

ORIGINAL

Attorney or Party Name, Address, Telephone and Fax Number, and CA State Bar No. James C. Bastian, Jr. - Bar No. 175415 Mark Bradshaw - Bar No. 192540 MARSHACK SHULMAN HODGES & BASTIAN LLP 26632 Towne Centre, Suite 300 Foothill Ranch, California 92610 Telephone: (949) 340-3400 Facsimile: (949) 340-3000	FOR COURT USE ONLY FILED 01 MAY 10 PM 2:31 CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY: <i>RK</i>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: ZYAN COMMUNICATIONS, INC., Debtor(s).	CASE NO.: LA 00-43483 KM

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: May 29, 2001	Time: 11:00 A.M.
Location: U.S. Bankruptcy Court, 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012	

Type of Sale: Public Private Last date to file objections: **May 15, 2001**

Description of Property to be Sold: See the attached Notice of Hearing on Debtor's Motion for Order Authorizing Sale and Assignment of Certain Assets of the Estate (Shasta 5000 BSN Equipment) et al. (the "Hearing Notice")

Terms and Conditions of Sale: See the attached Hearing Notice

Proposed Sale Price: See the attached Hearing Notice

Overbid Procedure (If Any): See the attached Hearing Notice

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:
May 29, 2001 at 11:00 A.M.

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):
James C. Bastian, Jr., Esq.
Marshack Shulman Hodges & Bastian LLP
26632 Towne Centre, Suite 300, Foothill Ranch, CA 92610
Telephone: (949) 340-3400
Facsimile: (949) 340-3000

Date: May 9, 2001

249/SP

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re

ZYAN COMMUNICATIONS, INC.,
a Delaware corporation, fdba
INTERNET EXPRESS NETWORK, INC., fdba
INTERNET DESIGN GROUP,

Debtor.

Debtor's Address:
707 Wilshire Boulevard, 14th Floor
Los Angeles, CA 90017

Tax I.D. No. 95-4570574

Case No. 00-43483 KM
Chapter 11

**NOTICE OF HEARING ON DEBTOR'S MOTION FOR ORDER
AUTHORIZING SALE AND ASSIGNMENT OF CERTAIN
ASSETS OF THE ESTATE (SHASTA 5000 BSN
EQUIPMENT) FREE AND CLEAR OF LIENS AND FOR
APPROVAL OF OVERBID PROCEDURES**

Date: May 29, 2001
Time: 11:00 A.M.
Place: Courtroom 1468
Edward R. Roybal Federal Bldg.
255 E. Temple Street
Los Angeles, CA 90012-3300

PLEASE TAKE NOTICE that a hearing on the Motion for Order Authorizing Sale and Assignment of Certain Assets of the Estate (Shasta 5000 BSN Equipment) Free and Clear of Liens and for Approval of Overbid Procedures (the "Sale Motion") filed by Zyan Communications, Inc., a Delaware corporation, the debtor and debtor in possession herein ("Debtor" or "Zyan") has been scheduled for **MAY 29, 2001 AT 11:00 A.M.**, in Courtroom 1468 of the above-entitled Court located at 255 East Temple Street, Los Angeles, California 90012. **At such hearing, the Court may also consider overbids among only those Overbidders who have qualified by submitting written bids pursuant to the procedures set forth below.**

A. Background Leading to Bankruptcy Filing

The Debtor filed a petition under Chapter 11 of the Bankruptcy Code on December 1, 2000 (the "Petition Date"), and has continued in the possession of its property and the management of its affairs.

Zyan is a leading, national digital subscriber line ("DSL") service provider focused on delivering broadband services to the business market. Founded as a full-service Internet solutions provider in 1994, Zyan was the first to deliver commercial DSL services to the Los Angeles region.

As a result of developments since the Petition Date, including the Debtor's inability to provision new DSL lines and the fact that several of its customers have filed for bankruptcy protection, the Debtor now projects that it is spending more money each month than it generates. Accordingly, the only option available to the Debtor is a quick and orderly sale of its operating assets.

