

Norman N. Kinel
24 Linden Place
Tenafly, New Jersey 07670

VIA ELECTRONIC MAIL

The Honorable Allan L. Gropper
United States Bankruptcy Court
for the Southern District of New York
The Old Customs House
One Bowling Green
New York, New York 10004-1408

Re: *In re 360networks (USA) inc. et al.*
Case No. 01-13721 (ALG)

Dear Judge Gropper:

I respectfully submit this letter in connection with the Order to Show Cause, dated December 11, 2008 (the "Order to Show Cause") entered in the above-referenced matter to inform the Court that I am no longer employed by, or affiliated with Dreier LLP, the counsel of record to The Official Committee of Unsecured Creditors of 360networks (USA) inc. *et al.* (the "Committee"). In addition, I have not been independently retained by the Committee to represent it in any matter. Consequently, I am not authorized to appear on behalf of the Committee at the hearing scheduled for December 16, 2008 with regard to the Order to Show Cause, and wanted to respectfully inform the Court that I will not be in attendance at the hearing.

In order to assist the Court and all appropriate parties with the issues raised in the Order to Show Cause, I have attached a copy of a declaration I submitted in connection with the action commenced against Marc S. Dreier by the Securities and Exchange Commission which addresses the circumstances surrounding the Preference Account. I am hopeful that the statements contained in the declaration will be helpful in addressing some of the immediate issues raised in connection with the Order to Show Cause.

Respectfully submitted,

/s/ Norman N. Kinel
Norman N. Kinel

cc: Greg Zipes, Esq., Office of the United States Trustee for the Southern District of New York (via facsimile)
Alan Lipkin, Esq.(via electronic mail)
Members of the Official Committee of Unsecured Creditors (via electronic mail)

JAMES CLARKSON
ACTING REGIONAL DIRECTOR
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center – RM 400
New York, NY 10281
(212) 336-1020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>		
SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	08 Civ. _____ ()
- against -	:	
	:	
MARC S. DREIER,	:	
	:	
Defendant.	:	
<hr/>		

DECLARATION OF NORMAN N. KINEL

NORMAN N. KINEL declares as follows under 28 U.S.C. § 1746:

1. I am an attorney duly admitted to practice before all courts of the State of New York and before the United States District Courts for the Southern and Eastern Districts of New York, the Second Circuit Court of Appeals and the United States Supreme Court.
2. I am employed by the law firm of Dreier LLP (“Dreier”), with its principal office located at 499 Park Avenue, New York, New York 10022.
3. Dreier is counsel for The Official Committee of Unsecured Creditors of 360networks (USA) inc. *et al.* (the “Committee”) in connection with the Chapter 11 Bankruptcy cases of 360networks (USA) inc. and certain of its affiliates that are now reorganized debtors (“360”, and together with the Committee, “Plaintiffs”).

4. The Committee was appointed by the Office of the United States Trustee for the Southern District of New York shortly after 360 filed for Chapter 11 protection in 2001. 360 emerged from Chapter 11 in 2002, although the Committee has at all times remained in existence.

5. Although the Committee was originally comprised of 11 members, presently there are only four (4) members of the Committee, as follows: AboveNet Communications, Inc., Pirelli North America, Inc, as the successor to the claims of Pirelli Communications Cables and Systems LLC, Kajima Construction Services, Inc. and Wagner Equipment Co. 360 is an ex officio member of the Committee.

6. For five (5) years, Dreier has represented Plaintiffs in connection with well over 200 avoidance actions (collectively, the "Avoidance Actions") filed on their behalf. Throughout this time, I have acted as lead counsel on behalf of Plaintiffs.

7. The beneficiaries of the net amount of funds collected from the Avoidance Actions (the "Net Preference Recoveries") are those holders of allowed, general unsecured claims against 360, who are to share pro rata in the Net Preference Recoveries. In addition, 360 itself is a beneficiary of a certain percentage of the Net Preference Recoveries.

8. Dreier resolved all of the Avoidance Actions and obtained nearly \$65 million in cash recoveries for unsecured creditors.

9. As of late November 2008, Dreier had resolved all of the Avoidance Actions, as well as an additional litigation that Dreier had commenced on behalf of Plaintiffs against another law firm that represented them in certain other litigation.

10. Pursuant to the terms of 360's plan of reorganization (the "Plan"), 360 is the disbursing agent of the Net Preference Recoveries to unsecured creditors. Also pursuant to

the terms of the Plan, 360 is to receive the amount of Net Preference Recoveries to which it is entitled on or before the date upon which distributions of Net Preference Recoveries are to be made to 360's creditors.

11. Pursuant to authorization received from the Committee, Dreier made two distributions of Net Preference Recoveries to 360 – one on September 8, 2008 in the amount of \$4.5 million and one on November 17, 2008 in the amount of \$11.9 million.

12. The balance of Net Preference Recoveries as of December 1, 2008 was approximately \$38.5 million.

13. On December 1, 2008, I notified Marc S. Dreier, the owner and managing partner of Dreier, in writing, that on the following day he was to wire transfer the approximately \$38.5 million in remaining Net Preference Recoveries to 360 for distribution to unsecured creditors. On December 2, 2008, after learning that the wire transfer had not been made, I twice requested in writing that Mr. Dreier wire transfer the funds to 360. As of the close of business on December 2, 2008, however, the wire transfer had not been made.

14. On December 3, 2008 I, and others at Dreier learned that Mr. Dreier had been arrested in Toronto, Canada on a charge of "impersonation." I then made inquiry of the firm's Controller and bookkeeper regarding the funds that should have been wired to 360 and was advised that substantially less than \$38.5 million was available in those firm accounts to which the Controller and bookkeeper had access. I notified the Committee and 360 of Mr. Dreier's arrest in Toronto and that Dreier LLP was unable to effectuate the transfer.

15. The following morning, my attorney Cynthia M. Monaco of Buchanan, Ingersoll & Rooney, P.C. acting on my behalf, made contact with the Federal Bureau of Investigation, the United States Attorney's Office for the Southern District of New York, and

Wachovia Bank, where the firm maintained accounts, and relayed my concerns regarding the unavailability of the 360 funds and the arrest of Mr. Dreier.

16. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 8, 2008.


NORMAN N. KINEL