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

	)	Chapter 11
In re:	)	
	)	Case No. 21-11880 ()
GTT COMMUNICATIONS, INC., <i>et al.</i> , ¹	)	
	)	(Joint Administration Requested)
Debtors.	)	
	)	

**DEBTORS' MOTION
FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING, BUT NOT DIRECTING,
DEBTORS TO (A) CONTINUE PERFORMING UNDER CUSTOMER
CONTRACTS, (B) CONTINUE CUSTOMER PROGRAMS, (C) CONTINUE
PERFORMING UNDER AGENT AGREEMENTS AND (D) HONOR PREPETITION
OBLIGATIONS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: GTT Communications, Inc. (6338); Communication Decisions - SNVC, LLC (6338); Core180, LLC (6338); Electra Ltd. (6338); GC Pivotal, LLC (6227); GTT Americas, LLC (1133); GTT Global Telecom Government Services, LLC (6338); GTT RemainCo, LLC (0472); GTT Apollo Holdings, LLC (2300); and GTT Apollo, LLC (8127). The service address for the Debtors is 7900 Tysons One Place, Suite 1450, McLean, VA 22102.

GTT Communications, Inc. (“GTT”) and its affiliated debtors, as debtors and debtors in possession (collectively with GTT, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), respectfully state as follows in support of this motion (the “Motion”):

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the forms annexed hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order”) and, together with the Interim Order, the “Orders”: (i) authorizing, but not directing, the Debtors to (a) continue performing under their prepetition contracts with customers, (b) continue their prepetition customer-related programs, (c) continue performing under their prepetition agreements with third-party sales and marketing agents and (d) honor their prepetition obligations related to the foregoing, as well as settle disputes, in the ordinary course of business; and (ii) granting related relief.

2. The facts and circumstances supporting the relief requested in this Motion are set forth in the *Declaration of Brian J. Fox in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed contemporaneously herewith and incorporated herein by reference.² For the reasons set forth in the First Day Declaration and below, and because all claims on account of the Customer Contracts, Customer Programs and Agent Agreements are unimpaired under the Plan (each defined below) and will be paid in full in the ordinary course of business, no party in interest will be prejudiced by the relief requested herein as the Motion does not seek to alter the amount or priority of such payments. In addition, as evidenced by the fact that holders of

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

100% of 2018 Credit Facility Claims³ and 100% of Senior Notes Claims⁴ that voted on the Plan voted to accept the Plan, which are the only two impaired classes of claims entitled to vote on the Plan, the Debtors' impaired creditors consent to the relief requested herein.⁵

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the Southern District of New York, dated as of January 31, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 6003(b), 6004(a) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

5. The Debtors consent to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection with this Motion consistent with Article III of the United States Constitution.

BACKGROUND

6. The Debtors are party to a restructuring support agreement, dated as of September 1, 2021 (the "Restructuring Support Agreement"), with, among others, holders of in excess of 85% of the 2018 Credit Facility Claims and holders of in excess of 76% of the Senior

³ The holders of 2018 Credit Facility Claims that voted on the Plan hold in excess of 88% of all 2018 Credit Facility Claims.

⁴ The holders of Senior Notes Claims that voted on the Plan hold in excess of 88% of all Senior Notes Claims.

⁵ The Disclosure Statement disclosed the Debtors' intention to file motions seeking to pay all of their trade liabilities (regardless of when incurred) in the ordinary course of business. See Disclosure Statement, Intro. at 5; Article V.

Notes Claims, that provides for a comprehensive restructuring through the disposition of the Infrastructure Business⁶ pursuant to the I Squared Infrastructure Sale followed by the commencement of these Chapter 11 Cases and prosecution of the Plan. On September 16, 2021, the I Squared Infrastructure Sale closed. In connection therewith, and as contemplated by the Debtors' prepetition secured debt documents and the Restructuring Support Agreement, on September 16, 2021, the Debtors repaid approximately \$1.673 billion of their then-outstanding secured funded debt.

7. On September 24, 2021, the Debtors commenced a prepetition solicitation process with respect to the *Joint Prepackaged Chapter 11 Plan of Reorganization of GTT Communications, Inc. and Its Debtor Affiliates* (as the same may be amended, supplemented or modified from time to time, the "Plan"). The Plan has overwhelming support from the Debtors' creditors impaired thereby, with holders of 100% of 2018 Credit Facility Claims and holders of 100% of Senior Notes Claims that voted on the Plan having voted to accept the Plan. Importantly, the classes of 2018 Credit Facility Claims and Senior Notes Claims have agreed to the unimpairment of general unsecured creditors and the current payment of such creditors during the pendency of these Chapter 11 Cases. Votes of holders of Existing GTT Equity Interests, who are to receive Equityholder Warrants under the Plan, were not solicited prior to the commencement of these Chapter 11 Cases and, contemporaneously herewith, the Debtors are requesting a waiver of the requirements under the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), including Bankruptcy Rule 3017(d), to solicit such holders.

