

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

In re:	)	Chapter 11
)	
PROXIM CORPORATION, <i>et al.</i>,	)	Case No. 05-11639 (PJW)
	)	(Jointly Administered)
Debtors.)	
	)	Deadline to Object: July 19, 2005,
	)	at 12:00 noon (ET)
	)	Hearing: July 20, 2005,
	)	at 9:30 am (ET)

**FEDERAL TRADE COMMISSION’S OBJECTION TO DEBTORS’ MOTION
FOR ORDER (I) APPROVING SALE BY DEBTORS OF SUBSTANTIALLY
ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND
OTHER INTERESTS PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE
BANKRUPTCY CODE; (II) ASSUMING AND ASSIGNING CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND
(III) GRANTING RELATED RELIEF (Docket No. 75)**

The Federal Trade Commission (“Commission” or “FTC”),¹ hereby files its Objection to the Debtors’ June 27, 2005, Motion for Order (1) Approving Sale by Debtors of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests Pursuant to Sections 363(b), (f) and (m) of the Bankruptcy Code; (2) Assuming and Assigning Certain Executory Contracts and Unexpired Leases; and (3) Granting Related Relief (“Proxim’s Motion”).² As set

¹ The FTC intends that neither this objection nor any later appearance, pleading, claim, or suit shall waive: (1) the FTC’s right to have final orders in noncore matters entered only after *de novo* review by a District Judge; (2) the FTC’s right to have the District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal; or (3) any other rights, claims, actions, defenses, setoffs, recoupments, or remedies to which the FTC is or may be entitled, in law or equity, all of which rights, claims, actions, defenses, setoffs, recoupments and remedies the FTC expressly reserves.

² The Commission files its Objection pursuant to Section 363 of the Bankruptcy Code (the “Code”), 11 U.S.C. § 363, Rules 2002(a)(2), 6004, and 9014 of the Federal Rules of

forth more fully below, the Commission objects to the Debtors' Motion insofar as it seeks an order that could be interpreted as undermining the protections afforded to consumers and the public interest by the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.*

The Commission is currently conducting a law enforcement investigation to determine whether Proxim (or a future holder of Proxim's patents) is collecting, or in the future will have the power to collect, monopoly rents as a result of Proxim's possible manipulation of an industry standard-setting process. If the Commission were ultimately to conclude that Proxim (or a future holder of Proxim's patents) is, or in the future threatens to, harm competition and injure consumers by using any improperly obtained monopoly power to collect royalties to which it is not entitled, the Commission might well order that Proxim or any successor cease and desist from collecting such unlawful royalties.

It is well settled that the Bankruptcy Code is not intended to "becom[e] a haven for wrongdoers." *CFTC v. Co Petro Mktg. Group*, 700 F.2d 1279, 1283 (9th Cir. 1983) (citations omitted). *See also SEC v. First Fin. Group of Texas*, 645 F.2d 429, 439 (5th Cir. 1981). But Proxim is attempting to use Section 363 of the Code, 11 U.S.C. § 363, as a haven for its potential wrongdoing by seeking a sale under terms that would cleanse the patents of any wrongdoing it may have committed and thereby override the Commission's enforcement and regulatory powers. Such a sale would be contrary to the Code and contrary to the enforcement structure created by Congress in the FTC Act.

Accordingly, the Commission respectfully requests that this Court amend Proxim's proposed order approving the sale (hereinafter "Sale Order") to confirm that the sale does not

Bankruptcy Procedure, and Bankr.D.Del. L.R. 9013-1(g).

limit in any way the Commission's regulatory and law enforcement authority. Indeed, because this Court lacks jurisdiction with respect to any such future action of the Commission, omission of such language in this Court's order could serve to mislead potential purchasers. Rather, this Court should enter an Order that expressly provides that a sale of the assets would *not* be free and clear of the Commission's regulatory and enforcement powers.

