

1 ANNAMARIE A. DALEY (*pro hac vice*)  
 2 ROBINS, KAPLAN, MILLER & CIRESI L.L.P.  
 2800 LaSalle Plaza  
 3 800 LaSalle Avenue  
 Minneapolis, Minnesota 55402  
 4 Telephone: (612) 349-8500  
 Facsimile: (612) 349-4181

5 Attorney for Defendants  
 6 COXCOM, INC., HOSPITALITY NETWORK,  
 INC., and CABLE AMERICA CORPORATION  
 7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION  
 10

11 In re  
 12 ACACIA MEDIA TECHNOLOGIES  
 13 CORPORATION  
 14

Case No. C-05-01114 JW

**COXCOM, INC., HOSPITALITY  
 NETWORK, INC., AND CABLE  
 AMERICA CORPORATION’S RESPONSE  
 TO ACACIA’S OBJECTIONS TO THEIR  
 BILL OF COSTS**

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 16 Acacia objects to some of the costs requested by Coxcom, Inc., Hospitality Network, Inc.  
 17 and Cable America Corporation’s (collectively referred to as “Cox”) in its Bill of Costs (Doc. No.  
 18 360). One of the disputed issues is whether the fees Cox incurred for the court-appointed  
 19 technical advisor are taxable as costs. The Civil Local Rules for the Northern District of  
 20 California provide that “[f]ees to masters and receivers are allowable.” Civil L.R. 54-3(f). *See*  
 21 *Intermedics, Inc. v. Ventritex, Co.*, 1993 U.S. Dist. LEXIS 17803 at \*15 (N.D. Cal. Dec. 2, 1993)  
 22 (permitting recovery of special master fees). Although the order of appointment states that Mr.  
 23 Schulz is a “technical advisor,” the services Mr. Schulz provided are akin to those of a special  
 24 master. Under Ninth Circuit law, as held in a case cited by Acacia in its Opposition to Cox’s Bill  
 25 of Costs, “master’s fees, costs, and expenses are ‘[taxable] costs’ . . .” *Nat’l Org. for the Reform*  
 26 *of Marijuana Laws v. Mullen*, 828 F.2d 536, 545 (9th Cir. 1987).<sup>1</sup>  
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28 <sup>1</sup> Cox incorporated by reference any submissions by other defendants in this case regarding recoverability of the fees for Mr. Schulz.

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Acacia also noted that the Declaration of Annamarie A. Daley in Support of Defendants Coxcom, Inc., Hospitality Network, Inc., and Cable America Corporation was missing one of the invoices from the court reporter for Court hearing transcript costs. A copy of that invoice is attached as Exhibit C-1 to Supplemental Declaration of Annamarie A. Daley in Support of Defendants Coxcom, Inc., Hospitality Network, Inc., and Cable America Corporation filed on December 2, 2009.<sup>2</sup> Additionally, with respect to Acacia's objection to the court reporter expenses associated with the transcripts for the June 14 and 15, 2006 hearing, a close review of the relevant invoice confirms that although the transcript for the second hearing day appears under the category of "expedited," the per-page cost is identical to the ordinary per-page cost. Daley Declaration at Exhibit C, page 6.

Respectfully submitted,

DATED: December 2, 2009.

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

By: s/Annamarie A. Daley  
Annamarie A. Daley

Annamarie A. Daley (*pro hac vice*)  
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402  
Telephone: (612) 349-8500  
Facsimile: (612) 339-4181

Attorneys for Defendants COXCOM, INC.,  
HOSPITALITY NETWORK, INC., and CABLE  
AMERICA CORPORATION

<sup>2</sup> Local Rule 54-4(a) provides that "The Clerk may require and consider further affidavits and documentation as necessary to determine allowable costs."

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**PROOF OF SERVICE BY MAIL**

I am a partner of the law firm Robins, Kaplan, Miller & Ciresi L.L.P. My business address is 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2015.

