

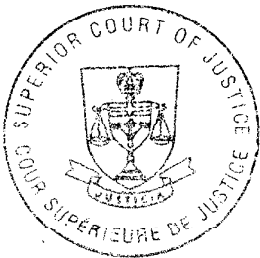
**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 10th DAY
)
JUSTICE FARLEY) OF JULY, 2001

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PSINET LIMITED, PSINET REALTY
CANADA LIMITED, PSINETWORKS CANADA LIMITED
AND TORONTO HOSTING CENTRE LIMITED

APPLICANTS



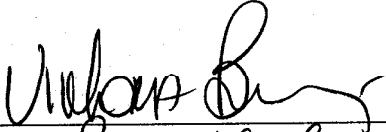
ORDER

THIS MOTION made by the Applicants for an Order, *inter alia*, approving and implementing an insolvency protocol governing cross-border matters and issues (the "Protocol"), relating to the reorganization proceedings of the Applicants pursuant to the provisions of the *Companies' Creditors Arrangement Act* (the "CCAA") and those of the applicants in the related application under section 18.6 of the CCAA in Court File #01-CL-4156 and the further related proceedings under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court, Southern District of New York (the "US Court") was heard this day, at 393 University Avenue, Toronto.

ON READING the Affidavit of Robert Offley sworn July 5, 2001 and the Exhibit thereto, on hearing the submissions of counsel for the Applicants and the Monitor and on being advised by counsel for the Applicants that the Protocol has been approved by the US Court, no one appearing for *Cisco Inc.*, although properly served, as appears from the Affidavit of Kevin MacEachern, sworn July 6, 2001 ;

- the balance of the service list*
1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is abridged so that the Motion is properly returnable today, and that no further service of the Notice of Motion and Motion Record herein on any other party shall be required.

2. **THIS COURT ORDERS** that the Protocol, a copy of which is attached hereto as Schedule "A", is hereby approved in its entirety.
3. **THIS COURT ORDERS** that the Protocol be implemented forthwith.
4. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.



Registrar

ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO.
JUL 1 0 2001
PER/PAR NB

SCHEDULE "A"

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
)	Case No. 01-13213 (REG)
PSINet Inc., et al.)	
)	(Joint Administration)
)	
)	
Debtors.)	
)	
)	

Court File No. 01-CL-4155

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PSINET LIMITED, PSINET REALTY
CANADA LIMITED, PSINETWORKS CANADA LIMITED
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APPLICANTS

**INSOLVENCY PROTOCOL GOVERNING
CROSS-BORDER MATTERS AND ISSUES
RELATING TO THE PLENARY REORGANIZATION PROCEEDINGS
OF THE ABOVE DEBTORS AND APPLICANTS**

This cross-border insolvency protocol (the “Protocol”) shall govern the conduct of all parties having an interest in the Insolvency Proceedings (as such term is defined herein) to the extent matters governing such conduct are provided for herein:

A. Background

1. PSINet Inc., a New York corporation (“PSI”), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada, Latin America, Europe and Asia.

2. PSI and twenty-four of its United States affiliates (collectively, the “Chapter 11 Debtors”) have commenced reorganization cases (collectively, the “U.S. Cases”) under chapter 11 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “U.S. Court”). The U.S. Cases have been assigned to the Honorable Robert E. Gerber. The Chapter 11 Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States Trustee (the “U.S. Trustee”) has appointed a committee of seven (7) members to serve as a statutory committee of unsecured creditors in the U.S. Cases (the “Committee”).

3. PSINet Limited, PSI Networks Canada Limited, Toronto Hosting Centre Limited and PSINet Realty Canada Limited, all of which are direct Canadian subsidiaries of PSI, (collectively, the “CCAA Debtors”) have commenced plenary insolvency proceedings (collectively, the “Canadian Proceedings”) by filing an application under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) with the Ontario Superior Court of Justice

(the "Canadian Court"). The CCAA Debtors have obtained an initial order of the Canadian Court, as amended and restated, (the "CCAA Order") under which, inter alia (a) the CCAA Debtors have been determined to be entities to which the CCAA applies and (b) PricewaterhouseCoopers Inc. has been appointed as monitor of the CCAA Debtors (the "Monitor"), with the rights, powers, duties and limitations upon liabilities set forth in the CCAA Order. The CCAA Debtors are seeking an extension of the CCAA Order to September 28, 2001. The Honourable Mr. Justice James Farley has made the CCAA Order in the Canadian Proceedings.

4. The Chapter 11 Debtors have obtained an order of the Canadian Court under Section 18.6 of the CCAA to assist the U.S. Court in administering the U.S. Cases.

