

Counterparty	Counterparty Address	Agreement Description	Cure Amount
AT&T Services, Inc.	Attn.: Legal Department One AT&T Way Bedminster, NJ 07921	Non-Disclosure Agreement, and any related amendments, modifications, renewals, and extensions thereto. Contract Dated: 9/6/2012.	\$0.00
AT&T Services, Inc.	Attn.: Director –Contracting & Sourcing 1277 Lenox Park Boulevard, 7 th Floor Atlanta, GA 30319	Customer Agreement, and any related amendments, modifications, renewals, and extensions thereto. Contract Dated: 5/3/2013.	\$0.00
AT&T Services, Inc.	Attn.: Edward Canobbio 2600 Camino Ramon RM1E00G San Ramon, CA 94583	Resale Agreement, and any related amendments, modifications, renewals and extensions thereto. Contract Dated: 7/21/2010.	\$0.00
AT&T Services, Inc.	Attn.: Legal Department One AT&T Way Bedminster, NJ 07921	Non-Disclosure Agreement, and any related amendments, modifications, renewals, and extensions thereto. Contract Dated: 7/19/2011.	\$0.00
AT&T Services, Inc.	Jo Anne Zingo-Hargis 1618 W 28 th Terrace Lawrence, KS 66046	Purchase Agreement, and any related amendments, modifications, renewals and extensions thereto. Contract Dated: 1/11/2007:	\$0.00
Cingular Wireless LLC	Attn.: Senior Contract Manager for Supplier's Account 5565 Glenridge Connector Atlanta, GA 30342	Master Supplier Agreement, and any related amendments, modifications, renewals, and extensions thereto. Contract Effective Date: 10/30/2006	\$0.00
Cricket Communications, Inc.	Attn.: Legal Department; Attn.: Procurement 5887 Copley Drive San Diego, CA 92111	Mutual Non-Disclosure Agreement, and any related amendments, modifications, renewals, and extensions thereto. Contract Effective Date: 2/17/2011.	\$0.00

2. AT&T and the Debtor are parties to supply agreements under which AT&T purchased equipment and services from the Debtor. AT&T and Exide, f/n/a GNB, a division of Exide Technologies, entered a certain Master Supplier Agreement, effective October 30, 2006, as amended by that certain Amendment to Master Supplier Agreement executed by Exide on May 4, 2009, and that certain Amendment No. cing7868.A.002 effective September 9, 2014 (the Master Supplier Agreement, as amended and supplemented, the “Master Supplier Agreement”).² AT&T and the Debtor entered a certain Buying Group Agreement effective May 10, 2013 (the “Buying Group Agreement,” and, together with the Master Supplier Agreement, the “Supply Agreements”).

3. AT&T has contingent, unliquidated claims against the Debtor under the Supply Agreements. The Debtor has numerous obligations, including, but not limited to, warranty, credit and indemnity obligations, that are owed to AT&T under the Master Supplier Agreement, and indemnification obligations under the Buying Group Agreement. Exide’s obligations to AT&T include, without limitation, warranty and potential indemnity obligations related to batteries purchased by AT&T under the Master Supplier Agreement.

4. AT&T is not aware of any liquidated or matured claims under the Supply Agreements or other AT&T Agreements existing as of the date of filing this Cure Objection. However, AT&T has potential unliquidated and/or contingent claims against the Debtor based on the terms of the Master Supplier Agreement and Buying Group Agreement including without

² The Master Supplier Agreement, the Buying Group Agreement and related documents in support of AT&T’s claim are voluminous and, in some instances, confidential. Copies and/or summaries can be obtained on request to counsel but may be subject to redaction and require a confidentiality agreement.

limitation, warranty and indemnity provisions, and provisions concerning any outstanding credits or discounts.

OBJECTION

5. In order to assume the AT&T Agreements, the Debtor must comply with the provisions of 11 U.S.C. § 365. Section 365 states, in pertinent part:

(b)(1) if there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default ...’

(B) compensates or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

6. Section 365(b)(1) makes it clear that defaults must be cured as of the time of assumption, including both prepetition and postpetition defaults. *See In re Kiwi Int’l. Air Lines, Inc.*, 344 F.3d 311, 318 (3d Cir. 2003); *In re Building Block Childcare Ctrs., Inc.*, 234 B.R. 762, 765 (9th Cir. B.A.P. 1999). Additionally, prior to assumption, a debtor must provide adequate assurance of future performance so that the other contracting party is assured that it will be made whole. *Id.* If a debtor assumes a contract “... he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.” *In re Fleming Cos., Inc.*, 499 F.3d 300, 308 (3d Cir. 2007) (citation omitted); *In re Buffets Holdings, Inc.*, 387 B.R. 115, 119 (Bankr. D. Del. 2008).

7. As a threshold matter, AT&T's records show the following AT&T Agreements have expired by their own terms post-petition, and therefore are no longer executory contracts eligible for assumption by the Debtor.

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AT&T Services, Inc.	Attn.: Edward Canobbio 2600 Camino Ramon RM1E00G San Ramon, CA 94583	Resale Agreement, and any related amendments, modifications, renewals and extensions thereto. Contract Dated: 7/21/2010. Contract no. 20090706.019.C. Expired 9/30/13.	\$0.00
AT&T Services, Inc.	Attn.: Legal Department One AT&T Way Bedminster, NJ 07921	Non-Disclosure Agreement, and any related amendments, modifications, renewals, and extensions thereto. Contract Dated: 7/19/2011. Contract no. 20110706.030.C. Expired 7/19/14.	\$0.00
AT&T Services, Inc.	Jo Anne Zingo-Hargis 1618 W 28 th Terrace Lawrence, KS 66046	Purchase Agreement, and any related amendments, modifications, renewals and extensions thereto. Contract no. Dated: 1/11/2007. Contract no. 20061120.C, as amended. Expired 7/31/14.	\$0.00

8. AT&T does not object in principle to the Debtor's assumption of the remaining unexpired AT&T Agreements. As of the date of this Cure Objection, AT&T also does not object to the cure amounts proposed by the Debtor with respect to the AT&T Agreements.³ However, AT&T objects to the proposed assumption of the AT&T Agreements to the extent that

³ Balances are owed to AT&T for telecommunications services it has provided to the Debtor pursuant to agreements entered by the Debtor pre-petition and/or post-petition. AT&T understands these service agreements are not proposed for assumption, and reserves all rights with respect to the agreements and the amounts owed under the agreements.

it does not include the Debtor's contingent and unliquidated warranty, credit and indemnity obligations under the Master Supplier Agreement and/or the Buying Group Agreement. Section 365 of the Bankruptcy Code does not permit the Debtor to assume the AT&T Agreements without assuming the Agreements in their entirety including the obligations related to these and all other contractual provisions.

9. AT&T reserves the right to amend this cure objection as new information becomes available, and also reserves the right to assert further objections to proposed assumption of the AT&T Agreements, including the right to object based on the ability of any proposed assignee of the AT&T Agreements to provide adequate assurance of future performance, and the right to object based on restrictions relating to assignment of proprietary intellectual property.

WHEREFORE, AT&T respectfully requests the Court only permit assumption of the AT&T Agreements consistent with the foregoing and granting such and further additional relief as the Court may deem just and proper.

Dated: March 25, 2015

Respectfully submitted,

ASHBY & GEDDES, P.A.

/s/ Benjamin W. Keenan

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CERTIFICATE OF SERVICE

I, Benjamin W. Keenan, hereby certify that, on March 25, 2015, I caused one copy of the foregoing document to be served upon the parties below as indicated.

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