BACKGROUND

I. The Commission's Investigation.

The Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. It is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) *et seq.*, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. If the Commission determines that the law has been violated, it is empowered to act in the public interest and issue a cease and desist order that puts a halt to illegal conduct. The Commission is also authorized to obtain an order that precludes the resumption of such conduct. *See* Section 5(b) of the FTC Act, 15 U.S.C. § 45(b); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952) ("If the Commission is to attain the objectives Congress envisioned . . . it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity"); *United States v. Minnesota Mining & Manufacturing Co.*, 96 F.Supp. 356, 357 (D. Mass. 1951) ("the object of the remedies under the anti-trust laws is to prevent the continuation of wrongful conduct, and to deprive the wrongdoers of the fruits of their unlawful conduct * * *"); *American Cyanamid Co. v. FTC*, 363 F.2d 757, (6th Cir. 1966) (court approved FTC order requiring the respondent to

grant patent licenses as a remedy for the patent holder's procurement of a patent by illegal conduct).³

On March 2, 2005, the Commission issued its investigational resolution with respect to the investigation of Proxim's conduct. The resolution provides in pertinent part that the Commission's staff shall investigate:

[t]o determine whether Proxim Incorporated . . . , their respective predecessors, successors, parents, or affiliates, or other unnamed persons, partnerships, or corporations have engaged in, or are engaging in, conduct in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, in connection with wireless local area network technologies and devices, including subverting or otherwise undermining the standard setting process of the Institute of Electrical and Electronics Engineers Standards Association ["IEEE"], its predecessors, parents, or affiliates, or other standard-setting bodies for wireless local area network technologies or devices.

Pursuant to that resolution, the Commission issued on May 24, 2005, a subpoena *duces tecum* and Civil Investigative Demand (hereinafter "CID") to Proxim Corporation.

The Commission's investigation seeks to determine whether Proxim manipulated the IEEE's standard-setting process.⁴ The IEEE has adopted a standard (known as IEEE 802.11) for wireless local area networks (hereinafter "wireless LAN"). Proxim owns several patents covering wireless LAN technology. The Commission's investigation, which is ongoing, is examining whether Proxim may be seeking unlawfully to extract royalties based on monopoly power obtained as a result of possible manipulation of the IEEE's standard-setting process.

³ Commission cease and desist orders are subject to direct review in the United States Courts of Appeals. *See* 15 U.S.C. § 45(c).

⁴ The IEEE is a large, multi-national, non-profit technical professional association that specializes in a wide-range of areas from computer engineering and telecommunications to consumer electronics. The IEEE's Standards Association is an affiliated global standards-setting body that seeks to develop consensus industry standards. *See* <http://standards.ieee.org/>.

The Commission is investigating whether, in the course of adopting the IEEE 802.11 standard, Proxim's conduct contributed to the selection of a standard that includes technology protected by Proxim's patents. If, absent Proxim's conduct, the IEEE may have selected different technology for the standard, and if, as a result, the industry is locked into the use of technology protected by Proxim's patents, then Proxim (or a future holder of Proxim's patents) may hold unlawful monopoly power, allowing it to extract royalties to which it is not entitled. Moreover, future actions to extract such royalties could distort competition in the relevant market, and could injure consumers, especially if conduct by Proxim (or the purchaser of the patents in this bankruptcy case) were to increase the costs of wireless LAN products.

If the Commission were to find that Proxim (or a future purchaser of Proxim's patents) is collecting, or has the power to collect, monopoly rents because of improper manipulation of the standard-setting process, it may issue a cease and desist order tailored to restore competition and remedy the harmful effects of the unlawful conduct. Such a remedial order might, for example, bar Proxim (or a future purchaser of Proxim's patents) from asserting the patent to collect patent royalties greater than it could have collected absent the improper manipulation of the standard-setting process.⁵ See *Dell Computer Corp.*, FTC Dkt. No. C-3658, 121 F.T.C. 616 (1996); *Union Oil Company of California*, FTC Dkt. No. 9305 (June 10, 2005) (proposed consent order pending public comment), *Rambus Inc.*, FTC Dkt. No. 9302 (June 18, 2002) (administrative complaint, appeal docketed before the Commission).