In summary, the Debtor has determined that it is in the best interest of the estate and creditors that the Debtor sell its operating assets and propose a liquidating Chapter 11 plan. It is essential for the Debtor to commence this orderly liquidation of its assets in order to maximize the recovery available to creditors. The Debtor believes that the sale of its Shasta Boxes as contemplated herein will provide the most meaningful recovery for the estate's unsecured creditors for such Assets.

B. The Proposed Sale

Subject to Court approval, the Debtor has entered into a proposed Purchase and Sale Agreement (the "Purchase Agreement") with Qwest Communications International, Inc., a Delaware corporation ("Qwest"). The Purchase Agreement is subject to further edits by Qwest and the Debtor as the parties are currently still negotiating the final terms of the Purchase Agreement. Once finalized, the finished form of the Purchase Agreement will be filed with the Court.

Subject to the terms and conditions of the Purchase Agreement and pursuant to the provisions of the Sale Motion the Debtor will seek to sell assets of the estate consisting of the 15 Nortel Shasta systems described in Schedule 3.1 attached to the Purchase Agreement (hereinafter "Shasta Boxes " or the "Assets"), subject to overbids. A summary of the terms of the Purchase Agreement follow, however, the summary is not meant to be a complete review of every provision of the Purchase Agreement. The Purchase Agreement itself is the legally binding document the Debtor seeks approval. In summary, the Purchase Agreement provides as follows:

a. Purchase and Sale and Closing Date. As of the date that is the first business day after the Bankruptcy Court enters a final, non-appealable order approving the sale of the Shasta Boxes to Qwest or the successful bidder ("Closing Date"), the Debtor will sell, assign and convey to Qwest or the successful bidder, and Qwest or the successful bidder will purchase, acquire, and accept from the Debtor the Assets, free and clear of any liens, charges, security interests, encumbrances, liabilities or obligations of any nature or kind whatsoever, including successor liabilities pursuant to Section 363 of the Bankruptcy Code (collectively, "Liens or Encumbrances").

b. Assets. All of the Debtor's rights and interest in the Shasta Boxes that are owned by the Debtor and that are listed on Schedule 3.1 of the Purchase Agreement and all materials and information of any kind related to the Assets whether written or otherwise, including all Warranty and Software Licensing specific to the Shasta Boxes.

c. Transfer of Assets.

i. Within 5 days of the Closing Date, the Debtor shall deliver to Qwest all Assets identified in Schedule 3.1 of the Purchase Agreement. The Debtor shall uncrate racked equipment and ship the Shasta Boxes utilizing adequate shipping materials, burden all shipping costs associated with the Shasta Boxes and ship to the designated shipping address as coordinated by Qwest.

ii. Qwest shall not be liable for any Shasta Boxes or portion thereof that is delivered to Qwest damaged or rendered, for any reason, inoperable.

iii. Shasta Boxes equipment designated as "in use" must be decommissioned and shipped to Qwest no later than 60 days after entry of the Court order approving the Purchase Agreement.

iv. The transfer or assignment of the Warranty and Software Licensing specific to the Shasta Boxes shall take place at no additional charge to Qwest. Qwest shall not be responsible for curing any of Debtor's defaults under the Software Licensing.

d. Contingencies to the Effectiveness of the Agreement.

i. The effectiveness of the Purchase Agreement is contingent on the Qwest being provided with copies of the original Purchase Orders from the Debtor Zyan to Nortel Networks, Inc. allowing Qwest to verify the original purchase dates and being provided with an itemized listing of the Shasta Boxes under the Purchase Order, inclusive of serial numbers.

ii. The sale of the Assets is subject to approval of the Bankruptcy Court. The Debtor makes no warranties, either express or implied, as to its ability to obtain approval of the Bankruptcy Court, and in the event that the Debtor is unable to obtain said approval, Qwest, its agents, successors and assigns shall hold the Debtor, its attorneys, and agents harmless from any and all damages which Qwest may allege it has suffered as a result therefrom.

e. Purchase Price. The purchase price for the Shasta Boxes shall be \$1,002,400 paid as follows:

i. Initial Payment. Within 3 business days following the Closing Date, Qwest shall forward to the Debtor an Initial Payment of \$501,150.

ii. Final Payment. Within 20 days following the Closing Date, Qwest shall forward to the Debtor a Final Payment of \$501,150. The Final Payment shall be reduced by an amount equal to the value of any Shasta Boxes or portion thereof returned as defective. Qwest shall return to the Debtor, at Qwest's cost, all defective Shasta Boxes to the Debtor within twenty (20) business days following the determination that such equipment is defective. The value attributed to any returned Shasta Boxes shall be fixed as shown on Schedule 3.1.

f. Risk of Loss. Risk of loss shall transfer to Qwest immediately upon Qwest taking possession or control of the Shasta Boxes.

g. Bankruptcy Court Approval. Qwest is aware that the sale transaction is expressly conditioned on approval of the United States Bankruptcy Court for the Central District of California, Los Angeles Division, the Honorable Kathleen P. March presiding.

h. Resolution of Disputes. Because the Shasta Boxes are property of the Debtors' bankruptcy estate, the resolution of any and all disputes between the Debtor and Qwest concerning the Shasta Boxes or the Purchase Agreement shall be resolved by the United States Bankruptcy Court for the Central District of California, Los Angeles Division. Further, the parties agree that if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.

i. Termination. The Purchase Agreement may be terminated and the transactions contemplated therein may be abandoned at any time prior to the Closing Date: (a) by mutual written consent of Qwest and the Debtor; or (b) if Qwest is not the successful bidder.

j. Releases. On the Closing Date, the parties shall exchange mutual and general releases that release each from the liability to the other except for claims and obligations arising under the Purchase Agreement.

C. Notice of Overbid Procedures

The Purchase Agreement provides that the sale is subject to overbids. The Debtor has determined that it would benefit the estate by permitting all interested parties to receive information and bid for the Assets instead of selling to Qwest on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of the creditors of this bankruptcy estate, the Debtor also seeks Court approval of the following overbid procedures:

a. Due Diligence. All entities interested in submitting a bid in excess of the purchase price offered by Qwest ("Overbidders") for the purchase of the Shasta Boxes shall have reasonable access to the Debtor's books and records and shall be allowed to conduct a due diligence investigation with respect to the acquisition of the Shasta Boxes at the Debtor's office in Los Angeles, California during the Debtor's normal business hours and after providing reasonable written request to the Debtor, and after signing a confidentiality agreement with the Debtor. All due diligence must be completed prior to the Overbidder submitting its bid.

b. Minimum Bidding Increments. Overbidders must bid an initial amount of at least \$50,000 over the price offered for the Assets by Qwest. Minimum bid increments thereafter shall also be \$25,000. The Shasta Boxes are available for inspection by contacting Steven Barbee at Zyan (213) 488-6100.

c. Deadline for Submitting Overbids. Overbids must be in writing and must be filed with the Court with a filed-stamped courtesy copy delivered to the Court's chambers and served personally or via facsimile so that it is actually received by the Debtor to the attention of Crosby Haffer, President, Zyan Communications, Inc., 707 Wilshire Boulevard, 14th Floor, Los Angeles, California 90017; Fax (213) 612-7696 with a copy to the Debtor's counsel, Marshack Shulman Hodges & Bastian LLP to the attention of James C. Bastian, Jr., 26632

Towne Centre, Suite 300, Foothill Ranch, California 92610; Fax (949) 340-3000, by no later than May 15, 2001.

