

# CENTURYTEL INC

## FORM 8-K

(Unscheduled Material Events)

Filed 8/15/2000 For Period Ending 7/31/2000

Address	P O BOX 4065 100 CENTURYTEL DR MONROE, Louisiana 71203
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Industry	Communications Services
Sector	Services
Fiscal Year	12/31

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported) July 31, 2000**

**CenturyTel, Inc.**

(Exact name of registrant as specified in its charter)

Louisiana  
(State or other  
jurisdiction of  
incorporation)

1-7784  
(Commission File  
Number)

72-0651161  
(IRS Employer  
Identification No.)

100 Century Park Drive, Monroe, Louisiana  
(Address of principal executive offices)

71203  
(Zip Code)

Registrant's telephone number, including area code (318) 388-9000

**ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS**

Pursuant to asset purchase agreements dated June 29, 1999 and July 8, 1999, on July 31, 2000, affiliates of CenturyTel, Inc. (the "Company") acquired certain assets from affiliates of Verizon Communications (successor to GTE Corporation) ("Verizon") in two separate transactions in exchange for an aggregate of approximately \$1.1 billion cash. Under these transactions:

o The Company purchased approximately 231,000 telephone access lines and related local exchange assets comprising 106 exchanges throughout Arkansas for approximately \$824 million cash.

o Spectra Communications Group, LLC ("Spectra") purchased approximately 127,000 telephone access lines and related local exchange assets comprising 107 exchanges throughout Missouri for approximately \$290 million cash. The Company owns 57.1% of Spectra, which was organized to acquire and operate these Missouri properties. At closing, the Company made a preferred equity investment in Spectra of approximately \$55 million and financed substantially all of the remainder of the purchase price.

To finance these acquisitions on a short-term basis, the Company borrowed \$800 million on a floating-rate basis under a \$1.5 billion Revolving Credit Facility Agreement dated July 31, 2000 with Bank of America, N.A., Citibank, N.A., Banc of America Securities LLC and Salomon Smith Barney, Inc., and borrowed \$300 million on a floating-rate basis under its existing senior unsecured credit facility with Bank of America, N.A. Depending upon market conditions and other factors, the Company expects to ultimately finance these transactions, along with two other pending acquisitions of local exchange assets in Wisconsin, by either issuing commercial paper, long-term debt, equity or equity-linked securities, by selling or monetizing non-core assets or by some combination thereof.

In addition to the continued provision of traditional local exchange telephone services, the Company intends to provide long distance, Internet access and other advanced technology services in certain of the service areas. The Company currently offers long distance and Internet access service in certain of the Arkansas communities and plans to offer high-speed Digital Subscriber Line Internet access service in selected markets.

The Company's press release announcing these transactions is filed as Exhibit 99.1 hereto.

**ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS**

(a) Financial statements of Verizon properties acquired.

Financial statements relating to the acquired Verizon properties will be filed within 75 days subsequent to July 31, 2000.

(b) Pro forma financial information.

Pro forma financial information related to these transactions will be filed within 75 days subsequent to July 31, 2000.

(c) Exhibits

- 2.1 Asset Purchase Agreement between Registrant and affiliates of Verizon Communications, dated June 29, 1999 (incorporated by reference to Exhibit 99 to Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1999)
- 2.2 Asset Purchase Agreement between Spectra Communications Group, LLC and affiliates of Verizon Communications, dated July 8, 1999.
- 2.3 First Amendment to Asset Purchase Agreement between Spectra Communications Group, LLC and affiliates of Verizon Communications, effective July 31, 2000.
- 4.1 Revolving Credit Facility Agreement, dated July 31, 2000, among Registrant, Bank of America, N.A., Citibank, N.A., Banc of America Securities LLC and Salomon Smith Barney, Inc.
- 99.1 Press release dated July 31, 2000 related to the Company's announcement of the purchase of certain assets in Arkansas and Missouri from Verizon Communications.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**CenturyTel, Inc.**

By: /s/ Neil A. Sweasy  
-----  
Neil A. Sweasy  
Vice President and Controller

**EXECUTION COPY**

**ASSET PURCHASE AGREEMENT**

**Between**

**GTE MIDWEST INCORPORATED**

as Seller,

and

**SPECTRA COMMUNICATIONS GROUP LLC**

**as Buyer**

July 8, 1999

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TABLE OF CONTENTS

	Page
ARTICLE 1	DEFINITIONS.....1
1.1	Terms.....1
1.2	Interpretation.....11
ARTICLE 2	PURCHASE AND SALE OF ASSETS.....11
2.1	Purchase and Sale of Assets.....11
2.2	Purchased Property.....11
2.3	Excluded Property.....12
2.4	Assumption of Liabilities.....13
2.4.1	Assumed Liabilities.....13
2.4.2	Retained Liabilities.....14
2.5	No Assignment Without Consent.....15
ARTICLE 3	ARTICLE 3. PURCHASE PRICE.....16
3.1	Purchase Price.....16
3.2	Closing Date Estimate.....16
3.3	Closing Date Statement.....16
3.4	Performance Deposit.....18
ARTICLE 4	REQUIRED APPROVALS, CONSENTS AND NOTIFICATIONS.....19
4.1	State Regulatory Approval.....19
4.2	Bondholder Consents.....19
4.3	Material Consents.....19
4.4	FCC Consents.....19
4.5	HSR Act Review.....19
4.6	Notification.....20
4.7	GTE/Bell Atlantic Merger.....20
ARTICLE 5	PRE-CLOSING COVENANTS.....20
5.1	Investigation by Buyer.....20
5.2	Operation of the Business in the Ordinary Course.....21
5.2.1	Preservation of Business.....21
5.2.2	No Material Changes.....21
5.3	Satisfaction of Conditions.....22
5.4	Approvals.....22
5.5	Financial Statements.....22
5.6	Capital Expenditures.....23
5.7	Delivery of Interim Information.....23
5.8	Cooperation with Respect to Like-Kind Exchange.....23
ARTICLE 6	CONDITIONS PRECEDENT TO THE CLOSING.....24
6.1	Conditions Precedent to Obligations of Buyer.....24
6.1.1	No Misrepresentation or Breach of Covenants and Warranties.....24
6.1.2	Documents.....24

	6.1.3	HSR.....	24
	6.1.4	No Legal Obstruction.....	24
	6.1.5	No Material Adverse Effect.....	25
6.2		Conditions Precedent to Obligations of Seller.....	25
	6.2.1	No Misrepresentation or Breach of Covenants and Warranties.....	25
	6.2.2	Documents.....	25
	6.2.3	Delivery of Closing Date Amount.....	25
	6.2.4	HSR.....	25
	6.2.5	No Legal Obstruction.....	25
ARTICLE 7		THE CLOSING.....	25
	7.1	The Closing.....	25
	7.2	Seller's Obligations at Closing.....	26
	7.3	Buyer's Obligations at Closing.....	27
ARTICLE 8		REPRESENTATIONS AND WARRANTIES.....	27
	8.1	Representations and Warranties of Seller.....	27
	8.1.1	Authorization and Effect of Agreement.....	27
	8.1.2	No Restrictions Against Sale or Assignment of the Purchased Property.....	27
	8.1.3	Consents, Approvals and Permits of Governmental Authorities.....	28
	8.1.4	No Violation of Law.....	28
	8.1.5	Corporate Organization.....	28
	8.1.6	Brokers.....	28
	8.1.7	Title to Owned Real Property.....	28
	8.1.8	Real Property Leases.....	29
	8.1.9	Tangible Assets.....	29
	8.1.10	No Material Adverse Change.....	29
	8.1.11	Material Contracts.....	29
	8.1.12	Insurance.....	30
	8.1.13	Taxes.....	31
	8.1.14	No Material Claims or Suits.....	31
	8.1.15	Tariffs; FCC Licenses.....	31
	8.1.16	Employee Matters.....	32
	8.1.17	Schedules of Telephone Plant.....	34
	8.1.18	Schedule of Real Property Interests.....	34
	8.1.19	Environmental Matters.....	34
	8.1.20	Schedule of Joint Construction Projects.....	35
	8.1.21	Financial Statements.....	35
	8.1.22	Year 2000 Compliance.....	35
	8.1.23	Access Line Count.....	36
	8.2	Representations and Warranties of Buyer.....	36
	8.2.1	Corporate Organization.....	36
	8.2.2	Authorization and Effect of Agreement.....	36
	8.2.3	No Restrictions Against Purchase of the Purchased Properties.....	37
	8.2.4	No Violation of Law.....	37
	8.2.5	Financial Capacity.....	37
	8.2.6	Brokers.....	37
	8.2.7	Consents and Approvals of Governmental Authority.....	37
ARTICLE 9		CONTINUING BUSINESS RELATIONSHIPS.....	38
	9.1	Transition Services Agreement.....	38
	9.2	Optional Services Agreement.....	38
	9.3	Directory Publishing.....	38
	9.3.1	Assumption of Certain Directory Publishing Agreement Rights and Obligations.....	38
	9.3.2	Co-Bound Directories Acknowledgement.....	38
	9.3.3	Meeting to Discuss Directory Publication.....	38
	9.4	GTE Telecom Agreements.....	39
ARTICLE 10		ADDITIONAL COVENANTS OF THE PARTIES.....	39
	10.1	Intellectual Property.....	39
	10.1.1	No License.....	39
	10.1.2	Infringement.....	39
	10.1.3	Trademark Phaseout.....	40
	10.1.4	Third Party Software.....	41
	10.2	Effect of Due Diligence and Related Matters.....	41
	10.3	Confidentiality.....	42
	10.4	Further Assurances.....	42
	10.5	Prorations.....	42
	10.6	Cost Studies/NECA Matters.....	43
	10.6.1	Prior to Closing.....	43
	10.6.2	From and After Closing.....	43
	10.7	Customer Deposits and Construction Advances.....	44

10.8	Access to Books and Records.....	44
10.9	Purchase Price Allocation.....	45
10.10	Owned Real Property Transfers.....	45
10.11	Transaction Taxes.....	46
10.12	Bulk Sales Laws.....	46
10.13	Prepaid Non-regulated Maintenance Agreements.....	47
10.14	Vehicle Registration.....	47
10.15	Carrier Access Billing and Accounts Receivable Transition.....	47
10.16	End-User Billing and Accounts Receivable Transition.....	47
10.17	Cooperation.....	48
ARTICLE 11	EMPLOYEES AND EMPLOYEE MATTERS.....	48
11.1	Employment of Transferred Employees.....	48
11.1.1	Assumption of Collective Bargaining Agreement Obligations.....	48
11.1.2	Assumption of Employment and Other Agreements.....	49
11.1.3	Recognition of Transferred Employee Service.....	49
11.1.4	Assumption of Obligation to Pay Bonuses.....	49
11.1.5	No Duplicate Benefits; Dependents and Beneficiaries.....	50
11.1.6	Affiliate Employees.....	50
11.1.7	Term of Assumed Obligations.....	50
11.2	Transferred Employee Benefit Matters.....	50
11.2.1	Defined Benefit Plans.....	50
11.2.2	Savings Plans.....	56
11.2.3	Welfare Plans.....	58
11.3	Miscellaneous Benefits.....	61
11.3.1	Loans.....	61
11.3.2	Vacation.....	61
11.4	Employee Rights.....	62
11.5	WARN Act Requirements.....	62
11.6	Indemnification.....	63
11.6.1	Indemnification of Seller.....	63
11.6.2	Indemnification of Buyer.....	63
11.7	Special Provisions For Certain Employees.....	63
ARTICLE 12	INDEMNIFICATION.....	64
12.1	Survival of Representations, Warranties and Covenants.....	64
12.2	Indemnification.....	65
12.3	Limitations on Liability.....	65
12.4	Defense of Claims.....	68
ARTICLE 13	TERMINATION.....	69
13.1	Termination Rights.....	69
13.2	Good Faith Performance.....	70
13.3	Effect of Termination.....	70
ARTICLE 14	MISCELLANEOUS.....	71
14.1	Notices.....	71
14.2	Information Releases.....	72
14.3	Expenses.....	72
14.4	Successors and Assigns.....	72
14.5	Amendments.....	73
14.6	Captions.....	73
14.7	Entire Agreement.....	73
14.8	Waiver.....	73
14.9	Third Parties.....	73
14.10	Counterparts.....	73
14.11	Governing Law.....	73
14.12	Further Assurances.....	74
14.13	Severability.....	74
14.14	Representation by Counsel; Interpretation.....	74

## INDEX OF SCHEDULES

Schedule\*....Title

1.1-A	Assigned Contracts
1.1-B	Excluded Contracts
1.1-C	Purchased Exchanges
1.1-D	License Agreement

1.1-E	National Account Agreement Customers
2.3(g)	Other Excluded Property
4.3	Material Consents
4.4	FCC Consents/Waivers
5.2.1	Operation of the Business
5.2.2(c)	Increase in Transferred Employee Benefits
5.2.2(d)	Dispositions
6.1.1	Seller's Closing Certificate
6.2.1	Buyer's Closing Certificate
7.2(a)	Bill of Sale and Assignment and Assumption Agreement
7.2(b)	Legal Opinion of Seller's Counsel
7.2(g)	Affidavit as to Status of Foreign Person
7.3(c)	Legal Opinion of Buyer's Counsel
8.1.3	Consents, Approvals and Permits of Governmental Authorities
8.1.4	Violation of Law
8.1.7(a)	Owned Real Property
8.1.7(b)	Bondholders Liens
8.1.8	Real Property Leases
8.1.9	Title Exceptions for Tangible Purchased Property
8.1.10	Material Adverse Changes
8.1.11(a)	Material Contracts - Limitations on Competition
8.1.11(b)	Material Contracts - Liens
8.1.11(c)	Material Contracts - Sale of Purchased Property
8.1.11(d)	Material Contracts - Ordinary Course
8.1.13	Exceptions to Tax Return Filings
8.1.14	State and Federal Claims/Suits
8.1.15(a)	Tariff Proceedings
8.1.15(b)	FCC Licenses
8.1.16(a)	Employee Matters - Seller's Employee Benefit Plans
8.1.16(b)	Employee Matters - Seller's Material Liabilities under ERISA
8.1.16(c)	Employee Matters - Seller's ERISA Plans - Compliance
8.1.16(d)	Employee Matters - Seller's Multiemployer Plans
8.1.16(e)	Employee Matters - Seller's Union Representation
8.1.17	Telephone Plant
8.1.18	Real Property Interests List
8.1.19	Environmental Matters
8.1.20	Joint Construction Projects
8.1.21(a)	Financial Statement - Estimated Income Statement
8.1.21(b)	Financial Statement - Estimated Balance Sheet
8.1.21(c)	Financial Statement - Estimated Statement of Cash Flows
9.1	Transition Services Agreement
9.2	Optional Services Agreement
9.3.1	Directory Publishing Agreements
9.3.2	Co-Bound Directory Agreements
9.4	GTE Telecom Agreements
11.1	Employees and Employee Matters - Transferred Employees and LTD Recipients
11.1.1	Employees and Employee Matters - Collective Bargaining Agreements
11.1.2	Employees and Employee Matters - Employment Agreement Obligations and Exceptions
11.1.4	Employees and Employee Matters - Seller's Bonus Plans
11.3.1	Employees and Employee Matters - Employment Loans

\* The Schedule numbers refer to the appropriate Section within the Agreement.

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of the 8th day of July, 1999, by and between Spectra Communications Group LLC, a Delaware Limited Liability Company ("Buyer"), and GTE Midwest Incorporated, a Delaware corporation ("Seller").

### **RECITALS**

WHEREAS, Seller is in the business of providing regulated local exchange telephone service in certain areas of the state of Missouri; and

WHEREAS, Seller desires to sell, convey, assign, transfer and deliver to Buyer, and Buyer desires to purchase and accept from Seller, certain of its telephone properties and related assets used in the provision of such service, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

1.1 Terms. For purposes of this Agreement and any amendment hereto, the following terms are defined as set out below or in the Section referenced below:

"Accounts Receivable Settlement Statements" is defined in Section 10.16(b).

"Acquired Local Loop" means a "Local Loop" as defined in 47 C.F.R. Section 51.319(a) of the FCC's rules, which Local Loop is part of the Purchased Exchanges.

"Active Employees" is defined in Section 11.1.

"Advanced Billings" means amounts arising primarily from the operation of the Business that have been billed by Seller as of the Closing Date but that are unearned because they relate to provision of service after the Closing Date.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

"Allocation" is defined in Section 10.9.

"Ancillary Documents" means the Transition Services Agreement, the Optional Services Agreement, the License Agreement, the GTE Telecom Agreements and the Bill of Sale and Assignment and Assumption Agreement.

"Assigned Contracts" means Contracts to which Seller is a party (i) which relate primarily to the operation of the Business, other than the Excluded Contracts, Real Property Interests, Real Property Leases and Third Party Intellectual Property Contracts, and (ii) any other Contract to which Seller or its Affiliates are a party and is listed on Schedule 1.1-A.

"Assigned Permits" means, to the extent assignable, all permits, licenses, franchises, approvals and authorizations of Seller issued or granted by any Governmental Authority that relate primarily to the operation of the Business, other than the FCC Licenses and the Excluded Permits.

"Assumed Liabilities" is defined in Section 2.4.1

"Automated Assets" is defined in Section 8.1.22.

"Bargained Welfare Plans" is defined in Section 11.2.3(a).

"Base Purchase Price" is defined in Section 3.1.

"Bill of Sale and Assignment and Assumption Agreement" is defined in Section 7.2(a).

"Bondholder Consents" is defined in Section 4.2.

"Bondholders" means the Persons listed on Schedule 8.1.7(b).



"Business" means the business of providing in the geographic area serviced by the Purchased Exchanges (i) local exchange (including extended community calling and extended area service), exchange access, switched, dedicated, special access, tandem, end office switching service and intra-LATA toll telecommunications services to end users, (ii) exchange access telecommunications services to interexchange carriers and other local exchange carriers, (iii) retail sales, leasing and maintenance of telephone equipment and products (including customer premises equipment), (iv) non-tariffed public communications (pay telephones) and commercial telecommunications services facilities leasing, and (v) provision of subscriber listing information (including directory services).

"Buyer Pension" is defined in Section 11.2.1(c)(iii)(B).

"Buyer Pension Plan" and "Buyer Pension Plans" are defined in Section 11.2.1(b).

"Buyer Savings Plan" and "Buyer Savings Plans" are defined in Section 11.2.2(b).

"Buyer Welfare Plans" is defined in Section 11.2.3(a).

"Buyer's Actuary" is defined in Section 11.2.1(d)(ii).

"Buyer's Closing Certificate" is defined in Section 6.2.1.

"Calendar-Related" is defined in Section 8.1.22.

"Capital Expenditure Amount" is defined in Section 5.6.

"Capital Expenditure Deficiency" is defined in Section 5.6.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"Closing" is defined in Section 7.1.

"Closing Date" is defined in Section 7.1.

"Closing Date Amount" is defined in Section 3.2(b).

"Closing Date Statement" is defined in Section 3.3.

"CLTA" is defined in Section 10.10.

"Co-Bound Directories" is defined in Section 9.3.2.

"Confidentiality Agreement" means the Confidentiality Agreement dated as of November 9, 1998, between Buyer, Seller and certain Affiliates of Seller.

"Construction Advances" means advances collected by Seller for the future performance of non-regulated construction in the Purchased Exchanges.

"Contracts" means all contracts, leases, indentures, agreements, and other legally binding arrangements.

"Customer Advances" means amounts arising from the operation of the Business that have been billed and collected by Seller as of the Closing Date but that are unearned because they relate to the provision of service after the Closing Date.

"Customer Deposits" is defined in Section 10.7.

"Date Data" is defined in Section 8.1.22.

"Deposit" is defined in Section 3.4.

"Deposit L/C" is defined in Section 3.4.

"Direct Claim" is defined in Section 12.4(b).

"DOJ" is defined in Section 4.5.

"Due Diligence Materials" means all materials contained in the six volumes delivered to Buyer on July 8, 1999.

"Earned End-User Accounts Receivable" means accounts receivable arising primarily from the operation of the Business that have been earned by Seller's provision of service on or before the Closing Date excluding amounts billed through the carrier access billing system to interexchange carriers.

"Earned End-User Accounts Receivable Amount" means the aggregate amount of all Earned End-User Accounts Receivable as of the Closing Date, less a discount for anticipated uncollectible Earned End-User Accounts Receivable in an amount equal to the Uncollectible Factor multiplied by the Earned End-User Accounts Receivable as of the Closing Date.

"Employment Agreements" is defined in Section 8.1.16(a).

"Environmental Requirements" means all federal, state, interstate and local government or agency Laws relating to pollution or protection of human health and safety or the environment (including, without limitation, air, surface water, ground water, land surface and subsurface strata), including, without limitation, Laws relating to emissions, discharges, releases or threatened releases of Regulated Materials; or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation or handling of Regulated Materials.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Plans" is defined in Section 8.1.16(a).

"Estimated Non-Regulated Construction Work in Process Amount" is defined in Section 3.2(a).

"Estimated Regulatory Obligation Amount" is defined in Section 3.2(a).

"Evaluation Material" is defined in the first paragraph of the Confidentiality Agreement.

"Excluded Contracts" means all billing and collection agreements, interconnection agreements, National Account Agreements, billing media agreements, vehicle leasing agreements, except to the extent expressly listed on Schedule 1.1-A, and (ii) such other agreements as are listed on Schedule 1.1-B.

"Excluded Marks" means all trademarks, applications for trademark registration, service marks, applications for service mark registration, trade names, domain names and related registrations owned by Seller or an Affiliate of Seller, or licensed to Seller or an Affiliate of Seller by any Person, and any derivations of the foregoing.

"Excluded Permits" means the permits, licenses, franchises, approvals and authorizations of Seller by Governmental Authorities that relate to the Excluded Property.

"Excluded Property" is defined in Section 2.3.

"Executive Officers" of Seller means the regional president of the region that includes the Purchased Exchanges, the general manager and the director of infrastructure provisioning for the Purchased Exchanges and the general manager of customer operations for the Purchased Exchanges.

"Expiration Date" is defined in Section 12.1(a).

"FCC" means the Federal Communications Commission.

"FCC Consents" is defined in Section 4.4.

"FCC Licenses" means all licenses, certificates, permits or other authorizations granted to Seller by the FCC that are used primarily in the operation of the Business.

"Final Order" is defined in Section 6.1.4.

"Financial Statements" is defined in Section 8.1.21.

"FRP" is defined in Section 11.2.3(e).

"FTC" is defined in Section 4.5.

"Future Capital Expenditure Obligations" is defined in Section 2.4.1(h).

"Future Regulatory Obligations" is defined in Section 2.4.1(g)

"GAAP" means United States generally accepted accounting principles.

"GATT Grandfathered Participant" is defined in Section 11.2.1(c)(ii)(C).

"Governmental Authority" means any court or any federal, state or foreign governmental, legislative, administrative or regulatory body, agency, department, authority or other instrumentality.

"GTE Telecom Agreements" is defined in Section 9.4.

"GTE Telecom Assets" is defined in Section 9.4.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indemnifiable Losses" is defined in Section 12.3(a).

"Indemnification Payment" is defined in Section 12.3(a).

"Indemnifying Party" is defined in Section 12.3(a).

"Indemnitee" is defined in Section 12.3(a).

"Intellectual Property" means all inventions (whether patentable or not and whether or not such inventions are described or claimed in any patent or patent application), designs (useful or ornamental), and works subject to copyright protection, invention disclosures, specifications, manuals, drawings, functional or system block diagrams, flow charts, circuit diagrams, design or user documentation, engineering notebooks, schematics, test programs, documented procedures, documented processes, documented flows, devices, software (in any form), or firmware, and all intellectual property rights therein or based thereon, including patents, patent applications (including continuations, continuations-in-part, divisions, reissues), reexamined patents and extensions thereof, copyrights (whether registered or unregistered), and trade secrets.

"IRC" means the Internal Revenue Code of 1986, as amended.

"IRS" means the Internal Revenue Service.

"Joint Construction Projects" is defined in Section 2.4.1(d).

"LTD Recipient" is defined in Section 11.7.

"Law" or "Laws" means any statute, rule, regulation, mandate, decree, decision, order or ordinance of any Governmental Authority.

"Leased Real Property" means the real property leased to Seller under the Real Property Leases.

"License Agreement" means the license agreement attached hereto as Schedule 1.1-D pursuant to which Seller grants to Buyer certain rights and licenses under Licensed Intellectual Property.

"Licensed Intellectual Property" means Intellectual Property owned by Seller, and Third Party Intellectual Property licensed to Seller which Seller has the right to sublicense to Buyer and its Affiliates without the payment of compensation or other consideration to any Person, and which Intellectual Property and Third Party Intellectual Property (i) are required for the use or maintenance (to the extent not provided by the owner or licensor of the Third Party Intellectual Property) of the Purchased Exchanges, (ii) are located in the geographic area of the Purchased Exchanges, and (iii) are used in the operation of the Business as of the Closing; provided that Licensed Intellectual Property shall at all times be Excluded Property.

"Lien" means any lien, charge, pledge, option, mortgage, security interest, right of first refusal or other encumbrance.

"Material Adverse Effect" means a materially adverse effect on the Business or the Purchased Property, taken as a whole, other than effects relating to or arising from (i) the execution of this Agreement, (ii) the United States economy generally or Missouri in particular, or (iii) events

or circumstances that affect the Business in the same manner and to the same extent as other businesses in the industry generally.

"Material and Supply Inventory" is defined in the FCC's Part 32 Uniform System of Accounts.

"Material Consents" is defined in Section 4.3.

"Material Contracts" is defined in Section 8.1.11.

"Merger" means the proposed merger involving GTE Corporation and Bell Atlantic Corporation and their respective Subsidiaries.

"National Account Agreements" means agreements between Seller or its Affiliates with those customers listed on Schedule 1.1-E.

"NECA" is defined in Section 10.6.1.

"Non-Regulated Construction" means all construction related to non-tariffed activities, including PBX, CPE and related construction activities.

"Non-Regulated Construction Work in Process Amount" means amounts expended by Seller for non-regulated construction work not completed as of Closing Date, net of Construction Advances related to such construction work. Non-Regulated Construction Work in Process Amount is billable by Buyer to third parties after Closing Date.

"Non-Union Welfare Plans" is defined in Section 11.2.3(a).

"Optional Services Agreement" is defined in Section 9.2.