⁵ The Commission also may seek equitable relief in federal district court pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

II. The Instant Bankruptcy Case.

On June 11, 2005, Proxim filed a voluntary petition for relief under the reorganization provisions of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court, District of Delaware, Case No. 05-11639-PW (Case No. 05-11639-PW, Docket No. 1 (hereinafter, “Dkt.” shall refer to this Court’s docket for the Proxim bankruptcy case). Proxim remains in possession of its assets and continues to operate its business as a debtor and debtor in possession. 11 U.S.C. § § 1107(a), 1108. On June 12, 2005, Proxim asked this Court to jointly administer its bankruptcy case together with cases filed by three related corporations: Proxim International Holdings, Inc., a Delaware corporation, Proxim Wireless Networks, Inc., a Delaware corporation, and WirelessHome Corporation, a Delaware corporation (Dkt. 4). This Court granted Proxim’s motion on June 15 (Dkt. 29).

After the Commission issued its investigatory resolution and its subpoena and CID to Proxim but before Proxim filed for bankruptcy relief, Proxim’s General Counsel, Mr. Richard J. Tallman, contacted staff to discuss the Commission’s investigation (*see* Declaration of P. Abbott McCartney, attached hereto, at ¶¶ 5 and 6). Mr. Tallman asked what the Commission’s position would be regarding liability if the patents being investigated were to be transferred. Mr. McCartney stated that the investigation was looking into possible unlawful monopolization and that Proxim was a target of the investigation. He stated further that, if the Commission were eventually to find a law violation, liability under the antitrust laws would follow the patents to any subsequent purchasers (*see* McCartney decl. at ¶¶ 5 and 6).

On June 27, 2005, Proxim⁶ filed its Motion to approve the sale of virtually all of its assets -- including intellectual property -- to a company named Moseley Associates Inc. (“Moseley”) (Dkt. 75, Debtors’ Motion at 12-15, ¶ 35). Although Proxim apparently attempted to sell its ongoing business outside of bankruptcy, it cryptically asserts in its papers that “[u]ltimately, it became clear that no transaction could be accomplished outside of bankruptcy and that the highest and best value for the Debtors’ assets could be realized from a bankruptcy sale to Moseley.” (Dkt. 75, Debtors’ Motion at 10, ¶ 29).

In the Motion, Proxim expressly states that Moseley (or whoever the ultimate purchaser may be) must be released from any obligations that transfer with ownership of the property (Dkt. 75, Debtors’ Motion at 18-22, ¶ ¶ 38-47). Their proposed order is just as sweeping -- the proposed Sale Order expressly seeks to bind the Commission (Dkt. 75, Proposed Sale Order ¶ 6), and also provides that “the Purchaser shall have no successors or vicarious liabilities of any kind or character including * * * *any theory of antitrust*, * * * whether known or unknown as of the Closing * * *.” (*Id.* at ¶ 24 (emphasis added)).⁷

Counsel for Moseley in this proceeding also spoke with Commission staff about potential antitrust liability of a purchaser of Proxim’s assets (*see* McCartney Decl. ¶ 7). Moseley’s counsel asked whether his client would take the assets subject to the Commission’s investigation if it

⁶ Proxim, Proxim Wireless Networks, Inc., and Proxim International Holdings, Inc., filed the Motion. Debtor WirelessHome Corporation is not a party to the proposed sale. (Dkt. 107, Notice of Motion, at 1, n.2).

⁷ Proxim’s proposed Sale Order provides that its assets would pass free and clear “to the extent permitted by law.” *See* ¶ 24. While this language may protect the Commission’s law enforcement authority as spelled out in this objection, the Commission is concerned that this language may not be sufficiently clear to put potential purchasers on notice, and a purchaser of the patents may later attempt to argue that the proposed Sale Order actually cuts off liability for any wrongful conduct under the laws enforced by the Commission.

were to buy the assets free and clear. Commission staff stated that the new owner would take the assets subject to the Commission's investigation. He further stated that, if a firm's prior conduct was found to be unlawful, it was his position that the Commission would bar the new owner from exercising any unlawfully acquired monopoly power.