5. For convenience, (a) the Chapter 11 Debtors and the CCAA Debtors shall be referred to herein collectively as the "Debtors", (b) the U.S. Cases and the Canadian Proceedings shall be referred to herein collectively as the "Insolvency Proceedings" and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts", and individually as a "Court".

6. None of the Debtors are applicants in both Insolvency Proceedings.

B. Purpose and Goals

7. Though full, separate and contemporaneous plenary proceedings are pending in the United States and Canada respectively for the Chapter 11 Debtors and the CCAA Debtors, the implementation of administrative procedures and cross-border guidelines are necessary to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto

and ensure the maintenance of the Courts' respective independent jurisdiction and comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Proceedings:

- (i) harmonize and coordinate activities in the Insolvency Proceedings before the Courts;
- (ii) promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- (iii) honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;
- (iv) promote international cooperation and respect for comity among the Courts, the Debtors, the Committee, the Estate Representatives (collectively, the Chapter 11 Representatives and the Canadian Representatives as such terms are defined below) and other creditors and interested parties in the Insolvency Proceedings;
- (v) facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located, and
- (vi) implement a framework of general principles to address fundamental procedural and substantive issues arising out of the cross-border nature of these Insolvency Proceedings.

C. Cross-Border Matters

8. The nature of the Debtors business operations in the United States of America and Canada and the fundamental interconnectivity and interdependence of the lines of communications of the PSINet group's global business and internet operations, including in the United States of America and Canada, raise a number of cross-border insolvency and restructuring matters (the "Cross-Border Matters") which will require the assistance of both

Courts to resolve issues and disputes in a fair and efficient manner in accordance with comity and the principles established in this Protocol. The Cross-Border Matters will include:

- (i) the approval of a sale of all or a substantial part of the assets of the CCAA Debtors in accordance with bidding or other procedures established by both Courts (the "Asset Sale Approval");
- (ii) the allocation as between the CCAA Debtors and the Chapter 11 Debtors of the proceeds of sale of any assets of the CCAA Debtors implemented in conjunction with the sale of any assets of the Chapter 11 Debtors (the "Allocation of Proceeds");
- (iii) the allowance, priority and valuation of inter-company claims between the Chapter 11 Debtors and the CCAA Debtors (the "Inter-Company Claims");
- (iv) the determination, priority and resolution of issues and claims in respect of personal property assets owned or leased (including the characterization of financing leases) by one of the Debtors where the assets are not physically located in the country of the Court having jurisdiction over the Debtor, and the sale of such assets (the "Asset Claims");
- (v) the determination, priority and valuation of claims and the resolution of issues in respect of contracts in which one or more of the Chapter 11 Debtors share liability with one or more of the CCAA Debtors, either as joint or primary obligors, or as guarantors or sureties, and the assignment of such contracts (the "Contract Claims");
- (vi) the determination, priority and valuation of claims and the resolution of issues in respect of indefeasible rights of use ("IRUs") relating to fibre optics cables crossing the Canadian and American territories, and the sale or assignment of such IRUs (the "IRU Matters"); and
- (vii) the approval and implementation of any reorganization plan which may involve as parties both the Chapter 11 Debtors and the CCAA Debtors or which requires a Debtor in one jurisdiction to provide financial assistance to another Debtor in the other jurisdiction by way of a guarantee, subordination or otherwise (the "Reorganization Plan").

As the Insolvency Proceedings progress, the Courts may also jointly determine that other Cross-Border matters that may arise in the US Cases and the Canadian Proceedings should be dealt with under and in accordance with the principles of this Protocol. Where

an issue is to be addressed to only one Court pursuant to paragraph 10 hereof, in rendering a determination in any Cross-Border Matter, such Court: (a) may, to the extent practical or advisable, consult with the other Court with or without counsel present (after consultation with counsel for the Debtors and any other counsel that represents a party in the relevant matter, if any); and (b) in its sole discretion and bearing in mind the principles of comity, may either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts.

D. Guidelines with Respect to Substantive Matters

9. In accordance with the principles enunciated in this Protocol, the Courts will conduct joint hearings to determine and resolve the following Cross-Border Matters:

- (i) the Asset Sale Approval;
- (ii) the Allocation of Proceeds as between the Chapter 11 Debtors and the CCAA Debtors;
- (iii) all IRU Matters;
- (iv) all Contract Claims; and
- (v) the Reorganization Plan, but only to the extent that Debtors in both jurisdictions are parties to the Reorganization Plan or are required to provide financial assistance to a Debtor in another jurisdiction.