"Owned Real Property" means the real property (i) owned in fee by Seller, (ii) located in the geographic area of the Purchased Exchanges and (iii) used primarily in the operation of the Business, including all land, buildings, structures, appurtenances and improvements located thereon.

"Participant Loans" is defined in Section 11.2.2(c)(i).

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Assets" is defined in Section 11.2.1(d)(i).

"Periodic Taxes" is defined in Section 10.5.

"Permitted Encumbrances" means (i) Liens for current Taxes and assessments not yet delinquent, or the amount or validity of which is being contested in good faith by appropriate proceedings during which collection or enforcement against the relevant property is stayed, (ii) standard utility easements, covenants and restrictions of record that do not individually or in the aggregate materially interfere with the operation of the Business as currently conducted on the Owned Real Property affected thereby, (iii) mechanics', carriers', workers', repairers' and other statutory Liens, satisfaction of which has not come due in the ordinary course of business, (iv) existing zoning or similar Laws or ordinances that do not interfere with the operation of the Business, (v) leases otherwise disclosed herein, and (vi) any other Liens that do not materially interfere with the operations of the Purchased Property in a manner consistent with the current use by Seller.

"Person" means an individual, corporation, partnership, trust, association, limited liability company or similar entity or organization.

"Plans" is defined in Section 8.1.16(a).

"Price-Cap Regulation Entity" means an entity subject to price-cap regulation within the meaning of 47 C.F.R. Section 61.41(c)(2) (the "all-or-nothing" rule).

"Proration Periods" is defined in Section 10.5.

"PSC" means the Missouri Public Service Commission.

"Publisher" is defined in Section 9.3.1.

"Publishing Agreement" is defined in Section 9.3.1.

"Purchase Price" is defined in Section 3.3(c).

"Purchased Exchanges" means the telephone exchanges listed in Schedule 1.1-C.

"Purchased Property" is defined in Section 2.2.

"Rate-of-Return Regulation Entity" means an entity not subject to price-cap regulation within the meaning of 47 C.F.R. Section 61.41(c)(2) (the "all-or-nothing" rule).

"Real Property Interests" means all easements, rights of way, licenses or other interests in real property of Seller that are used primarily in the operation of the Business, and are located in the geographic area of the Purchased Exchanges, other than Owned Real Property or Leased Real Property.

"Real Property Leases" means the Leases set forth on Schedule 8.1.8.

"Regulated Material" means (i) any "hazardous substance" as defined in CERCLA, (ii) any petroleum or petroleum substance, and (iii) any other pollutant, waste, contaminant, or other substance regulated under Environmental Requirements.

"Regulatory Approvals" is defined in Section 4.1.

"Regulatory Obligation Amount" is defined in Section 3.1.

"Retained Books and Records" means, collectively, all corporate records and stock books of Seller and its Affiliates, the general ledger, all records required by Law to be retained by Seller and all books and records relating to (i) Tax Returns and Tax records, (ii) Excluded Property, (iii) attorney work product, and (iv) the Retained Liabilities; provided that where reasonably necessary or prudent, "Retained Books and Records" shall also include copies of the Transferred Books and Records.

"Retained Future Capital Expenditure Obligations" is defined in Section 2.4.1(h).

"Retained Future Regulatory Obligations" is defined in Section 2.4.1(g).

"Retained Liabilities" is defined in Section 2.4.2.

"Retired Non-Union Transferred Employee" is defined in Section 11.2.3(b)(ii).

"Seller's Actuary" is defined in Section 11.2.1(d)(ii).

"Seller's Bonus Plans" is defined in Section 11.1.4.

"Seller's Closing Certificate" is defined in Section 6.1.1.

"Seller's Hourly Pension Plan" is defined in Section 11.2.1(a)(ii).

"Seller's LTD Plan" is defined in Section 11.7.

"Seller's Pension" is defined in Section 11.2.1(c)(iii)(B).

"Seller's Pension Plan" and "Seller's Pension Plans" are defined in Section 11.2.1(a)(ii).

"Seller's Salaried Pension Plan" is defined in Section 11.2.1(a)(i).

"Seller's Savings Plans" is defined in Section 11.2.2(a).

"Seller's Welfare Plans" is defined in Section 11.2.3(a).

"Switch Software" means any telephone switch software licensed to Seller which software is necessary to Seller's current operation and use of any telephone switching equipment in the Purchased Exchanges and which equipment is included in Telephone Plant.

"System Date" is defined in Section 8.1.22.

"Tax Returns" means a report, return or other information statement required to be supplied to or filed with a Governmental Authority with respect to Taxes.

"Tax(es)" means any foreign, federal, state, county or local income, sales, use, transfer, excise, franchise, stamp duty, custom duty, real and personal property, gross receipt, capital stock, business and occupation, disability, employment, payroll, recording, ad valorem, unemployment compensation, profits, registration, social security, estimated, add-on, minimum, or withholding tax relating to the Business or the Purchased Exchanges and any interest and penalties and additions to such taxes (civil or criminal) related thereto or to the nonpayment thereof and related notarial fees.

"Telephone Plant" means (i) Owned Real Property, (ii) Real Property Interests, and (iii) the machinery, equipment, inventory, vehicles (whether currently owned or leased by Seller) and all other assets and properties used primarily in the operation of the Business, including all plant, systems, structures, construction work in progress, telephone cable (whether in service or under construction), microwave facilities (including frequency spectrum assignment), telephone line facilities, machinery, furniture, fixtures, tools, implements, conduits, stations, substations, equipment (including central office equipment, subscriber station equipment, network connection equipment and other equipment in general), instruments, house wiring connections and other personal property used primarily in the operation of the Business and located in the Purchased Exchanges, other than Excluded Property. Without limiting the generality of the foregoing, Telephone Plant includes the assets that would be properly included in the fixed assets referenced in Part 32 of the FCC Rules and Regulations (47 CFR, Part 32), as such accounts are reflected in Schedule 8.1.17.

"Third Party Claim" is defined in Section 12.4(a).

"Third Party Intellectual Property" means Intellectual Property owned by any Person, other than Seller, without regard as to whether Seller has any rights therein or the right to assign such rights to Buyer.

"Third Party Intellectual Property Contracts" is defined in Section 10.1.4.

"Total Service Pension" is defined in Section 11.2.1(c)(iii)(B).

"Transaction Taxes" is defined in Section 10.11.

"Transferred Books and Records" means all of Seller's customer or subscriber lists and records, accounts and billing records, plant and continuing property records, plans, blueprints, specifications, drawings, surveys, engineering reports, personnel records of Transferred Employees (where applicable), tariffs, orders or other material correspondence or records relating to regulation of the Business by any Governmental Authority, and all other documents, computer data and records, in each case relating primarily to the operation of the Business, except for the Retained Books and Records.

"Transferred Employees" is defined in Section 11.1.

"Transition Services Agreement" is defined in Section 9.1.

"Transitional Year" means any calendar year (beginning with the calendar year in which the Closing occurs) in which USF distributions are based upon the costs, whether historic costs or forward-looking economic costs, reported for a calendar year in which Seller owned the Acquired Local Loop for any part of such calendar year.

"Uncollectible Factor" is defined in Section 10.16.

"USAC" is defined in Section 10.6.1.

"USF" is defined in Section 10.6.1.

"Vacation Proration Amount" is defined in Section 11.3.2(c).

"Year 2000 Compliant" is defined in Section 8.1.22.

## 1.2 Interpretation.

(a) Unless the context otherwise requires, (i) all references to Sections, Articles or Schedules are to Sections, Articles or Schedules of or to this Agreement, (ii) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP, (iii) all references to the "knowledge of Seller" are deemed to refer to the actual knowledge of the Executive Officers of Seller, (iv) the term "primarily" means primarily or exclusively, and (v) the term "including" means including without limitation.

(b) No provision of this Agreement will be interpreted in favor of or against either of the parties by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of such provision or of this Agreement.

(c) Except as otherwise provided in this Agreement, in the event of any dispute concerning the "knowledge" of a party to this Agreement, the burden of proof shall be on the party asserting that another party had such knowledge.

## **ARTICLE 2**

### **PURCHASE AND SALE OF ASSETS**

2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, Seller hereby agrees to sell, convey, transfer, assign and deliver to Buyer and Buyer hereby agrees to purchase, acquire and accept from Seller, in each case effective as of the Closing, all of Seller's right, title and interest in and to the Purchased Property.

2.2 Purchased Property. The term "Purchased Property" means all the following business, properties, assets and rights of Seller on the Closing Date, other than the Excluded Property:

- (i) Telephone Plant;
- (ii) Earned End-User Accounts Receivable;
- (iii) Material and Supply Inventory
- (iv) Non-Regulated Construction Work In Process
- (v) FCC Licenses and Assigned Permits;
- (vi) Assigned Contracts;
- (vii) Transferred Books and Records;
- (viii) Real Property Leases;
- (ix) Advance Billings;
- (x) Insurance proceeds of Seller arising from any loss, damage or destruction of Purchased Property between the date hereof and the Closing Date, to the extent that (1) such Purchased Property has not been replaced by Seller, and (2) such insurance proceeds do not exceed the replacement cost of such Purchased Property; and
- (xi) All other business, property, assets and rights of Seller on the Closing Date not described above that relate primarily to the Purchased Exchanges.

2.3 Excluded Property. For purposes of this Agreement, "Excluded Property" means the following:

- (a) Cash, cash equivalents and investments;
- (b) All rights of Seller and its Affiliates under this Agreement, the Ancillary Documents and the certificates and other documents delivered to Seller by Buyer in connection with this Agreement;
- (c) All records prepared in connection with the sale of the Business, including bids received from third parties and analysis relating to the Business;
- (d) All rights and obligations related to the Retained Liabilities;
- (e) The Retained Books and Records;
- (f) Seller's interests in any business other than the Business, including the provision of wireless service (cellular and PCS), inter-LATA long distance and internet service or internet related services, air-to-ground communications (air phone service), and any Excluded Permits related thereto, and all assets of Seller and its Affiliates used in connection with any such business or related thereto, and all assets used by Seller and its Affiliates in rendering corporate services to Seller or the Business that are located outside the geographic area serviced by the Purchased Exchanges;
- (g) Such other assets (i.e., encryption decoder devices, AWAS terminals, SODA, etc.), if any, as set forth on Schedule 2.3(g);
- (h) The Excluded Contracts;
- (i) The Excluded Marks;
- (j) All Intellectual Property, including the Licensed Intellectual Property and Third Party Intellectual Property (except for such rights to possess and use Third Party Intellectual Property as may be assigned in accordance with Section 10.1.4); and
- (k) All of Seller's insurance proceeds arising in connection with the operation of the Business or the Purchased Property prior to the Closing, except as described in Section 2.2(x).

2.4 Assumption of Liabilities.

2.4.1 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, Buyer hereby agrees to assume, as of the Closing Date, and agrees, beginning on the day following the Closing Date, to pay, perform and discharge when due the following (the "Assumed Liabilities"):

(a) Ordinary Course. All liabilities, responsibilities and obligations (including Taxes), arising out of or accruing or resulting from the use or ownership of the Purchased Property in the ordinary course after the Closing Date;

(b) Employment Matters. All liabilities, responsibilities and obligations of Buyer as provided in Article 11 with respect to Transferred Employees;

(c) Assigned Contracts, Real Property Interests and Real Property Leases. All liabilities, responsibilities and obligations that arise after the Closing Date in connection with the performance of the Assigned Contracts, Real Property Interests and the Real Property Leases;

(d) Joint Construction Projects. All liabilities, responsibilities and obligations to third parties that relate to arrangements and commitments between Seller and a third party related to post-Closing engineering and construction required to complete scheduled construction of mutual transmission facilities between various switching points included in the Purchased Exchanges ("Joint Construction Projects");

(e) Construction in Progress. All liabilities, responsibilities and obligations relating to post-Closing engineering and construction required to complete scheduled construction and other capital expenditure projects for the Purchased Exchanges;

(f) Customer Advances, Advance Billings, Customer Deposits and Construction Advances. All liabilities, responsibilities and obligations relating to Customer Advances, Advance Billings, Customer Deposits and Construction Advances;

(g) Future Regulatory Obligations. All liabilities, responsibilities and obligations, other than Future Capital Expenditure Obligations, related to the Purchased Exchanges arising out of any Law promulgated or issued by a Governmental Authority after the Closing Date or other action taken by a Governmental Authority after the Closing Date, regardless of whether such Law or action is or purports to be based on conduct or actions that occurred at any time prior to the Closing Date ("Future Regulatory Obligations"), except that Buyer shall not be liable for any such Future Regulatory Obligation arising directly out of any intentional misconduct by Seller or conduct by Seller that was not reasonably prudent based on the circumstances prevailing at the time that occurred prior to the Closing Date ("Retained Future Regulatory Obligations"); provided that (i) Seller's reliance on reasonable interpretation of existing Law or practice shall be deemed reasonably prudent, and (ii) Seller shall not retain any liability for Future Regulatory Obligations to the extent that the costs associated with such obligations are included in Buyer's rate base for the Purchased Exchanges;

(h) Future Capital Expenditure Obligations. All liabilities, responsibilities and obligations related to the Purchased Exchanges arising out of any Law promulgated or issued by a Governmental Authority or other action taken by a Governmental Authority requiring any capital expenditure (other than a Future Regulatory Obligation) after the date of this Agreement, regardless of whether such Law or action is or purports to be based on conduct, facts or actions that occurred at any time prior to the date of this Agreement ("Future Capital Expenditure Obligations"), except that Buyer shall not be liable for any such Future Capital Expenditure Obligation arising directly out of any intentional misconduct by Seller or conduct by Seller that was not reasonably prudent based on the circumstances prevailing at the time ("Retained Future Capital Expenditure Obligations"); provided that (i) Seller's reliance on reasonable interpretation of existing Law or practice shall be deemed reasonably prudent, and (ii) Seller shall not retain any liability for Future Capital Expenditure Obligations to the extent that the costs associated with such obligations are included in Buyer's rate base for the Purchased Exchanges. Prior to the Closing Date, Seller shall notify Buyer of all material Future Capital Expenditure Obligations within a reasonable time after publication of said obligations by a Governmental Authority; and

(i) Litigation and Claims. All liabilities and obligations arising out of (i) litigation and claims that arise out of an occurrence after the Closing Date,

(ii) litigation and claims in respect of Future Regulatory Obligations (other than Retained Future Regulatory Obligations) regardless of when filed, and (iii) claims of a Governmental Authority arising from or related to a Future Regulatory Obligation (other than Retained Future Regulatory Obligations).

Notwithstanding anything in this Section 2.4.1 to the contrary, "Assumed Liabilities" shall not include any liabilities, responsibilities or obligations expressly included in Retained Liabilities pursuant to Section 2.4.2.

2.4.2 Retained Liabilities. Seller shall retain and shall pay, perform and discharge when due, the following liabilities, responsibilities and obligations of Seller (the "Retained Liabilities"); provided that Retained Liabilities shall not include any liability, responsibility or obligation with respect to any matter that is the subject of a representation, warranty or covenant by Seller (breaches of which shall be handled in accordance with Article 12):

(a) Subject to Section 10.5, all trade payables and other accrued payment obligations of Seller as of the Closing Date;

(b) All debt of Seller (including indebtedness to the Bondholders) and debt of Seller owed to any one or more of its Affiliates;

(c) Subject to Section 10.5, all federal, state and local income, franchise, gross receipts and similar Taxes of Seller or its consolidated or



combined group and all federal, state and local income, franchise, gross receipts and sales, use, property or other Taxes relating to the operation of the Business on or before the Closing Date or the use, ownership or operation of the Purchased Property on or before the Closing Date;

(d) Except to the extent otherwise provided in Article 11, all liabilities and obligations arising on or before the Closing Date with respect to the Transferred Employees, including (i) all liabilities responsibilities and obligations arising on or before the Closing Date relating to collective bargaining agreements or other union Contracts, and (ii) any such liabilities or obligations that arise after the Closing Date to the extent that such liabilities and obligations relate to facts, circumstances or conditions arising or occurring on or before the Closing Date, but excluding any Future Regulatory Obligations with respect to the Transferred Employees;

(e) All liabilities, responsibilities and obligations resulting from (i) litigation and claims that arise out of an occurrence prior to the Closing Date,

(ii) litigation and claims in respect of Retained Future Regulatory Obligations and (iii) litigation and claims in respect of Retained Future Capital Expenditure Obligations;

(f) Any Retained Future Regulatory Obligations and any Retained Future Capital Expenditure Obligations; and

(g) All liabilities, responsibilities and obligations with respect to the Excluded Property and Excluded Contracts.

**2.5 No Assignment Without Consent.** Notwithstanding anything to the contrary contained in this Agreement, to the extent that the sale, conveyance, transfer, assignment or delivery or attempted sale, conveyance, transfer, assignment or delivery to Buyer of any Purchased Property (including any Contract) is prohibited by any applicable Law or would require any governmental or third-party authorizations, approvals, consents or waivers and such authorizations, approvals, consents or waivers shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, conveyance, transfer, assignment or delivery, or an attempted sale, conveyance, transfer, assignment or delivery thereof, if any of the foregoing would constitute a breach of applicable Law or the rights of any third party; provided, however, that, except to the extent that a condition to Closing set forth in Article 6 relating to the foregoing shall not be satisfied, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account of such required authorization. Following the Closing, the parties shall use their commercially reasonable efforts, and shall cooperate with each other, to obtain promptly such authorizations, approvals, consents or waivers; provided, however, that neither Seller nor Buyer nor any of their respective Affiliates shall be required to pay any consideration therefor, other than filing, recordation or similar fees payable to any Governmental Authority, which fees shall be shared equally by Seller and Buyer. Pending or in the absence of such authorization, approval, consent or waiver, the parties shall cooperate with each other in any reasonable and lawful arrangements to provide to Buyer the benefits and liabilities of use of such Purchased Property including, if permitted by the terms of any applicable Real Property Lease or applicable Material Contract, through a sublease or subcontract in accordance with Article

4. If such authorization, approval, consent or waiver for the sale, conveyance, transfer, assignment or delivery of any such Purchased Property is obtained, Seller shall promptly convey, transfer, assign and deliver, or cause to be conveyed, transferred, assigned and delivered, such Purchased Property to Buyer.

### **ARTICLE 3**

#### **PURCHASE PRICE**

**3.1 Purchase Price.** The purchase price for the Purchased Property shall be the sum of (i) Two Hundred Ninety Million Dollars (\$290,000,000) (the "Base Purchase Price"), (ii) amounts expended by Seller to comply with Future Capital Expenditure Obligations between the date of this Agreement and the Closing Date (the "Regulatory Obligation Amount"), and (iii) the Non-Regulated Construction Work in Process Amount, minus (iv) any Capital Expenditure Deficiency and (v) any Vacation Proration Amount (assuming that Buyer receives a credit under Section 11.3.2, but if Seller receives a credit, the Vacation Proration Amount shall be added to the Purchase Price).

#### **3.2 Closing Date Estimate.**

(a) Not less than three (3) business days prior to the Closing Date, Seller will give to Buyer a notice, setting forth Seller's good faith estimate as of the Closing Date of (i) the Regulatory Obligation Amount (the "Estimated Regulatory Obligation Amount"), (ii) the Non-Regulated Construction Work in Process Amount (the "Estimated Non-Regulated Construction Work in Process Amount"), (iii) any Capital Expenditure Deficiency, and (iv) any Vacation Proration Amount.

(b) On the Closing Date, Buyer shall pay to Seller an amount equal to the sum of (i) the Base Purchase Price, (ii) the Estimated Regulatory Obligation Amount, and (iii) the Estimated Non-Regulated Construction Work in Process Amount, minus (iv) any Capital Expenditure Deficiency and (v) any Vacation Proration Amount (assuming that Buyer receives a credit under Section 11.3.2, but if Seller receives a credit, the Vacation Proration Amount shall be added to the Purchase Price) (the "Closing Date Amount"). The Closing Date Amount shall be paid by delivery on the Closing Date of immediately available funds in U.S. dollars by wire transfer to an account that Seller shall designate to Buyer at least two (2) business days prior to the Closing Date. Payments from Buyer to Seller for Earned End-User Accounts Receivable and from Seller to Buyer for Customer Advances and Customer Deposits will occur subsequent to Closing in accordance with Article 10.

#### **3.3 Closing Date Statement**

(a) Within sixty (60) days after Closing Date, Seller shall prepare and deliver to Buyer a written statement (with appropriate supporting documentation) of the Base Purchase Price, Regulatory Obligation Amount, Non-Regulated Construction Work in Process Amount, any Capital Expenditure Deficiency and any Vacation Proration Amount ("Closing Date Statement"). Within thirty (30) days after receipt of the Closing Date Statement, Buyer shall, in a written notice to Seller, either accept the Closing Date Statement or describe in reasonable detail any proposed adjustments to the Closing Date Statement and the reasons therefore. If Seller shall not have received a notice of proposed adjustments within such thirty (30) day period, Buyer will be deemed irrevocably to have accepted such Closing Date Statement.

(b) Upon the acceptance of any Closing Date Statement by Buyer, the parties shall, based thereupon, calculate the Base Purchase Price, Regulatory Obligation Amount and Non-Regulated Construction Work in Process Amount (collectively, the "Purchase Price"). If the Purchase Price as finally determined above is greater than the Closing Date Amount, Buyer shall promptly, but no later than three (3) business days after such acceptance, pay to Seller the amount of such difference. If the Purchase Price as determined above is less than the Closing Date Amount, Seller shall promptly, but no later than three (3) business days after such acceptance, pay to Buyer the amount of such difference.

(c) Seller and Buyer shall negotiate in good faith to resolve any disputes over any proposed adjustments to the Closing Date Statement, provided that if any such dispute is not resolved within thirty (30) days following Seller's receipt of any proposed adjustments delivered by Buyer pursuant to Section 3.3(b), Buyer and Seller jointly shall select an independent public accounting firm that is nationally recognized in the United States to resolve such disputes in accordance with the standards set forth in this Section 3.3, which resolution shall be final and binding. The fees and expenses of such accounting firm shall be shared by Buyer and Seller in inverse proportion to the relative amounts of the disputed amount determined to be for the account of Buyer and Seller, respectively.

(d) If Buyer disputes any portion of the Closing Date Statement, the parties shall calculate the portion of the Closing Date Statement that is not the subject of any dispute or proposed adjustment. If the undisputed portion of the Closing Date Statement (i) is greater than the respective estimated amounts paid on the Closing Date, Buyer shall promptly pay Seller the amount of such difference, or (ii) is less than the respective estimated amounts paid on the Closing Date, Seller shall promptly pay Buyer the amount of such difference. Payments with respect to any undisputed portions of these adjustments shall be made no later than three (3) business days after delivery of the notice of the proposed adjustments. Upon resolution of any dispute over any proposed adjustments as described above in Section 3.3(d), a party which is determined to owe the other party an amount shall pay that amount promptly, but no later than three (3) business days after resolution.

(e) Any amount payable pursuant to this Section 3.3 after the date which is ninety (90) days following the Closing Date shall bear interest from such ninetieth day through but excluding the date of payment, at a rate of eight percent (8%) per annum. Such interest shall accrue daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which interest is due and shall be payable together with the amount payable pursuant to this Section 3.3. All amounts payable pursuant to this Section 3.3 shall be paid by delivery of immediately available funds in U.S. dollars by wire transfer to, in the case of amounts payable by Buyer, the account identified by Seller as described in 3.2 above or to an alternate account that Seller may designate on the Closing Date Statement and, in the case of amounts payable by Seller, to such account of Buyer as Buyer shall designate in writing to Seller.

### 3.4 Performance Deposit.

(a) Concurrently with the execution and delivery hereof, Buyer shall pay to Seller by wire transfer of immediately available funds the sum of Fourteen Million Five Hundred Thousand Dollars (\$14,500,000), an amount equal to five percent (5%) of the Base Purchase Price (the "Deposit"), to be held by Seller against payment of the Purchase Price and as security for the performance by Buyer of its obligations under this Agreement.

(b) Buyer may elect to deliver the Deposit to Seller in cash or in the form of an irrevocable, clean, standby letter of credit for the same amount (the "Deposit L/C"). The Deposit L/C shall (i) be in a form reasonably acceptable to Seller, (ii) be issued in favor of Seller under this Agreement and (iii) be issued by a bank that has a long-term unsecured debt rating of at least A+ by Standard & Poor's Rating Services and that is otherwise reasonably satisfactory to Seller. The Deposit L/C (and any replacement thereof furnished in accordance with this Section 3.4(b)) shall have an expiration date no earlier than the first anniversary of the date of issuance thereof and shall be automatically renewed from year to year unless stated not to be so renewed by the issuer thereof in a written notice given to the Seller not less than 30 days prior to the expiration thereof. In the event of the termination of the Deposit L/C (and any replacement thereof furnished in accordance with the provisions of this Section 3.4(b)), Buyer shall deliver to Seller a replacement letter or letters of credit in lieu thereof no later than 30 days prior to the expiration of the preceding letter of credit. If Buyer shall fail to obtain any replacement of the Deposit L/C (and/or any replacement thereof furnished in accordance with the provisions of this Section 3.4(b)), then Seller shall draw down the full amount of the existing letter of credit and retain the same as security for the covenants, agreements and obligations of Buyer under this Agreement. Any replacement of any Deposit L/C shall be in a form reasonably acceptable to Seller. Buyer acknowledges that Seller has agreed to accept the Deposit L/C in lieu of a cash down payment against the Purchase Price solely as an accommodation to Buyer.

(c) If the transfer of the Purchased Property as contemplated hereunder is consummated, then the Deposit shall be paid to Seller at the Closing and credited against the Base Purchase Price. If Buyer elects to deliver the Deposit L/C in lieu of cash, Seller shall draw down the full amount of the Deposit L/C at the Closing and pay such proceeds to Seller as a credit against the Base Purchase Price.

(d) Seller acknowledges that, upon two (2) business days prior written notice to Seller, Buyer shall have the right to deliver to Seller a cash payment of \$14,500,000, and upon receipt of such payment, Seller shall return to Buyer the Deposit L/C.

(e) The parties hereto acknowledge and agree that their respective rights and obligations related to the Deposit are described in Section 13.3.