ARGUMENT

This Court should not enter Proxim's proposed Sale Order unless it is amended to make clear that the Commission's regulatory and enforcement powers are preserved. The Sale Order purports to preclude the Commission from taking future action with respect to a possible ongoing violation of U.S. antitrust and consumer protection laws. Indeed, it purports to bind the Commission, *see, e.g.*, ¶ 6, to cut off its authority to enforce the antitrust laws, and to provide that "the Purchaser shall have no successors or vicarious liabilities of any kind or character including * * * *any theory of antitrust*, * * * whether known or unknown as of the Closing * * *." Paragraph 24 (emphasis added). But the Bankruptcy Code does not authorize the sort of preemption of antitrust remedies that Proxim seeks. Thus, unless the Sale Order is modified, it may cause potential purchasers mistakenly to conclude that the Commission's future law enforcement powers are limited.

There are two reasons why this Court should reject Proxim's blatant attempt to immunize its patents from the consequences of any illegal conduct in which Proxim may have engaged. First, the injunctive relief that the Commission may issue or obtain to protect the public from the consequences of violations of the antitrust or consumer protection laws is not an interest extinguishable under Section 363. Second, the Sale Order would effectively stay any future

action the Commission might ultimately bring, a result that is contrary to the clear intent of the Code.

A. The Relief That the Commission Might Seek in Connection with its Investigation of Proxim Is Not an “Interest” That Can Be Extinguished under Section 363.

Although this Court may authorize the sale of property in the estate “free and clear of any interest in such property,” 11 U.S.C. § 363(f), the injunctive relief that the Commission may issue or obtain with respect to Proxim’s patents is not such an interest. While the Code does not define “interest,” and numerous courts have concluded that the term “interest” extends beyond “liens” as defined in Section 101(37) of the Code, the case law indicates that Section 363(f) cannot be used to sell assets free and clear of restrictions such as the ones the Commission might impose if it determines that Proxim has violated the antitrust laws. For example, in *In re Welker*, 163 B.R. 488 (Bankr. N.D. Tex. 1994), the debtors had obtained low interest financing from HUD on the condition that they maintain the low income status of the housing project they were building. The court rejected the bankruptcy trustee’s attempt to sell the property free and clear of the obligation to maintain the property’s low income status, holding that this was not an interest that could be extinguished under Section 363.

In addition, the mere fact that the imposition and continuation of a governmental entity’s regulatory right may devalue the asset does not mean such restriction constitutes an “interest” pursuant to § 363(f). For example, in *Michigan Employment Sec. Comm’n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1146, 1148 (6th Cir. 1991), *cert. dismissed*, 503 U.S. 978 (1992), the Sixth Circuit found that the debtor’s unemployment experience rating followed the assets of the debtor corporation, even though the result might be a

financial burden on the purchaser. *See also In re Fleishman*, 138 B.R. 641, 647 (Bankr. D. Mass. 1992) (right of first refusal in a deed is in the nature of a contractual agreement that is not an “interest” under Section 363(f)); *In re Independence Village, Inc.*, 52 B.R. 715, 734 (Bankr. E.D. Mich. 1985) (sale of life care facility under Section 363(f) could not extinguish residents’ leases or life estates); *Jandel v. Precision Colors, Inc. (In re Jandel)*, 19 B.R. 415, 419-20 (Bankr. S.D. Ohio 1992) (stock restrictions imposed by corporate bylaws are not interests in property under Section 363).

In determining whether an “interest” can be extinguished by sale under Section 363(f), courts have considered the effects on the holder of such “interest.” As the court explained in *In re Lady H Coal Co., Inc.*, 199 B.R. 595 (Bankr. S.D. W. Va. 1996), *aff’d*, 99 F.3d 573 (4th Cir. 1996), “[t]he well established general rule that sales within a bankruptcy proceeding occur free and clear of any interest is founded upon the principle that good faith purchasers receive clean title to the property and that any claims against the property attach to the proceeds.” 199 B.R. at 605. The legislative history confirms that a sale under Section 363(f) is free and clear of an interest if the holder “could be compelled to accept a money satisfaction of the interest in a legal or equitable proceeding. Sale under this subsection is subject to the adequate protection requirement.” H.R. Rep. No. 595, 95th Cong., 2d Sess. 345 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6302. “Most often, adequate protection in connection with a sale free and clear of other interests will be to have those interests attach to the proceeds of the sale.” S. Rep. No. 989, 95th Cong., 2d Sess. 56 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5842. *See also* 11 U.S.C. § 363(e) (the Court “shall prohibit or condition” the use, sale, or lease of property in which an entity has an interest “as is necessary to provide adequate protection of such interest”).