10. Other Cross-Border Matters not determined and resolved under a joint hearing of both Courts may be determined and resolved by one Court as follows (bearing in mind that the following is a non-exhaustive list, and that this paragraph and paragraph 9 may be revised upon application to the Courts, as appropriate):

- (i) except to the extent that claims and issues relate to Contract Claims, claims and issues relating to third party equipment and financing leases of personal property and any ancillary or related claims thereunder, including any guarantee, indemnity or surety claims, and the sale or assignment thereof (including the leased or financed assets) will all be determined, valued and resolved by the Court having jurisdiction over the Debtor having the primary obligation under such lease;
- (ii) claims and issues with third parties relating to real estate property and any leases of real property, and the sale thereof, will all be determined, valued and resolved by the Court of the country where the real property is located;
- (iii) the allocation of proceeds of sale solely as between and among Chapter 11 Debtors and the distribution of proceeds of sale of assets allocated to any one of the Chapter 11 Debtors will be determined and resolved by the US Court; the allocation of proceeds of sale solely as between CCAA Debtors and the distribution of proceeds of sale of assets allocated to any one of the CCAA Debtors will be determined and resolved by the Canadian Court;
- (iv) the Inter-Company Claims of the Chapter 11 Debtors against the CCAA Debtors, including their priority in the Canadian Proceedings, will be determined, valued and resolved by the Canadian Court; the Inter-Company Claims of the CCAA Debtors against the Chapter 11 Debtors, including their priority in the US Cases, shall be determined, valued and resolved by the US Court; provided that, in either event, any set-off and netting after the determination, valuation and resolution of the Inter-Company Claims shall be applied and recognized in both jurisdictions to the extent allowed under the laws governing each of the Insolvency Proceedings, including the determination of any priority issues relating to any such claims;
- (v) any other claims or causes of action against the Debtors will be determined, valued and resolved by the Court in which the claims are asserted, unless principles of comity or *forum non conveniens* dictate otherwise;
- (vi) for purposes of voting and distributions in respect of any Reorganization Plan or other plan of reorganization, the priority of any claim, whether or not determined and resolved in accordance with this Protocol, shall be determined by the Court having jurisdiction over the Debtor in which a claim is being compromised under the Reorganization Plan or other plan of arrangement or reorganization; and

- (vii) except only to the extent dealt with under this Protocol, each Court will retain exclusive jurisdiction over the Debtors under its jurisdiction and all creditors of those Debtors under a Reorganization Plan or other plan of arrangement or reorganization.

11. To the extent applicable under this Protocol and in accordance with principles of comity, the determination, valuation and resolution of any claim or issue in accordance with this Protocol will be recognized by the other Court for the purposes of its proceedings in respect of a Debtor under its jurisdiction.

E. Cooperation

12. To assist in the efficient administration of the Insolvency Proceedings, the Debtors, the Committee and the Estate Representatives shall (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Proceedings for the benefit of the Debtors' respective estates and stakeholders.

13. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each shall use its best efforts to coordinate activities and, where appropriate and feasible, will defer to the judgment of the other Court. The U.S. Court and the Canadian Court may communicate with one another with respect to any matter relating to the Insolvency Proceedings and, in addition to joint hearings contemplated by this Protocol, may conduct other joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases and the Canadian Proceedings, in circumstances where both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of

the U.S. Cases and the Canadian Proceedings. With respect to any joint hearings, unless otherwise ordered, the following procedures will be followed:

- (i) a telephone or video link may be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court;
- (ii) any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing or application shall file such materials, which shall be similar insofar as possible and shall be consistent with the procedural and evidentiary rules and requirements of each Court, in advance of the time of such hearing or the submission of such application. If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of either Court, it shall be entitled to file such materials without, by the act of filing, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from the Court to which it does not wish to attorn;
- (iii) submissions or applications by any party shall be made only to the Court in which such party is appearing, unless specifically given leave by the other Court to make submissions or applications to it;
- (iv) the Judge of the U.S. Court and the Justice of the Canadian Court who will hear any such application shall be entitled to communicate with each other in advance of the hearing of any application, motion, or other request for judicial intervention, with or without counsel being present, to establish guidelines for the orderly submission of pleadings, papers and other materials and the rendering of decisions of the U.S. Court and the Canadian Court, and to deal with any related procedural, administrative or preliminary matters;
- (v) the Judge of the U.S. Court and the Justice of the Canadian Court, having heard any such application, shall be entitled to communicate with each other after the hearing on such application, with or without counsel present (after consultation with counsel for the Debtors and any other counsel that represents a party in the relevant matter, if any), for the purpose of determining whether consistent rulings can be made by both Courts, and the terms upon which such rulings shall be made, as well as to address any other procedural or non-substantive matter relating to such applications; and

- (vi) To the extent desirable and not inconsistent with (a) the principles, terms and procedures of this Protocol, and (b) comity, the Courts may use the Guidelines for Court-to-Court Communications in Cross-Border cases developed by the American Law Institute's Transnational Insolvency Project, a copy of which is attached to this Protocol as Schedule "1".