I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On December 2, 2009, I caused the below listed document to be served upon the parties listed in the attached service list by transmitting via the United States District Court for the Northern District of California Electronic Case Filing Program by uploading the electronic file for the below listed documents and also placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**COXCOM, INC., HOSPITALITY NETWORK, INC., AND CABLE AMERICA CORPORATION'S RESPONSES TO ACACIA'S OBJECTIONS TO THEIR BILL OF COSTS**

in a sealed envelope, postage fully paid, addressed as set forth on the attached Service List.

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 2, 2009, at Minneapolis, Minnesota.

s/Annamarie A. Daley  
Annamarie A. Daley

**SERVICE LIST: FIRST CLASS MAIL**

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**  
ATTORNEYS AT LAW  
MINNEAPOLIS

- 1
- 2 Rebecca A. Bortolotti  
Merchant & Gould  
80 S. 8th Street  
Suite 3200  
4 Minneapolis, MN 55402
- 5 Fritz Byers  
824 Spitzer Bldg.,  
6 520 Madison Avenue  
Toledo, OH 43604
- 7
- 8 David C. Doyle  
Morrison & Foerster LLP  
3811 Valley Centre Dr., Ste. 500  
9 San Diego, Ca 92130
- 10 Christopher B. Fagan  
Fay Sharpe Fagan Minnich & McKee  
11 7th Floor  
1100 Superior Avenue  
12 Cleveland, OH 44114-2518
- 13 C Mark Kittredge  
Perkins Coie Brown & Bain PA  
14 P. O. Box 400  
Phoenix, AZ 85001-0400
- 15
- 16 Martin P. Michael  
Sonnenschein Nath & Rosenthal  
1221 Avenue of the Americas  
17 New York, NY 10020
- 18 Carl E. Myers  
Marshall Gerstein & Borun  
19 6300 Sears Tower  
233 South Wacker Drive  
20 Chicago, IL 60606
- 21 John Francis Petrsoric  
Goodwin Procter LLP  
22 599 Lexington Avenue  
New York, NY 10022
- 23
- 24 Paul A. Ragusa  
Baker Botts LLP  
30 Rockefeller Plaza  
25 New York, NY 10112
- 26 Andrew D. Raymond  
Marshall Gerstein & Borun LLP  
27 6300 Sears Tower  
233 South Wacker Drive  
28 Chicago, IL 60606-6357

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John C. Reich  
Merchant & Gould  
80 S. 8th Street  
Suite 3200  
Minneapolis, MN 55402

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21  
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27  
28

**SERVICE LIST: ELECTRONIC NOTIFICATION**

- **Adam R. Alper**  
aalper@kirkland.com,tiffany.lee@kirkland.com
- **David Benyacar**  
dbenyacar@kayescholer.com,maondca@kayescholer.com
- **Asim M. Bhansali**  
amb@kvn.com,efiling@kvn.com,gap@kvn.com,pwm@kvn.com
- **Jon-Thomas Bloch**  
jbloch@marshallip.com
- **Alan P. Block**  
blocka@hbdlawyers.com,effnere@hbdlawyers.com,yusonc@hbdlawyers.com
- **Bryant Carroll Boren , Jr**  
bryant.c.boren@bakerbotts.com,cynthia.short@bakerbotts.com
- **Juanita R. Brooks**  
brooks@fr.com,srodriguez@fr.com,gonzales@fr.com
- **Robert Donald Carroll**  
rcarroll@goodwinprocter.com
- **Jason A. Crotty**  
jcrotty@mofo.com,ggerrish@mofo.com
- **Annamarie A. Daley**  
aadaley@rkmc.com,vlriley@rkmc.com
- **Jeffrey H. Dean**  
jdean@marshallip.com,Ahernandez@marshallip.com,Tweber@marshallip.com,Tortman@marshallip.com
- **DirectV Group, Inc.**  
kgmcbride@jonesday.com
- **Roderick G. Dorman**  
dormanr@hbdlawyers.com,effnere@hbdlawyers.com,mccorryl@hbdlawyers.com
- **Daralyn J. Durie**  
ddurie@durietangri.com
- **John C. Englander**  
jenglander@goodwinprocter.com
- **Paul A. Friedman**  
pafriedman@mofo.com
- **Sean David Garrison**  
sgarrison@lrlaw.com,ssantiago@lrlaw.com,kwildman@lrlaw.com
- **Benjamin Hershkowitz**  
bhershkowitz@gibsondunn.com,aarias@gibsondunn.com
- **Kevin D. Hogg**  
khogg@marshallip.com
- **Daniel E. Jackson**  
djackson@kvn.com,mcanales@kvn.com,efiling@kvn.com
- **Christopher W Kennerly**  
chris.kennerly@bakerbotts.com