Debtors cite *Folger Adam Security, Inc. v. Dematteis/MacGregor, JV*, 209 F.3d 252, 264 (3rd Cir. 2000), for the proposition that the Third Circuit has broadened 363(f) interests beyond the traditional *in rem* interests affected by Section 363 sales. Debtors' reliance on *Folger Adam* is misplaced. Although the *Folger Adam* court held that a Section 363 "interest" is not strictly limited to liens and the like, it rejected the argument that the term could encompass the defense of recoupment, recognizing that, at a minimum, an "interest" must be an "interest in property that can be reduced to a money satisfaction." *Id.* at 259. As discussed above, the prospective equitable relief that the Commission may seek here cannot be "reduced to money satisfaction." Moreover, as the concurring judge pointed out, there is no reason to believe that the court intended to overturn the "fundamental principle [of the Code] that the estate succeeds only to the nature and rights of the property interest that the debtor possessed pre-petition." *Id.* at 267, quoting *Integrated Solutions, Inc. v. Service Support Specialties*, 124 F.3d 487, 495 (3d Cir. 1997). Here, Proxim seeks to violate that "fundamental principle" by having this Court immunize its patents from the consequences of any illegal conduct it may have committed or is committing.

Thus, a sale under Section 363(f) assumes that "interests" can be converted into monetary claims and holders of such interests can then look to proceeds of the sale to satisfy those claims. But here the Commission would receive no protection because any possible injunctive order to cease and desist would contain conduct prohibitions that cannot be converted into a monetary claim. Moreover, attaching the Commission's enforcement rights to sales proceeds would not protect either the Commission or the public interest because it would not halt any ongoing violation or ensure that competitive conditions prevail in the marketplace. Because the

injunctive relief that the Commission may seek regarding Debtors' patents cannot be satisfied through a monetary claim, the rationale that ordinarily supports a sale "free and clear" under Section 363(f) does not apply to the enforcement and regulatory powers that the Commission seeks to preserve through its objection to the proposed Sale Order in this case.

B. The Proposed Sale Order Would Effectively Stay Future Commission Actions in Violation of the FTC Act and Bankruptcy Law.

Debtors' proposed Sale Order purports to frustrate not only the FTC's ongoing investigation but also its future ability to commence an administrative proceeding against the purchaser and to enter a remedial conduct order against the purchaser, in the event that Commission were to find a law violation. The provisions of Section 362(a) of the Bankruptcy Code were created to permit the orderly administration of the debtor's estate and to protect creditors' rights as of the time of bankruptcy. The protections granted by the automatic stay were not created to shield the purchaser from the risk of federal law enforcement for any ongoing unlawful conduct of the successor. Through Section 362(b) of the Bankruptcy Code, Congress recognized that governmental law enforcement interests outweigh the goals of protecting the purchaser from successor liability.

In particular, Section 362(b)(4) of the Bankruptcy Code provides that the filing of a bankruptcy petition does not operate as a stay of "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power." 11 U.S.C. § 362(b)(4). "Congress recognized . . . that the stay provision was particularly vulnerable to abuse by debtors improperly seeking refuge under the stay in an effort to frustrate necessary governmental functions. To combat the risk that

the bankruptcy court would become a sanctuary for . . . wrongdoers . . . Congress enacted the police and regulatory power exception to the automatic stay.” *United States v. Nicolet*, 857 F.2d 202, 207 (3d Cir. 1988).⁸ In enacting Section 362(b)(4), “Congress clearly intended for the police power exception to allow governmental agencies to remain unfettered by the bankruptcy code in the exercise of their regulatory powers.” *Word v. Commerce Oil Co. (In re Commerce Oil Co.)*, 847 F.2d 291, 295 (6th Cir.1988). Thus, Congress “prevent[ed] the bankruptcy court from becoming a haven for wrongdoers.” *CFTC v. Co Petro Mktg. Group*, 700 F.2d at 1283 (citations omitted).