⁶ Information regarding the sale of the Infrastructure Business (the "I Squared Infrastructure Sale") can be found in the First Day Declaration.

8. In furtherance of the above, on the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

9. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

10. A detailed description of the Debtors’ businesses, capital structure, the events leading to the commencement of these Chapter 11 Cases, the Restructuring Support Agreement and the Plan is set forth in the First Day Declaration.

OVERVIEW

A. Customer Contracts

11. GTT, through its Debtor and non-Debtor affiliates, provides cloud networking, high-speed connectivity and related products and services to a broad range of customers. Specifically, the Debtors provide, among other products and services, (a) wide area networking services, including software-defined wide area networking, multiprotocol label switching, and virtual private LAN services, (b) broadband and wireless internet connectivity services, (c) transport services, such as Ethernet, wavelength and colocation services to support live international broadcasting and (d) enterprise voice services.

12. The vast majority of the Debtors’ revenues are derived from their long-term contracts with their customers (“Customer Contracts”). As a result, securing new Customer Contracts and maintaining existing Customer Contracts are critical to the Debtors’ long-term success and viability. Generally, Customer Contracts provide that customers are charged (subject to certain credits, rebates, adjustments and/or discounts described in more detail below) on a

monthly, quarterly or annual basis (the “Recurring Fees”) for their subscribed products and/or services. Certain Customer Contracts, however, require customers to prepay for the full amount of their contracted for products and/or services (such payments, the “Non-Recurring Fees” and, together with the Recurring Fees, the “Contract Fees”).

13. The Debtors depend on the uninterrupted continuation of their Customer Contracts and the attendant receipt of Contract Fees for their success. Thus, maintaining and strengthening the Debtors’ relationships with their customers are critical during these Chapter 11 Cases. In the ordinary course of their business operations, the Debtors offer customers various Customer Programs (defined below), which are memorialized in Customer Contracts. For example, the Debtors may offer a customer a volume-based discount in respect of Recurring Fees that is conditioned on minimum service thresholds being maintained throughout the life of its Customer Contract, the terms of which would be set forth in the Customer Contract.⁷

14. Accordingly, by this Motion the Debtors seek authorization, but not direction, to (a) continue performing under their Customer Contracts in the ordinary course of business, (b) honor all of their customer-related obligations, including any prepetition obligations associated therewith, and (c) enter into new Customer Contracts in the ordinary course of business.

B. Customer Programs

15. In order to develop, maintain and expand customer relationships, the Debtors provide certain incentives, discounts and other accommodations to new and existing customers (collectively, the “Customer Programs”). The Debtors’ Customer Programs primarily fall within one of three (3) categories: (a) Customer Acquisition Promotions; (b) Customer Retention

⁷ The Debtors’ Customer Programs can be customized on a customer-by-customer basis. For example, the amount of a volume-based discount or the minimum service threshold required in order to retain such discount may be established in a Customer Contract and may vary from contract to contract.

Promotions; and (c) Service Level Guarantees (each defined below). The Debtors believe that the Customer Programs promote and maintain customer satisfaction by reducing costs and providing flexible solutions to address customer needs, which, in turn, increase the Debtors' goodwill and the value of their brand. Given the competitive nature of the Debtors' industry, maintaining the goodwill of customers is critical to the Debtors' ongoing operations and the preservation and maximization of stakeholder value. For these reasons, the Debtors seek authorization, but not direction, to continue providing the Customer Programs to their customers, as well as to honor all of their prepetition obligations related thereto, nearly all of which comprise accrued credits, rebates, adjustments, discounts or other similar non-cash obligations owing to customers but may sometimes include *de minimis* amounts of cash refunds or other cash outlays.⁸

(i) Customer Acquisition Promotions

16. The Debtors offer various sales promotions (the "Customer Acquisition Promotions") that are designed to attract and incentivize new customers to enter into long-term contracts with the Debtors, as well as to incentivize existing customers to expand significantly the networking, internet connectivity, enterprise voice and transport products and services they obtain from the Debtors. Under the Customer Acquisition Promotions, the Debtors offer customers a variety of incentives, including, among others: (a) volume-based discounts with respect to the service-level thresholds maintained with the Debtors, which discounts take the form of flexible bill credits and rebates and typically are applied to the first and/or last recurring periods within the term of a Customer Contract, in an amount equal to a specified percentage of the Contract Fees required thereunder; (b) "step-charge" credits which increase on a fixed periodic (*i.e.*, monthly,

⁸ For example, a cash refund can be required due to the erroneous billing of a paid-in-advance customer that would be unable to timely utilize an account credit.

quarterly or annual) basis to reduce incrementally a customer's Contract Fees over the life of a Customer Contract;⁹ and (c) "start-up" rebates to (i) defray the costs associated with maintaining duplicative services during a customer's transition to the Debtors' network from an alternative provider and/or (ii) compensate a customer for any service failures or quality disruptions during such transition.

17. The Debtors' obligations under the Customer Acquisition Promotions consist of cashless rebates, credits, adjustments and discounts. By this Motion, the Debtors request authorization, but not direction, to continue providing the Customer Acquisition Promotions in the ordinary course of business and to honor all of their prepetition obligations outstanding in connection therewith.

(ii) Customer Retention Promotions

18. The Debtors offer various retentive promotions (the "Customer Retention Promotions") that are designed to incentivize existing customers to maintain and renew their Customer Contracts with the Debtors. Under the Customer Retention Promotions, the Debtors offer customers a variety of incentives, including, among others: (a) renewal discounts in the form of upfront bill credits or specified discounts against Recurring Fees (which credits and discounts typically depend on the type, scope and volume of renewed business) and (b) waivers of certain early termination liabilities for qualified customers who wish to right-size their services with the Debtors (as opposed to seeking alternative solutions from other providers) and thus need to terminate a portion (but not all) of the services that they procure from the Debtors.

⁹ On rare occasions, to meet the needs of certain customers, the Debtors may enter into a Customer Contract that provides for reduced Recurring Fees during an initial period and utilizes step charges to increase periodically the Recurring Fees due over the life of the Customer Contract.

19. As with the Customer Acquisition Promotions, the Debtors' obligations under the Customer Retention Promotions are in the form of cashless rebates, credits, adjustments and discounts. By this Motion, the Debtors request authorization, but not direction, to continue providing the Customer Retention Promotions in the ordinary course of business and to honor all of their prepetition obligations outstanding in connection therewith.

(iii) Service Level Guarantees

20. In the ordinary course of business, the Debtors provide service level guarantees with respect to certain of their commercial service offerings (the "Service Level Guarantees"), including, but not limited to, certain of their cloud networking, high-speed connectivity and related services. Pursuant to these Service Level Guarantees, a commercial customer experiencing a service interruption or an outage rising to the definition of "outage" under its Customer Contract may request a pro-rata bill credit for the length of time of the outage.¹⁰ The Debtors offer a maximum credit of the total Recurring Fees due for the period in which the customer experienced the outage.

21. The Debtors' obligations under the Service Level Guarantees are in the form of cashless credits. By this Motion, the Debtors request authorization, but not direction, to continue providing Service Level Guarantees in the ordinary course of business and to honor all of their prepetition obligations outstanding in connection therewith.

C. Marketing and Sales Agents

22. The Debtors operate in a highly competitive industry and growing their customer base is critical to the Debtors' long-term success. In the ordinary course of business, the Debtors

¹⁰ To determine the value of such bill credits, the Debtors record the amount of time (either by the minute or the hour) during which that customer experienced an "outage" and calculate the percentage of the fee period in which that customer was without service.

market their products and services both directly, through an internal sales force, and indirectly, through approximately 190 third-party marketing and sales agents (collectively, the “Agents”). The Agents proactively market the Debtors’ products and services using Debtor-created promotional materials and, upon the prior written consent of the Debtors, offer unique discounts, Customer Programs and/or tailor-made service packages on a customer-by-customer basis. In addition, certain of the Agents provide ancillary services to customers by serving as a point of contact through which customers can voice concerns or obtain information regarding the terms of their Customer Contracts.

23. Each Agent’s engagement by the Debtors is governed by a master agreement (the “Agent Agreements”) that, among other things, provides for the Agent to receive a commission in an amount equal to a fixed percentage (typically between eight (8) and twenty (20) percent) of the Contract Fees collected by the Debtors from customers procured by such Agent (the “Agent Commissions”). The Agent Agreements are non-exclusive contracts, and most Agents provide comparable sales and marketing services to the Debtors’ competitors. Therefore, in order to drive sales, the Debtors offer competitive Agent Commissions that can vary based on the volume and classification of services sold to customers.

24. In the twelve months leading up to the Petition Date, the Agents accounted for approximately 34% of the Debtors’ overall new customer sales. During that same period, the Debtors paid on average \$2,500,000 per month on account of Agent Commissions. The Debtors do not anticipate that any amounts will become due and owing on account of Agent Commissions within the first twenty-one (21) days immediately following the Petition Date and as such only seek authority to pay Agent Commissions pursuant to the Final Order. As noted above, the Debtors are only obligated to pay Agent Commissions on account of Contract Fees actually received from

customers, and the Debtors generally remit Agent Commissions one month in arrears of such receipts.¹¹ As such, all amounts remitted to Agents on account of Agent Commissions represent a small percentage of the actual customer revenue attributable to the customers procured by the Agents.

25. Accordingly, by this Motion, the Debtors seek authority, but not direction, to (a) continue performing under the Agent Agreements in the ordinary course of business, (b) honor all of their obligations thereunder, including prepetition Agent Commissions, and (c) enter into new Agent Agreements in the ordinary course of business.

BASIS FOR RELIEF

26. Courts in this district generally acknowledge that it is appropriate to authorize a debtor's payment of prepetition obligations and the use of estate assets outside the ordinary course of business where necessary to protect and preserve the estate, including an operating business's going-concern value. *See GLM DFW, Inc. v. Windstream Holdings Inc. (In re Windstream Holdings Inc.)*, 614 B.R. 441, 460 (S.D.N.Y. 2020) (holding that bankruptcy court properly utilized its broad "equitable power" to allow payment of certain prepetition claims which would "ensure the rehabilitation of Debtors and viability of the estate for all creditors"), *appeal dismissed*, 838 F. App'x 634 (2d Cir. 2021); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (affirming bankruptcy court's order granting authority to pay prepetition claims of suppliers); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (outlining the standards and case law governing payment of prepetition claims and stating that courts can "authorize a debtor in a reorganization case to pay pre-petition

¹¹ The Agent Agreements typically reserve the Debtors' rights to recapture Agent Commissions (via chargebacks or deductions from future Agent Commissions) that are paid in connection with Contract Fees that are subsequently credited or refunded back to a customer.

claims where such payment is essential to the continued operation of the debtor”). In doing so, courts acknowledge that several legal theories rooted in Bankruptcy Code sections 363(b) and 105(a) support the payment of prepetition claims as provided herein.

27. Bankruptcy Code section 363(b) provides, in pertinent part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). Under Bankruptcy Code section 363(b), a court may authorize a debtor to pay certain prepetition claims where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175; *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying on Bankruptcy Code section 363 to allow contractor to pay prepetition claims of suppliers).

28. The Customer Contracts, Customer Programs and Agent Agreements are, in large part, the drivers of the Debtors’ relationship with their customers and, thus, the Debtors’ revenues. As described above, the Customer Contracts provide for a stable and long-term source of revenue for the Debtors, and the Agent Agreements help facilitate the Debtors’ acquisition of new business. In addition, the Debtors’ Customer Programs promote and maintain customer satisfaction, which, in turn, increases the Debtors’ goodwill, the value of their brand and ultimately their revenues. Continuing to perform under the Customer Contracts and Agent Agreements, as well as to continue providing the Customer Programs, without interruption during the pendency of these Chapter 11 Cases is critical to preserving the value of the Debtors’ estates. Therefore, the Debtors seek authorization, but not direction, to continue performing under the Customer Contracts and Agent Agreements, to continue providing the Customer Programs and to settle any disputes and honor prepetition claims related to each of the foregoing.

29. In addition, the Court has the authority, pursuant to its equitable powers under Bankruptcy Code section 105(a), to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under Bankruptcy Code section 1107(a). Bankruptcy Code section 105(a) empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Code section 1107(a) contains an implied duty of the debtor in possession to protect and preserve the estate, including an operating business’s going-concern value, on behalf of a debtor’s creditors and other parties in interest. *See In re Sillerman*, 605 B.R. 631, 648 (Bankr. S.D.N.Y. 2019) (“While the Bankruptcy Code permits a debtor to operate its business and exercise control over its estate, the debtor-in-possession acts as a fiduciary of the estate and its creditors.”) (citations omitted); *Taub v. Taub (In re Taub)*, 427 B.R. 208, 224 (Bankr. E.D.N.Y. 2010), *aff’d*, Case No. 10-cv-5717, 2011 WL 1322390 (E.D.N.Y. Mar. 31, 2011); *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 169 (Bankr. S.D.N.Y. 1990); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 233 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”).

30. Here, the Debtors must continue to honor and perform under their Customer Contracts and continue to provide the Customer Programs in order to maximize the value of their businesses and their revenues. The Debtors believe that, should they fail to honor their obligations under their Customer Contracts and Customer Programs, certain of their customers may stop using their services and/or may withhold payments otherwise due for services performed. Further, if the Debtors’ customers perceive that the Debtors are unable or unwilling to honor their obligations related to the Customer Contracts or Customer Programs, the Debtors’ goodwill and business

relationships may erode. As such, any delay in honoring the Debtors' obligations could severely disrupt the Debtors' efforts to maximize value in these Chapter 11 Cases. Even if the Debtors could avoid payment of accrued obligations to customers under the Customer Contracts or Customer Programs, the collateral consequences on the Debtors' go-forward business would vastly exceed whatever modest short-run cost savings the Debtors might achieve. Accordingly, the Debtors seek authorization, but not direction, to continue performing under their Customer Contracts and providing the Customer Programs in the ordinary course of business, including by making payments with respect thereto regardless of whether such obligations are prepetition or postpetition obligations.

31. Similarly, the Debtors' ability to attract new customers and, thus, maximize the value of their estates, will be aided by continuing to honor and perform under their Agent Agreements. As mentioned above, the Agents operate under non-exclusive agreements with the Debtors and provide comparable services to the Debtors' competitors. Moreover, under the vast majority of Agent Agreements the Debtors are unable to compel Agents to continue signing up new customers for them.¹² Accordingly, should the Debtors fail to honor prepetition obligations owed to Agents, such Agents may redirect their efforts towards other service providers and/or cease doing business with the Debtors entirely.

32. Further, in a long line of well-established cases, courts consistently have permitted payment of a prepetition obligation where such payment is necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C. & Sw. Ry. Co.*, 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to

¹² Under the Agent Agreements (subject only to rare exceptions), an Agent's failure to sign up new customers does not constitute a breach of the agreement or provide the Debtors with grounds to compel performance.

reorganization permitted to prevent “stoppage of the continuance of [crucial] business relations”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”); *In re Windstream Holdings Inc.*, 614 B.R. at 456-57 (noting existence of “judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor”) (quoting *Ionosphere Clubs*, 98 B.R. at 175); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving bankruptcy court’s order authorizing payment of prepetition wages, salaries, expenses and benefits); *In re CoServ L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“[I]t is only logical that the bankruptcy court be able to . . . authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”).

33. Continuing to perform under the Customer Contracts and Agent Agreements and continuing to provide the Customer Programs are necessary costs of preserving the Debtors’ estates. Interruption of the Debtors’ performance with respect to existing customer-related obligations and/or the loss of a reliable source of new business would lead to a considerable loss of anticipated revenue. Further, any disruption with respect to existing Customer Contracts, Customer Programs and Agent Agreements, or an inability to renew or continue such agreements and programs could place the Debtors at a competitive disadvantage in the marketplace, amplifying the negative effect of any customer uncertainty that may arise in connection with these Chapter 11 Cases. Such uncertainty could erode the Debtors’ hard-earned reputation and brand

loyalty, which, in turn, could adversely impact the Debtors' prospects for a successful emergence from chapter 11.

34. Accordingly, authority to continue performing under the Customer Contracts and Agent Agreements, to continue providing their Customer Programs and to pay all of their obligations related to the foregoing, including obligations arising prior to the commencement of these Chapter 11 Cases, is critical to the Debtors' ability to preserve their going concern value. Further, the relief requested by this Motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates and is justified under Bankruptcy Code sections 363(b) and 105(a). Moreover, as stated above, no party in interest will be prejudiced by the relief requested herein because all claims on account of the Customer Contracts, Customer Programs and Agent Agreements are unimpaired under the Plan and will be paid in full in the ordinary course of business. Additionally, holders of 2018 Credit Facility Claims and holders of Senior Notes Claims, which are the only creditors impaired under the Plan, have consented to the relief requested herein. Accordingly, authority to continue to pay all obligations relating to the Customer Contracts, Customer Programs and Agent Agreements, whether arising before or after the Petition Date, is essential to preserve the Debtors' businesses and value of their estates and is amply justified by the circumstances of these Chapter 11 Cases.

35. Courts in this district and others have granted relief similar to that requested herein. *See, e.g., In re Centric Brands Inc.*, Case No. 20-22637 (SHL) [Docket No. 167] (Bankr. S.D.N.Y. Jun. 10, 2020) (granting debtors authority to continue prepetition customer programs in the ordinary course of business and honor prepetition obligations related to same); *In re Frontier Comm'ns Corp.*, Case No. 20-22476 (RDD) [Docket No. 368] (Bankr. S.D.N.Y. May 26, 2020) (same); *In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) [Docket No. 379] (Bankr.

S.D.N.Y. Apr. 22, 2019) (same); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) [Docket No. 219] (Bankr. S.D.N.Y. May 7, 2018) (same); *In re Cenveo Inc.*, Case No. 18-22178 (RDD) [Docket No. 172] (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) [Docket No. 246] (Bankr. S.D.N.Y. Mar. 29, 2017) (granting debtors authority to continue prepetition customer programs in the ordinary course of business and honor prepetition obligations related to same); *In re Avaya, Inc.*, Case No. 17-10089 (SMB) [Docket No. 141] (Bankr. S.D.N.Y. Feb. 10, 2017) (approving over \$90 million in prepetition payments on account of customer programs and obligations to third party providers). Accordingly, the Debtors submit that the Court should grant the Debtors the authority to continue performing under the Customer Contracts and Agent Agreements, to continue providing the Customer Programs and to pay all of their obligations related thereto, each in the ordinary course of business.

**CAUSE EXISTS TO AUTHORIZE FINANCIAL INSTITUTIONS
TO HONOR CHECKS AND ELECTRONIC FUND TRANSFERS**

36. The Debtors have sufficient funds to pay Agent Commissions, as well as the other relief addressed in this Motion, in the ordinary course of business by virtue of cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Agent Commissions or other relief addressed in this Motion. Accordingly, the Debtors believe that there is minimal risk that checks or wire transfer requests representing payments that the Court has not authorized will be made inadvertently. Thus, the Debtors request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein, solely to the extent that the Debtors have sufficient funds on deposit in the applicable bank accounts to cover such payments.

RESERVATION OF RIGHTS

37. To the extent that the Customer Contracts, Agent Agreements or any contract or agreement in connection with any of the Customer Programs is deemed to be an executory contract within the meaning of Bankruptcy Code section 365, the Debtors do not at this time intend to assume such contract or agreement. As such, the Debtors request that the Court's authorization of payment of any obligations arising in connection with the Customer Contracts, Customer Programs or Agent Agreements, and any action taken by the Debtors in furtherance of the Orders shall not be deemed to constitute an assumption of any contract or agreement pursuant to Bankruptcy Code section 365. The Debtors are currently in the process of reviewing all of their contracts and agreements and reserve all of their rights with respect thereto.

38. Nothing contained herein is intended or should be construed as (a) an agreement or admission as to the validity or priority of any claim against the Debtors or their estates; (b) a waiver or impairment of the Debtors' or any appropriate party in interest's rights to dispute any claim against the Debtors on any grounds; (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (d) a promise by the Debtors to pay any claim; or (e) an implication or admission by the Debtors that any claim is payable pursuant to an order granting the relief requested in this Motion.

BANKRUPTCY RULE 6003(b) IS SATISFIED

39. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" within twenty-one (21) days after filing of the petition. Fed. R. Bankr. P. 6003(b). As described above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and

that any delay in granting the relief requested herein could hinder the Debtors' operations and cause irreparable harm. Any lapse in the Debtors' ability to perform under their prepetition Customer Contracts and Agent Agreements, to continue providing their Customer Programs or to honor their obligations relating thereto on a postpetition basis could harm customer relations and/or jeopardize the Debtors' critical revenue streams. Coupled with any perceived uncertainty caused by the filing of these Chapter 11 Cases, a failure to honor discounts, rebates and waivers to which existing customers are accustomed could incentivize such customers to terminate or refuse to renew their Customer Contracts, thereby reducing the Debtors' market share to the detriment of the Debtors' estates. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

40. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

NOTICE

41. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Jones Day, counsel to KeyBank National Association, as Administrative Agent; (d) Reed Smith LLP, counsel to Wilmington Trust, National Association, as Indenture Trustee; (e) Milbank LLP, counsel to the Ad Hoc Lender Group; (f) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the 2020 Ad Hoc Lender Group; (g) Latham & Watkins, LLP, counsel to the Ad Hoc Noteholder Group; (h) Kirkland & Ellis LLP, counsel to I Squared; (i) the United States Attorney's Office for the Southern District of New York; (j) the Internal Revenue Service; (k) the SEC; (l) the attorneys general for the states where the

Debtors conduct business operations; (m) the Federal Communications Commission; (n) the Agents; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Bankruptcy Rule 9013 and Local Rule 9013-1(b). In light of the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request entry of the Orders, substantially in the forms annexed hereto as **Exhibit A** and **Exhibit B**, granting the relief requested in this Motion and such further relief as is just, proper and equitable.