## **ARTICLE 4**

### **REQUIRED APPROVALS, CONSENTS AND NOTIFICATIONS**

4.1 State Regulatory Approval. Promptly after the date of this Agreement, Buyer and Seller shall file the appropriate applications and notices with the PSC, seeking orders permitting the transfer of service in the Purchased Exchanges to Buyer (collectively, the "Regulatory Approvals"). Buyer will be responsible for establishing the tariff for its post-Closing operations in the Purchased Exchanges. Buyer agrees to use its commercially reasonable efforts to obtain the Regulatory Approvals and Seller agrees to cooperate fully with Buyer and with the applicable regulatory agency to obtain the Regulatory Approvals at the earliest practicable date.

4.2 Bondholder Consents. Seller shall use its commercially reasonable efforts to obtain from its Bondholders the termination or release, at Closing, of all security agreements, mortgages, financing statements or other Liens running in favor of the Bondholders and relating to the Purchased Property (such termination or release being hereinafter referred to as the "Bondholder Consents"). Buyer agrees to cooperate in good faith with Seller in obtaining the required Bondholder Consents.

4.3 Material Consents. Promptly after the date hereof, the parties shall use their commercially reasonable efforts to mutually seek the consent of the lessor under any Real Property Lease with respect to a central office or any license with respect to Switch Software which lease or license requires consent as a condition to an assignment, and which is identified on Schedule 4.3 or Schedule 8.1.8 (the "Material Consents"). If a lessor or licensor refuses to consent to an assignment, and if the applicable lease or license permits a sublease or sublicense without the consent of the lessor or licensor, the parties hereto shall, effective as of the Closing, enter into a sublease or sublicense upon terms and conditions as similar and comparable to an assignment of the lease or license as is reasonably feasible.

4.4 FCC Consents. Promptly after the date of this Agreement, the parties shall use their commercially reasonable efforts to obtain (i) the FCC's consent to the transfer of the FCC Licenses from Seller to Buyer, (ii) the FCC consents and waivers set forth on Schedule 4.4 and (iii) the FCC Final Orders (all such consents, waivers or orders are collectively referred to as the "FCC Consents").

4.5 HSR Act Review. Within thirty (30) business days after the date of this Agreement, the parties will make such filings as may be required by the HSR Act with respect to the transactions contemplated by this Agreement. Thereafter, the parties will file as promptly as practicable all reports or other documents required or requested by the U.S. Federal Trade Commission ("FTC") or the U.S. Department of Justice ("DOJ") pursuant to the HSR Act or otherwise and will comply promptly with any requests by the FTC or the DOJ for additional information concerning such transactions, so that the waiting period specified in the HSR Act will expire as soon as reasonably possible after the execution and delivery of this Agreement. Without limiting the foregoing, Seller and Buyer agree to use their commercially reasonable efforts to cooperate and oppose any preliminary injunction sought by any Governmental Authority preventing the consummation of the transactions contemplated by this Agreement. Buyer agrees to pay all application fees required in connection with any filings under the HSR Act.

Seller and Buyer shall cause their respective counsel to furnish each other such necessary information and reasonable assistance as the other may reasonably request in connection with the preparation of necessary filings or submissions under the provisions of the HSR Act. Seller and Buyer will cause their respective counsel to supply to each other copies of all correspondence, filings or written communications by such party or its Affiliates with any Governmental Authority or staff members thereof, with respect to the transactions contemplated by this Agreement and any related or contemplated transactions, except for documents filed pursuant to Item 4(c) of the Hart-Scott-Rodino Notification and Report Form or communications regarding the same documents or information submitted in response to any request for additional information or documents pursuant to the HSR Act which reveal Seller's or Buyer's negotiating objectives or strategies or purchase price expectations.

4.6 Notification. Each of the parties agrees to notify the others promptly upon learning of any fact or set of circumstances that would be reasonably likely to delay or prevent receipt of a Regulatory Approval, Bondholder Consent, FCC Consent, HSR clearance or other consent or approval referred to in Article 4.

4.7 GTE/Bell Atlantic Merger. Notwithstanding anything else contained in this Agreement, Seller and its Affiliates shall not be obligated to take any action that would violate the terms of their agreements regarding the Merger, or that would interfere with, delay or prevent the consummation of the Merger; provided that Buyer shall not be obligated to proceed with the Closing if the Merger has resulted in a Material Adverse Effect.

## **ARTICLE 5**

### **PRE-CLOSING COVENANTS**

5.1 Investigation by Buyer. Prior to the Closing, upon reasonable notice from Buyer to Seller given in accordance with this Agreement and subject to approval by Seller's appointed representative (which shall not be unreasonably withheld), Seller will afford to the authorized representatives of Buyer reasonable access during normal business hours to the Transferred Books and Records, the Owned Real Property and the Leased Real Property, so as to afford Buyer the opportunity to make such review, examination and investigation of the Business and the Purchased Property as Buyer may reasonably request; provided, however, that no environmental sampling or other testing shall be performed without Seller's prior written consent, which consent may be given or withheld in Seller's sole discretion. Buyer will not contact any employee, customer or supplier of Seller with respect to this Agreement, the matters involved herein or the Purchased Property without the prior written consent of Seller. Nothing herein will obligate Seller to take actions that would unreasonably disrupt the normal course of the business of Seller.

or violate the terms of any applicable Law or any Contract to which Seller or any of its Affiliates is a party or to which any of its assets is subject. Any information or documentation provided to Buyer or acquired by Buyer during this investigation shall be deemed "Evaluation Material" as that term is defined in the Confidentiality Agreement and shall be subject in all cases to the terms of the Confidentiality Agreement.

## 5.2 Operation of the Business in the Ordinary Course.

5.2.1 Preservation of Business. Except as contemplated on Schedule 5.2.1 or in connection with or relating to the Merger (and disclosed to Buyer) or as otherwise consented to by Buyer prior to the Closing, from the date of this Agreement until the Closing Seller shall:

- (a) Conduct the Business in the ordinary course consistent with past practice and shall keep available to the Business its services and the services of its Affiliates to the same extent generally available on the date hereof;
- (b) Operate the Business in substantially the same manner as it is presently being conducted, and, with respect to the Business, refrain from entering into any Contract that would be a Material Contract without the prior consent of Buyer (which shall not be unreasonably withheld);
- (c) Not institute or participate in any proceeding with respect to, or otherwise change, amend or supplement any of its tariffs or make any other filings (other than periodic reports) with the PSC without the prior consent of Buyer (which shall not be unreasonably withheld) except as disclosed on Schedule 8.1.15(a);
- (d) Maintain the Purchased Property in good repair, order and condition, reasonable wear and use excepted;
- (e) Maintain insurance with respect to the Purchased Property consistent with past practice;
- (f) Make capital expenditures in accordance with Section 5.6; and
- (g) Maintain the books and records of the Business substantially in accordance with prior practice, except as changes are mandated by Governmental Authorities or required by GAAP, in which event Seller shall promptly notify Buyer.

5.2.2 No Material Changes. Except as contemplated by this Agreement or in connection with or relating to Merger (and disclosed to Buyer) or as otherwise consented to by Buyer prior to the Closing, from the date of this Agreement until the Closing, Seller will not:

- (a) Make any material change in the general nature of the Business;
- (b) Sell, lease or dispose of, or make any Contract for the sale, lease or disposition of any Purchased Property, other than in the ordinary course of business consistent with past practice;
- (c) Increase the number of Active Employees other than in a manner consistent with past practice, or increase the benefit provided under any plans concerning employee benefits or increase the general rates of compensation of its Transferred Employees, except (i) as required by Law, (ii) pursuant to any Contract to which Seller is a party existing on the date hereof, (iii) in the ordinary course of business of Seller consistent with past practice, or (iv) as listed or described on Schedule 5.2.2(c);
- (d) (i) Enter, amend, modify or terminate any Material Contract or permit any of the foregoing to occur other than in the ordinary course of business; or (ii) sell, transfer or otherwise dispose of any Purchased Property other than in the ordinary course of business or as listed or described on Schedule 5.2.2(d), or encumber any Purchased Property, except for Permitted Encumbrances;
- (e) Enter into any new written employment agreement, or union agreement with, or commitment to, the Transferred Employees (including any new commitment to pay retirement or other benefits or other amendments to Seller's retirement plans), provided that Seller may enter into new union agreements to the extent the new union agreements succeed any union agreement that expires prior to the Closing; or
- (f) Except as contemplated by this Agreement or the Ancillary Agreements, enter into any transaction with any of its Affiliates that contemplates (i) the transfer of any Purchased Property; or (ii) any other contractual arrangement that will survive the Closing and not be terminable at will by, and with no cost to, Buyer subsequent to the Closing.

5.3 Satisfaction of Conditions. Without limiting the generality or effect of any provision of Article 6, the parties will use their commercially reasonable efforts to satisfy promptly all the conditions required to be satisfied prior to the Closing.

## 5.4 Approvals.

- (a) Between the date of this Agreement and the Closing Date, Buyer and Seller will (i) cooperate with one another and take all reasonable steps to obtain, as promptly as practicable, all consents, approvals, authorizations, waivers and permits of any Governmental Authorities required of either party to consummate the transactions contemplated by this Agreement and (ii) provide such other information and communications to

any Governmental Authority as may be reasonably requested.

(b) To the extent that any consents, approvals, authorization or waiver of a third party with respect to any Assigned Contract is required in connection with the transactions contemplated by this Agreement, Seller shall use its commercially reasonable efforts to obtain such authorization, consent, approval or waiver prior to the Closing Date.

**5.5 Financial Statements.** Seller will cooperate with the independent auditors chosen by Buyer to audit the Financial Statements delivered to Buyer in accordance with Section 8.1.21. Seller's cooperation will include access to workpapers and other supporting documents used in the preparation of the Financial Statements as may be reasonably required by such auditors to render an opinion, and cooperation with respect to such other financial statements as Buyer may require with respect to the Business in order to comply with the reporting requirements of the Securities and Exchange Commission under Regulations S-K and S-X. Seller will bear the cost of preparation of the Financial Statements. Buyer will bear the cost of the audit and the cost of preparation of any financial statements other than the Financial Statements. Buyer acknowledges that the Financial Statements and any supporting documents have been made available as an indication of the historical financial performance and condition of the Business. Except to the extent that the Financial Statements reflect intentional misrepresentation or fraud, or to the extent that Seller has breached its representations and warranties under Section 8.1.21, Buyer agrees not to make any claims related to the performance of the Business after the date of the Financial Statements on the basis of a comparison to the Financial Statements.

**5.6 Capital Expenditures.** Seller shall be obligated to make capital expenditures with respect to the Telephone Plant required to support normal maintenance and customer growth in a manner consistent with established regulatory performance objectives, which expenditures (exclusive of any Future Capital Expenditure Obligations or Future Regulatory Obligations) shall not be less than \$8,000,000 during calendar year 1999, and which amount shall be discounted on a pro rata daily basis to the extent that the Closing Date occurs prior to December 31, 1999 (the "Capital Expenditure Amount"). The Purchase Price shall be adjusted down, on a dollar-for-dollar basis, to the extent that Seller's actual capital expenditures are less than the Capital Expenditure Amount (a "Capital Expenditure Deficiency"). In the event the Closing does not occur prior to January 1, 2000, the Capital Expenditure Amount shall be increased on a pro rata daily basis and Seller shall be obligated to make capital expenditures during fiscal year 2000 in the same relative amount, and the Purchase Price shall be adjusted in the same manner described above for any Capital Expenditure Deficiency occurring during the period after January 1, 2000. Between the date of this Agreement and the Closing Date, Seller will notify Buyer of any project involving Non-Regulated Construction Work in Process in excess of \$100,000.

**5.7 Delivery of Interim Information.** From the date of this Agreement until the Closing, Seller shall furnish Buyer monthly reports concerning the operating performance of the Business. Such reports shall contain such data as typically reported to GTE management with respect to the Purchased Exchanges, including revenue, access line counts, trouble [capital expenditures (on a quarterly basis only)] indices and other service measures. All information provided in accordance with this Section 5.7 shall be subject to compliance with the Confidentiality Agreement and to compliance with applicable antitrust Laws.

**5.8 Cooperation with Respect to Like-Kind Exchange.** Buyer agrees that Seller's transfer of the Purchased Property may, at Seller's election, be accomplished in a manner enabling such transfer to qualify as part of a like-kind exchange of property covered by Section 1031 of the IRC. If Seller so elects, Buyer shall cooperate with Seller (but without being required to incur any out-of-pocket costs in the course thereof) in connection with Seller's efforts to effect such like-kind exchange, which cooperation shall include, without limitation, taking such actions as Seller requests in order to enable Seller to qualify such transfer as part of a like-kind exchange of property covered by Section 1031 of the IRC (including any actions required to facilitate the use of a "qualified intermediary" within the meaning of the United States Treasury Regulations), and Buyer agrees that Seller may assign all or part of its rights (but no obligations) under this Agreement to a person or entity acting as a qualified intermediary to qualify the transfer of the Purchased Property as part of a like-kind exchange of property covered by Section 1031 of the IRC. Buyer and Seller agree in good faith to use reasonable efforts to coordinate the transactions contemplated by this Agreement with any other transactions engaged in by either Buyer or Seller; provided that such efforts are not required to include an unreasonable delay in the consummation of the transactions contemplated by this Agreement.

## **ARTICLE 6**

### **CONDITIONS PRECEDENT TO THE CLOSING**

**6.1 Conditions Precedent to Obligations of Buyer.** The obligations of Buyer to consummate the Closing shall be subject to the satisfaction or waiver by Buyer, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived at the option of Buyer:

**6.1.1 No Misrepresentation or Breach of Covenants and Warranties.** Seller shall have complied in all material respects with its covenants to be performed in whole or in part prior to the Closing, and the representations and warranties of Seller in Section 8.1 shall be true and correct as of the Closing, except for (i) such representations or warranties that are made expressly as of and only as of an earlier date, which shall have been true and correct as of such earlier date except as would not have a Material Adverse Effect, and (ii) to the extent that any breach of such representations and warranties has not had and is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect; and Seller shall have delivered to Buyer a certificate ("Seller's Closing Certificate") in the form attached as Schedule 6.1.1, dated the Closing Date and signed by an Executive Officer of Seller, certifying each of the foregoing, or specifying those respects in which such covenants have not been performed or such representations and warranties are not true and correct.

**6.1.2 Documents.** Seller shall have delivered to Buyer all documents required by Section 7.2.

6.1.3 HSR. All required waiting periods under the HSR Act shall have expired or been terminated.

6.1.4 No Legal Obstruction. Each of the required Bondholder Consents shall have been obtained, each consent required under Section 4.3 shall have been obtained and each of the required Regulatory Approvals and FCC Consents shall have been obtained, free of any special terms, conditions or restrictions that are materially adverse to Buyer (other than any such approvals or consents which, if not obtained, would not have a Material Adverse Effect); provided that any Regulatory Approval that would have the effect of converting any of Buyer's equity investors or their Affiliates from a Rate-of-Return Regulation Entity to a Price-Cap Regulation Entity shall be deemed to have a Material Adverse Effect. For purposes of this Agreement, all such approvals and consents shall be deemed to have been obtained upon the granting thereof, and the expiration of any appeals period (a "Final Order"). In addition, there shall not have been entered a preliminary or permanent injunction, temporary restraining order or other judicial or administrative order or decree in any jurisdiction, the effect of which prohibits the Closing.

6.1.5 No Material Adverse Effect. There shall not have occurred any event or condition, which individually or in the aggregate has resulted, or could reasonably be expected to result, in a Material Adverse Effect.

6.2 Conditions Precedent to Obligations of Seller. The obligations of Seller to consummate the Closing shall be subject to the satisfaction or waiver by Seller, at or prior to the Closing, of each of the following conditions:

6.2.1 No Misrepresentation or Breach of Covenants and Warranties. Buyer shall have complied in all material respects with its covenants to be performed in whole or in part prior to the Closing, and the representations and warranties of Buyer in Section 8.2 shall be true and correct in all material respects as of the Closing, except for (i) representations or warranties made expressly as of and only as of an earlier date, which shall have been true and correct as of such earlier date except as would not have a Material Adverse Effect, and (ii) to the extent that any breach of such representations and warranties has not, individually or in the aggregate, had a Material Adverse Effect, and Buyer shall have delivered to Seller a certificate ("Buyer's Closing Certificate") in the form attached as Schedule 6.2.1, dated the Closing Date and signed by an Executive Officer of Buyer, certifying each of the foregoing or specifying those respects in which such covenants have not been performed or such representations and warranties are not true and correct.

6.2.2 Documents. Buyer shall have delivered to Seller all documents required by Section 7.3.

6.2.3 Delivery of Closing Date Amount. Buyer shall have delivered to Seller, in the manner specified in Section 3.2, the Closing Date Amount.

6.2.4 HSR. All required waiting periods under the HSR Act shall have expired or been terminated.

6.2.5 No Legal Obstruction. Each of the required Bondholder Consents shall have been obtained, and each of the required Regulatory Approvals and FCC Consents shall have been obtained free of any special terms, conditions or restrictions that are materially adverse to Seller based upon good faith business concerns that are not commercially unreasonable (other than any such approvals or consents which, if not obtained, would not have a Material Adverse Effect). For purposes of this Agreement, all such approvals and consents shall be deemed to have been obtained upon the granting of a Final Order. In addition, there shall not have been entered a preliminary or permanent injunction, temporary restraining order or other judicial or administrative order or decree in any jurisdiction, the effect of which prohibits the Closing.

## **ARTICLE 7**

### **THE CLOSING**

7.1 The Closing. Subject to the terms and conditions of this Agreement, the closing of the purchase and sale of the Purchased Property and the assumption of the Assumed Liabilities (the "Closing") shall be held at 9

A.M. local time at the offices of GTE Network Services at 600 Hidden Ridge, Irving, Texas 75038, on the date agreed upon by the parties, provided such date shall be (i) the last business day of the month, and (ii) at least five (5) business days, but not more than ninety (90) days, after the date either party notifies the other in writing of its determination that all required Regulatory Approvals, Bondholder Consents, the Material Consents and FCC Consents have been obtained, or at such other time and place as the parties may agree (the "Closing Date"). Such Closing shall be deemed to have occurred as of 11:59 P.M., local time, on the Closing Date. Seller's ownership and operation of the Purchased Property shall be deemed to cease immediately prior to the Closing.

7.2 Seller's Obligations at Closing. At the Closing, Seller shall deliver to Buyer the following documents:

(a) (i) The Bill of Sale and Assignment and Assumption Agreement, (ii) subject to Permitted Encumbrances, special warranty deeds in respect of the Owned Real Property, and (iii) subject to Section 2.5, assignments of the Assigned Contracts or to the extent set forth in Section 4.3, sublicenses of certain Assigned Contracts. For purposes of this Agreement, the term "Bill of Sale and Assignment and Assumption Agreement" means the form attached hereto as Schedule 7.2(a) executed by Seller;

(b) A legal opinion from William Mundy, general counsel for GTE Network Services, as counsel for Seller, dated as of the Closing Date and in the form of Schedule 7.2(b);

(c) Seller's Closing Certificate;

(d) Instruments of assignment of the Real Property Leases and Real Property Interests or, to the extent set forth in Section 4.3, subleases for the Leased Real Property;

(e) Mortgage satisfactions, UCC Form 3 Termination Statements and other instruments necessary to remove, release and terminate all Liens held by any party on the Purchased Property (except for Permitted Encumbrances);

(f) All of the documents and papers required of Seller as conditions to Closing pursuant to Section 6.1, including the Regulatory Approvals, Bondholder Consents and FCC Consents;

(g) A certificate substantially in the form of Schedule 7.2(g) certifying that Seller is not a "foreign person" within the meaning of Section 1445(b)(2) of the IRC;

(h) The License Agreement;

(i) All documentation and information required to be delivered by Seller prior to Closing pursuant to Article 11; and

(j) Such other documents as Buyer may reasonably request.

7.3 Buyer's Obligations at Closing. At the Closing, Buyer shall deliver to Seller the following:

(a) The Closing Date Amount in the manner specified in Section 3.2;

(b) The Bill of Sale and Assignment and Assumption Agreement and the Ancillary Agreements executed by Buyer;

(c) A legal opinion from Boles, Boles & Ryan, counsel to Buyer dated as of the Closing Date and in the form of Schedule 7.3(c);

(d) Buyer's Closing Certificate;

(e) All other documents and papers required of Buyer as conditions of Closing pursuant to Section 6.2, including the Regulatory Approvals; and

(f) Such other documents as Seller may reasonably request.

## **ARTICLE 8**

### **REPRESENTATIONS AND WARRANTIES**

8.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

8.1.1 Authorization and Effect of Agreement. Seller has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform its obligations hereunder and thereunder. The execution and delivery by Seller of this Agreement and the Ancillary Agreements and the fulfillment of its obligations under this Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action on the part of Seller and, to the extent required by Law, any entity that controls the Seller. This Agreement and the Ancillary Agreements have been or will be duly executed and delivered by Seller and, assuming the due execution and delivery of this Agreement and the Ancillary Agreements by Buyer, constitute valid and binding obligations of Seller enforceable in accordance with its terms subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and subject to the exercise of judicial discretion in accordance with principles of equity

8.1.2 No Restrictions Against Sale or Assignment of the Purchased Property. The execution and delivery of this Agreement and the Ancillary Agreements by Seller does not, and prior to Closing will not, and the fulfillment by Seller of its obligations under this Agreement and the Ancillary Agreements will not (i) conflict with or violate any provision of its certificate of incorporation or bylaws, (ii) subject to obtaining the approvals and or consents referred to in Section 2.5, Article 4 and Schedule 8.1.1(a-e), conflict with, violate or result in the breach of any provision of any Material Contract, or (iii) result in the creation of any Lien (other than Permitted Encumbrances) upon any of the Purchased Property under (a) any Material Contract or (b) any Law applicable to any of the Purchased Property, except in the case of clauses (ii) or (iii) for any such conflict, violation, breach or Lien that would not have a Material Adverse Effect.

8.1.3 Consents, Approvals and Permits of Governmental Authorities. Except as set forth in Schedule 8.1.3:

(a) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required to be obtained or made by or with respect to Seller or in connection with the execution and delivery of this Agreement and the Ancillary Agreements by Seller or the fulfillment by Seller of its obligations under this Agreement and the Ancillary Agreements, except (i) FCC Consents and HSR Act clearance, (ii) the Regulatory Approvals, and (iii) any consent approval, order or authorization or registration declaration or filing, which if

not obtained or made would not have a Material Adverse Effect.

(b) Seller holds valid permits, licenses, franchises, approvals and authorizations issued or granted by any Governmental Authority and adequate for the operation of the Business as currently conducted, except to the extent absence of any such permit, license, franchise, approval or authorization would not have a Material Adverse Effect.

8.1.4 No Violation of Law. Except as indicated in Schedule 8.1.4, the execution and delivery of this Agreement and the Ancillary Agreements and the fulfillment by Seller of its obligations under this Agreement and the Ancillary Agreements will not violate any applicable Law, except where such violation would not reasonably be expected to have a Material Adverse Effect.

8.1.5 Corporate Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware, and is duly qualified to conduct business in Missouri. Seller has full power and authority to own its properties and to carry on the Business as it is now being conducted and to own, or hold under lease or Contract the Purchased Property.

8.1.6 Brokers. Seller has not paid or become obligated to pay any fee or commission to any broker, finder, investment banker or other intermediary in connection with the transactions contemplated by this Agreement in such a manner as to give rise to a valid claim against Buyer or any of the Purchased Property for any broker's or finder's fees or similar fees or expenses.

8.1.7 Title to Owned Real Property. As of the date hereof, the address and a general description of each item of Owned Real Property are set forth on Schedule 8.1.7(a). Seller has good fee simple title to all of the Owned Real Property, free and clear of any Lien other than Permitted Encumbrances and Liens of the Bondholders identified on Schedule 8.1.7(b). Seller represents that the only creditors that have a Lien (other than any Permitted Encumbrances) on any of the Owned Real Property are the Bondholders identified on Schedule 8.1.7(b). The Owned Real Property set forth on Schedule 8.1.7(a) constitutes substantially all of the Owned Real Property used in the Business during calendar year 1998 and located in the Purchased Exchanges, except as such (i) has been disposed of since January 1, 1998 in the ordinary course of business, or (ii) would not have a Material Adverse Effect.

8.1.8 Real Property Leases. Schedule 8.1.8 sets forth (i) a list of all Real Property Leases as of the date hereof and, except for such Real Property Leases as may have been executed or terminated in accordance with Section 5.2, as of the Closing Date, and (ii) all Real Property Leases used in the Business and with respect to property located in the Purchased Exchanges during calendar year 1998 except such as (1) have been executed or terminated since January 1, 1998 in the ordinary course of business, or (2) would not have a Material Adverse Effect. Each of the leases for the Leased Real Property is enforceable in accordance with its terms, subject to bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and subject to the exercise of judicial discretion in accordance with the principles of equity, and except as otherwise disclosed in Schedule 8.1.8, there is not under any lease any material default or a material breach of covenant by Seller.

8.1.9 Tangible Assets. All of the tangible Purchased Property is in substantially good operating condition and repair, normal wear and tear excepted. Except as set forth on Schedule 8.1.9 or elsewhere in this Agreement, Seller has, or as of Closing will have, good title to each item of tangible Purchased Property (other than Real Property Interests, representations with respect to which are included in Section 8.1.7 and 8.1.8 hereof, and office equipment or vehicles subject to leases) with a fair market value in excess of \$10,000, free and clear of any Lien (other than Permitted Encumbrances). Seller has not received any written notice within the past twelve(12) months of a violation of any ordinances, regulations or building, zoning or other Laws with respect to such assets that would have a Material Adverse Effect. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8.1.9, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OR FITNESS OF THE TANGIBLE PURCHASED PROPERTY AND HEREBY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INFRINGEMENT.**

8.1.10 No Material Adverse Change. Except as disclosed in Schedule 8.1.10 or as may be related to the Merger (and disclosed to Buyer), between December 31, 1997 and the date of this Agreement there has not occurred

(i) any event or condition that would have a Material Adverse Effect; (ii) any increase in compensation payable or to become payable by Seller to any of its Transferred Employees or agents, other than normal merit or promotional increases made in the ordinary course of business consistent with past practice, other than Seller's obligation to make payments for service prior to Closing under the retention pay program announced in connection with the network business repositioning of Seller and its Affiliates; or (iii) any amendment or termination by Seller of any Material Contract, except any amendment or termination in the ordinary course of business.