Congress has charged the Commission with protecting the public interest from unfair methods of competition and unfair or deceptive acts or practices in interstate commerce and halting or prohibiting illegal conduct by initiating actions administratively or through the federal district courts. 15 U.S.C. §§ 41 *et seq.* While Congress cloaked its bankruptcy courts with broad equitable relief so that debtors could obtain a fresh financial start, those equitable powers are not limitless.⁹ Indeed, Congress exempted law enforcement and regulatory agencies such as the

⁸ See also *Safety-Kleen, Inc. v. Wyche*, 274 F.3d 846, 866 (4th Cir. 2001) (stay did not apply to state’s enforcement of financial assurance regulations requiring hazardous waste landfill owner to provide bonds); *EEOC v. McLean Trucking Co.*, 834 F.2d 398, 402 (4th Cir. 1987) (EEOC action to recover back pay not subject to stay); *Universal Life Church, Inc. v. United States (In re Universal Life Church, Inc.)*, 128 F.3d 1294, 1297-1300 (9th Cir. 1997) (Internal Revenue Service’s revocation of debtor’s tax-exempt status fell within the Section 362(b)(4) exemption from the stay). Indeed, courts routinely have recognized that actions brought by the FTC under the FTC Act are exempt from the stay. See, e.g., *FTC v. First Alliance Mortgage Co. (In re First Alliance Mortgage Co.)*, 264 B.R. 634, 651 (C.D. Cal. 2001) (reversing the bankruptcy court and holding that FTC’s action to enforce consumer protection and fair lending laws falls within the 362(b)(4) exemption from the stay).

⁹ Congress’s intent to preserve the ability of governmental entities to protect the public interest through exercise of their police powers, without undue interference from bankruptcy proceedings, is also manifest from the limitations that courts have recognized in the

Commission from the automatic stay so that such agencies could take whatever action was necessary to protect the public, irrespective of a bankruptcy filing. Issuance of the sweeping Sale Order proposed by Debtors could be interpreted as cutting off the Commission's ongoing investigation and terminating the Commission's power to adopt a remedy to halt the violation and restore the market to competitive conditions. Such an interpretation would be contrary to Section 362(b)(4) and Congress' statutory mandate to the Commission.

CONCLUSION

For the reasons set forth above, the Commission requests that this Court amend and clarify Proxim's proposed Sale Order by approving the sale free and clear of all appropriate interests, but with the specific exception for the Commission's regulatory and enforcement powers under the U.S. antitrust and consumer protection laws.¹⁰

"claims" that are subject to discharge. *See In re Torwico Electronics, Inc.*, 8 F.3d 146, 150 (3d Cir. 1993). In that case, the Third Circuit refused to permit Torwico to use the Bankruptcy Code to discharge a state-imposed obligation to clean up hazardous waste. The court distinguished the state's right to enforce a regulatory requirement from a claim for damages, thereby establishing limits on the broad definition of "claim" under the Bankruptcy Code.

¹⁰ Specifically, the FTC requests that any Sale Order entered herein that contains language similar to that in paragraph 24 of the proposed Sale Order be amended to strike any reference to the transfer of the assets free of any liability imposed by "any theory of antitrust" and to include the following recitation: "Nothing in this paragraph, or in this Order, shall be construed to limit, in any fashion, the lawful regulatory and enforcement powers of the Federal Trade Commission."

Dated: July 18, 2005

Of Counsel:

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P. ABBOTT McCARTNEY
JEANNE M. CROUSE
Federal Trade Commission
Washington, D.C.