14. Notwithstanding the terms of the above paragraphs, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to such Court and (b) the conduct of the parties appearing in such matters.

F. Retention and Compensation of Estate Representative and Professionals

15. The Monitor, its officers, directors, employees, counsel and agents, wherever located, to the extent they render services in respect of the Canadian Proceedings (collectively the "Monitor Parties") and any other estate representatives in the Canadian Proceedings (collectively, the "Canadian Representatives") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters (except to the extent they appear before the U.S. Court) including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the CCAA Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives and their counsel and other professionals shall not be required to seek approval of their retention in the U.S. Court for services rendered to the CCAA Debtors. Additionally, the Canadian Representatives and counsel and their professionals (a) shall be compensated for their services to the CCAA Debtors

solely in accordance with the CCAA and other applicable Canadian law or orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.

16. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor or carrying out of the provisions of the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

17. Any estate representatives appointed in the U.S. Cases, including without limitation any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, "Chapter 11 Representatives"), shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters (except to the extent they appear before the Canadian Court) including: (a) the Chapter 11 Representatives' tenure in office; (b) the retention and compensation of the Chapter 11 Representatives; (c) the Chapter 11 Representatives' liability, if any, to any person or entity, including the Chapter 11 Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Chapter 11 Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The Chapter 11 Representatives and their counsel and other professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the Chapter 11 Representatives and their

counsel and other professionals (a) shall be compensated for their services to the U.S. Chapter 11 Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their compensation for services performed for the U.S. Chapter 11 Debtors in the Canadian Court.

18. Any Canadian professionals retained by or with the approval of the CCAA Debtors (collectively, the "Canadian Professionals"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in Canada with respect to services performed on behalf of the CCAA Debtors and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court with respect to services performed on behalf of the CCAA Debtors.

19. Any professionals retained by the Chapter 11 Debtors and any professionals retained by the Committee (collectively, the "Chapter 11 Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Chapter 11 Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code with respect to services performed on behalf of the U.S. Chapter 11 Debtors and any other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court with respect to services performed on behalf of the U.S. Chapter 11 Debtors.

20. Notwithstanding anything above to the contrary, the Debtors' independent auditors, PricewaterhouseCoopers, (the "Auditors"), who are also acting as restructuring accountants, (in such capacity, the "Restructuring Accountants") but excluding the Monitor

Parties: (a) shall be required to seek the approval of their retention in the U.S. Court; and (b) shall be subject to the procedures and standards for review and approval of compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States of America or orders of the U.S. Court. Save and except for the provisions of this paragraph, nothing in this Protocol shall be deemed to subject the Auditors and Restructuring Accountants to the jurisdiction of the U.S. Court or any court in the United States of America.

G. Joint Recognition of Stays of Proceedings Under the Bankruptcy Code and the CCAA

21. In recognition of the importance of the stay of the proceedings and actions against the CCAA Debtors, their directors and their assets, rights and holdings and assets of their affiliates under section 11 of the CCAA and the CCAA Order (the “Canadian Stay”) to the successful administration and completion of the Insolvency Proceedings for the benefit of the Debtors and their respective estates and stakeholders, to the extent appropriate the U.S. Court shall extend and enforce the Canadian Stay in the United States (to the same extent such stay of proceedings and actions is applicable in Canada) to prevent adverse actions against the CCAA Debtors, their directors and the assets, rights and holdings of the CCAA Debtors and of their affiliates in the United States of America. In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and application of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (b) the enforcement in the United States of America of the Canadian Stay.

22. In recognition of the importance of the stay of proceedings and actions against the U.S. Debtors and their assets under section 362 of the Bankruptcy Code and other stays of proceedings and actions ordered by the U.S. Court in the U.S. Cases against the Chapter 11

Debtors, their directors and their assets and assets of their affiliates (the "U.S. Stay") to the successful administration and completion of the Insolvency Proceedings for the benefit of the Debtors and their respective estates and stakeholders, to the extent appropriate the Canadian Court shall extend and enforce the U.S. Stay in Canada (to the same extent such stay of proceedings and action is applicable in the United States of America) to prevent adverse actions against the assets, rights and holding of the Chapter 11 Debtors and their directors and affiliates in Canada. In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement in Canada of the U.S. Stay.

