if necessary, to resolve any timely filed Objection shall take place before The Honorable _____ at the United States Bankruptcy Court for the

District of Delaware, 824 North Market Street, _____ Floor, Courtroom _____, Wilmington, Delaware 19801 on the date set by this Court for the Plan confirmation hearing (the “Final Hearing Date”).

12. If no Objections are timely filed, served, and received in accordance with this Interim Order, the Court may enter a Final Order without further notice or hearing.

13. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

14. Notwithstanding the applicability of Bankruptcy Rule 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

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

Dated: _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

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

In re:)	
)	Chapter 11
COMMERCECONNECT MEDIA HOLDINGS, INC., <u>et al.</u> , ¹)	Case No. 09-
)	
Debtors.)	Joint Administration Pending
)	

**FINAL ORDER AUTHORIZING DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS**

Upon the motion (the “Motion”)² of above-captioned debtors and debtors-in-possession (“Cygnus”) or the “Debtors”) for entry of an order (this “Final Order”) authorizing the Debtors, in their discretion, to pay the prepetition claims of certain critical vendors and service providers; and upon the Affidavit of James Ogle in Support of First Day Motions; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and due and proper notice of this Motion having been provided; and after due deliberation and sufficient cause appearing therefor;

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: CommerceConnect Media Holdings, Inc. (1749), Cygnus Business Media, Inc. (0832), Cygnus New Business Launches, Inc. (0713) and Cygnus Interactive New Business Launches, Inc. (1283). The address for each of the Debtors is: 1233 Janesville Avenue, Fort Atkinson, WI 53538.

² Unless stated otherwise, all capitalized terms not defined herein shall have the same meanings as set forth in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors, in their business judgment, are authorized, but not required, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition claims of certain Critical Vendors (the "Critical Vendor Claims"), subject to the conditions set forth in this Final Order.
 3. The Debtors' payment of the Critical Vendor Claims shall not exceed the Critical Vendor Cap in the aggregate unless otherwise ordered by the Court.
 1. The Debtors shall undertake all appropriate efforts to cause each Critical Vendor that requests a payment to enter into an agreement with the Debtors (the "Trade Agreement"), including, but not limited to, the following terms:
 - (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Final Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
 - (b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
 - (c) The Critical Vendor's agreement to provide goods to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
 - (d) The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any

remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien; and

- (e) The Critical Vendor's agreement that it has received payment of a prepetition claim but subsequently refuses to supply goods to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

4. The Debtors are authorized, in their sole discretion, to make payments on account of Critical Vendor Claims, even in the absence of a Trade Agreement, if the Debtors determine, in their sole discretion and business judgment, that failure to pay such Critical Vendor Claim is likely to result in significant harm to the Debtors' business operations.

5. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith, or any order regarding the use of cash collateral.

6. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Final Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has not complied with the terms and provisions of the Trade Agreement or has failed to continue to provide Customary Trade Terms to the Debtors.

7. If a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods to the

Debtors on Customary Trade Terms during the pendency of these Chapter 11 Cases, the Debtors may, in their discretion, declare that provisional payments made to the Critical Vendor on account of prepetition Trade Claims be deemed to have been in payment of then outstanding postpetition amounts owed to such Critical Vendor without further order of the Court or action by any person or entity. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation, it being the express intention of this Court to return the parties to the status quo in effect as of the date of entry of this Final Order with respect to all prepetition claims if a Trade Agreement is terminated.

8. The existence of a Trade Agreement with the Debtors shall not be declared a waiver of any other cause of action, including avoidance actions, that may be held by the Debtors.

9. All banks and other financial institutions on which checks were drawn or electronic payment requests made in payment of such prepetition obligations approved herein are authorized and directed to (i) receive, process, honor, and pay all such checks and electronic payment requests when presented for payment (assuming that sufficient funds are then available in the Debtors' bank accounts to cover such payments), (ii) rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order and (iii) rely on the Debtors' representation that such checks or wires are permitted to be honored pursuant to first day motions and orders, and none of the banks shall have any obligation to verify same and shall have no liability for honoring checks or wires authorized by the Debtors.

10. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

11. Notwithstanding the applicability of Bankruptcy Rule 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

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

Dated: _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE