

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Objection Deadline: July 27, 2009 at 5:00 p.m. ET**
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In re

WASHINGTON MUTUAL, INC., et al.,¹

Debtors.

**NOTICE OF PROPOSED DISPOSITION OF DEBTORS' INTERESTS IN
CERTAIN INVESTMENTS PURSUANT TO INVESTMENT SALES PROCEDURES**

PLEASE TAKE NOTICE that, on June 15, 2009, Wavelink Corporation (“Wavelink”) was acquired by Wavelink Holdings Corp. (“Holdings”). Pursuant to the terms of that certain Agreement and Plan of Merger, dated May 20, 2009, by and between Wavelink, Holdings, and Wavelink Mergersub, Inc. (the “Merger Agreement”),² as of the Effective Date of the merger transaction (the “Merger”), Wavelink securities held by Washington Mutual, Inc. (“WMI”) (i.e., Series A, A-1, B, and B-1 preferred stock of Wavelink (collectively, the “Securities”)) were converted into the right to receive approximately \$3.2 million in cash and a

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

² The Merger Agreement contains commercially sensitive information and accordingly will not be filed with the Bankruptcy Court. Copies of the Merger Agreement and all related documentation (the “Transaction Documents”) have been provided to the official committee of unsecured creditors in WMI’s chapter 11 cases.



beneficial interest in an unsecured and subordinated promissory note of approximately \$750,000³ (together, the “Merger Consideration”).

PLEASE TAKE FURTHER NOTICE that WMI did not, and was not required to, vote in favor of the Merger. Nonetheless, in order to receive the Merger Consideration, WMI is required to execute and tender to Wavelink: (i) a Letter of Transmittal, (ii) a Subordination Agreement,⁴ and (iii) a Stock Power Agreement (together, the “Transmittal Documents”).

Copies of the Transmittal Documents will be made available upon request. Pursuant to the Letter of Transmittal, WMI will, among other things:

- Ratify the appointment of a shareholder representative to act on behalf of WMI and other Wavelink shareholders;
- Agree that fees and expenses, if any, incurred by the shareholder representative, in excess of \$100,000, will be (i) paid directly by Wavelink’s shareholders, including WMI, on a *pro rata* basis, based on their respective Wavelink ownership interest percentage (“pro rata”) or (ii) reimbursed from the proceeds of the Seller Note;
- Agree to indemnify the shareholder representative for losses incurred in connection with his duties, other than those losses incurred as a result of his bad faith, on a pro rata basis;
- Release Wavelink and Holdings from any and all claims that WMI may have relating to WMI’s ownership of stock in Wavelink, other than WMI’s rights arising under the Merger Agreement and the Seller Note; and
- Agree to be bound by the terms of the Merger Agreement, including the indemnification obligations thereunder. Pursuant to the Merger Agreement, each Wavelink investor,

³ The amount of the note issued to Wavelink’s investors, in which WMI has received an interest, is approximately \$8 million (the “Seller Note”). Except as set forth in the Transaction Documents, the Debtors are not aware of any appraisal or other indicia of value with respect to the Securities.

⁴ Certain investors in Wavelink (including WMI), David Bullis, acting in his capacity as the shareholder representative, Wavelink, and CapitalSource Finance, LLC (“CapitalSource”) are parties to the Subordination Agreement. CapitalSource, certain other lenders, and Wavelink are parties to that certain Second Amended and Restated Credit Agreement dated as of June 15, 2009 (the “Credit Agreement”), pursuant to which CapitalSource and the other lenders thereto have made certain loans to Wavelink under the terms and conditions set forth therein. The Obligations (as defined in the Credit Agreement and Subordination Agreement) are secured by substantially all of Wavelink’s assets. The Subordination Agreement provides that the Seller Note is subordinate to Wavelink’s Obligations to Capitalsource and the other lenders party to the Credit Agreement.

including WMI, regardless of whether or not the investor actually voted in favor of the Merger, severally, but not jointly, agrees to indemnify and hold Holdings harmless from any and all damages arising out of (i) any breach by such investor of any representation or warranty made in any Letter of Transmittal, (ii) any breach or violation of any such investor's obligations under the Merger Agreement or any related agreements, including the Letter of Transmittal, and (iii) Wavelink's breaches of any representation or warranty made by Wavelink in the Merger Agreement, in accordance with such investor's Wavelink ownership interest percentage.

The Seller Note is the first source of recourse for Holdings and Wavelink with respect to any damages incurred for which Holdings and/or Wavelink are entitled to be indemnified by Wavelink's investors (including WMI). In addition, WMI's indemnification obligations are generally capped at a pro rata portion of \$3.5 million or a percentage of the Merger Consideration received, with the exception of liability for intentional misrepresentation or fraud on the part of WMI, where WMI will have no cap on its liability.

PLEASE TAKE NOTICE that, in accordance with the *Order Approving In Part and Denying In Part Motions of the Debtors Pursuant to Sections 105, 107 and 363 of the Bankruptcy Code For Order Approving Procedures for the Sale of Debtors' Interests in Certain Investments Free and Clear of Liens, Claims, and Encumbrances and Without Further Court Approval*, dated January 5, 2009 [Docket No. 536] (the "Sale Order"), WMI and WMI Investment Corp., as debtors and debtors in possession (together, the "Debtors"), seek authority to execute the Transmittal Documents. This Notice is being provided in accordance with and sets forth the information required by the Sale Order.

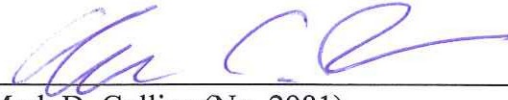
PLEASE TAKE FURTHER NOTICE that, prior to the commencement of WMI's chapter 11 case, WMI pledged the Securities to CapitalSource and guaranteed Wavelink's obligations under its Credit Agreement with CapitalSource up to the amount of the Securities. As part of the Merger transaction, CapitalSource released its lien on the Securities and released

WMI from its guaranty. The Debtors are not aware of any other liens, claims or encumbrances with respect to the Securities.

PLEASE TAKE FURTHER NOTICE that any objection to the action proposed herein (an "Objection") must: (i) be in writing; (ii) state with specificity the nature of the objection; (iii) be filed with the United States Bankruptcy Court for the District of Delaware; and (iv) be served on the parties identified on Exhibit A attached hereto (the "Notice Parties") so as to be received by 5:00 p.m. (EDT) on or before July 27, 2009 (the "Objection Deadline"). If no Objections are filed with the Bankruptcy Court and served on the Notice Parties by the Objection

Deadline in accordance with the terms of the Sale Order, the Debtors, in their sole and absolute discretion, may execute the Transmittal Documents, after complying with the procedures set forth in the Sale Order.

Dated: Wilmington, Delaware
July 16, 2009



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ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A

Notice Parties

1. The Office of the United States Trustee
District of Delaware
844 King Street, Suite 2207, Lockbox 35,
Wilmington, Delaware 19801
Attn: Joseph J. McMahon, Jr., Esq.
2. Akin Gump Strauss Hauer & Feld, LLP
One Bryant Park
New York, New York 10036
Attn: Fred S. Hodara, Esq. and David P. Simonds, Esq.
3. White and Case LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
Attn: Thomas E. Lauria, Esq.
4. Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
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