8.1.11 Material Contracts. Except for the agreements set forth on Schedule 8.1.11 subparts (a) through (d) (all such contracts being referred to herein as the "Material Contracts"), there is no Assigned Contract (other than the Assigned Contracts entered into after the date of this Agreement in the ordinary course of business) that is:

(a) an agreement containing a non-compete agreement or other covenant that in either case would by its terms limit the freedom of Buyer following the Closing to compete in any material respect with respect to the Business with any third party, other than any such agreement or covenant which does not materially impair the continued operation of the Business as it is currently conducted;

(b) an agreement granting a Lien with respect to any of the Purchased Property (other than a Permitted Encumbrance or Lien of a Bondholder);



(c) an agreement for the sale, lease or encumbrance (other than a Permitted Encumbrance or Lien of a Bondholder) of any material Purchased Property (including any interconnection agreements) or grant of any preferential rights to purchase any material Purchased Property in each case outside the ordinary course of business; or

(d) an agreement other than as set forth above with respect to which the aggregate amount to be received or paid thereunder with respect to calendar year 1999 is expected to exceed \$100,000 based on the payments which have been made under such agreement with respect to calendar year 1998, to the extent applicable.

Except as set forth on Schedule 8.1.11, to the knowledge of Seller, each of the Material Contracts is valid, binding and in full force and effect and is enforceable by Seller or Seller's Affiliates, as applicable, in accordance with its terms, except for any such failure to be valid, binding, in full force and effect or enforceable that is not reasonably likely to have a Material Adverse Effect. Except as set forth on Schedule 8.1.11, to the knowledge of Seller, Seller and Seller's Affiliates have performed all material obligations required to be performed by them to date under the Material Contracts, and they are not (with or without the lapse of time or the giving of notice, or both) in breach or default thereunder and, to the knowledge of Seller, no other party to any Material Contract is (with or without the lapse of time or the giving of notice, or both) in breach or default in any respect thereunder, in each case except for such noncompliance, breaches and defaults that, individually or in the aggregate, are not reasonably likely to have a Material Adverse Effect. As of the date hereof, neither Seller nor any Seller Affiliate has, except as disclosed on Schedule 8.1.11, received any written notice of the intention of any party to terminate any Material Contract. Except as set forth in Schedule 8.1.11, no consents or approvals are required from third parties with respect to the assignment of any Material Contract. Complete and correct copies of all the Material Contracts, together with all modifications and amendments thereto to the date of this Agreement, have been made available to Buyer or its representatives.

**8.1.12 Insurance.** The Purchased Property of an insurable nature and of a character usually insured by companies carrying on similar businesses is insured under insurance policies or self insured in such amounts and against such losses or casualties as is usual in Seller's industry. Effective at 11:59 P.M. on the Closing Date, the coverage under the insurance policies and programs applicable to the Purchased Property will be terminated. Thereafter, Buyer will be responsible for providing all insurance coverage for the Purchased Property.

**8.1.13 Taxes.** Except as disclosed on Schedule 8.1.13,

(i) all Tax Returns required to be filed by Seller on or before the Closing Date have or will have been filed, and all Taxes shown as due and payable on such Tax Returns have been or will be paid by Seller when required by law; (ii) no deficiencies or assessments for any Taxes have been asserted in writing or assessed against Seller that remain unpaid and that individually or in the aggregate are material to the Business; (iii) Seller has withheld all required federal, state and local payroll Taxes relating to the Business and have remitted or will remit all amounts required to be remitted to the appropriate Taxing authorities; (iv) there are no Tax Liens upon any of the Purchased Property except for statutory liens covering Taxes not yet due and payable; (v) Seller is not a "foreign person" within the meaning of Section 1445(b)(2) of the IRC and shall provide an appropriate certificate for purposes of Section 1445(b)(2) of the IRC; and (vi) there are no material, current audits or material audits for which written notice has been received or, to the knowledge of Seller, for which verbal notice has been received (in either case, specifically with respect to the Business).

**8.1.14 No Material Claims or Suits.** Except as disclosed in Schedule 8.1.13 or Schedule 8.1.14, there are no claims, actions, lawsuits or legal proceedings pending before any Governmental Authority, or, to the knowledge of Seller threatened, against or affecting the Business or Purchased Property that in Seller's opinion, if determined adversely to Seller, would reasonably be expected to have a Material Adverse Effect on the Business or materially adversely affect ability of Seller to consummate the transactions contemplated hereby.

**8.1.15 Tariffs; FCC Licenses.**

(a) Schedule 8.1.15(a) sets forth a list of all regulatory tariffs applicable to the Business. Such tariffs stand in full force and effect on the date of this Agreement in accordance with all terms, and there is no outstanding notice of cancellation or termination or, to Seller's knowledge, any threatened cancellation or termination in connection therewith, nor is Seller subject to any restrictions or conditions applicable to its regulatory tariffs that limit or would limit the operation of the Business (other than restrictions or conditions generally applicable to tariffs of that type). Each such tariff has been duly and validly approved by Seller's regulatory agency. Seller is not in material default under the terms and conditions of any such tariff and there is no basis for any claim of default by Seller in any material respect under any such tariff. Except as disclosed on Schedule 8.1.15(a), there are no applications by Seller or complaints (other than end-user complaints), or petitions by others or proceedings pending or threatened before the PSC relating to the Business or its operations or the regulatory tariffs. To the knowledge of Seller, there are no material violations by subscribers or others under any such tariff. A true and correct copy of each tariff set forth on Schedule 8.1.15(a) has been delivered or made available to Buyer.

(b) Schedule 8.1.15(b) sets forth a list of all FCC Licenses held by Seller and used in the operation of the Business. Except as set forth on Schedule 8.1.15(b), (i) each such FCC License is in full force and effect on the date of this Agreement in accordance with its terms, (ii) there is no outstanding notice of cancellation or termination or, to Seller's knowledge, any threatened cancellation or termination in connection therewith, nor (iii) are any of such FCC Licenses subject to any restrictions or conditions that limit the operation of the Business (other than restrictions or conditions generally applicable to licenses of that type). Subject to the Communications Act of 1934, as amended, and the regulations thereunder, the FCC Licenses are free from all security interests, liens, claims, or encumbrances of any nature whatsoever. There are no applications by Seller or complaints (other than individual end-user complaints that would not cause a Material Adverse Effect) or petitions by others or proceedings pending or threatened before the FCC relating to the Business or the FCC Licenses that, in Seller's opinion, would reasonably be expected to have a Material Adverse Effect on the Business.

#### 8.1.16 Employee Matters.

(a) Seller will provide by letter as soon as practicable following the date hereof the name, annual compensation, incentive compensation target, job title, job location and collective bargaining unit status as of June 26, 1999, of each person employed by Seller at a location in the Purchased Exchanges who is expected to be a Transferred Employee. Schedule 8.1.16(a) lists (and identifies the sponsor of) each material "Employee Pension Benefit Plan," as that term is defined in Section 3(2) of ERISA, each material "Employee Welfare Benefit Plan," as that term is defined in Section 3(1) of ERISA (such plans being hereinafter referred to collectively as the "ERISA Plans"), and each other material retirement, pension, profit-sharing, money purchase, deferred compensation, incentive compensation, bonus, stock option, stock purchase, severance pay, unemployment benefit, vacation pay, savings, medical, dental, post-retirement medical, accident, disability, weekly income, salary continuation, health, life or other insurance, fringe benefit, or other employee benefit plan, program, agreement, or arrangement maintained or contributed to by Seller or its Affiliates in respect of or for the benefit of any Transferred Employee or former employee of Seller, excluding any such plan, program, agreement, or arrangement maintained or contributed to solely in respect of or for the benefit of Transferred Employees or former employees employed or formerly employed by Seller outside of the United States, as of the date hereof (collectively, together with the ERISA Plans, referred to hereinafter as the "Plans"). Schedule 8.1.16(a) also includes a list of each material written employment, severance, termination or similar-type agreement between Seller and its Affiliates and any Transferred Employee (the "Employment Agreements"). Except for retention bonuses paid in connection with the closing of the transactions contemplated by this Agreement and except as otherwise disclosed on Schedule 8.1.16(a), the execution and delivery of this Agreement by Seller and the performance of this Agreement by Seller will not directly result now or at any time in the future in the payment to any Transferred Employee of any severance, termination, or similar-type payments or benefits being paid to any Transferred Employee.

(b) Except as set forth on Schedule 8.1.16(b):

(i) Neither Seller nor any of its Affiliates, any of the ERISA Plans, any trust created thereunder, or any trustee or administrator thereof, has engaged in any transaction as a result of which Seller, any of its Affiliates or the Business could be subject to any material liability pursuant to Section 409 of ERISA or to either a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed pursuant to Section 4975 of the IRC; and

(ii) Since the effective date of ERISA, no material liability under Title IV of ERISA has been incurred or is reasonably expected to be incurred by Seller, any of its Affiliates or the Business (other than liability for premiums due to the PBGC), unless such liability has been, or prior to the Closing Date will be, satisfied in full.

(c) Except as set forth on Schedule 8.1.16(c), with respect to the Plans other than those Plans identified on Schedule 8.1.16(a) as "multiemployer plans"

(i) the PBGC has not instituted proceedings to terminate any Plan that is subject to Title IV of ERISA (the "Retirement Plans");

(ii) none of the ERISA Plans has incurred an "accumulated funding deficiency" (as defined in Section 302 of ERISA and Section 412 of the IRC), whether or not waived, as of the last day of the most recent fiscal year of each of the ERISA Plans ended prior to the date of this Agreement;

(iii) each of the Plans has been operated and administered in all material respects in accordance with its provisions and with all applicable laws;

(iv) each of the ERISA Plans that is intended to be "qualified" within the meaning of Section 401(a) of the IRC and, to the extent applicable, Section 401(k) of the IRC, has been determined by the IRS to be so qualified, and nothing has occurred since the date of the most recent such determination (other than the effective date of certain amendments to the IRC, the remedial amendment period for which has not yet expired) that would adversely affect the qualified status of any of such ERISA Plans; and

(v) there are no pending material claims by or on behalf of any of the Plans, by any employee or beneficiary covered under any such Plan, or other- wise involving any such Plan (other than routine claims for benefits and routine expenses).

(d) Except as set forth on Schedule 8.1.16(d), none of the ERISA Plans is a "multiemployer Plan," as that term is defined in Section 3(37) of ERISA, and with respect to any such multiemployer plans (as so defined) listed in Schedule 8.1.16(d), neither Seller nor any of its Affiliates have made or incurred a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA that would result in the incurrence of a material liability by Seller, any of its Affiliates or the Business, and the transactions contemplated herein shall not constitute a "complete withdrawal" or a "partial withdrawal" as such terms are defined in Sections 4203 and 4205 of ERISA, respectively.

(e) Except as set forth on Schedule 8.1.16(e), (i) none of the Transferred Employees are represented by a labor union or labor organization, and (ii) Seller is not subject to any collective bargaining agreement covering any Transferred Employee. There are currently no strikes, slowdowns, work stoppages or lockouts by or with respect to any Transferred Employee covered by collective bargaining agreements. Except as set forth on Schedule 8.1.16(e), to the best knowledge of Seller, during the twelve (12) months preceding the date of this Agreement, there have not been any union organizational campaigns by or directed at Transferred Employees.

(f) Seller will make available to Buyer, prior to the Closing Date, a list of those Transferred Employees that Seller believes to have participated

in the health or dependent care reimbursement accounts of Seller, together with the elections made prior to the Closing Date with respect to such accounts through the Closing Date.

8.1.17 Schedules of Telephone Plant. Schedule 8.1.17 sets forth, as of December 31, 1998 and, except for such changes as may occur pursuant to Section 5.2, as of the Closing Date, a materially accurate summary of the book value of the Telephone Plant (except for Real Property Interests and Real Property Leases) and Material and Supply Inventory as reflected in Seller's continuing property records. Schedule 8.1.17 summarizes substantially all Telephone Plant used in the Business (other than Excluded Property and the GTE Telecom Assets) during calendar year 1998 and located in the Purchased Exchanges, except such as (i) has been disposed of in the ordinary course of business since January 1, 1998, or (ii) would not have a Material Adverse Effect.

8.1.18 Schedule of Real Property Interests. To the knowledge of Seller and as of the date of this Agreement, Schedule 8.1.18 sets forth a true and accurate list of all its Real Property Interests.

8.1.19 Environmental Matters. Except as set forth in Schedule 8.1.19 (which Seller may supplement within 30 days of the date hereof with respect to Leased Real Property):

- (a) Seller's current use of the Owned Real Property or Leased Real Property materially complies with Environmental Requirements;
- (b) No Liens under any Environmental Requirement have been or are imposed on any of the Owned Real Property, except for such Liens as would not have a Material Adverse Effect;
- (c) No action, proceeding, revocation proceeding, procedure, writ, injunction or claim is pending, or to Seller's knowledge threatened, concerning any Environmental Requirement and relating to any of the Owned Real Property, except as would not have a Material Adverse Effect;
- (d) Seller has obtained or filed for all permits, licenses, registrations, and other approvals and has made all reports and notifications required under any Environmental Requirements in connection with the Owned Real Property, except as would not have a Material Adverse Effect; and
- (e) There are no present actions, activities, circumstances, conditions, events, or incidents relating to Seller's use of any of the Owned Real Property or Leased Real Property that would reasonably be expected to involve Seller in any material litigation under the Environmental Requirements, or impose upon Seller any material liability related to any Environmental Requirements.

8.1.20 Schedule of Joint Construction Projects. Schedule 8.1.20 sets forth a list of all Joint Construction Projects for which Buyer is to assume liability as of the Closing.

8.1.21 Financial Statements. Schedules 8.1.21(a), 8.1.21(b) and 8.1.21(c) present the estimated income statement, estimated balance sheet and estimated statement of cash flows, respectively for the Business for the years ended December 31, 1997 and December 31, 1998 (collectively, the "Financial Statements"). The Financial Statements have been prepared based on the books and records of Seller. Such books and records have been maintained in accordance with GAAP. However, because the Business represents only a portion of Seller, the Financial Statements are based on the extensive use of estimates and allocations. Seller believes these estimates and allocations have been performed on a reasonable basis and such Financial Statements materially reflect the results of operations for the periods set forth therein. However, Buyer acknowledges that (i) the Financial Statements themselves may not be consistent with the applicable regulations of the FCC or state regulatory authorities, and

(ii) because the Business represents only a portion of Seller, the Buyer is not acquiring significant support elements located outside the Purchased Exchanges, and Buyer will operate under new tariffs, carrier contracts and other conditions that may significantly impact the future revenue of the Business, the Financial Statements may not be representative of the financial performance of the Business during future periods.

8.1.22 Year 2000 Compliance.

- (a) As of the Closing Date, Seller shall have caused the modification or remediation of the Automated Assets in accordance with applicable manufacturer or vendor recommendations such that the Automated Assets are Year 2000 Compliant; provided that any and all Buyer or third-party supplied computer software, computer firmware and computer hardware that directly interfaces with the Automated Assets, co-exists with the Automated Assets, or indirectly influences the operation of the Automated Assets are also demonstrated to be Year 2000 Compliant.
- (b) Seller shall be deemed to be in satisfaction of the requirements of subsection (a) of this Section 8.1.22 to the extent that Seller has (i) performed on or before the Closing Date any modification or remediation in accordance with applicable manufacturer or vendor recommendations for achieving Year 2000 compliance or Year 2000 readiness, or (ii) received on or before the Closing Date reasonable assurances from the applicable manufacturer or vendor that an Automated Asset, without modification or remediation, is Year 2000 Compliant or Year 2000 ready.
- (c) When used in this Section 8.1.22, the following terms shall have the respective meanings given below:

"Automated Assets" means the computer software, computer firmware, computer hardware (whether general or special purpose), documentation, data, and other similar or related items of the automated, computerized, and/or software system(s) that are provided by Seller to Buyer as part of the Purchased Exchanges pursuant to this Agreement.

"Calendar-Related" refers to the date values based on the Gregorian calendar, as defined in Encyclopedia Britannica, 15th edition, 1982, page 602, and to all uses in any manner of those date values, including without limitation manipulations, calculations, conversions, comparisons and presentations.

"Date Data" means any Calendar-Related data in the inclusive range January 1, 1900 through December 31, 2050, which the Automated Assets use in any manner.

"System Date" means any Calendar-Related data value in the inclusive range January 1, 1985 through December 31, 2035 (including the natural transition between such values) which the Automated Assets shall be able to use as their current date while operating.

"Year 2000 Compliant" means:

(i) As of the Closing Date, in connection with Calendar-Related data and Calendar-Related processing of Date Data or of any System Date, the Automated Assets will not malfunction, will not cease to function and will not produce incorrect results; and

(ii) As of the Closing Date, the Automated Assets will represent dates without ambiguity as to century when providing Calendar-Related data to and accepting Calendar-Related data from other automated, computerized and/or software systems and users by way of user interfaces, electronic interfaces and data storage.

8.1.23 Access Line Count. As of December 31, 1998, the Purchased Exchanges served a total of 116,149 access lines.

8.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

8.2.1 Corporate Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware, and is duly qualified to conduct business in Missouri and has the requisite corporate power and authority to own, lease or otherwise hold the assets owned, leased or held by it.

8.2.2 Authorization and Effect of Agreement. Buyer has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements, to carry on the Business as presently conducted and to fulfill all other obligations of Buyer under this Agreement and the Ancillary Agreements. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements, and the fulfillment by it of its obligations under this Agreement and the Ancillary Agreements have been duly authorized by all necessary corporate action on the part of Buyer. Buyer has the requisite legal capacity to purchase, own and hold the Purchased Property upon the consummation of the sale of the Purchased Property. This Agreement and the Ancillary Agreements have been duly executed and delivered by Buyer and, assuming the due execution and delivery of this Agreement and the Ancillary Agreements by Seller, constitute valid and binding obligations of Buyer enforceable in accordance with their terms subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and subject to the exercise of judicial discretion in accordance with principles of equity.

8.2.3 No Restrictions Against Purchase of the Purchased Properties. The execution and delivery of this Agreement and the Ancillary Agreements by Buyer do not, and the fulfillment by Buyer of its obligations under this Agreement and the Ancillary Agreements will not, conflict with, violate or result in the breach of any provision of the certificate of incorporation or bylaws of Buyer or, conflict with, violate or result in the breach of any contract to which Buyer is a party. No material consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required to be obtained or made by or with respect to Buyer in connection with the execution and delivery of this Agreement by Buyer or the fulfillment by Buyer of its obligations under this Agreement, except the filings and approvals described in Article 4.

8.2.4 No Violation of Law. The execution and delivery of this Agreement and the Ancillary Agreements and the fulfillment by Buyer of its obligations under this Agreement and the Ancillary Agreements will not violate any Law except to the extent any such violation would not have a material adverse effect on the ability of Buyer to fulfill its obligations hereunder and thereunder.

8.2.5 Financial Capacity.

(a) Buyer has sufficient cash or other sources of funds to pay the Purchase Price in the manner specified in Section 3.1 and all related fees and expenses.

(b) Buyer has sufficient financial resources to operate the Business after the Closing Date. Without limiting the generality of the foregoing, Buyer has sufficient financial resources to satisfy any applicable requirement relating to financial capacity or capital imposed by any Governmental Authority in any state in which the Business is conducted. Buyer is solvent, is able to pay its debts as they become due, and owns property that has both a fair value and a fair saleable value in excess of the amount required to pay its debts as they become due.

8.2.6 Brokers. Buyer has not paid or become obligated to pay any fee or commission to any broker, finder, investment banker or other intermediary in connection with the transactions contemplated by this Agreement in such a manner as to give rise to a valid claim against Seller for any broker's or finder's fees or similar fees or expenses.

8.2.7 Consents and Approvals of Governmental Authority. Subject to Article 4 with respect to Regulatory Approvals and FCC Consents, no consent, approval or authorization of, or declaration, filing or registration with, any Governmental Authority or regulatory authority is required in connection with the execution, delivery and performance of this Agreement by Buyer or the consummation by Buyer of the transactions contemplated herein, except for filings with the FTC and DOJ pursuant to the HSR Act, if required.

## **ARTICLE 9**

### **CONTINUING BUSINESS RELATIONSHIPS**

9.1 Transition Services Agreement. The parties agree to cooperate with each other to ensure that the transition of the ownership of the Purchased Property proceeds with minimal disruption to the services being provided to subscribers. The parties agree that it may be necessary for Seller to assist Buyer in converting Seller's systems and processes with respect to the Purchased Property to Buyer's systems and processes. Seller and Buyer agree to execute a separate "Transition Services Agreement" substantially in the form attached hereto as Schedule 9.1 for the provision of such services.

9.2 Optional Services Agreement. It is understood and agreed that Buyer may not have for a period of time after Closing Date, certain systems or processes necessary to provide some basic customer services. Seller will at Buyer's request and for the fees described in the attachments to the Optional Services Agreement provide any or all of the services described in said attachments on terms and conditions substantially in the form attached hereto as Schedule 9.2.

9.3 Directory Publishing.

9.3.1 Assumption of Certain Directory Publishing Agreement Rights and Obligations. Seller is party to a directories publishing agreement with GTE Directories Service Corporation n/k/a GTE Directories Corporation or GTE Directories Corporation as purchaser of the rights and interests of Associated Directory Services, Inc. f/k/a Mast Advertising and Publishing, Inc. herein "Publisher." These agreements are identified in Schedule 9.3.1 attached hereto ("Publishing Agreements"). Pursuant to these agreements Publisher has the exclusive right and obligation to sell advertising, and to publish, print and distribute directories containing telephone numbers relating to the Purchased Exchanges.

At Seller's option, Buyer agrees to execute an agreement effective as of the Closing to assume and appropriately amend the Publishing Agreements as they relate to the Purchased Exchanges, which agreement will extend the length of the term of the Publishing Agreements to expire not earlier than December 31, 2001. Buyer agrees to allow Publisher to participate in any process for negotiating future directory publishing agreements on terms no less favorable than any other participant.

9.3.2 Co-Bound Directories Acknowledgement. Buyer acknowledges that Publisher may have a pre-existing obligation (which Publisher may choose to continue) to sell advertising, publish, print and distribute the telephone numbers of third party local exchange telephone companies in the same directory as the Purchased Exchanges ("Co-Bound" directory). Co-Bound directory agreements of which Seller is aware, if any, are identified on Schedule 9.3.2.

9.3.3 Meeting to Discuss Directory Publication. Within ninety (90) days following the date of this Agreement, Buyer agrees to meet with Seller and Publisher for the purpose of having an initial discussion about the first directory publication after the Closing Date. This meeting will be held at Publisher's address unless otherwise agreed between the parties and Publisher. All parties shall employ their respective commercially reasonable efforts to ensure that directory publication is not interrupted following the Closing Date.

9.4 GTE Telecom Agreements. Buyer acknowledges that GTE Telecom will retain ownership of certain assets as well as related rights in connection with fiber loop located in the Purchased Exchanges, all of which assets and rights are listed on Schedule 2.3(g) (the "GTE Telecom Assets"). Buyer further acknowledges that the GTE Telecom Assets may be co-located with the Purchased Property, and may share certain easements, rights of way or other real property interests. In order to clarify the relationship between Buyer and GTE Telecom with respect to the GTE Telecom Assets, Buyer agrees to execute and deliver at Closing certain agreements substantially in the form attached hereto as Schedule

9.4 (the "GTE Telecom Agreements").

## **ARTICLE 10**

### **ADDITIONAL COVENANTS OF THE PARTIES**

10.1 Intellectual Property.

10.1.1 No License. Buyer and Seller agree and understand that except as expressly set forth in writing in the License Agreement and Section 10.1.3, Seller has not granted any rights or licenses, express or implied, of, and nothing shall constitute or be construed as a license of Seller under any Intellectual Property now or hereafter owned, obtained or licensable by Seller or under any Third Party Intellectual Property.

10.1.2 Infringement.

(a) Notwithstanding anything in this Agreement to the contrary, Seller shall have no obligation to defend, indemnify or hold harmless Buyer or

any of its Affiliates, from any damages, costs or expenses resulting from any obligation, proceeding or suit based upon any claim that any activity subsequent to the Closing Date engaged in by Buyer, a customer of Buyer's or anyone claiming under Buyer, constitutes direct or contributory infringement, misuse of, or misappropriation of, or inducement to infringe, any Third Party Intellectual Property.

(b) Buyer shall defend, indemnify and hold harmless Seller and its Affiliates from and against any and all Indemnifiable Losses resulting from any obligation, proceeding or suit based upon any claim alleging or asserting direct or contributory infringement, or misuse or misappropriation of or inducement to infringe by Seller or any of its Affiliates of any Third Party Intellectual Property, to the extent that such claim is based on, or would not have arisen but for, activity conducted or engaged in subsequent to the Closing Date by Buyer, a customer of Buyer's, or anyone claiming under Buyer.

#### 10.1.3 Trademark Phaseout.

(a) Buyer acknowledges that Seller or its Affiliates are the owners of Excluded Marks that qualify as Excluded Property under Section 2.3. Buyer understands and agrees that the Excluded Marks, or any right to or license of the Excluded Marks, are not being transferred pursuant to this Agreement. Buyer acknowledges the exclusive and proprietary rights of Seller and its Affiliates in the use of the Excluded Marks, and Buyer agrees that it shall not use the Excluded Marks (or any names, domain names, marks or indicia confusingly similar to the Excluded Marks) except and to the extent expressly set forth in this Section 10.1.3 or assert any rights or claims in such Excluded Marks (or in any names, domain names, marks or when confusingly similar to the Excluded Marks). After the Closing, all Excluded Marks of Seller and its Affiliates shall be replaced by Buyer, at Buyer's expense, as soon as possible, but in no event later than ninety (90) days after the Closing Date for items with Excluded Marks affixed to them which Buyer has continued to use in Buyer's operation of the Business, including buildings, vehicles, heavy equipment, hard hats, tools, tool boxes, kits (safety and others), signs, public (pay) telephones, manual covers and notebooks. After the Closing, Buyer will not use, and will destroy or deliver to Seller, all such items with Excluded Marks affixed to them that have no valid continuing use in Buyer's operation of the Business, including items affecting customer or employee relations or items that do not reflect Buyer's true identity. Specific items to be destroyed or returned include items with Excluded Marks affixed to them including giveaways; order, purchase or materials forms; requisitions; invoices; statements; time sheets/labor reports; bill inserts; stationery; personalized note pads; maps; organization charts; bulletins/releases; sales/price literature; manuals or catalogs; report covers/folders; program materials; and materials such as media contact lists/cards. The ninety (90) day time period for replacement of Excluded Marks affixed to telephone directories that were already published or closed for publication at the Closing Date shall be extended to the expiration date of such directories.

(b) Buyer recognizes the great value of the goodwill associated with the Excluded Marks, and acknowledges that the Excluded Marks and all rights therein and the goodwill pertaining thereto belong exclusively to Seller and that the Excluded Marks have a secondary meaning in the minds of the public. Buyer further agrees that any and all permitted use of the Excluded Marks pursuant to this Agreement shall inure to the sole and exclusive benefit of Seller.

(c) Buyer agrees that any permitted use of the Excluded Marks in the operation of the Business after the Closing shall be provided in accordance with all applicable federal, state and local laws, and that the same shall not reflect adversely upon the good name of Seller or its Affiliates, and that the operation of the Business will be of a high standard and skill.

(d) Buyer acknowledges that its failure to cease use of the Excluded Marks as provided in this Agreement, or its improper use of the Excluded Marks, will result in immediate and irreparable harm to Seller and its Affiliates. Buyer acknowledges and admits that there is no adequate remedy at law for such failure to terminate use of the Excluded Marks, or for such improper use of the Excluded Marks. Buyer agrees that in the event of such failure or improper use, Seller and its Affiliates shall be entitled to equitable relief by way of temporary restraining order, or preliminary or permanent injunction, or any other relief available under this Agreement.

(e) Buyer will not contest the ownership or validity of any rights of Seller or its Affiliates in the Excluded Marks.

10.1.4 Third Party Software. To the extent that the transfer of Purchased Property by Seller to Buyer under this Agreement results in the transfer of possession to Buyer of software that at the Closing Date is Third Party Intellectual Property, which software was located in and rightfully used by Seller in the geographical areas of the Purchased Exchanges prior to the Closing Date in the normal and ordinary operation of the Business pursuant to Contracts with the owners or licensors of such software ("Third Party Intellectual Property Contracts"), then subject to Section 2.5 and the receipt of any required consents from Switch Software vendors, effective as of the Closing and provided that no payments to any Person other than a Switch Software vendor are thereby required, Seller hereby assigns to Buyer, and Buyer hereby accepts all rights and licenses, if any, to possess and use such software pursuant to such Third Party Intellectual Property Contracts. Buyer agrees that the acceptance by Buyer of such assignment of the Third Party Intellectual Property Contracts includes the assumption by Buyer of obligations under such Third Party Intellectual Property Contracts, including all obligations necessary or incidental to the transfer of such rights and licenses. Buyer understands and agrees that except as provided above in this Section 10.1.4, or as expressly provided elsewhere in this Agreement or in another written agreement between Buyer and Seller, no rights or licenses to use or possess such software or any Third Party Intellectual Property are transferred to Buyer. Buyer shall properly dispose of, and shall not use, any software of which Buyer acquires possession in connection with Purchased Property and which, after the Closing Date, Buyer knows, or reasonably should know, is not the subject of a Third Party Intellectual Property Contract that has been rightfully transferred to Buyer. Seller makes no warranty or representation that any Third Party Intellectual Property Contract or any right therein is assignable in whole or in part to Buyer.

#### 10.2 Effect of Due Diligence and Related Matters.

(a) Buyer represents that it is a sophisticated entity that was advised by knowledgeable counsel and financial advisors and, to the extent it

deemed necessary, other advisors in connection with this Agreement and has conducted its own independent review and evaluation of the Purchased Property. Accordingly, Buyer covenants and agrees that (i) except for the representations and warranties set forth in this Agreement, Buyer has not relied and will not rely upon any duty to disclose or any document or written or oral information furnished to or discovered by it or its representatives, including any financial data, (ii) there are no representations or warranties, express or implied, statutory or otherwise, by or on behalf of Seller or its Affiliates or representatives except for those expressly set forth in this Agreement, and (iii) to the fullest extent permitted by law, Buyer's rights and obligations with respect to all of the foregoing matters will be solely as set forth in this Agreement. Buyer further acknowledges and agrees that Seller is not under any duty to make any inquiry regarding any matter that may or may not be known to Seller or any of its officers, directors, employees or representatives.

(b) Upon the Closing, Buyer shall be deemed to have waived any claim with respect to a breach of any representation, warranty, covenant or obligation of Seller, or any failure of a condition, hereunder of which Buyer had actual knowledge on or prior to the date hereof; provided that Buyer shall be deemed to have actual knowledge on or prior to the date hereof of the information made available to Buyer and/or its representatives during Buyer's due diligence review, and which information is contained in the Due Diligence Materials.

(c) After the date of this Agreement and prior to the Closing Date, Buyer shall promptly notify Seller if Buyer obtains actual knowledge of any actual or prospective breach of any representation, warranty, covenant or obligation of Seller, or any actual or prospective failure of a condition, hereunder of which Buyer obtains actual knowledge. Failure to provide timely notice of any such breach of which Buyer obtains actual knowledge after the date hereof shall be deemed to constitute a waiver with respect to such breach.

10.3 Confidentiality. Whether or not the Closing occurs, the parties hereto and their respective officers, directors, employees and representatives will comply with the Confidentiality Agreement (to the extent not inconsistent with this Agreement), the provisions of which are expressly incorporated herein in their entirety by this reference.

10.4 Further Assurances. After the Closing, Seller will use its commercially reasonable efforts to furnish to Buyer such other instruments and information as Buyer may reasonably request in order to convey to Buyer title to the Purchased Property, to be delivered from time to time upon Buyer's reasonable request.

10.5 Prorations. The following liabilities that call for periodic payments shall be prorated between Seller and Buyer: (i) utility charges (which shall include water, sewer, electricity, gas and other utility charges) with respect to the Owned Real Property, the property subject to the Real Property Leases and customer owned equipment, (ii) rental charges (which shall include rental charges and other lease payments under the Real Property Leases and Real Property Interests), (iii) personal services (these services are charged for a period which includes the Closing Date; this shall include contract labor), and (iv) any Taxes that are imposed on a periodic basis and are payable for a taxable period that includes (but does not end on) the Closing Date, including but not limited to real and personal property Taxes, ad valorem Taxes, and franchise fees or Taxes ("Periodic Taxes"). With respect to measurement periods during which the Closing Date occurs (all such periods of time being hereinafter called "Proration Periods"), the liabilities described in clauses (i), (ii) and (iii) of the preceding sentence shall be apportioned between Seller and Buyer as of the Closing Date, with Buyer bearing only the expense thereof in the proportion that the number of days remaining in the applicable Proration Period after the Closing Date bears to the total number of days covered by such Proration Period. Real and personal property Taxes and ad valorem Taxes shall be prorated between Buyer and Seller based on the relative periods the Purchased Property was owned by each respective party during the fiscal period for which Periodic Taxes were assessed by the Taxing jurisdiction (as such fiscal period is reflected on the bill rendered by such taxing jurisdiction). Buyer and Seller shall pay or be reimbursed for Periodic Taxes (including instances in which such property Taxes have been paid before the Closing Date) on this prorated basis. If a payment on a Periodic Tax bill is due after the Closing, the party that is legally required to make such payment shall make such payment and promptly forward an invoice to the other party for its pro rata share, if any. If the other party does not pay the invoice within thirty (30) calendar days of receipt, the amount of such payment shall bear interest at the rate of eight percent (8%) per annum. Similarly, all prepayments made by Seller under Assigned Contracts with respect to service or maintenance agreements requiring periodic payments with third parties or license or other fees payable to third parties shall be prorated on an appropriate basis between Seller and Buyer.

10.6 Cost Studies/NECA Matters.

10.6.1 Prior to Closing. Seller agrees that, with respect to all toll revenues, settlements, pools, separations studies or similar activities, Seller shall be responsible for (and shall receive the benefit or suffer the burden of) any adjustments to contributions, or receipt of funds, by Seller resulting from any such activities that are related to the operation of the Business or the ownership or operation of the Purchased Property prior to the Closing Date. Specifically, this paragraph shall apply, but shall not be limited to, any matters related to the National Exchange Carrier Association ("NECA") or the Universal Service Administration Company ("USAC") including the Universal Service Fund ("USF"), Long Term Support ("LTS"), and Telecommunications Relay Services funds established by the FCC.

10.6.2 From and After Closing.

(a) In the case of Purchased Exchanges that comprise less than an entire Study Area, the following shall apply:

(i) Rural and non-rural carriers currently receive USF funds based on historic costs computed pursuant to Subpart F of Part 36 of the FCC's rules. Beginning July 1, 1999 or a date thereafter determined by the FCC, non-rural carriers shall not receive USF funds pursuant to Part 36, but will receive support based on forward-looking economic costs pursuant to Part 54. Seller will take all steps necessary to ensure that, for each Transitional Year, Buyer receives a pro rata share of any USF funds distributed during each year. Buyer's pro rata share of such USF

funds for a given Transitional Year shall be determined for each Acquired Local Loop by multiplying the USF funds attributable to such loop for that year times the number of months of that year that such loop is owned by the Buyer.

(ii) Buyer shall make all USF filings that are required under FCC rules after the Closing Date, and Seller shall provide such reasonable assistance as is required in order to make such filings.

(iii) Notwithstanding the foregoing, Buyer's right to receive a pro rata share of USF is conditioned upon Buyer's payment, from and after the Closing Date, of a pro rata share of the annual universal service contribution liability assessed by the USAC based on end-user retail revenues for the previous year generated by assets being sold. The resulting Buyer's annual USF obligation for assets purchased shall be prorated in proportion to the number of months in the year from and after the Closing Date.

(b) In the case of Purchased Exchanges that comprise an entire Study Area, the following shall apply:

(i) Buyer shall receive all USF funds, from and after the Closing Date, as determined by USAC from data submitted by Seller prior to Closing Date pursuant to FCC Rules and Regulations as stated in Part 36.611 and Part 36.612 for rural carriers and Part 54 for non-rural carriers. After Closing Date Buyer shall make all submissions and filings for USF funds for all years for which Seller had not made a submission prior to Closing Date in accordance with FCC Rules and Regulations. Within a reasonable time after Buyer's written request, Seller shall furnish to Buyer such necessary information regarding Seller's ownership of the Purchased Property during any year for which Buyer shall make a submission, and such reasonable assistance as required in connection with Buyer's preparation of necessary filings or submissions.

(ii) Notwithstanding the foregoing, Buyer's right to receive all USF revenue is conditioned upon Buyer's payment, from and after the Closing Date, of all universal service contribution liability assessed by USAC based on end-user retail revenues for the previous year generated by assets being sold.

#### 10.7 Customer Deposits and Construction Advances. Within thirty

(30) days after Closing, Seller agrees to transfer to Buyer the customer deposits together with any interest accrued thereon (collectively "Customer Deposits") and Construction Advances, together with all of Seller's obligations (exclusive of pre-Closing disputes with respect thereto) and rights to hold the Customer Deposits and Construction Advances of the Business, up to the Closing Date, and Buyer agrees to hold, disburse and retain such deposits so delivered to it, and to perform related construction, as the case may be, as if it were Seller.

#### 10.8 Access to Books and Records.

(a) After the Closing, Seller will retain all Retained books and Records for a period of three (3) years from the date hereof, except for Tax Returns and supporting documentation, which Seller shall retain until the later to occur of

(i) sixty (60) days subsequent to the expiration of the applicable statute of limitations or any extensions thereof, or (ii) the expiration of three (3) years from the date hereof.

(b) After the Closing, upon reasonable notice and subject to the Confidentiality Agreement, the parties will give to the representatives, employees, counsel and accountants of the other, access, during normal business hours, to books and records relating to the Business and the Purchased Property, and will permit such persons to examine and copy such records, in each case to the extent reasonably requested by the other party in connection with Tax and financial reporting matters (including any Tax Returns and related information, but not attorney work product), audits, legal proceedings, governmental investigations and other business purposes (including such financial information and any receipts evidencing payment of Taxes as may be requested by Seller to substantiate any claim for Tax credits or refunds); provided, however, that nothing herein will obligate any party to take actions that would unreasonably disrupt the normal course of its business or violate the terms of any Contract to which it is a party or to which it or any of its assets is subject. Seller and Buyer will cooperate with each other in the conduct of any Tax audit or similar proceedings involving or otherwise relating to the Business (or the income therefrom or assets thereof) with respect to any Tax and each will execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 10.8(b).

10.9 Purchase Price Allocation. No later than ninety (90) days subsequent to the Closing Date, Buyer and Seller shall use their good faith efforts to agree to the allocation (the "Allocation") of the Purchase Price, the Assumed Liabilities and other relevant items (including, for example, adjustments to the Purchase Price) to the individual assets or classes of assets within the meaning of Section 1060 of the IRC. If Buyer and Seller agree to such Allocation prior to Closing, Buyer and Seller covenant and agree that (i) the values assigned to the assets by the parties' mutual agreement shall be conclusive and final for all purposes, and (ii) neither Buyer nor Seller will take any position before any Governmental Authority or in any judicial proceeding that is in any way inconsistent with such Allocation. Notwithstanding the foregoing, if Buyer and Seller cannot agree to an Allocation, Buyer and Seller covenant and agree to file and to cause their respective Affiliates to file, all Tax Returns and schedules thereto (including, for example, amended returns, claims for refund, and those returns and forms required under Section 1060 of the IRC and any Treasury regulations promulgated thereunder) consistent with each of Buyer and Seller's good faith Allocations, unless otherwise required because of a change in applicable Law.

10.10 Owned Real Property Transfers. Within sixty (60) days of the date of this Agreement, Seller shall deliver to Buyer copies of all existing title insurance policies in Seller's possession covering the Owned Real Property. Thereafter, no later than thirty (30) days before the Closing Date, Seller shall deliver (at Seller's expense) to Buyer title commitments for owners' policies of title insurance prepared by a title insurance company reasonably acceptable to Buyer and a certified current survey, with respect to all Owned Real Property included in the Purchased Property and in which Seller purports to own fee title. Buyer acknowledges that such title commitments shall be for California Land Title



Association ("CLTA") owners' policies of title insurance (or its equivalent) unless Buyer has requested in writing, prior to the date hereof, that such commitments be issued for other forms of title insurance (in which event, Buyer shall bear all costs and premiums for such title insurance to the extent attributable to such coverage being in excess of CLTA coverage or its equivalent). Such title commitments shall reflect that upon the consummation of the sale to Buyer contemplated by this Agreement and the payment of all premiums and charges due for such title insurance, Buyer will be vested with good, fee simple title to such Owned Real Property, subject only to the exceptions shown thereon, the title company's standard exceptions and exclusions, and such matters that arise after the date and time of such title commitment. Except as provided in the following sentence, in the event that Buyer requires endorsements to such title commitments or the applicable title insurance policies, such endorsements shall be obtained at Buyer's sole cost and expense and shall not be a condition to Closing. On the Closing Date, Seller shall convey the Owned Real Property to be transferred to Buyer subject only to Permitted Encumbrances, provided that Seller may transfer such property subject to one or more exceptions that are not Permitted Encumbrances if Seller commits in writing, in form and substance reasonably acceptable to Buyer, on or before the Closing Date, to cause any such exception that is not a Permitted Encumbrance to be removed, insured or bonded over to Buyer's reasonable satisfaction, or if Seller indemnifies Buyer with respect to such exceptions to Buyer's reasonable satisfaction on or before the Closing Date. With respect to each parcel of Owned Real Property covered by a title commitment referenced above, the amount of title insurance provided under the applicable title insurance policy shall be the fair market value of the applicable property, which shall be determined by Buyer at its sole cost and expense using commercially reasonable methods of valuation, provided that all such valuations shall be consistent with all allocations of the Purchase Price made hereunder or pursuant to this Agreement, and shall be acceptable to the title insurance company. The determination of fair market value shall be made in a timely manner such that the title commitments can be issued in a timely manner prior to the Closing Date. Seller agrees that prior to Closing it will provide the title company with such instructions, authorizations, affidavits, and indemnities as may be reasonably necessary for the title company to issue title policies to Buyer, dated as of the Closing Date, for all of the Owned Real Property with so-called non-imputation endorsements. By no later than forty-five (45) days after the Closing Date, Seller shall deliver to Buyer a final title insurance policy covering each parcel of the Owned Real Property covered by the title commitments. Buyer will use its commercially reasonable efforts to work with the title company between the date hereof and forty-five (45) days after Closing Date to resolve any issues with respect to such title commitments. Seller shall be responsible for the payment of all title insurance premiums attributable to the CLTA portion of the coverage afforded by each such policy obtained, and Buyer shall be responsible for the payment of all title insurance premiums in excess of such amount and for the payment of all endorsement charges and other fees and costs imposed by the title company.

10.11 Transaction Taxes. Buyer shall bear and be responsible for paying any sales, use, transfer, documentary, registration, business and occupation and other similar Taxes (including related penalties (civil or criminal), additions to Tax and interest) imposed by any Governmental Authorities with respect to the transfer of Purchased Property to Buyer (including the Owned Real Property) ("Transaction Taxes"), regardless of whether the Tax authority seeks to collect the such Taxes from Seller or Buyer. Buyer shall also be responsible for (i) administering the payment of such Transaction Taxes, (ii) defending or pursuing any proceedings related thereto, and (iii) paying any expenses related thereto. Seller shall give prompt written notice to Buyer of any proposed adjustment or assessment of any Transaction Taxes with respect to the transaction, or of any examination of said transaction in a sales, use, transfer or similar Tax audit. In any proceedings, whether formal or informal, Seller shall permit Buyer to participate and control the defense of such proceeding, and shall take all actions and execute all documents required to allow such participation. Seller shall not negotiate a settlement or compromise of any Transaction Taxes without the written consent of Buyer, which consent shall not be unreasonably withheld.

10.12 Bulk Sales Laws. Seller and Buyer waive compliance with applicable Laws under any version of Article 6 of the Uniform Commercial Code adopted by any state or any similar Law relating to the sale of inventory, equipment or other assets in bulk in connection with the sale of the Purchased Property.

10.13 Prepaid Non-regulated Maintenance Agreements. Within thirty (30) days following Closing, Seller shall pay to Buyer an amount equal to the pro rata portion of all prepaid but unearned revenues from Seller's customers for all non-regulated maintenance agreements as of the Closing Date.

10.14 Vehicle Registration. Buyer agrees to use its commercially reasonable efforts to file promptly the appropriate vehicle title applications and registrations to change the name of the titled owner on each vehicle title certificate and change the motor vehicle registration (with respect to license plate information) on each vehicle being transferred to Buyer from Seller pursuant to this Agreement. Buyer agrees that it shall remove and destroy Seller's existing license plates from all vehicles received promptly upon the receipt of new license plates.

10.15 Carrier Access Billing and Accounts Receivable Transition. Seller shall render its own final carrier access bills to its interexchange carriers for minutes, messages and other applicable charges up to the Closing Date. Seller shall be responsible for collecting and settling any disputes associated with its final bills to the interexchange carriers.

10.16 End-User Billing and Accounts Receivable Transition. Buyer agrees to purchase Seller's Earned End-user Accounts Receivable and make payment to Seller for those accounts in the manner described below.

(a) Seller shall transfer to Buyer, as soon as reasonably available after Closing, all open end-user customer account records as of the end of business on the Closing Date. Following the Closing, Buyer will be responsible for administering those records including the application of cash receipts to customer accounts, whether related to services rendered before or after the Closing. Seller will promptly forward to Buyer all customer payments and related remittance documents received by Seller after the Closing for processing by Buyer.

(b) Within twenty (20) days following the Closing, Seller will provide an accounting to Buyer of the Earned End-User Accounts Receivable and the Customer Advances, as well as the most recent twelve (12) month history of Seller's uncollectible net writeoffs expressed as a

percentage of billings for the Business (the "Uncollectible Factor"). This data and the resulting calculation of the Earned End-User Accounts Receivable Amount will be summarized in an accounts receivable settlement statement (the "Accounts Receivable Settlement Statement"). Within thirty (30) days following the Closing, Buyer will remit to Seller an amount equal to 80% of the Earned End-User Accounts Receivable Amount less 100% of the Customer Advances. Within sixty (60) days following the Closing, Buyer will remit an additional 15% of the Earned End-User Accounts Receivable Amount and within ninety (90) days will remit the final 5%.

(c) Not later than ten (10) days prior to the due dates for the sixty (60) and ninety (90) day payments referred to in Section 10.16(b) above, Seller will provide Buyer with an updated Accounts Receivable Settlement Statement reflecting any adjustments based upon non-sufficient funds checks, billing adjustments or other facts that have become known after the original statement that relate to pre-closing activity.

(d) If at any time during the ninety (90) day period following the Closing, Buyer or Seller discovers any material discrepancy in the Accounts Receivable Settlement Statement, Seller and Buyer agree to use commercially reasonable efforts to resolve any discrepancy in a timely manner, and also agree to make payments related to any undisputed amounts as set forth above.

10.17 Cooperation. Subsequent to the Closing Date, Buyer and Seller agree that they shall cooperate, each with the other, in order to facilitate the orderly transfer of the operation of the Business from Seller to Buyer; provided that except as may be otherwise required under that Agreement, no party shall be required to pay any out-of-pocket costs associated with their respective obligations hereunder.

## **ARTICLE 11**

### **EMPLOYEES AND EMPLOYEE MATTERS**

11.1 Employment of Transferred Employees. All Active Employees of Seller employed in the Business, and all Active Employees of Seller and its Affiliates who are associated with the Business, on the Closing Date (hereinafter collectively referred to as "Transferred Employees") shall be employed by (or become the responsibility of, as applicable) Buyer as of the Closing Date in the same or comparable positions, and at the same or comparable total compensation (including base pay and bonus (exclusive of any retention bonus)), as were in effect on the Closing Date, except as otherwise provided in this Agreement. The term "Transferred Employees" shall include only those individuals described in the preceding sentence who are identified as such on Schedule 11.1. For purposes of the first sentence, the term "Active Employees" shall include all full-time and part-time employees, employees on workers' compensation, military leave, maternity leave, leave under the Family and Medical Leave Act of 1993, short-term disability, non-occupational disability, on layoff with recall rights, and employees on other approved leaves of absence with a legal or contractual right to reinstatement. Buyer also shall employ any employee of Seller or its Affiliates who on the Closing Date is an LTD Recipient (as defined in Section 11.7) and who immediately before his active employment with Seller or its Affiliates ceased was employed in or in association with the Business, provided such employee returns to active employment within one (1) year of the Closing Date. For a period of six (6) months following the Closing Date, Buyer shall not employ, and Buyer shall not permit any of its Affiliates to employ, any person who retires or otherwise terminates from any employment at or in association with the Business during the six-month period beginning three

(3) months before the Closing Date. All Transferred Employees and LTD Recipients (as defined in Section 11.7) shall be identified on Schedule 11.1 to be prepared by Seller and submitted to Buyer at least fifteen (15) days prior to the Closing Date; such Schedule 11.1 shall identify, as of the date of such Schedule, the employees who have terminated employment as described in the preceding sentence; and such Schedule 11.1 shall be updated as of the date that is three months after the Closing to identify any employees who terminated employment as described in the preceding sentence after the date of the original Schedule 11.1.

11.1.1 Assumption of Collective Bargaining Agreement Obligations. On and after the Closing Date, Buyer, as successor employer to Seller (subject to Seller's Retained Liabilities in Section 2.4.2(d)), shall assume all of the employer's obligations under, and be bound by the provisions of, each collective bargaining agreement covering Transferred Employees. Each such collective bargaining agreement relating to Transferred Employees shall be identified on a Schedule 11.1.1 to be prepared by Seller and submitted to Buyer at least fifteen (15) days prior to the Closing Date. Seller shall cooperate with Buyer in Buyer's efforts to contact the unions representing Transferred Employees. If a union representing Transferred Employees objects to Buyer's assumption of, or refuses to allow Buyer to assume, the provisions of any existing collective bargaining agreement that covers such Transferred Employees immediately before the Closing Date, or objects to any change in or termination of employee benefits on or after the Closing Date, Seller and its Affiliates shall have no liability or obligation to Buyer by reason of such objection or refusal. If, on or before the Closing Date, an employee objects, or refuses to assent, to the consummation of the transactions contemplated by this Agreement insofar as the Agreement affects the employee, Seller and its Affiliates shall have no liability or obligation to the employee or any other party by reason of the employee's objection or refusal to assent, and Buyer shall be responsible for any liability or obligation that arises by reason of the employee's objection or refusal to assent (other than any liability or obligation that results from Seller's failure to comply with this Agreement and that does not result from Buyer's failure to comply with this Agreement).

11.1.2 Assumption of Employment and Other Agreements. On and after the Closing Date, except as otherwise provided in this Agreement or in Schedule 11.1.2, Buyer, as successor employer to Seller (subject to Seller's Retained Liabilities in Section 2.4.2(d)), shall assume all obligations under and be bound by the provisions of each offer of employment by Seller relating to the Business, each employment agreement or any other agreement by Seller relating to conditions of employment, employment separation, severance, or employee benefits in connection with the Business. All obligations described in this Section 11.1.2 assumed by and binding Buyer shall be identified on a Schedule 11.1.2 to be prepared by Seller and submitted to Buyer at least fifteen (15) days prior to the Closing Date.

11.1.3 Recognition of Transferred Employee Service. On and after the Closing Date, and subject to the provisions of any applicable collective

bargaining agreement, Buyer shall recognize the service of each Transferred Employee for all employment-related purposes (other than an employee achievement award, within the meaning of Section 274(j) of the IRC) determined in accordance with the practices and procedures of Seller in effect on the Closing Date, as if such service had been rendered to Buyer. Schedule 11.1 to be prepared by Seller and submitted to Buyer no later than fifteen (15) days prior to the Closing Date shall list the service of each Transferred Employee for the employment-related purposes referred to in the preceding sentence.