Respectfully submitted,

FEDERAL TRADE COMMISSION
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In re:)	Chapter 11
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PROXIM CORPORATION, <i>et al.</i> ,)	Case No. 05-11639 (PJW)
)	(Jointly Administered)
Debtors.)	
)	Deadline to Object: July 19, 2005,
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DECLARATION OF P. ABBOTT McCARTNEY

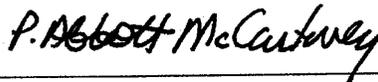
Pursuant to 28 U.S.C. § 1746, I, P. Abbott McCartney, hereby declare and state as follows:

1. I am an attorney at the Federal Trade Commission in Washington, D.C. (hereinafter "Commission"). I am assigned to the Anticompetitive Practices Division of the Bureau of Competition.
2. This declaration is based on my personal knowledge. It is submitted in support of the Commission's Objection to the Debtors' June 27, 2005, Motion for Order Approving Sale filed in *In Re Proxim Corporation*, Case No. 05-11639 (PJW) (Bankr. D. Del., case filed June 11, 2005, motion filed as Dkt. 75 on June 27, 2005).
3. On March 2, 2005, the Commission issued a Resolution Authorizing Use of Compulsory Process in a Nonpublic Investigation in File No. 031-0018. The resolution identified an investigation to determine whether Proxim Incorporated and its predecessors and successors, among others, have engaged or are engaging in conduct in violation of section 5 of the FTC Act, 15 U.S.C. § 45. A true and correct copy of the Commission's resolution is attached except that the name of an unrelated company has been redacted.
4. On May 24, 2005, the Commission issued a subpoena *duces tecum* and Civil Investigative Demand (hereinfter "CID") to Proxim Corporation. The Commission's March 2, 2005, resolution was attached to the subpoena and the CID. I was identified on the face of both the subpoena and the CID as Commission Counsel. Both the subpoena and the CID invited Proxim Corporation to contact Commission Counsel if it had any questions and to discuss possible modifications.

5. On June 9, 2005, Richard J. Tallman, General Counsel for Proxim, telephoned me in connection with the investigation. During that conversation, I reaffirmed that Proxim was a target of the investigation as set forth in the Commission's resolution. During the conversation, Mr. Tallman stated that Proxim was likely to file shortly for bankruptcy.
6. I spoke again by telephone with Mr. Tallman on June 10, 2005. During that conversation, Mr. Tallman inquired about the Commission's investigation and what remedy that the Commission was likely to pursue if it eventually found a violation of the law. I stated that the investigation was looking into whether Proxim might have been engaged in unlawful monopolization in connection with its patents and industry standard setting. In view of the possible bankruptcy filing, he asked our position whether an acquirer in a bankruptcy proceeding would be liable for any possible law violation by Proxim. I stated that our position is yes. If the Commission were eventually to find a law violation by Proxim, our position is that there would be liability for the new owner of the patents.
7. On June 10, 2005, I was contacted by telephone by Jeffrey Garfinkle, counsel to Moseley Associates, Inc. in this proceeding. Mr. Garfinkle represented that he was a bankruptcy attorney for a prospective acquirer of the Proxim assets. Mr. Garfinkle stated that he had a copy of the Commission's subpoena to Proxim. Mr. Garfinkle asked whether his client would take the assets subject to the Commission's investigation if it were to buy the assets free and clear. I stated that I could not confirm or deny the existence of the Commission's investigation but that, speaking hypothetically, if a firm's prior conduct was found to be unlawful, we would not allow the new owner of the assets to exercise any monopoly power acquired unlawfully by the prior owner. The new owner would take the assets subject to the Commission's investigation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 18th day of July, 2005.



P. Abbott McCartney

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

RESOLUTION AUTHORIZING USE OF COMPULSORY
PROCESS IN A NONPUBLIC INVESTIGATION

File No. 031-0018

Nature and Scope of Investigation:

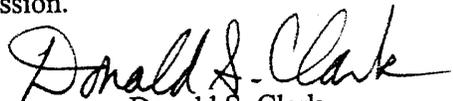
To determine whether Proxim Incorporated, [REDACTED], their respective predecessors, successors, parents, or affiliates, or other unnamed persons, partnerships, or corporations have engaged in, or are engaging in, conduct in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, in connection with wireless local area network technologies and devices, including subverting or otherwise undermining the standard-setting process of the Institute of Electrical and Electronics Engineers Standards Association, its predecessors, successors, parents, or affiliates, or other standard-setting bodies for wireless local area network technologies or devices.