Dated: October 31, 2021
New York, New York

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Philip C. Dublin
Ira S. Dizengoff
Philip C. Dublin
David H. Botter
Naomi Moss
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
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idizengoff@akingump.com
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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Interim Order

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

		)	Chapter 11
In re:		)	
		)	Case No. 21-11880 ()
GTT COMMUNICATIONS, INC., <i>et al.</i> , ¹		)	
		)	(Jointly Administered)
Debtors.		)	
		)	Re: Docket No. ____

**INTERIM ORDER
(I) AUTHORIZING, BUT NOT DIRECTING,
DEBTORS TO (A) CONTINUE PERFORMING
UNDER CUSTOMER CONTRACTS, (B) CONTINUE
CUSTOMER PROGRAMS, (C) CONTINUE PERFORMING
UNDER AGENT AGREEMENTS AND (D) HONOR PREPETITION
OBLIGATIONS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases for entry of an interim order (the “Interim Order”): (i) authorizing, but not directing, the Debtors to (a) continue performing under their prepetition contracts with customers, (b) continue their prepetition customer-related programs, (c) continue performing under their prepetition agreements with third-party sales and marketing agents and (d) honor their prepetition obligations related to the foregoing, as well as settle disputes, in the ordinary course of business; and (ii) granting related relief, all as further described in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this Court being proper pursuant to 28 U.S.C. §§ 1408 and 1409;

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: GTT Communications, Inc. (6338); Communication Decisions - SNVC, LLC (6338); Core180, LLC (6338); Electra Ltd. (6338); GC Pivotal, LLC (6227); GTT Americas, LLC (1133); GTT Global Telecom Government Services, LLC (6338); GTT RemainCo, LLC (0472); GTT Apollo Holdings, LLC (2300); and GTT Apollo, LLC (8127). The service address for the Debtors is 7900 Tysons One Place, Suite 1450, McLean, VA 22102.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

and due and proper notice of the Motion having been given; and this Court having found that no other or further notice is necessary; and this Court having reviewed the Motion and the First Day Declaration and having heard statements in support of the Motion at a hearing held before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and this Court having found, that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to continue performing under their Customer Contracts, to settle any customer-related disputes, to honor all customer-related obligations, including obligations that arose prior to the Petition Date, and to enter into new Customer Contracts, in each case, in the ordinary course of business and consistent with their prepetition practices, without the need for further Court approval.
3. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to continue their Customer Programs, to settle any disputes associated with the Customer Programs and to honor all obligations related to the Customer Programs, including obligations that arose prior to the Petition Date, in each case, in the ordinary course of business and consistent with their prepetition practices, without the need for further Court approval.

4. The Debtors are authorized, but not directed, to renew, replace, modify, and/or terminate their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without the need for further Court approval.

5. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to continue performing under their Agent Agreements, to settle any disputes associated with the Agent Agreements, to honor all obligations related to the Agent Agreements and to enter into new Agent Agreements, in each case, in the ordinary course of business and consistent with their prepetition practices, without the need for further Court approval; *provided that* the Debtors shall not pay any amounts on account of Agent Commissions prior to the entry of the Final Order.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. Nothing contained in the Motion or this Interim Order is intended or should be construed as (a) an agreement or admission as to the validity or priority of any claim against the Debtors or their estates; (b) a waiver or impairment of the Debtors' or any appropriate party in interest's rights to dispute any claim against the Debtors on any grounds; (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (d) a promise by the

Debtors to pay any claim; (e) an implication or admission by the Debtors that any claim is payable pursuant to this Interim Order; or (f) the assumption or adoption of any contract or agreement under Bankruptcy Code section 365.

8. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any use of cash collateral by the Debtors (the “Cash Collateral Orders”). To the extent there is any inconsistency between the terms of the Cash Collateral Orders and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Orders shall control.

9. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the entry of a final order.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry, and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are waived.

12. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Interim Order.

13. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Interim Order.

14. A hearing to consider the entry of the Final Order granting the relief requested in the Motion shall be held on _____, **2021 at __:__ a.m./p.m. prevailing Eastern Time.** Any objections or responses to entry of the Final Order granting the requested relief shall be filed with the Clerk of the United States Bankruptcy Court for the Southern District of New York by no later than _____, **2021 at 4:00 p.m. prevailing Eastern Time** and served on or before such date upon: (a) the Debtors, Attn: Douglass Maynard, Esq.; (b) proposed counsel to the Debtors, Akin Gump Strauss Hauer & Feld LLP, Attn: Ira S. Dizengoff, Esq., Philip C. Dublin, Esq., David H. Botter, Esq. and Naomi Moss, Esq.; (c) counsel to any statutory committee appointed in these Chapter 11 Cases; (d) Jones Day, counsel to KeyBank National Association, as Administrative Agent, Attn: Thomas A. Wilson, Esq.; (e) Reed Smith LLP, counsel to Wilmington Trust, National Association, as Indenture Trustee, Attn: Kurt F. Gwynne, Esq.; (f) Milbank LLP, counsel to the Ad Hoc Lender Group, Attn: Evan R. Fleck, Esq., Lauren C. Doyle, Esq. and Brian J. Zucco, Esq.; (g) Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the 2020 Ad Hoc Lender Group, Attn: Robert Britton, Esq., Karen R. Zeituni, Esq. and Joseph M. Graham, Esq.; (h) Latham & Watkins, LLP, counsel to the Ad Hoc Noteholder Group, Attn: Richard A. Levy, Esq. and Ted A. Dillman, Esq.; (i) Kirkland & Ellis LLP, counsel to I Squared, Attn: Steven N. Serajeddini, Esq. and Kevin McClelland, Esq.; and (j) the Office of the United States Trustee for the Southern District of New York, Attn: Greg M. Zipes, Esq. and Richard C. Morrissey, Esq. In the event that no objections are timely received, this Court may enter the Final Order without need for a hearing.