**11.1.4 Assumption of Obligation to Pay Bonuses.** Except as otherwise expressly provided in this Agreement, Transferred Employees shall not accrue benefits under any employee benefit policies, plans, arrangements, programs, practices, or agreements of Seller or any of its Affiliates after the Closing Date. For the year in which the Closing Date occurs, the Transferred Employees shall be paid any bonuses that would have been payable to the Transferred Employees for that year had the Transferred Employees remained employees of Seller or one of its Affiliates, in accordance with the provisions of the policy, plan, arrangement, program, practice or agreement under which the bonus would have been paid (the "Seller's Bonus Plans"). Seller shall pay to Transferred Employees that portion of any such bonus (exclusive of any retention bonus) that is attributable to service during such year on or before the Closing Date, and Buyer shall pay to Transferred Employees that portion of any such bonus that is attributable to service during such year after the Closing Date. In determining the amount of the bonus to be paid by Buyer in accordance with the preceding sentence, Buyer shall apply criteria that are substantially comparable to the criteria established as of the Closing Date under the Seller Bonus Plans under which the bonus would have been paid had the Transferred Employees remained employees of Seller or one of its Affiliates. Seller shall identify the Seller Bonus Plans on a Schedule 11.1.4 to be delivered to Buyer no later than fifteen (15) days prior to the Closing Date.

**11.1.5 No Duplicate Benefits; Dependents and Beneficiaries.** Nothing in this Agreement shall cause duplicate benefits to be paid or provided to or with respect to a Transferred Employee under any employee benefit policies, plans, arrangements, programs, practices, or agreements. References herein to a benefit with respect to a Transferred Employee shall include, where applicable, benefits with respect to any eligible dependents and beneficiaries of such Transferred Employee under the same employee benefit policy, plan, arrangement, program, practice or agreement.

**11.1.6 Affiliate Employees.** If any employee identified in Schedule 11.1 is an employee of an Affiliate of Seller, he or she shall be considered a Transferred Employee and shall be treated under this Agreement in a manner that is comparable to the treatment given to the Transferred Employees who are employed by Seller, except that his or her service as of the Closing Date shall be determined in accordance with the practices and procedures of his or her employer, as in effect on the Closing Date.

**11.1.7 Term of Assumed Obligations.** Except as otherwise expressly provided in this Agreement, Buyer's obligations with respect to Transferred Employees under this Article 11 shall continue for a period of not less than one year after the Closing Date.

## **11.2 Transferred Employee Benefit Matters.**

### **11.2.1 Defined Benefit Plans.**

(a) Seller's Pension Plans. As of the date of this Agreement, Seller participates in the following single-employer defined benefit pension plans maintained in the United States:

(i) the GTE Service Corporation Plan for Employees' Pensions (the "Seller's Salaried Pension Plan"); and

(ii) the GTE Midwest Incorporated Plan for Hourly-Paid Employees' Pensions (the "Seller's Hourly Pension Plan").

The plans identified in this Section 11.2.1(a) shall be referred to collectively in this Agreement as the "Seller's Pension Plans," and each such plan shall be referred to individually as a "Seller's Pension Plan."

(b) Buyer Obligations. Buyer shall take all actions necessary and appropriate to ensure that, as soon as practicable after the Closing Date, Buyer maintains or adopts one or more pension plans (hereinafter referred to in the aggregate as the "Buyer Pension Plans" and individually as the "Buyer Pension Plan") effective as of the Closing Date and to ensure that each Buyer Pension Plan satisfies the following requirements as of the Closing Date: (i) the Buyer Pension Plan is a qualified, single-employer defined benefit plan under Section 401(a) of the IRC; (ii) any Buyer Pension Plan that was in effect before the Closing Date shall not have any "accumulated funding deficiency," as defined in Section 302 of ERISA and Section 412 of the IRC, whether or not waived, immediately before the Closing Date; (iii) the Buyer Pension Plan is not the subject of termination proceedings or a notice of termination under Title IV of ERISA; (iv) the Buyer Pension Plan does not exclude Transferred Employees from eligibility to participate therein; (v) the Buyer Pension Plan does not violate the requirements of any applicable collective bargaining agreement; and (vi) with respect to Transferred Employees who were participants in the Seller's Hourly Pension Plan on the Closing Date, the terms of the Buyer Pension Plan are substantially identical in all material respects to the terms of the Seller's Hourly Pension Plan. Within the 30-day period immediately preceding any transfer of assets and liabilities from a Seller's Pension Plan to a Buyer Pension Plan pursuant to this Section 11.2.1(b), Buyer shall provide Seller with a written certification, in a form acceptable to Seller, that the Buyer Pension Plan satisfies each of the requirements set forth in this Section 11.2.1(b).

### **(c) Transfer of Liabilities.**

(i) In accordance with the provisions of this Section 11.2.1, Buyer shall cause the Buyer Pension Plans to accept all liabilities for benefits under

the Seller's Pension Plans, whether or not vested, that would have been paid or payable (but for the transfer of assets and liabilities pursuant to this

Section 11.2.1) to or with respect to the Transferred Employees under the terms of the Seller's Pension Plans, including, but not limited to, all liabilities for "Section 411(d)(6) protected benefits" (as defined by Section 411(d)(6) of the IRC and the regulations thereunder) that have accrued under the Seller's Pension Plans to or with respect to the Transferred Employees based on accredited service and compensation under the Seller's Pension Plans as of the Closing Date. Buyer shall not amend the Buyer Pension Plans, or permit the Buyer Pension Plans to be amended, to eliminate any benefit, whether or not vested, that is a "Section 411(d)(6) protected benefit" (as defined by Section 411(d)(6) of the IRC and the regulations thereunder). Seller or an Affiliate thereof may, in its sole discretion on or prior to the transfer of liabilities, take action to fully vest Transferred Employees in their benefits (if any) under the Seller's Pension Plans.

(ii) (A) For purposes of eligibility and vesting under the Buyer Pension Plans, each Transferred Employee whose accrued benefit is transferred from a Seller's Pension Plan to a Buyer Pension Plan shall be credited with service and compensation as of the Closing Date as determined under the terms of the Seller's Pension Plan. The benefit under the Buyer Pension Plan for each Transferred Employee who, on the Closing Date, participates in the Seller's Hourly Pension Plan, shall be calculated under terms of the Buyer Pension Plan that are substantially identical in all material respects to the terms of the Seller's Hourly Pension Plan. The benefit for each Transferred Employee who, on the Closing Date, participates in the Seller's Salaried Pension Plan, shall not be less than the greater of (x) the sum of the Transferred Employee's "Seller's Pension" and "Buyer Pension," or (y) the Transferred Employee's "Total Service Pension," each as determined under the rules set forth in subsection (c)(iii)(B) of this Section 11.2.1.

(B) Each Transferred Employee who, as of the Closing Date, participates or formerly participated in the Seller's Salaried Pension Plan and who, under the terms of the Seller's Salaried Pension Plan, has at least 15 years of accredited service and combined years of age and accredited service of at least 74 as of June 1, 1999, shall be eligible, after the Transferred Employee's employment with the Buyer and its Affiliates is terminated and after the Transferred Employee's combined years of age and years of accredited service equal or exceed 76, to receive his or her "Seller's Pension" (as determined under the rules set forth in subsection (c)(iii) of this Section 11.2.1) as an immediate early retirement pension under the applicable Buyer Pension Plan in accordance with early retirement provisions that are no less favorable to the Transferred Employee than the early retirement provisions of the Seller's Salaried Pension Plan as of the Closing Date. For a period of at least five (5) years following June 1, 1999, Buyer shall cause the Buyer Pension Plan to retain early retirement provisions that are no less favorable to the Transferred Employees than the early retirement provisions of the Seller's Salaried Pension Plan to which they were subject as of the Closing Date; provided, however, that a Transferred Employee shall be entitled to consent to the provision to such Transferred Employee of a different and less favorable early retirement benefit.

(C) Notwithstanding the foregoing provisions of this sub-section (c) (ii), if a lump-sum distribution is available under the Buyer Pension Plan, the benefit under the Buyer Pension Plan of a GATT Grandfathered Participant, when expressed in the form of a lump sum, shall not be less than the benefit under the Buyer Pension Plan determined without regard to the changes to Section 417 of the IRC made by the Uruguay Round Agreements Act. The method used to convert a GATT Grandfathered Participant's accrued benefit into a lump-sum amount under the Buyer Pension Plan after 1999 shall be not less favorable to a GATT Grandfathered Participant than the method used for similar purposes by the Seller's Pension Plan. For purposes of this paragraph

(c)(ii)(C), "GATT Grandfathered Participant" shall mean a Transferred Employee

(x) with respect to whom liabilities are transferred pursuant to this subsection

(c) and (y) who, taking service from Buyer into account as service with Seller, would have been eligible under the Seller's Pension Plan, but for the transfer of liabilities pursuant to this subsection (c), to have his benefit under the Seller's Pension Plan (when expressed in the form of a lump sum) determined without regard to the changes to Section 417 of the IRC made by the Uruguay Round Agreements Act.

(D) For a period of five (5) years following June 1, 1999, Buyer shall cause the Buyer Pension Plan to retain early retirement provisions that are no less favorable to the Transferred Employees than the early retirement provisions of the Seller's Hourly Pension Plan to which they were subject as of the Closing Date; provided, however, that a Transferred Employee shall be entitled to consent to the provision to such Transferred Employee of a different and less favorable early retirement benefit.

(iii) (A) The Buyer Pension Plan benefit of a Transferred Employee who, on the Closing Date, participates in the Seller's Hourly Pension Plan, shall be calculated as set forth in paragraph (c)(ii)(a) of this Section 11.2.1.

(B) The Buyer Pension Plan benefit of a Transferred Employee who, on the Closing Date, participates in the Seller's Salaried Pension Plan, shall be calculated by applying the benefit formula set forth in paragraph

(c)(ii)(A) of this Section 11.2.1, in accordance with the rules described in the remainder of this paragraph (B). A Transferred Employee's "Seller's Pension" shall be calculated by applying the benefit formula under the Seller's Salaried Pension Plan (as in effect on the Closing Date) to the Transferred Employee's service and compensation credited under the Seller's Salaried Pension Plan as of the Closing Date. A Transferred Employee's "Buyer Pension" shall be not less than an amount calculated by applying the benefit formula under the Buyer Pension Plan to the Transferred Employee's total accredited service and compensation under the Buyer Pension Plan (including service and compensation credited under the Seller's Salaried Pension Plan as of the Closing Date as if such service and compensation had been earned under the Buyer Pension Plan and service and compensation credited under the Buyer Pension Plan after the Closing Date), multiplied by the ratio of accredited service earned after the Closing Date to such total accredited service; provided that for a period of at least five (5) years following June 1, 1999, Buyer shall cause the benefit formula used in determining such "Buyer Pension" to provide benefits at least as valuable as were provided under the benefit formula applicable to the Transferred Employee under the Seller's Salaried Pension Plan on the Closing Date. A Transferred Employee's "Total Service Pension" shall be calculated by applying the benefit formula under the Buyer Pension Plan to the Transferred Employee's accredited service (including service and compensation credited with the Seller under the Seller's Salaried Pension Plan as of the Closing Date as if such service and compensation was earned under the Buyer Pension Plan and service and compensation credited under the

Buyer Pension Plan on and after the Closing Date). Solely for purposes of computing a Transferred Employee's "Total Service Pension," compensation received by such a Transferred Employee from the Seller shall be treated as compensation received from the Buyer. The Seller's Pension, the Buyer Pension, and the Total Service Pension shall take into account the Transferred Employee's actual age and entire period of service (including service credited under the Seller's Salaried Pension Plan as of the Closing Date and service credited under the Buyer Pension Plan on and after the Closing Date) for vesting and benefit eligibility purposes.

(C) Each Transferred Employee who is eligible to receive a benefit under the Buyer Pension Plan may elect to receive the portion of said benefit that is equal to the Seller's Pension in any form, and with any early retirement or other actuarial subsidy, that was available under the Seller's Pension Plan on the Closing Date, without regard to whether the Transferred Employee is eligible to elect or receive, or does elect or receive, the same form of payment or early retirement or actuarial subsidy for the remainder of the pension under the Buyer Pension Plan.

(iv) As soon as practicable after the Closing Date, Seller shall deliver to Buyer a list reflecting each Transferred Employee's service and compensation under each of the Seller's Pension Plans and each Transferred Employee's accrued benefit thereunder as of the Closing Date.

(d) Transfer of Assets.

(i) In accordance with the provisions of subsection (d)(i) of this Section 11.2.1 and subject to the provisions of subsection (d)(vi) of this Section 11.2.1, Seller shall direct the trustee of the Seller's Pension Plans to transfer to the trustee or funding agent of the applicable Buyer Pension Plan an amount determined as provided in the following sentence (the "Pension Assets") with respect to the Transferred Employees whose accrued benefits are transferred to a Buyer Pension Plan pursuant to Section (c) of this Section 11.2.1. The value of the Pension Assets to be transferred by the Seller's Pension Plans shall be equal in value to the projected benefit obligation, as defined in paragraph 17 of Statement of Financial Accounting Standards No. 87 ("FAS 87"), under the Seller's Pension Plans for the Transferred Employees whose accrued benefits are transferred to a Buyer Pension Plan pursuant to Section (c) of this Section 11.2.1, determined in each case on an on-going plan basis as of the Closing Date, and on the basis of the assumptions used for the fiscal year which includes the Closing Date in Seller's determination of pension expense for the Seller's Pension Plans in accordance with FAS 87; provided, however, that in no event shall the value of the Pension Assets be less than the amount required to be transferred by Section 414(l) of the Code and the regulations thereunder, determined using the assumptions used by the PBGC with respect to a plan termination occurring on the Closing Date. The Pension Assets shall be in the form of cash or marketable obligations. Under no circumstances shall Seller or the Seller's Pension Plans be liable to transfer any additional amount to Buyer or a Buyer Pension Plan or any other person in respect of the accrued benefits transferred to a Buyer Pension Plan pursuant to Section (c) of this Section 11.2.1, including but not limited to any circumstance under which any person (including a governmental agency) states a claim to some portion or all of the Pension Assets.

(ii) Seller shall appoint an actuary ("Seller's Actuary") to determine the amount to be transferred pursuant to subsection (d)(i) of this Section 11.2.1 and shall provide such determination to Buyer. Buyer shall appoint an actuary ("Buyer's Actuary") who shall have the right to audit and review the determination made by Seller's Actuary. Within thirty (30) days of the date Seller inform Buyer of the amount of the Pension Assets, Seller's Actuary shall provide Buyer's Actuary with a computer file containing all the employee data used by Seller's Actuary to calculate the Pension Assets. If Buyer's Actuary is unable to agree with Seller's Actuary on the amount of the transfer within sixty (60) days after Seller inform Buyer of the amount to be transferred, Seller and Buyer shall jointly select a third actuary, whose determination shall be binding on Seller and Buyer. Each of Seller and Buyer shall bear the fees, costs and expenses of their respective actuaries, and the fees, costs, and expenses of the third actuary shall be borne one-half by Seller and one-half by Buyer.

(iii) The Pension Assets shall be credited with interest from the Closing Date to the actual date of transfer at the assumed discount rate used in accordance with paragraph (i) of this Section (d); provided that any Pension Assets that are distributed from the Seller's Pension Plans before the date of transfer pursuant to subsection (d)(vi) of this Section 11.2.1 shall be credited with interest (such interest to be credited to the Buyer Pension Plans) only from the Closing Date to the date of distribution.

(iv) Under the terms of each Buyer Pension Plan, the accrued benefit of each Transferred Employee immediately after the transfer of assets and liabilities pursuant to this Section 11.2.1 shall not be less than the sum of each Transferred Employee's accrued benefits under the Seller's Pension Plan and the Buyer Pension Plan immediately before the transfer of assets and liabilities. Neither Seller nor its Affiliates nor the Seller's Pension Plans nor any trustee thereof shall retain any liability for benefits under the Seller's Pension Plans for any Transferred Employee with respect to whom cash or marketable obligations have been transferred to a Buyer Pension Plan pursuant to this Section 11.2.1 or distributed pursuant to subsection (d)(vi) of this Section 11.2.1 (other than any additional liability that results from Seller's (or its Affiliates') failure to comply with this Agreement, the Seller's Pension Plan or applicable Law and that does not result from any failure of Buyer or its Affiliates to comply with this Agreement, the Buyer Pension Plan or applicable Law).

(v) In connection with the transfer of assets and liabilities pursuant to this Section 11.2.1, Seller and Buyer shall cooperate with each other in making all appropriate filings required by the IRC or ERISA and the regulations thereunder, and the transfer of assets and liabilities pursuant to this Section 11.2.1 shall not take place until as soon as practicable after the latest of (i) the expiration of the 30-day period following the filing of any required notices with the IRS pursuant to Section 6058(b) of the IRC, or (ii) the date Buyer has delivered to Seller (xx) a copy of the Buyer Pension Plan and a copy of the most recent determination letter from the IRS to the effect that the Buyer Pension Plan is qualified under Section 401(a) of the IRC, together with documentation reasonably satisfactory to Seller of the due adoption of any amendments to the Buyer Pension Plan required by the IRS as a condition to such qualification and a certification from Buyer that no events have occurred that adversely affect the continued validity of such determination letter (apart from the enactment of any Federal law for which the remedial amendment period under

Section 401(b) of the IRC has not yet expired), and (yy) information enabling the enrolled actuary for the Buyer Pension Plan to issue the certification required by Section 6058(b) of the IRC.

(vi) (A) If, after the Closing Date and before the date of transfer of assets and liabilities from the Seller's Pension Plans pursuant to this Section 11.2.1, the accrued benefit as of the Closing Date becomes payable under a Seller's Pension Plan to or with respect to a Transferred Employee, Buyer shall (xx) furnish GTE Service Corporation with a copy of a properly completed application for such benefits, and (yy) direct GTE Service Corporation to instruct the trustee of the Seller's Pension Plan to make benefit payments in the form and amount determined by GTE Service Corporation in accordance with the properly completed application for benefits. Seller shall cause GTE Service Corporation to comply with any such direction.

(B) To the extent that any reasonable custodial, trustee, asset management, or other plan administration expenses attributable to the Pension Assets and to the period ending on the date of the transfer of assets and liabilities from the Seller's Pension Plans pursuant to this Section 11.2.1 are allocable to the assets and liabilities to be so transferred, Buyer shall reimburse the trustee of the Seller's Pension Plans in the amount of such allocable expense if the expense is to be paid from assets then held by the trustee of the Seller's Pension Plans or, if the expense is not to be paid from assets then held by the trustee of the Seller's Pension Plans, Buyer shall reimburse GTE Service Corporation in the amount of the expense, in each case within fifteen (15) days of the date on which Buyer receives a statement therefor from GTE Service Corporation.

(C) Notwithstanding anything herein to the contrary, the assets and liabilities to be transferred from the trustee of the Seller's Pension Plans to the trustee or funding agent of the Buyer Pension Plan pursuant to this Section 11.2.1 shall be reduced, as provided in this subsection (vi), to reflect any benefit payments made pursuant to this subsection (vi) regardless of the form in which paid and any expenses described in paragraph (B) of this subsection (vi) that have not otherwise been paid pursuant to this subsection (vi).

#### 11.2.2 Savings Plans.

(a) As of the date of this Agreement, Seller participates in the GTE Savings Plan and the GTE Hourly Savings Plan (collectively referred to as the "Seller's Savings Plans"). Except as provided in Section (g) of this Section 11.2.2, Transferred Employees shall not be entitled to make contributions to or to benefit from matching or other contributions under the Seller's Savings Plans on and after the Closing Date.

(b) Buyer shall take all action necessary and appropriate to ensure that, as soon as practicable after the Closing Date, Buyer maintains or adopts one or more savings plans (hereinafter referred to in the aggregate as the "Buyer Savings Plans" and individually as the "Buyer Savings Plan") effective as of the Closing Date and to ensure that the Buyer Savings Plans satisfy the following requirements as of the Closing Date: (i) each Buyer Savings Plan is a qualified, single-employer individual account plan under Section 401(a) of the IRC; (ii) at least one (1) Buyer Savings Plan does not exclude Transferred Employees from eligibility to participate therein; (iii) at least one (1) Buyer Savings Plan permits Transferred Employees to make before-tax contributions (under Section 401(k) of the IRC) and provides for matching contributions by the Buyer at a rate of match determined solely in the discretion of Buyer; and (iv) the Buyer Savings Plan does not violate the requirements of any applicable collective bargaining agreement to which it is subject. Within the thirty (30) day period immediately preceding any transfer of assets and liabilities from a Seller's Savings Plan to a Buyer Savings Plan pursuant to this Section 11.2.2, Buyer shall provide Seller with a written certification, in a form acceptable to Seller, that the Buyer Savings Plan satisfies each of the requirements set forth in this Section (b).

(c) (i) Seller shall direct the trustee of the Seller's Savings Plans to transfer to the trustee or funding agent of the Buyer Savings Plan designated by Buyer an amount in cash equal in value to the account balances of the Transferred Employees covered by the Seller's Savings Plans as of the date of the transfer; provided that to the extent the account balances to be transferred consist in whole or in part of outstanding participant loans which comply with the provisions of the IRC and ERISA (the "Participant Loans"), Seller shall direct the trustee of the Seller's Savings Plans to transfer to the trustee or funding agent of the Buyer Savings Plans, in lieu of cash, the promissory notes and related documents evidencing such Participant Loans. Buyer and Seller shall take such actions as may be required to effect the assignment of such loans by the trustee of the Seller's Savings Plan to the trustee or funding agent of the Buyer Savings Plan, and Buyer shall cause the trustee or funding agent of the Buyer Savings Plan to accept the assignment of such Participant Loans.

(ii) After the date of the transfer of assets and liabilities pursuant to this Section 11.2.2, Buyer shall assume all liabilities for the benefits payable to or with respect to such Transferred Employees under the Seller's Savings Plans, and Seller and the Seller's Savings Plans and their implementing trust shall retain no liability for such benefits (other than any additional liability that results from Seller's (or its Affiliates') failure to comply with this Agreement, the Seller's Savings Plan or applicable Law and that does not result from any failure of Buyer or its Affiliates to comply with this Agreement, the Buyer Savings Plan or applicable Law).

(d) For purposes of eligibility and vesting under the Buyer Savings Plans, each Transferred Employee shall be credited with service as of the Closing Date as determined under the terms of the Seller's Savings Plans. As soon as practicable after the Closing Date, Seller shall cause GTE Service Corporation to deliver to Buyer a list of the Transferred Employees covered by the Seller's Savings Plans, together with each Transferred Employee's service under each of the Seller's Savings Plans as of the Closing Date.

(e) In connection with the transfer of assets and liabilities pursuant to this Section 11.2.2, Seller and Buyer shall cooperate with each other in making all appropriate filings required by the IRC or ERISA and the regulations thereunder, and the transfer of assets and liabilities pursuant to this Section 11.2.2 shall not take place until as soon as practicable after the latest of (i) the expiration of the thirty (30) day period following the filing of any required notices with the IRS pursuant to Section 6058(b) of the IRC, and (ii) the date Buyer has delivered to Seller (xx) a copy of the Buyer Savings Plan and a copy of the most recent

determination letter from the IRS to the effect that the Buyer Savings Plan is qualified under Sections 401(a) and 401(k) of the IRC, together with documentation reasonably satisfactory to Seller of the due adoption of any amendments to the Buyer Savings Plan required by the IRS as a condition to such qualification and a certification from Buyer that no events have occurred that adversely affect the continued validity of such determination letter (apart from the enactment of any Federal law for which the remedial amendment period under Section 401(b) of the IRC has not yet expired).

(f) As soon as practicable after the Closing Date, Seller shall cause GTE Service Corporation to deliver to Buyer a list of the Transferred Employees who have outstanding Participant Loans under the Seller's Savings Plans, together with copies of said Transferred Employees' notes, disclosure statements, and security agreements under the Seller's Savings Plans. Subject to obtaining the consent of the applicable Transferred Employee if required by law, from the Closing Date until the earliest of (i) the actual date of transfer of assets and liabilities pursuant to this Section 11.2.2; (ii) the full amortization of the Transferred Employee's indebtedness; (iii) the distribution of the entire balance of the Transferred Employee's accounts; or (iv) the last date on which Buyer or one of its Affiliates pays remuneration to the Transferred Employee, Buyer or its Affiliate shall (x) continue the payroll deductions pursuant to which each such Transferred Employee is discharging indebtedness to a Seller's Savings Plan and (y) remit the deducted funds to Fidelity Management Trust Company, the trustee of the Seller's Savings Plans, as soon as practicable, but in no event more than thirty (30) days, after the date of deduction, together with an accounting that identifies the Transferred Employees with respect to whom the funds were deducted and the amount deducted for each Transferred Employee. All such remitted funds shall be transferred to the appropriate Seller's Savings Plan and applied to reduce the appropriate Transferred Employee's outstanding indebtedness. Buyer's obligations under this Section (f) are limited to payroll deductions of Participant Loans repayments by the Transferred Employees and remittance of those funds, and nothing herein shall be construed to obligate Buyer to repay to Seller any portion of the outstanding indebtedness of the Transferred Employees that are not otherwise discharged by the Transferred Employees themselves.

(g) Seller shall make all required matching contributions with respect to the Transferred Employees' contributions to the Seller's Savings Plans that are (i) eligible for matching and (ii) made before, or relate to a period ending on or prior to, the Closing Date. Such matching contributions shall be made not later than the date on which all other matching contributions are made to the Seller's Savings Plans with respect to contributions made at the same time as the Transferred Employees' contributions.

#### 11.2.3 Welfare Plans.

(a) Buyer shall take all action necessary and appropriate to ensure that, as soon as practicable after the Closing Date, Buyer maintains or adopts, as of the Closing Date, one or more employee welfare benefit plans, including medical, health, dental, flexible spending account, accident, life, short-term disability, and long-term disability and other employee welfare benefit plans (including retiree medical and life) for the benefit of (i) the non-bargained Transferred Employees (the "Non-Union Welfare Plans") and (ii) the union-represented Transferred Employees in accordance with the provisions of applicable collective bargaining agreements (the "Bargained Welfare Plans"). The Non-Union Welfare Plans and the Bargained Welfare Plans are hereinafter referred to collectively as the "Buyer Welfare Plans." The Buyer Welfare Plans shall provide as of the Closing Date pre-retirement benefits to Transferred Employees (and their dependents and beneficiaries) that, in the aggregate, are comparable to the pre-retirement benefits to which they were entitled under the corresponding employee welfare benefit plans maintained by Seller on the Closing Date. For purposes of determining eligibility to participate in each Buyer Welfare Plan, each Transferred Employee shall be credited with service, determined under the terms of the corresponding welfare plans maintained by Seller on the Closing Date (hereinafter referred to collectively as the "Seller's Welfare Plans"). Any restrictions on coverage for pre-existing conditions or requirements for evidence of insurability under the Buyer Welfare Plans shall be waived for Transferred Employees, and Transferred Employees shall receive credit under the Buyer Welfare Plans for co-payments and payments under a deductible limit made by them and for out-of-pocket maximums applicable to them during the plan year of the Seller's Welfare Plan in accordance with the corresponding Seller's Welfare Plans. As soon as practicable after the Closing Date, Seller shall deliver to Buyer a list of the Transferred Employees who had credited service under a Seller's Welfare Plan, together with each such Transferred Employee's service, co-payment amounts, and deductible and out-of-pocket limits under such plan.