The Federal Trade Commission hereby resolves and authorizes that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10 and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

ISSUED: March 2, 2005

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Debtors.)	
)	Deadline to Object:
)	July 19, 2005, at 12:00 noon (ET)

CERTIFICATION OF PATRICK J. ROACH

Pursuant to Rule 9010-1(c)(ii) of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Patrick J. Roach hereby certifies as follows under penalty of perjury:

1. I am an attorney employed by the United States Federal Trade Commission and I represent the United States Federal Trade Commission in this matter.
2. I am not admitted as an attorney in the United States District Court for the District of Delaware but am admitted in another United States District Court.
3. The courts in which I am admitted as an attorney are as follows: Supreme Court of Illinois, District of Columbia Court of Appeals, United States District Court for the Northern District of Illinois, United States District Court for the District of Columbia, United States Court of International Trade, United States Courts of Appeals for the Fourth, Ninth and District of Columbia Circuits, United States Supreme Court.
4. I am in good standing in all jurisdictions in which I am admitted as an attorney.
5. I will be bound by the Rules of this Court and submit to the jurisdiction of this Court for disciplinary purposes.

By my signature I hereby certify under penalty of perjury that the foregoing statements are

true and correct.

July 18, 2005

/s/Patrick J. Roach
Patrick J. Roach
Federal Trade Commission
601 New Jersey Ave., NW
Washington DC 20580
202 326 2793
proach@ftc.gov

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
)	
PROXIM CORPORATION, <i>et al.</i>	)	Case No. 05-11639 (PJW)
	)	(Jointly Administered)
Debtors.)	
	)	Deadline to Object:
	)	July 19, 2005, at 12:00 noon (ET)
	)	Hearing: July 20, 2005,
	)	at 9:30 am (ET)

CERTIFICATION OF LAWRENCE DeMILLE-WAGMAN

Pursuant to Rule 9010-1(c)(ii) of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Lawrence DeMille-Wagman hereby certifies as follows under penalty of perjury:

1. I am an attorney employed by the United States Federal Trade Commission and I represent the United States Federal Trade Commission in this matter.
2. I am not admitted as an attorney in the United States District Court for the District of Delaware but am admitted in another United States District Court.
3. The courts in which I am admitted as an attorney are as follows: District of Columbia Court of Appeals, Supreme Court of Kentucky (inactive), and the United States Supreme Court. I am also admitted in the United States Courts of Appeals for the Second, Fourth, Fifth, Seventh, Ninth, Tenth, Eleventh, and District of Columbia Circuits, and in the United States District Courts for the District of Colorado, the Eastern District of Kentucky, and the Western District of Washington.
4. I am in good standing in all jurisdictions in which I am admitted as an attorney.

5. I will be bound by the Rules of this Court and submit to the jurisdiction of this Court for disciplinary purposes.

By my signature I hereby certify under penalty of perjury that the foregoing statements are true and correct.

July 18, 2005

/s/ Lawrence DeMille-Wagman
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Federal Trade Commission
600 Pennsylvania Ave., N.W.
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lwagman@ftc.gov

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
)	
PROXIM CORPORATION, <i>et al.</i>	)	Case No. 05-11639 (PJW)
	)	(Jointly Administered)
Debtors.)	
	)	Deadline to Object:
	)	July 19, 2005, at 12:00 noon (ET)
	)	Hearing: July 20, 2005,
	)	at 9:30 am (ET)

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2005, I electronically filed the following document with the Clerk of Court using CM/ECF:

**Federal Trade Commission's Objection to Debtors'
Motion for Order (I) Approving Sale by Debtors of Substantially All Assets
Free and Clear of Liens, Claims, Encumbrances and Other Interests
Pursuant to Sections 363(b), (f) and (m) of the Bankruptcy Code; (II)
Assuming and Assigning Certain Executory Contracts and Unexpired
Leases; and (III) Granting Related Relief (Docket No. 75)**

Based on information from the CM/ECF system, I understand that such electronic filing will send notification of such filing to those persons listed under "electronic notification" on the attached service list. I hereby certify that I caused the same document to be sent by courier, for delivery by noon on July 19, 2005, to those persons listed under "courier service" on the attached service list.

/s/Patrick J. Roach
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