Dated: _____, 2021
New York, New York

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Final Order

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

		)	Chapter 11
In re:		)	
		)	Case No. 21-11880 ()
GTT COMMUNICATIONS, INC., <i>et al.</i> , ¹		)	
		)	(Jointly Administered)
Debtors.		)	
		)	Re: Docket No. ____

**FINAL ORDER
(I) AUTHORIZING, BUT NOT DIRECTING,
DEBTORS TO (A) CONTINUE PERFORMING
UNDER CUSTOMER CONTRACTS, (B) CONTINUE
CUSTOMER PROGRAMS, (C) CONTINUE PERFORMING
UNDER AGENT AGREEMENTS AND (D) HONOR PREPETITION
OBLIGATIONS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases for entry of a final order (the “Final Order”): (i) authorizing, but not directing, the Debtors to (a) continue performing under their prepetition contracts with customers, (b) continue their prepetition customer-related programs, (c) continue performing under their prepetition agreements with third-party sales and marketing agents and (d) honor their prepetition obligations related to the foregoing, as well as settle disputes, in the ordinary course of business; and (ii) granting related relief, all as further described in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this Court being proper

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: GTT Communications, Inc. (6338); Communication Decisions - SNVC, LLC (6338); Core180, LLC (6338); Electra Ltd. (6338); GC Pivotal, LLC (6227); GTT Americas, LLC (1133); GTT Global Telecom Government Services, LLC (6338); GTT RemainCo, LLC (0472); GTT Apollo Holdings, LLC (2300); and GTT Apollo, LLC (8127). The service address for the Debtors is 7900 Tysons One Place, Suite 1450, McLean, VA 22102.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and this Court having found that no other or further notice is necessary; and this Court having reviewed the Motion and the First Day Declaration and having heard statements in support of the Motion at a hearing held before this Court (the “Final Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Final Hearing establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED:**

1. The Motion is granted on a final basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to continue performing under their Customer Contracts, to settle any customer-related disputes, to honor all customer-related obligations, including obligations that arose prior to the Petition Date, and to enter into new Customer Contracts, in each case, in the ordinary course of business and consistent with their prepetition practices, without the need for further Court approval.
3. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to continue their Customer Programs, to settle any disputes associated with the Customer Programs and to honor all obligations related to the Customer Programs, including obligations that arose prior to the Petition Date, in each case, in the ordinary course of business and consistent with their prepetition practices, without the need for further Court approval.

4. The Debtors are authorized, but not directed, to renew, replace, modify, and/or terminate their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without the need for further Court approval.

5. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to continue performing under their Agent Agreements, to settle any disputes associated with the Agent Agreements, to honor all obligations related to the Agent Agreements, including any Agent Commissions that arose prior to the Petition Date, and to enter into new Agent Agreements, in each case, in the ordinary course of business and consistent with their prepetition practices, without the need for further Court approval.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. Nothing contained in the Motion or this Final Order is intended or should be construed as (a) an agreement or admission as to the validity or priority of any claim against the Debtors or their estates; (b) a waiver or impairment of the Debtors' or any appropriate party in interest's rights to dispute any claim against the Debtors on any grounds; (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (d) a promise by the Debtors to pay any claim; (e) an implication or admission by the Debtors that any claim is payable

pursuant to this Final Order; or (f) the assumption or adoption of any contract or agreement under Bankruptcy Code section 365.

8. Notwithstanding anything in the Motion or this Final Order to the contrary, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all rights and authorizations granted or approved hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any use of cash collateral by the Debtors (the “Cash Collateral Orders”). To the extent there is any inconsistency between the terms of the Cash Collateral Orders and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Orders shall control.

9. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry, and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are waived.

10. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Final Order.

11. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Final Order.

Dated: _____, 2021
New York, New York

UNITED STATES BANKRUPTCY JUDGE