(b) (i) Except as otherwise provided in subsection (b)(ii) of this Section (b) or in an applicable collective bargaining agreement, Buyer shall provide or cause to be provided retiree medical, health, and life benefits to each Transferred Employee (or the dependents or beneficiaries of such Transferred Employee, as the case may be) under substantially comparable terms and conditions as apply to other comparable employees of Buyer, and Seller shall have no obligation to provide retiree medical, health and life benefits in respect of any Transferred Employee on or after the Closing Date.

(ii) Subject to Section 11.4 below, following the retirement from Buyer and its Affiliates or any successor thereof of a Transferred Employee who is not subject to a collective bargaining agreement as of the Closing Date, who has combined age and years of accredited service (within the meaning of the Seller's Pension Plan) as of June 1, 1999, equal to at least 66, and who as of his or her retirement has combined age and years of accredited service (within the meaning of the Seller's Pension Plan) equal to at least 76 and at least 15 years of accredited service (within the meaning of the Seller's Pension Plan) (a "Retired Non-Union Transferred Employee"), Seller shall provide or cause to be provided to each such Retired Nonunion Transferred Employee (and/or his or her dependents and beneficiaries) retiree medical, health, and life benefits under terms and conditions that are substantially identical to the terms and conditions under the corresponding programs offered by Seller to its similarly situated noncollectively bargained employees retiring as of the Closing Date; provided that nothing in this subsection (b)(ii) shall be construed to prevent any Retired Non-Union Transferred Employee (or his or her dependents or beneficiaries) from voluntarily relinquishing such benefits. Buyer shall reimburse Seller, in accordance with this subsection (b)(ii), for the cost of the retiree medical, health, and life coverage for which Seller are responsible and that Seller actually provide pursuant to this subsection (b)(ii). For each year for which Buyer is required to reimburse Seller under this subsection

(b)(ii), Buyer shall pay Seller annually in arrears, within 30 days after Seller provides a statement therefor to Buyer, (A) \$4,500 with respect to each Retired Non-Union Transferred Employee who has not yet attained age 65 during the year for which the payment is made and \$4,500 with

respect to each spouse who is covered with respect to a Retired Non-Union Transferred Employee and who has not yet attained age 65 during the year for which the payment is made, and (B) \$2,000 with respect to each Retired Non-Union Transferred Employee who has attained at least age 65 during the year for which the payment is made and \$2,000 with respect to each spouse who is covered with respect to a Retired Non-Union Transferred Employee and who has attained at least age 65 during the year for which the payment is made. No reimbursement shall be due with respect to any dependent, other than a spouse, covered with respect to a Retired Non-Union Transferred Employee. The reimbursement obligation for partial years shall be prorated based on the portion of the year covered by the obligation. Each Retired Non-Union Transferred Employee (or his or her dependent or beneficiary, as the case may be) who is provided benefits by Seller under this subsection (b)(ii) shall be required to pay to Seller any premium, contribution or other payment required under, and shall be subject to any co-payment or deductible required under, the terms of Seller's applicable retiree medical, health, or life benefit plan; to the extent that any amount constituting such a payment is deducted from any plan, program, or arrangement maintained by Buyer or one of its Affiliates or is otherwise paid to Buyer or one of its Affiliates by such person, Buyer shall cause such amount to be paid to Seller as soon as administratively practicable.

(iii) Benefits provided pursuant to subsection (b)(ii) of this

Section (b) shall take into account service with and compensation increases from Buyer on and after the Closing Date in the same manner as if such post-Closing Date service was performed with, or such compensation was provided by, Seller. Buyer shall provide Seller with such information as shall be required to implement the immediately preceding sentence.

(c) Buyer shall refer to GTE Service Corporation and GTE Service Corporation shall assume responsibility for any valid claim under a Seller's Welfare Plan for disability, medical, dental or other benefits made by a Transferred Employee on or after the Closing Date arising from a loss incurred on or before the Closing Date. Nothing in this Section 11.2.3 shall require Seller, any Affiliate of Seller, or the Seller's Welfare Plans to make any payment or to provide any benefit not otherwise provided by the terms of the Seller's Welfare Plans.

(d) Seller, Buyer, their respective Affiliates, and the Seller's Welfare Plans and the Buyer Welfare Plans shall assist and cooperate with each other in the disposition of claims made under the Seller's Welfare Plans pursuant to subsection (c) of this Section 11.2.3, and in providing each other with any records, documents, or other information within its control or to which it has access that is reasonably requested by any other as necessary or appropriate to the disposition, settlement, or defense of such claims.

(e) Except for GTE Flexible Reimbursement Plan (the "FRP") account balances described in Section 11.2.3(f), nothing in this Agreement shall require Seller or its Affiliates to transfer assets or reserves with respect to the Seller's Welfare Plans to Buyer or the Buyer Welfare Plans.

(f) As of the Closing Date, Seller shall cause the portion of the FRP applicable to Transferred Employees to be segregated into a separate component and all account balances of the Transferred Employees in the FRP shall be transferred to a flexible reimbursement plan that Buyer shall cause to be maintained for the duration of the calendar year in which the Closing Date occurs.

(g) On and for a period of at least three (3) years after the Closing Date, Transferred Employees not subject to a collective bargaining agreement shall be eligible for benefits under a Buyer severance or separation pay policy or plans that are the same as or comparable to the severance or separation pay policy benefits that are provided by Seller (or the applicable Affiliate, if the Transferred Employee is employed by an employer other than the Seller) or a Seller's Pension Plan as of the Closing Date. Buyer shall recognize the service of each such Transferred Employee with Seller and its Affiliates for eligibility, vesting, and benefit determinations under the Buyer severance or separation pay policy or plan. Transferred Employees subject to a collective bargaining agreement shall be eligible for severance or separation pay benefits in accordance with the terms of the applicable collective bargaining agreement.

### 11.3 Miscellaneous Benefits.

#### 11.3.1 Loans.

Buyer shall (i) obtain at its own expense newly executed payroll deduction authorization forms from all Transferred Employees to whom Seller has made outstanding education loans, mortgage loans, and relocation loans (excluding any Participant Loans under the Seller's Savings Plans), (ii) subject to obtaining the consent of the applicable Transferred Employee if required by law, continue the payroll deductions pursuant to which such Transferred Employees are discharging such indebtedness, and (iii) as soon as practicable, but in no event more than thirty (30) days, after the date of deduction, remit such funds (together with an accounting that identifies the Transferred Employees with respect to whom the funds were deducted and the amount deducted for each Transferred Employee) to Seller for application by Seller to the Transferred Employees' outstanding indebtedness. Buyer's obligation with respect to each respective Transferred Employee pursuant to the preceding sentence shall commence as of the Closing Date and continue until the earlier of the full amortization of the Transferred Employee's indebtedness or the last date on which Buyer or one of its Affiliates pays remuneration to the Transferred Employee. Seller shall not seek to accelerate, cancel or otherwise change the terms of any education loans, mortgage loans, or relocation loans made by Seller to such Transferred Employees, except in the case of a default by a Transferred Employee. Buyer's obligations under this Section 11.3.1 are limited to payroll deductions of loan repayments by the Transferred Employees and remittance of those funds and the related accounting, and nothing herein shall be construed to obligate Buyer to repay to Seller any portion of the outstanding indebtedness of the Transferred Employees that are not otherwise discharged by the Transferred Employees themselves; provided that, notwithstanding anything to the contrary in Article 12 of this Agreement or

Section 11.6 of this Agreement, Seller shall indemnify and hold harmless Buyer for all claims, demands, actions, proceedings, causes of action, liability, loss, cost, damage, and expense (including reasonable attorney's fees) in any way arising from or incurred as a result of Buyer's administration of the outstanding indebtedness or the payroll deduction authorization process as described above. All Transferred Employees with outstanding indebtedness as described in this Section 11.3.1 and the amount and nature of this indebtedness shall be identified on a



Schedule 11.3.1 to be prepared by Seller and submitted to Buyer before the Closing Date.

#### 11.3.2 Vacation.

(a) On or after the Closing Date, Buyer shall allow Transferred Employees to receive paid time off in the calendar year of the Closing for any unused vacation time accrued, with respect to the calendar year of the Closing, prior to the Closing Date. Except as provided in the following sentence, Seller and its Affiliates shall have no liability to Transferred Employees for the vacation payments described in this Section 11.3.2. Seller shall pay Transferred Employees any banked vacation on or before the Closing Date. Schedule 11.1 to be prepared by Seller and submitted to Buyer on or before the Closing Date shall list the accrued but unused vacation pay, as of the Closing Date, of each Transferred Employee for the calendar year in which the Closing Date occurs.

(b) For purposes of determining a Transferred Employee's eligibility for vacation under Buyer's vacation plan, a Transferred Employee shall be credited, as of the first day of the first calendar year that begins after the calendar year in which the Closing Date occurs, with service for the calendar year in which the Closing Date occurs in an amount equal to the aggregate of the Transferred Employee's service with both Seller and Buyer during the calendar year in which the Closing Date occurs.

(c) At the time of Closing, all vacation for Transferred Employees for the calendar year of Closing shall be prorated and the net liability shall be an adjustment to the Purchase Price (the "Vacation Proration Amount"). The adjustment shall be determined by crediting the Buyer with an amount equal to the accrued and unused vacation for Transferred Employees. In determining said net liability, Seller shall receive a credit against the total liability for any vacation used in excess of the accrued vacation for Transferred Employees as of the Closing Date.

#### 11.4 Employee Rights.

Nothing herein expressed or implied shall confer upon any employee of Seller or its Affiliates, or Buyer or its Affiliates, or upon any legal representative of such employee, or upon any collective bargaining agent, any rights or remedies, including any right to employment or continued employment for any specified period, of any nature or kind whatsoever under or by reason of this Agreement.

Nothing in this Agreement shall be deemed to confer upon any person (nor any beneficiary thereof) any rights under or with respect to any plan, program, or arrangement described in or contemplated by this Agreement, and each person (and any beneficiary thereof) shall be entitled to look only to the express terms of any such plan, program, or arrangement for his or her rights thereunder.

Nothing in this Agreement shall cause Buyer or its Affiliates, nor Seller or its Affiliates to have any obligation to provide employment or any employee benefits to any individual who is not a Transferred Employee or, except as otherwise provided in Section 11.1.2 with respect to employment agreements, to continue to employ any Transferred Employee for any period of time following the Closing Date.

#### 11.5 WARN Act Requirements.

On and after the Closing Date, Buyer shall be responsible with respect to Transferred Employees and their beneficiaries for compliance with the Worker Adjustment and Retraining Notification Act of 1988 and any other applicable Law, including any requirement to provide for and discharge any and all notifications, benefits, and liabilities to Transferred Employees and government agencies that might be imposed as a result of the consummation of the transactions contemplated by this Agreement or otherwise.

#### 11.6 Indemnification.

11.6.1 Indemnification of Seller. Notwithstanding anything to the contrary in Article 12 of this Agreement, Buyer shall indemnify and hold harmless Seller, its Affiliates, and their respective directors, officers, employees, agents, and assigns, and each employee benefit plan or arrangement maintained or contributed to by Seller or an Affiliate thereof (whether or not such plan or arrangement is an "employee benefit plan" within the meaning of Section 3(3) of ERISA) and its administrators, fiduciaries, and agents, from and against any and all claims, demands, actions, administrative or other proceedings, causes of action, liability, loss, cost, damage, and expense (including reasonable attorneys' fees) (i) in any way arising out of or incurred as a result of any action by Buyer, its Affiliates, their respective directors, officers, employees, or agents, the administrators or fiduciaries of any employee benefit plan maintained or contributed to by Buyer or an Affiliate thereof (whether or not such plan or arrangement is an "employee benefit plan" within the meaning of Section 3(3) of ERISA), or any of their successors, to change, reduce contributions to, terminate, fail to continue, fail to pay benefits under, or fail to manage or administer properly any employee benefit plan or arrangement (whether or not such plan or arrangement is an "employee benefit plan" within the meaning of Section 3(3) of ERISA) on or after the Closing Date, or (ii) in any way arising out of or incurred as a result of any action that is a breach of any the covenants, representations, warranties, or obligations of any such person under this Agreement.

11.6.2 Indemnification of Buyer. Notwithstanding anything to the contrary in Article 12 of the Agreement, Seller shall indemnify and hold harmless Buyer, its Affiliates, and their respective directors, officers, employees, agents, and assigns, and each employee benefit plan or arrangement maintained or contributed to by Buyer or an Affiliate thereof (whether or not such plan or arrangement is an "employee benefit plan" within the meaning of Section 3(3) of ERISA) and its administrators, fiduciaries, and agents, from and against any and all claims, demands, actions, administrative or other proceedings, causes of action, liability, loss, cost, damage, and expense (including reasonable attorneys' fees) (i) in any way arising out of

or incurred as a result of any action by Seller, its Affiliates, their respective directors, officers, employees, or agents, the administrators or fiduciaries of any employee benefit plan maintained or contributed to by Seller or an Affiliate thereof (whether or not such plan or arrangement is an "employee benefit plan" within the meaning of Section 3(3) of ERISA), or any of their successors, to change, reduce contributions to, terminate, fail to continue, fail to pay benefits under, or fail to manage or administer properly any employee benefit plan or arrangement (whether or not such plan or arrangement is an "employee benefit plan" within the meaning of Section 3(3) of ERISA) before, or relating to a period before, the Closing Date, or (ii) in any way arising out of or incurred as a result of any action that is a breach of any the covenants, representations, warranties, or obligations of any such person under this Agreement.

#### 11.7 Special Provisions For Certain Employees.

Any individual employed in or in association with the Business and whose primary work location is within the areas services by the Purchased Exchanges who as of the Closing Date either (i) is currently receiving long-term disability benefits under a long-term disability plan of the Seller or one of its Affiliates (the "Seller's LTD Plan"), (ii) has been approved for receipt of long-term disability benefits under the Seller's LTD Plan, or (iii) is receiving a disability pension under a Seller's Pension Plan (collectively, an "LTD Recipient") shall be treated as a Transferred Employee if and when the LTD Recipient recovers from his or her disabling condition and returns to active service with the Buyer. The term "LTD Recipients" shall include only those individuals described in the preceding sentence who are identified on Schedule 11.1.

Any Transferred Employee described in the preceding paragraph (whether or not identified on Schedule 11.1 as an "LTD Recipient") shall continue to receive benefits under Seller's LTD Plan (or, if applicable, a disability pension under a Seller's Pension Plan) after the Closing Date to the extent provided under Seller's LTD Plan (or the applicable Seller's Pension Plan). As long as such individual remains eligible to receive benefits under Seller's LTD Plan (or the applicable Seller's Pension Plan), the Buyer shall not be required to provide coverage or benefits to the individual under the employee benefit plans or programs maintained by the Buyer.

If any LTD Recipient recovers from his or her disabling condition, Seller shall have no obligation to offer or provide any employment to such LTD Recipient, and absent a legal or contractual right to reemployment and except as otherwise provided in Section 11.1, Buyer shall have no obligation to offer or provide any employment to such LTD Recipient. If an LTD Recipient who received disability benefits under the Seller's LTD Plan (or the applicable Seller's Pension Plan, as the case may be) returns to active service with the Buyer or one of its Affiliates, the LTD Recipient's period of disability covered under the Seller's LTD Plan (or the applicable Seller's Pension Plan, as the case may be) shall be treated as a period of service under the employee benefit plans and programs of the Buyer and its Affiliates to the same extent that the period of disability is treated as a period of service under the employee benefit plans and programs of Seller and its Affiliates.

### **ARTICLE 12**

#### **INDEMNIFICATION**

##### 12.1 Survival of Representations, Warranties and Covenants.

(a) The representations and warranties contained in Sections 8.1.6 and 8.2.6 will survive the Closing and remain in full force and effect indefinitely. The representations and warranties contained in Section 8.1.13 will terminate upon the expiration of the applicable statute of limitations. Each of the other representations and warranties contained in Article 8 will terminate, without further action, on the date which is (i) the later of one (1) year following the Closing Date, or (ii) the completion of Buyer's first audit cycle following the Closing Date, however, that such cycle is completed within fifteen (15) months following the Closing Date (in each case, the applicable date of expiration of such representations and warranties is referred to herein as an "Expiration Date").

(b) This Article 12 shall survive any termination of this Agreement and the Ancillary Agreements and the indemnification contained in this Article 12 shall survive the Closing and shall remain in effect (i) indefinitely, with respect to any Indemnifiable Claim related to the breach of any representation or warranty which pursuant to Section 12.1(a) survives indefinitely, (ii) indefinitely, with respect to any Indemnifiable Claim arising under Section 12.2(a)(iii) (Retained Liabilities) or 12.2(b)(iii) (Assumed Liabilities) and (iii) until the date Expiration Date for any Indemnifiable Claims that are not specified in any of the preceding clauses. Unless a claim for indemnification with respect to any alleged breach of any representation or warranty is asserted by notice given as herein provided that specifically identifies a particular breach and the underlying facts relating thereto, which notice is given within the applicable period of survival for such representation or warranty, such claim may not be pursued and is irrevocably waived after such time. Without limiting the generality or effect of the foregoing, no claim for indemnification with respect to any representation or warranty will be deemed to have been properly made except (i) to the extent it is based upon a Third Party Claim made or brought prior to the expiration of the survival period for such representation or warranty, or (ii) to the extent based on Indemnifiable Losses actually incurred, or after due inquiry, reasonably expected to be incurred, by an Indemnitee prior to the expiration of the survival period for such representation or warranty.

##### 12.2 Indemnification.

(a) Following the Closing and subject to the other sections of this Article 12 Seller will indemnify, defend and hold harmless Buyer and its Affiliates and their respective directors, officers, and agents from and against all Indemnifiable Losses relating to, resulting from or arising out of (i) any inaccuracy in any of the representations and warranties made by Seller in Section 8.1 of this Agreement, (ii) a breach by Seller of any covenant or agreement of Seller contained in this Agreement, and (iii) any of the Retained Liabilities.

(b) Following the Closing and subject to the other sections of this Article 12 Buyer will indemnify, defend and hold harmless Seller and its Affiliates and directors, officers, and agents from and against all Indemnifiable Losses relating to, resulting from or arising out of (i) any inaccuracy in any of the representations or warranties made by Buyer in Section 8.2 of this Agreement, (ii) a breach by Buyer of any covenant or agreement of Buyer contained in this Agreement, and (iii) any of the Assumed Liabilities.

(c) Payments made under this Section 12.2 shall be treated by Buyer and Seller as purchase price adjustments and Buyer and Seller shall file all Tax Returns consistent with such treatment. Notwithstanding anything to the contrary contained herein, Buyer shall not be indemnified or reimbursed for any Tax consequences arising from the receipt or accrual of an indemnity payment hereunder including any Tax consequences arising from adjustments to the basis of any asset resulting from an adjustment to the Purchase Price or any additional or reduced taxes resulting from any such basis adjustment.

### 12.3 Limitations on Liability.

(a) For purposes of this Agreement, (i) "Indemnification Payment" means any amount of Indemnifiable Losses required to be paid pursuant to this Agreement, (ii) "Indemnatee" means any person or entity entitled to indemnification under this Agreement, (iii) "Indemnifying Party" means any person or entity required to provide indemnification under this Agreement, and (iv) "Indemnifiable Losses" means any losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses and reasonable costs of investigation) actually incurred in connection with any actions, suits, demands, assessments, judgments and settlements, in any such case (x) reduced by (i) the amount of insurance proceeds recovered from any person or entity with respect thereto, and (ii) any Tax benefits to the Indemnatee as a result of the Indemnifiable Losses involved and (y) excluding any such losses, liabilities, damages, costs and expenses to the extent that the underlying liability or obligation is the result of any action taken or omitted to be taken by any Indemnatee. For purposes of this 12.3(a), the amount of any Tax benefits to the Indemnatee shall be deemed to be equal to the net present value amount of the reduction in federal, state and local income or franchise Taxes or the increase of a Tax loss or credit determined on the basis of the maximum marginal Tax rates in effect for the Taxable period when payment is made by the Indemnifying Party (regardless of whether the Indemnatee realizes or will realize an actual reduction in federal, state or local income or franchise Taxes).

(b) Notwithstanding anything to the contrary contained in this Agreement, if the Closing occurs, (i) no claim for indemnification may be asserted under

Section 12.2(a)(i) or Section 12.2(a)(ii) with respect to any matter (x) known to Buyer on or before the date of this Agreement, or (y) after the date of this Agreement and on or before the Closing Date to the extent that such matter became known to Buyer prior to Closing and Buyer did not provide timely notice to Seller of the existence of such claim or condition in accordance with Section 10.2(c), and (ii) no claim for indemnification may be asserted under Section 12.2(b)(i) or Section 12.2(b)(ii) with respect to any matter discovered by or known to Seller on or before the date of this Agreement.

(c) As between Seller and any Affiliate of Seller, on the one hand, and Buyer and any Affiliate of Buyer, on the other hand, the remedies, rights and obligations set forth in this Article 12, Sections 10.1.2, 11.2.2, 11.7, 13.3 and the Ancillary Agreements will be the exclusive remedies, rights and obligations with respect to the liabilities and obligations referred to in Section 12.2 and any breach of the representations, warranties or covenants set forth in this Agreement. Without limiting the foregoing, as a material inducement to entering into this Agreement, to the fullest extent permitted by law, each of the parties waives any claim or cause of action that it otherwise might assert, and any breach of the representations, warranties or covenants set forth in this Agreement, except for claims or causes of action brought under and subject to the terms and conditions of this Article 12 and Sections 10.1.2, 11.7 and 13.3, and claims based on common law fraud.

(d) Notwithstanding any other provision of this Agreement or of any applicable Law, no Indemnatee will be entitled to make a claim against an Indemnifying Party under Sections 11.2.2, 11.7, 12.2(a)(i), 12.2(a)(ii), 12.2(b)(i) or 12.2(b)(ii) until:

(i) the aggregate amount of Indemnifiable Losses incurred by the Indemnatee for any individual occurrence giving rise to such Indemnifiable Losses exceeds \$25,000, and

(ii) the aggregate amount of claims that may be asserted for such Indemnifiable Losses pursuant to Section 12.3(d)(i) exceeds an amount equal to two percent (2%) of the Purchase Price, but only to the extent such amount, if any, (a) exceeds an amount equal to two percent (2%) of the Purchase Price, or in the case of claims for breaches of Section 8.1.19 only, exceeds an amount equal to \$2,400,000 (provided that Indemnifiable Losses with respect to breaches of Section 8.1.19 shall be payable as Indemnifiable Losses in excess of the \$2,400,000 basket or the two percent (2%) basket, but not both), and (b) is less than the amount set forth in Section 12.3(e).

(e) Notwithstanding any other provision of this Agreement, the indemnification obligations of Seller under Section 12.2(a) (except with respect to indemnification for inaccuracies of the representations contained in Sections 8.1.1 through 8.1.6) or the indemnification obligation of Buyer under Section 12.2(b) will not exceed the amount of an amount equal to ten percent (10%) of the Purchase Price respectively, after subtracting the floor amount specified in Section 12.3(d)(ii).

(f) No Indemnifying Party shall be liable to or obligated to indemnify any Indemnatee hereunder for any consequential, special, multiple, punitive or exemplary damages including, but not limited to, damages arising from loss or interruption of business, profits, business opportunities or goodwill, loss of use of facilities, loss of capital, claims of customers, or any cost or expense related thereto, except to the

extent such damages have been recovered by the Indemnifying Party under its insurance or have been received by a third person and are the subject of a Third Party Claim for which indemnification is available under the express terms of this Section 12.

(g) Notwithstanding anything in this Agreement to the contrary, Seller shall not be liable to or obligated to indemnify Buyer or any other Indemnitee hereunder for any claim that any of Seller's representations or warranties in Section 8.1 is inaccurate, or that any covenant has been breached, if such claim is predicated on any action by a Governmental Authority (other than a Tax authority) undertaken after Closing or any action a Governmental Authority (other than a Tax authority) requires Seller to undertake after Closing.

(h) From the date hereof through the Expiration Date, Buyer shall not be eligible to seek indemnification from Seller with respect to any resulting Indemnifiable Losses, and shall indemnify Seller from any losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses and reasonable costs of investigation) actually incurred in connection with any resulting actions, suits, demands, assessments, judgments and settlements in the event that Buyer, without the prior written consent of Seller: (i) undertakes any environmental remediation activity with respect to any Owned Real Property; or (ii) contacts, or causes or permits any of its subsidiaries, affiliates, agents, employees, officers or directors to contact on its behalf, any Governmental Authority for the purpose of initiating any investigation or inquiry as to the compliance by Seller with Environmental Requirements with respect to the Owned Real Property, except in each case as is required to comply with applicable Environmental Requirements.

(i) Seller and Buyer shall cooperate with each other with respect to resolving any claim or liability with respect to which one party is obligated to indemnify the other party hereunder, including by making commercially reasonable efforts to mitigate or resolve any such claim or liability.