d. Overbidder Deposit. Overbids must be accompanied by certified funds in an amount equal to Twenty-Five Percent (25%) of the overbid purchase price "Overbidder Deposit"). The Overbidder Deposit shall be delivered to the Debtor's attorney, Marshack Shulman Hodges & Bastian LLP.

e. Overbidder Qualification. Concurrent with the submission of their overbid, Overbidders must demonstrate their capacity to complete the transaction. In connection therewith, the Debtor may require all potential Overbidders to provide the Overbidder's audited financial statements and federal tax returns for the prior three calendar/fiscal years and such other documentation relevant to an Overbidder's ability to qualify as the purchaser of the Assets and to provide proof of an Overbidder's ability to close the sale and immediately and unconditionally pay the purchase price as increased by overbid.

f. Terms Not Less Favorable. The Overbidder must seek to acquire the Assets on terms and conditions not less favorable to the bankruptcy estate than the terms and conditions to which Qwest has agreed to purchase the Assets. Any Overbidder must offer to acquire the Assets on terms not materially more burdensome or conditional to the Debtor than the terms of the Purchase Agreement and must offer to acquire the Assets without any condition on the outcome of unperformed due diligence beyond the deadline for conducting due diligence set forth above. Any Overbidder must offer to acquire the Assets on an "as is" and "where is" basis, and subject only to the accuracy of representations and warranties or the satisfaction of conditions not materially more burdensome to the Debtor than those set forth in the Purchase Agreement.

g. Notice of Final Bidding Round. If overbids are received, the Final Bidding Round shall be held at the hearing on the Sale Motion in order to allow all parties the opportunity to overbid and purchase the Shasta Boxes.

h. Determination of Most Favorable Bid. In the event that overbids are received, prior to the hearing on the Sale Motion, representatives of the Debtor shall meet and consult with the Committee to determine which offer received for the purchase of the Assets is the most favorable offer for the purchase of the Shasta Boxes in order that a recommendation can be made to the Court to determine who may be the successful bidder.

i. Successful Overbidder Default. If, due to the fault of the successful highest Overbidder, the successful highest Overbidder fails to pay the overbid purchase price in cash or certified funds within the same time parameters as set forth in Section 6.0, 6.1, and 6.2 of the Purchase Agreement, the successful Overbidder expressly and unconditionally forfeits his Overbidder Deposit and all such amounts become non-refundable. The Debtor may then sell the Assets to the next highest Overbidder without further notice, hearing or Court order.

The foregoing procedures will provide for an orderly completion of the sale of the Shasta Boxes and insures that Overbidders are provided with full disclosure as to the overbid procedures and the specific assets to be sold. By having all Overbidders compete on similar terms, interested parties may compare competing bids in order to realize the highest benefit for the estate. Thus, the Debtor is requesting that the Court approve the overbid procedures as a fair and reasonable method of realizing the highest and best price for the Assets for the benefit of the bankruptcy estate and its creditors.

D. Resolution of Disputes With Nortel Regarding the Shasta Boxes

Since the Petition Date, the Debtor and Nortel Networks, Inc. ("Nortel") have engaged in settlement discussions regarding disputes over the financing and lease of the Shasta Boxes. Nortel and the Debtor have reached a settlement of the disputes, subject to Court approval. A hearing on the proposed settlement is scheduled to be heard concurred with this Sale Motion. In brief, the proposed settlement specifically provides that the licensing specific to the Shasta Boxes may be assigned by the Debtor provided that all requirements under Bankruptcy Code Section 365 for assignment have been met. Thus, the proposed settlement with Nortel allows for the Debtor to move forward with a sale of the Shasta Boxes as proposed herein.

E. Summary of Debtor's Secured Obligations

A lien search (conducted on March 5, 2001 on Lexis-Nexis), on assets of the Debtor's bankruptcy estate was conducted using the following terms: "Zyan Communications", "Internet Express Network", "Internet Express Networks" and "Internet Design Group". No documents were found when the same names were searched in a Lexis-Nexis source library containing judgments liens.