H. Comity and Independence of the Courts

23. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Cases and the Canadian Proceedings. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States of America or Canada.

24. The U.S. Court shall have sole and exclusive jurisdiction and power to preside over the U.S. Cases. The Canadian Court shall have sole and exclusive jurisdiction and power to preside over the Canadian Proceedings.

25. In accordance with the principles of comity and independence established in this Protocol, nothing contained herein shall be construed to:

- (i) increase, decrease otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or "limited notice" basis;
- (ii) require the Debtors, the Committee or the Estate Representatives to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law; or
- (iii) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol).

26. The Debtors, the Committee, the Estate Representative and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws.

I. Rights to Appear and Be Heard

27. The Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Committee, the Estate Representatives and the U.S. Trustee, shall have the right and standing to (a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum and (b) file notices of appearance or other papers with the Clerk of the U.S. Court or the Canadian Court in the Insolvency Proceedings; provided, however, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the Committee (by counsel or by any member on behalf of the Committee) in the Canadian

Proceedings shall not in and of itself form a basis for personal jurisdiction in Canada over the members of the Committee in their individual capacity. Notwithstanding the foregoing: (a) the Canadian Court shall have personal jurisdiction over the U.S. Representatives and the U.S. Trustee solely with respect to the particular matters as to which the U.S. Representatives or the U.S. Trustee appear before the Canadian Court; and (b) the U.S. Court shall have personal jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

J. Notice

28. Where joint hearings are held in respect of the U.S. Cases and the Canadian Proceedings, notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings and notice of any related hearings or other proceedings mandated by applicable law in connection with the Insolvency Proceedings or the Protocol shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) the twenty (20) largest creditors, on a consolidated basis, of the U.S. Debtors, (b) the Committee, (c) the U.S. Trustee, (d) the Monitor, (e) the parties listed on the Service List maintained in respect of the Canadian Proceedings, and (f) all other parties entitled to Notice in accordance with any Order (notice-related or otherwise) issued in the U.S. Cases or the Canadian Proceedings, or the practice of the jurisdiction where the papers are filed or the proceedings are to occur.

K. Effectiveness; Modification

29. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

30. This Protocol may not be supplemented, modified, terminated or replaced in any manner except by Orders of both the U.S. Court and the Canadian Court. The Courts may determine that any proposed supplemental, modification, termination or replacement of this Protocol should be determined in a joint hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given accordance with the notice provisions outlined in paragraph 28 of this Protocol.

L. Procedure for Resolving Disputes under the Protocol

31. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with the notice provisions outlined in paragraph 28 of this Protocol. The Courts may determine that any matter raised by such disputes should require a joint hearing of both Courts. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

M. Preservation of Rights

32. Neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committee, the Estate Representatives, the U.S. Trustee or any of the Debtors'

creditors under applicable law, including the Bankruptcy Code and the CCAA and the orders of the Courts.

Schedule "1"

The American Law Institute

TRANSNATIONAL INSOLVENCY PROJECT
PRINCIPLES OF COOPERATION IN TRANSNATIONAL
INSOLVENCY CASES AMONG THE MEMBERS OF THE
NORTH AMERICAN FREE TRADE AGREEMENT

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

Submitted by the Council to the Members of The American Law Institute
for Discussion at the Seventy-Seventh Annual Meeting
on May 15, 16, 17, and 18, 2000

The Executive Office
THE AMERICAN LAW INSTITUTE
4025 Chestnut Street
Philadelphia, Pa. 19104-3099

Amended — February 12, 2001

Guidelines
Applicable to Court-to-Court Communications
in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channelling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

The Guidelines at this time contemplate application only between Canada and the United States, because of the very different rules governing communications with Principles of Cooperation courts and among courts in Mexico. Nonetheless, a Mexican Court might choose to adopt some or all of these Guidelines for communications by a *sindico* with foreign administrators or courts.

A Court intending to employ the Guidelines - in whole or part, with or without modifications - should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency

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community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means in which case Guideline 7 shall apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate.
- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate;
- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.
- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only, to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List which may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-35,
AS AMENDED

Court File No: 01-CL-4155

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PSINET
LIMITED, PSINET REALTY CANADA LIMITED, PSINETWORKS CANADA LIMITED AND
TORONTO HOSTING CENTRE LIMITED

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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