- 1 • **Matthew Ian Kreeger**  
mkreeger@mofo.com,jhaskins@mofo.com
- 2 • **Rachel Krevans**  
rkrevans@mofo.com,rsexton@mofo.com
- 3 • **Mitchell D. Lukin**  
mitch.lukin@bakerbotts.com
- 4 • **Bradford P. Lyerla**  
blyerla@marshallip.com,lsolski@marshallip.com
- 5 • **Christopher Scott Marchese**  
marchese@fr.com,bbrosz@fr.com,srodriguez@fr.com
- 6 • **Kevin G. McBride**  
kgmcbride@jonesday.com,ctartalone@jonesday.com
- 7 • **Harold J. McElhinny**  
HMcElhinny@mofo.com,vsmith@mofo.com
- 8 • **Emmett J. McMahan**  
ejmcmahan@rkmc.com,lhbuck@rkmc.com
- 9 • **Michael J. McNamara**  
michael.mcnamara@bakerbotts.com
- 10 • **Todd Glen Miller**  
miller@fr.com,owens@fr.com
- 11 • **Marc Morris**  
morrism@hbdlawyers.com
- 12 • **Marsha Ellen Mullin**  
memullin@jonesday.com,ccwong@jonesday.com
- 13 • **J. Timothy Nardell**  
tim@jtnlaw.com
- 14 • **Maria Kara Nelson**  
mknelson@jonesday.com,aeraimer@jonesday.com
- 15 • **William R. Overend**  
woverend@reedsmith.com,cmosqueda@reedsmith.com,cshanahan@reedsmith.com
- 16 • **Daniel Reisner**  
dreisner@kayescholer.com,maondca@kayescholer.com
- 17 • **William Joseph Robinson**  
wrobinson@foley.com,lsaptoero@foley.com,LACA-LitigationDocket@foley.com
- 18 • **Stephen P. Safranski**  
spsafranski@rkmc.com,bjweiss@rkmc.com
- 19 • **Victor George Savikas**  
vgsavikas@jonesday.com
- 20 • **Bobby T. Shih**  
bshih@mount.com
- 21 • **David Jason Silbert**  
djs@kvn.com,efiling@kvn.com,aap@kvn.com
- 22 • **Jonathan Elliot Singer**  
singer@fr.com,skarboe@fr.com
- 23 • **James Michael Slominski**  
jslominski@hh.com,jimslominski@verizon.net
- 24 • **Jeffrey D. Sullivan**  
jeffrey.sullivan@bakerbotts.com
- 25
- 26
- 27
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27  
28

- **Morgan William Tovey**  
morgantovey@quinnemanuel.com, marinadimanlig@quinnemanuel.com
- **Albert L. Underhill**  
aunderhill@swlaw.com, docket\_oc@swlaw.com, docket@swlaw.com
- **Patrick J. Whalen**  
pwhalen@spencerfane.com, ecrank@spencerfane.com
- **William R. Woodford**  
woodford@fr.com, stenen@fr.com, balwanz@fr.com
- **David A. York**  
david.york@lw.com
- **Victor de Gyarfas**  
vdegyarfas@foley.com