As evidenced by the UCC-Financing Statements found pursuant to such lien search, the only secured creditors with a blanket secured interest in the assets that are a part of the sale transactions proposed herein are Critical Mass Ventures LLC, George A Hormel II Trust, The RHB Insurance Trust, Breitman Children's Insurance Trust, Breitman Irrevocable Life Insurance Trust (collectively the "Secured Parties"). The Debtor believes that the Secured Parties have or will consent to the sale terms proposed herein.

Following is a summary of how the Secured Parties with a blanket interest in the Assets to be sold are listed in the Debtor's Bankruptcy Schedule D:

<u>Creditor</u>	<u>Description of Collateral</u>	<u>Approximate Amount Owed</u>
Critical Mass Ventures LLC 1920 San Vicente Blvd Santa Monica, CA 90402	UCC Financing Statement filed 12/27/99 Instrument No. 9936460033 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$1,725,000.00
The George A Hormel II Trust 6112 Paradise View Dr Paradise Valley, AZ 85253	UCC Financing Statement filed 10/19/00 Instrument No. 0029960130 Convertible Loan dated October 16, 2000 secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$507,000.00
The RHB Insurance Trust c/o Brian T Corrigan Esq Corrigan & Morris 201 N Figueroa St #690 Los Angeles, CA 90012	UCC Financing Statement filed 10/16/00 Instrument No. 029960134 Convertible Loan dated October 16, 2000 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$304,000.00

<u>Creditor</u>	<u>Description of Collateral</u>	<u>Approximate Amount Owed</u>
Breitman Children's Insurance Trust c/o Brian T Corrigan Esq Corrigan & Morris 201 N Figueroa St #690 Los Angeles, CA 90012	UCC Financing Statement filed 10/19/00 Instrument No. 0029960127 Convertible Loan dated October 16, 2000 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$102,000.00
Breitman Irrevocable Life Insurance Trust c/o Brian T Corrigan Esq Corrigan & Morris 201 N Figueroa St #690 Los Angeles, CA 90012	UCC Financing Statement filed 10/19/00 Instrument No. 0029960124 Convertible Loan dated October 16, 2000 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$102,000.00

In addition, NTFC Capital Corporation was listed in Scheduled D with regards to a UCC-1 Financing Statement filed on September 19, 2000, Instrument No. 0026460340 (the "NTFC Financing Statement"). The NTFC Financing Statement relates to the alleged lease of the Shasta Boxes that was never consummated (the "Alleged Lease"). To the extent that it is a valid lease, in connection with the sale of the Shasta Boxes, the Debtor hereby rejects the Alleged Lease, effective as of the Petition Date.

As evidenced by the UCC-Financing Statements, additional Secured Parties exist whose collateral consists of miscellaneous leased equipment that is not a part of the sale contemplated herein. For information purposes, following is a list of the additional Secured Parties whose collateral consists of miscellaneous equipment leased to the Debtor that is not a part of the sale contemplated herein:

<u>Lessor</u>	<u>Status of Leases</u>
Bancorp Financial Services, Inc	Lease is unexpired
GE Capital Business Finance, a Division of General Electric Capital Business Asset Funding Corp	Lease is unexpired
The Manifest Group	Lease is unexpired
Internet Design Group	Lease is unexpired
JDR Capital Corporation	Lease is unexpired
Compaq Financial Services Corporation	Lease Number 50000 BCE deemed rejected pursuant to Court order entered on February 14, 2001.
Advanta Leasing	Lease Number 052 5505468-001 deemed rejected pursuant to Court order entered on February 14, 2001. Lease Number 5505468-002 is unexpired.

<u>Lessor</u>	<u>Status of Leases</u>
First Sierra Financial, Inc.	Lease is unexpired.
Sunrise Leasing Corporation (Cisco Systems)	Lease Number 72007043 AA deemed rejected pursuant to Court order entered on March 20, 2001. Lease Number 72007043AD is unexpired.

F. The Proposed Sale Serve the Bests Interests of the Estate and Creditors

The Debtor believes that the sale of its Shasta Boxes, subject to overbids, will provide the most meaningful recovery for the estate's unsecured creditors for such Assets.

Furthermore, the negotiation of the proposed sale of the Shasta Boxes was conducted in and represents a arms-length transactions. The negotiations with Qwest have resulted in an offer to purchase the Shasta Boxes, which offer will have substantial benefit to the estate. The consideration provided by Purchase Agreement should provide a monetary benefit to the bankruptcy estate and creditors and as such, approval of the Sale Motion is in the best interests of the bankruptcy and creditors.

G. Good Cause Exists to Grant the Sale Motion

As a result of developments since the Petition Date, including the Debtor's inability to provision new DSL lines and the fact that several of its customers have filed for bankruptcy protection, the Debtor now projects that it is spending more money each month than it generates. Accordingly, the only option available to the Debtor is a quick and orderly sale of its operating assets. Thus, the Debtor has determined that it is in the best interest of the estate and creditors that the Debtor sell its operating assets and propose a liquidating Chapter 11 plan. It is essential for the Debtor to commence this orderly liquidation of its assets in order to maximize the recovery available to creditors.

The Debtor has made a business decision that it is in the best interest of the creditors of this estate that this Sale Motion be approved. Due to the amount of liens and encumbrances and operating costs associated with the DSL lines, the Debtor does not believe that its business can be reorganized. The Debtor has determined that rather than risk conversion of this case to Chapter 7 and the almost certainty that funds will not be available for unsecured creditors and perhaps others, the Debtor will be proposing a liquidating Chapter 11 plan.

The Debtor has worked diligently both before and after the Petition Date to market and sell its business operations and/or its assets. The Debtor has gained much experience and information through this process and believes that the offer presented by Qwest, subject to overbids, represents the highest and best offer for creditors at this time. If the proposed sale is not approved, the Debtor may be unable to find another buyer and/or will incur additional costs with trying to find a new buyer, if one can be found.

Thus, based on the good business reasons that exist to consummate the sale, the Debtor believes that the Sale Motion should be approved.

For further information please see the Debtor's Motion for Order Authorizing Sale and Assignment of Certain Assets of the Estate (Shasta 5000 BSN Equipment) Free and Clear of Liens and for Approval of Overbid Procedures; Memorandum of Points and Authorities and Declaration of Crosby Haffner in Support Thereof on file with the Clerk of the above-entitled Court which may be reviewed on Monday through Friday from 9:00 A.M. to 4:00 P.M. A copy of the Sale Motion may be obtained by written request to the Debtor's attorney at the address indicated below.

PLEASE TAKE FURTHER NOTICE, that objections, if any, shall be filed with the Clerk of the above Court located at 300 North Los Angeles Street, Los Angeles, California 90012, with a filed-stamp courtesy copy delivered to the chambers of the Honorable Kathleen P. March, United States Bankruptcy Judge, and a copy served upon Marshack Shulman Hodges & Bastian LLP to the attention of James C. Bastian, Jr., 26632 Towne Centre, Suite 300, Foothill Ranch, California 92610 and the Office of the United States Trustee, 221 North Figueroa, Suite 800, Los Angeles, California 90012, no later than fourteen (14) days prior to the scheduled hearing. Failure to file a timely response may be deemed as consent to the relief requested in the Motion. **SEE, LOCAL BANKRUPTCY RULE 9013-1(a)(7)**.

Dated: May 1, 2001

James C. Bastian, Jr. - Bar No. 175415
Mark Bradshaw - Bar No. 192540
MARSHACK SHULMAN HODGES & BASTIAN LLP
26632 Towne Centre, Suite 300
Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
Facsimile: (949) 340-3000

James C. Bastian, Jr.
Attorneys for the Debtor and
Debtor in Possession Zyan Communications, Inc.,
a Delaware corporation