#### 12.4 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion of any claim or of the commencement of any action or proceeding by any entity that is not a party to this Agreement or an Affiliate of such a party (a "Third Party Claim") against such Indemnitee, with respect to which an Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnitee will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than ten (10) calendar days after receipt of notice of such Third Party Claim; provided, however, that the failure of the Indemnitee to notify the Indemnifying Party shall only relieve the Indemnifying Party from its obligation to indemnify the Indemnitee pursuant to this Article 12 to the extent that the Indemnifying Party is materially prejudiced by such failure (whether as a result of the forfeiture of substantive rights or defenses or otherwise). Upon receipt of notification of a Third Party Claim, the Indemnifying Party shall be entitled, upon written notice to the Indemnitee, to assume the investigation and defense thereof with counsel reasonably satisfactory to the Indemnitee. Whether or not the Indemnifying Party elects to assume the investigation and defense of any Third Party Claim, the Indemnitee shall have the right to employ separate counsel and to participate in the investigation and defense thereof; provided, however, that the Indemnitee shall pay the fees and disbursements of such separate counsel unless (i) the employment of such separate counsel has been specifically authorized in writing by the Indemnifying Party, (ii) the Indemnifying Party has failed to assume the defense of such Third Party Claim within reasonable time after receipt of notice thereof with counsel reasonably satisfactory to such Indemnitee, or (iii) the named parties to the proceeding in which such claim, demand, action or cause of action has been asserted include both the Indemnifying Party and such Indemnitee and, in the reasonable judgment of counsel to such Indemnitee, there exists one or more defenses that may be available to the Indemnitee that are in conflict with those available to the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party shall not be liable for the fees and disbursements of more than one counsel for all Indemnified Parties in connection with any one proceeding or any similar or related proceedings arising from the same general allegations or circumstances. Without the prior written consent of the Indemnitee, the Indemnifying Party will not enter into any settlement of any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnitee unless such settlement includes as an unconditional term thereof the release of the Indemnitee from all liability in respect of such Third Party Claim. If a settlement offer solely for money damages is made by the applicable third party claimant, and the Indemnifying Party notifies the Indemnitee in writing of the Indemnifying Party's willingness to accept the settlement offer and pay the amount called for by such offer without reservation of any rights or defenses against the Indemnitee, the Indemnitee may continue to contest such claim, free of any participation by the Indemnifying Party, and the amount of any ultimate liability with respect to such Third Party Claim that the Indemnifying Party has an obligation to pay hereunder shall be limited to the lesser of (A) the amount of the settlement offer that the Indemnitee declined to accept plus the Losses of the Indemnitee relating to such Third Party Claim through the date of its rejection of the settlement offer or (B) the aggregate Losses of the Indemnitee with respect to such claim.

(b) Any claim by an Indemnitee on account of an Indemnifiable Loss that does not result from a Third Party Claim (a "Direct Claim") will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after the receipt of notice thereof, and the Indemnifying Party will have a period of thirty (30) calendar days within which to respond in writing to such Direct Claim. If the Indemnifying Party does not so respond within such thirty (30) calendar day period, the Indemnifying Party will be deemed to have rejected such claim, in which event the Indemnitee will be free to pursue such remedies as may be available to the Indemnitee on the terms and subject to the provisions of this Article 12.

(c) If after the making of any Indemnification Payment the amount of the Indemnifiable Loss to which such payment relates is reduced by recovery, settlement or otherwise under any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other entity, the amount of such reduction (less any costs, expenses, premiums or taxes incurred in connection therewith) will promptly be repaid by the Indemnitee to the Indemnifying Party. Upon making any Indemnification Payment, the Indemnifying Party will, to the extent of such Indemnification Payment, be subrogated to all rights of the Indemnitee against any third party that is not an Affiliate of the Indemnitee in respect of the Indemnifiable Loss to which the Indemnification Payment relates; provided that (i) the Indemnifying Party shall then be in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, all claims of the Indemnifying Party against any such third party on account of said Indemnification Payment will be

subrogated and subordinated in right of payment to the Indemnatee's rights against such third party. Without limiting the generality or effect of any other provision of this Article 12, each such Indemnatee and Indemnifying Party will duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

## **ARTICLE 13**

### **TERMINATION**

13.1 Termination Rights. This Agreement may be terminated at any time prior to the Closing Date:

(a) at any time by mutual written consent of the parties;

(b) by Buyer if any of the conditions provided in Section 6.1 of this Agreement have not been met within eighteen (18) months after execution of this Agreement and have not been waived by Buyer;

(c) by Seller if any of the conditions provided in Section 6.2 of this Agreement have not been met within eighteen (18) months after execution of this Agreement and have not been waived by Seller; or by Seller if any obligations of Buyer provided in Article 3 become incapable of being fulfilled.

13.2 Good Faith Performance. Neither party shall be entitled to exercise any right of termination pursuant to subsection 13.1(b), (c) or (d) above if such party shall not have performed diligently and in good faith the obligations required to be performed by such party hereunder prior to the date of termination.

13.3 Effect of Termination.

(a) If this Agreement is terminated as a result of a Material Adverse Effect or Section 13.1(a), this Agreement shall be of no further force and effect and there shall be no further liability hereunder (except the obligations under the Confidentiality Agreement and the liability for breach of such obligations) on the part of either party or their respective Affiliates, directors, officers, shareholders, agents or other representatives.

(b) If this Agreement is terminated by Buyer pursuant to Section 13.1(b), this Agreement shall be of no further force and effect and there shall be no further obligations or liability hereunder (except the obligations under the Confidentiality Agreement and the liability for breach of such obligations) on the part of either party or their respective Affiliates, directors, officers, shareholders, agents or other representatives; provided, however, that (i) in the event that such termination is the result of one or more Seller's willful or negligent failure to fulfill its conditions to Closing under Section 6.1 and Buyer has fulfilled its conditions to Closing under Section 6.2, and Seller has failed to cure such non-performance within a reasonable period after notice from Buyer, then Seller shall pay Buyer liquidated damages in an amount equal to the Deposit, and (ii) Seller shall promptly refund the Deposit following such termination. Payment of the amount of the Deposit by Seller as liquidated damages and return of the Deposit to Buyer shall be Buyer's sole and exclusive remedy. Seller shall promptly pay such amount to Buyer in immediately available funds following such termination. Notwithstanding anything herein to the contrary, in no event shall any act or omission of Seller in connection with the Merger be deemed to be a breach of the terms and conditions of this Agreement for purposes of this Section 13.3(b).

(c) If this Agreement is terminated by Seller pursuant to Section 13.1(c) or

(d), this Agreement shall be of no further force and effect and there shall be no further obligations or liability hereunder (except the obligations under the Confidentiality Agreement and the liability for breach of such obligations) on the part of either party or their respective Affiliates, directors, officers, shareholders, agents or other representatives; provided, however, that Seller shall be entitled to retain the Deposit as liquidated damages as Seller's sole and exclusive remedy if such termination is (i) the result of Buyer's willful or negligent failure to fulfill its conditions to Closing under Section 6.2 and Seller has fulfilled its condition to Closing under Section 6.1, and Buyer has failed to cure such non-performance within a reasonable period after notice from Seller, or (ii) the result of Buyer's incapacity to fulfill its obligations under Article 3.

(d) Upon any termination of the Agreement, each of the parties shall promptly comply with the obligations of the Confidentiality Agreement regarding return or destruction of Evaluation Material of the other party. Notwithstanding anything to the contrary contained herein, the provisions of this Section 13.3 and of Sections 14.1, 14.2, 14.3, 14.8, 14.11, 14.13 and 14.14, shall survive any termination of this Agreement.

## **ARTICLE 14**

### **MISCELLANEOUS**

14.1 Notices. All notices and other communications required or permitted hereunder shall be in writing and, unless otherwise provided in this Agreement, will be deemed to have been given when delivered in person or dispatched by electronic facsimile transfer (confirmed in writing by certified mail, concurrently dispatched) or one business day after having been dispatched for next-day delivery by a nationally recognized overnight courier service to the appropriate party at the address specified below:

(a) If to Buyer, to:

Spectra Communications Group LLC 3190 NE Expressway, Suite 220 Atlanta, GA 30341  
Facsimile No.: (770) 455-1866 Attention: Dorothy D. Rollins President

With a copy to:

CenturyTel, Inc.  
100 Century Park Drive Monroe, LA 71203  
Facsimile No.: 318-388-9488 Attention: R. Stewart Ewing, Jr.

Executive Vice President and  
Chief Financial Officer

Stacey W. Goff  
General Counsel's Office

William R. Boles, Jr.  
Boles, Boles & Ryan  
1805 Tower Drive  
Monroe, LA 71201

Facsimile No.: 318-329-9150

(b) If to Seller, to:

William M. Edwards, III Vice President - Property Repositioning 600 Hidden Ridge, HQE02J27 Irving, TX 75038  
Facsimile No. (972) 719-7062

With a copy to:

Dale R. Chamberlain  
Legal Counsel - Property Repositioning 600 Hidden Ridge, HQE02J34 Irving, TX 75038  
Facsimile No. (972) 719-7162

or to such other address or addresses as any such party may from time to time designate for itself by like notice.

14.2 Information Releases. The parties shall consult with each other (and allow the other party notice, and a reasonable time to comment) in preparing any employee announcement, press release, public announcement, news media response or other form of release of information concerning this Agreement or the transactions contemplated hereby that is intended to provide such information to the employees generally, news media or the public. Neither party shall issue or cause the publication of any press release, public announcement or media response without the prior written consent of the other party; provided, however, that, after allowing the other party notice and a reasonable time to comment prior to issuance, nothing herein will prohibit either party from making an employee announcement, or issuing or causing publication of any press release, public announcement or media response to the extent that such action is required by applicable Law or the rules of any national stock exchange applicable to such party or its Affiliates.

14.3 Expenses. Whether or not the transactions contemplated hereby are consummated and except as otherwise expressly provided herein, each party will pay any expenses (including attorneys' fees) incurred by it incidental to this Agreement and in consummating the transactions provided for herein.

14.4 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but is not assignable or delegable by any party without the prior written consent of the other party; provided, that (i) Seller may assign this Agreement to an Affiliate of Seller without the consent of Buyer including, on and after the closing of the Merger, the ultimate parent entity of the successor corporation to such merger or any entity controlled thereby and (ii) Buyer may assign its rights under this Agreement to one or more wholly-owned subsidiaries, provided that Buyer shall remain responsible for all of its obligations under this Agreement.

14.5 Amendments. This Agreement may be amended or modified only by a subsequent writing signed by authorized representatives of both parties.

14.6 Captions. The captions set forth in this Agreement are for convenience only and shall not be considered as part of this Agreement, nor as in any way limiting or amplifying the terms and provisions hereof.

14.7 Entire Agreement. The term "Agreement" shall mean collectively this document, the Schedules hereto and any agreements expressly

incorporated herein. This Agreement supersedes and revokes any prior discussions and representations, other agreements, commitments, arrangements or understandings of any sort whatsoever, whether oral or written, that may have been made or entered into by the parties relating to the matters contemplated hereby, except the Confidentiality Agreement. This Agreement, the Confidentiality Agreement and the Ancillary Documents constitute the entire agreement by and among the parties with respect to the subject matter hereof, and there are no representations, warranties, agreements, commitments, arrangements or understandings except as expressly set forth herein.

14.8 Waiver. Except as otherwise expressly provided in this Agreement, neither the failure nor any delay on the part of any party to exercise any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or waiver of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege available to each party at law or in equity.

14.9 Third Parties. Except as expressly provided herein, nothing contained in this Agreement is intended to confer upon any Person, other than the parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

14.10 Counterparts. This Agreement may be executed in two or more counterparts, any or all of which shall constitute one and the same instrument.

14.11 Governing Law. This Agreement and the Ancillary Agreements shall in all respects be governed by and construed in accordance with the laws of the State of New York (except that no effect shall be given to any conflicts of law principles of the State of New York that would require the application of the laws of any other jurisdiction). The parties irrevocably submit to the exclusive jurisdiction of any Missouri District Court or any Federal Court located in Missouri for purposes of any suit, action or other proceeding arising out of this Agreement, the Ancillary Agreements or any transaction contemplated hereby or thereby. The parties agree that service of process, summons or notice or document by U.S. registered mail to such party's respective address set forth in Section 14.1 shall be effective service of process for any action, suit or proceeding in Missouri with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. The parties hereto irrevocably and unconditionally waive trial by jury in any legal action or proceeding relating to this Agreement or any other agreement entered into in connection therewith and for any counterclaim with respect thereto. In the event of any breach of the provisions of this Agreement or any other agreement entered into in connection therewith, the non-breaching party shall be entitled to equitable relief, including in the form of injunctions and orders for specific performance, where the applicable legal standards for such relief in such courts are met, in addition to all other remedies available to the non-breaching party with respect thereto at law or in equity.

14.12 Further Assurances. From time to time, as and when requested by one of the parties, the other party will use its commercially reasonable efforts to execute and deliver, or cause to be executed and delivered, all such documents and instruments as may be reasonably necessary or appropriate, in the reasonable opinion of counsel for Seller and Buyer, to consummate and make effective the transactions contemplated by this Agreement.

14.13 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Authority, the remaining provisions of this Agreement to the extent permitted by Law shall remain in full force and effect provided that the essential terms and conditions of this Agreement for both parties remain valid, binding and enforceable and provided that the economic and legal substance of the transactions contemplated is not affected in any manner materially adverse to any party. In the event of any such determination, the parties agree to negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes hereof. To the extent permitted by Law, the parties hereby to the same extent waive any provision of Law that renders any provision hereof prohibited or unenforceable in any respect.

14.14 Representation by Counsel; Interpretation. Seller and Buyer each acknowledge that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of Buyer and Seller.

Intentionally left blank.

IN WITNESS WHEREOF, the parties, acting through their duly authorized agents, have caused this Agreement to be duly executed and delivered as of the date first above written.

**GTE MIDWEST INCORPORATED SPECTRA COMMUNICATIONS GROUP LLC**

By:    /s/ William M. Edwards, III  
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By:       /s/ Dorothy D. Rollins  
-----

Name:   William M. Edwards, III  
-----

Name:   Dorothy D. Rollins  
-----

Title:   Vice President-  
          Property Repositioning

Title:   Chairman



**ASSET PURCHASE AGREEMENT**

This is the first amendment to the Asset Purchase Agreement ("Agreement") by and among Spectra Communications Group, LLC, ("Buyer"), and GTE Midwest Incorporated ("Seller") dated July 8, 1999, as amended by a Supplemental Agreement dated January 19, 2000.

**RECITALS**

WHEREAS, Buyer and Seller have determined that it is in their interests to amend the Agreement and they desire to set forth in this document the terms and conditions of said amendments;

THEREFORE, in consideration of the mutual covenants herein expressed, the parties hereby agree to amend the Agreement as follows:

1. Section 3.1 is amended by deleting from the second and third lines thereof the words and figures "Two Hundred Ninety Million Dollars (\$290,000,000)" and inserting in lieu thereof the words and figures "Two Hundred Eighty-Nine Million Dollars (\$289,000,000)."
2. Section 1.1 of the Agreement is hereby amended by adding a new definition "Waived Claims" which means any claim or potential claim that Buyer or its successors, assigns, or lenders may now or in the future have that Seller has violated, breached or otherwise not performed any of Seller's obligations under any provision of the Agreement, if (i) such claims or potential claims are related to obligations under the Communications Assistance to Law Enforcement Act ("CALEA"), or (ii) such claims or potential claims are related to data from Seller's MARK system, or (iii) the facts or circumstances which are the basis for such claim or potential claim occurred on or before July 10, 2000, and the Buyer or any of their employees, officers, directors, investors or agents had knowledge on or before July 10, 2000 of the facts or circumstances which are the basis for such claim or potential claim.
3. Subsection 5.2.1 of the Agreement is hereby amended by adding the following as new Sub-subsection (h):  
  
(h) Notwithstanding any other provision of this Agreement, Buyer hereby waives for all purposes other than fraud and releases Seller from all liability and responsibility in respect of all Waived Claims arising pursuant to subsection 5.2.1 (a) through (g).
4. Subsection 5.2.2 of the Agreement is hereby amended by adding the following as new Sub-subsection (g):  
  
(g) Notwithstanding any other provision of this Agreement, Buyer hereby waives for all purposes other than fraud and releases Seller from all liability and responsibility in respect of all Waived Claims arising pursuant to subsections 5.2.2 (a) through (f).
5. Section 8.3, entitled "Certain Waived Claims," is hereby added to and made a part of the Agreement.  
  
8.3 Certain Waived Claims. Notwithstanding any other provision of this Agreement, Buyer waives for all purposes other than fraud and releases Seller from all liability and responsibility in respect of all Waived claims arising pursuant to Section 8.1.
6. Subsection 12.3(j) is hereby added to and made a part of the Agreement:  
  
(j) Buyer acknowledges and agrees that none of the Waived Claims shall be an Indemnifiable Loss as defined in the Agreement and no Waived Claims or any portion of the reduction in the Base Purchase Price set forth in paragraph 1 of this Amendment shall constitute an amount claimed against Seller as an Indemnifying Party pursuant to the provisions of Section 12.3(d) of the Agreement. Seller acknowledges and agrees that none of the Waived Claims or any portion of the reduction in the Base Purchase Price set forth in paragraph 1 of this Amendment shall be credited against the amount of the indemnification obligations of the Seller set forth in Section 12.3(e) of the Agreement.

In all other respects, the Agreement remains unchanged and in full force and effect in accord with its terms.

This Amendment shall become effective upon execution by the parties.

**Executed this 31st day of July, 2000.**

**GTE MIDWEST INCORPORATED**

By:     /s/ William M. Edwards, III  
-----  
Name:   William M. Edwards, III  
-----  
Title:   Vice President - Property Repositioning

**SPECTRA COMMUNICATIONS GROUP, LLC**

By:    /s/ Dorothy D. Rollins  
-----  
Name:  Dorothy D. Rollins  
-----  
Title:  President

\$1,500,000,000

**REVOLVING CREDIT FACILITY AGREEMENT**

**Dated as of**

July 31, 2000

among

**CENTURYTEL, INC.,**

**THE LENDERS NAMED HEREIN,**

and

**BANK OF AMERICA, N.A.,**

as Administrative Agent,

CITIBANK, N.A., as Syndication Agent,

and

**BANC OF AMERICA SECURITIES LLC**

and

**SALOMON SMITH BARNEY INC.,**

**as Joint Lead Arranger\ and Joint Book Managers**

# TABLE OF CONTENTS

	Page
SECTION 1. DEFINITIONS	1
1.1 Certain Defined Terms.....	1
1.2 Number and Gender of Words.....	13
1.3 Accounting Principles.....	13
SECTION 2. FACILITIES	14
2.1 Facility A Commitments.....	14
2.2 Facility B Commitments.....	14
2.3 Extension of Facility A Termination Date.....	14
2.4 Borrowing Procedure.....	16
2.5 Conversions.....	16
2.6 Commitment Fees.....	17
2.7 Optional Termination and Reduction of Commitments.....	17
2.8 Loans.....	18
2.9 Notes.....	19
2.10 Interest on Loans.....	19
2.11 Interest on Overdue Amounts.....	20
2.12 Alternate Rate of Interest for Eurodollar Loans.....	20
2.13 Mandatory and Optional Prepayment of Loans.....	20
2.14 Reserve Requirements; Change in Circumstances.....	21
2.15 Change in Legality.....	23
2.16 INDEMNITY.....	24
2.17 Pro Rata Treatment.....	25
2.18 Sharing of Setoffs.....	25
2.19 Payments .....	26
2.20 Calculation of Eurodollar Rate.....	27
2.21 Booking Loans.....	27
2.22 Quotation of Rates.....	27
SECTION 3 REPRESENTATIONS AND WARRANTIES	27
3.1 Purpose of Credit Facility.....	27
3.2 Corporate Existence, Good Standing, and Authority.....	28
3.3 Subsidiaries.....	28
3.4 Financial Statements.....	28
3.5 Compliance with Laws, Charter, and Agreements.....	28
3.6 Litigation.....	29
3.7 Taxes.....	29
3.8 Environmental Matters.....	29
3.9 Employee Benefit Plans.....	29
3.10 Properties; Liens.....	29
3.11 Holding Company and Investment Company Status.....	29
3.12 Transactions with Affiliates.....	30
3.13 Leases.....	30
3.14 Labor Matters.....	30
3.15 Insurance.....	30
3.16 Solvency .....	30
3.17 Business .....	30
3.18 General .....	30
SECTION 4 CONDITIONS PRECEDENT	30
4.1 Initial Loan.....	30
4.2 Acquisition Loans.....	31
4.3 Each Loan.....	31
4.4 Materiality of Conditions.....	32
4.5 Waiver of Conditions.....	32
SECTION 5 COVENANTS	32
5.1 Use of Proceeds.....	32
5.2 Books and Records.....	32
5.3 Items to be Furnished.....	32
5.4 Inspection.....	33
5.5 Taxes .....	33
5.6 Payment of Obligations.....	34
5.7 Expenses .....	34
5.8 Maintenance of Existence, Assets, Business, and Insurance.....	34
5.9 Preservation and Protection of Rights.....	34
5.10 Employee Benefit Plans.....	34
5.11 Liens .....	34
5.12 Restricted Payments.....	35
5.13 [Intentionally Omitted].....	35
5.14 Acquisitions, Mergers, and Dissolutions.....	35
5.15 Loans, Advances, and Investments.....	35

5.16	Transactions with Affiliates.....	36
5.17	Sale of Assets.....	36
5.18	Compliance with Laws and Documents.....	36
5.19	New Businesses.....	36
5.20	Assignment.....	36
5.21	Fiscal Year and Accounting Methods.....	37
5.22	Holding Company and Investment Company Status.....	37
5.23	Environmental Laws.....	37
5.24	Environmental Indemnification.....	37
5.25	Financial Covenants.....	37
SECTION 6	DEFAULT	38
6.1	Payment of Obligation.....	39
6.2	Covenants.....	39
6.3	Debtor Relief.....	39
6.4	Attachment.....	39
6.5	Payment of Judgments.....	39
6.6	Default Under Other Agreements.....	40
6.7	Antitrust Proceedings.....	40
6.8	Misrepresentation.....	40
6.9	Change in Control.....	40
6.10	ERISA .....	41
6.11	Validity and Enforceability of Loan Documents.....	41
SECTION 7	RIGHTS AND REMEDIES	41
7.1	Remedies Upon Event of Default.....	41
7.2	Waivers .....	42
7.3	Performance by Administrative Agent.....	42
7.4	Delegation of Duties and Rights.....	42
7.5	Lenders Not in Control.....	42
7.6	Waivers by Lenders.....	42
7.7	Cumulative Rights.....	42
7.8	Application of Proceeds.....	43
7.9	Certain Proceedings.....	43
7.10	Setoff .....	43
SECTION 8	AGREEMENT AMONG LENDERS	43
8.1	Agents .....	43
8.2	Expenses .....	45
8.3	Proportionate Absorption of Losses.....	45
8.4	Delegation of Duties; Reliance.....	45
8.5	Limitation of Liability.....	46
8.6	Default .....	47
8.7	Limitation of Liability of Lenders.....	47
8.8	Relationship of Lenders.....	47
8.9	Foreign Lenders.....	47
8.10	Benefits of Agreement.....	48
SECTION 9	MISCELLANEOUS	48
9.1	Changes in GAAP.....	48
9.2	Money and Interest.....	48
9.3	Number and Gender of Words.....	48
9.4	Headings .....	48
9.5	Exhibits .....	49
9.6	Communications.....	49
9.7	Form and Number of Documents.....	49
9.8	Exceptions to Covenants.....	49
9.9	Survival .....	49
9.10	Governing Law.....	49
9.11	VENUE; SERVICE OF PROCESS; JURY TRIAL.....	49
9.12	Maximum Interest Rate.....	50
9.13	Invalid Provisions.....	50
9.14	Entire Agreement.....	50
9.15	Amendments, Etc.....	51
9.16	Waivers .....	51
9.17	Taxes .....	51
9.18	Governmental Regulation.....	51
9.19	Multiple Counterparts.....	51
9.20	Successors and Assigns; Participations; Assignments.....	52
9.21	Confidentiality.....	53
9.22	Conflicts and Ambiguities.....	54
9.23	General Indemnification.....	54
9.24	Investment Representation.....	54

## SCHEDULES

Permitted Liens  
Transactions with Affiliates  
Business of Companies

Schedule 2  
Schedule 3.12  
Schedule 3.17

EXHIBITS

Notice of Borrowing  
Facility A Note  
Facility B Note  
Opinion of Borrower's Counsel  
Financial Report Certificate  
Assignment and Acceptance

Exhibit A  
Exhibit B-1  
Exhibit B-2  
Exhibit C  
Exhibit D  
Exhibit E

## REVOLVING CREDIT FACILITY AGREEMENT

REVOLVING CREDIT FACILITY AGREEMENT dated as of July 31, 2000, among CENTURYTEL, INC., a Louisiana corporation (the "Borrower"), the lenders listed on the signature pages hereof (the "Lenders"), BANK OF AMERICA, N.A., a national banking association, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), CITIBANK, N.A., a national banking association, as syndication agent (in such capacity, the "Syndication Agent") and BANC OF AMERICA SECURITIES LLC and SALOMON SMITH BARNEY INC. as Joint Lead Arrangers and Joint Book Managers (in such capacity, collectively the "Arrangers").

The Borrower has requested the Lenders to extend credit to the Borrower in order to enable it to borrow on a revolving credit basis a principal amount not in excess of \$1,500,000,000 at any time outstanding.

The Lenders are willing to extend such credit to the Borrower on the terms and conditions herein set forth. Accordingly, the Borrower, the Agents, and the Lenders agree as follows:

### SECTION 1. DEFINITIONS.

1.1 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Acquisitions" means the acquisition by the Borrower or its subsidiaries of certain properties owned by the GTE Entities pursuant to the provisions of the Asset Purchase Agreements.

"Acquisition Documents" means the Asset Purchase Agreements and any and all other documents and instruments executed in connection with the Acquisitions.

"Adjusted Consolidated Net Worth" means, as of the date of determination, Consolidated Net Worth minus (i) deferred assets other than prepaid insurance, prepaid taxes, prepaid interest, extraordinary retirements, and deferred charges where such deferred charges are considered by Tribunals when setting rates, (ii) patents, copyrights, trademarks, trade names, franchises, experimental expense, goodwill (other than goodwill arising from the purchase of capital stock or assets of a Person engaged in the telephone or cellular mobile communications business) and similar intangible or intellectual property, and (iii) unamortized debt discount and expense (other than debt discount and expense of the Companies located in jurisdictions where such items are considered by Tribunals when setting rates).

"Administrative Agent" is defined in the introduction to this Agreement.

"Affiliate" of any Person means any other individual or entity that directly or indirectly controls, or is controlled by, or is under common control with, such Person, and, for purposes of this definition only, "control," "controlled by," and "under common control with" mean possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person (whether through ownership of Voting Stock, by contract, or otherwise).

"Agents" means the Administrative Agent, the Syndication Agent and the Arrangers.

"Agreement" means this Revolving Credit Facility Agreement, as the same may be amended, supplemented, modified or restated from time to time.

"Alternate Base Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the greater of (a) the Federal Funds Rate for such day plus one-half of one percent (0.5%) and (b) the Prime Rate for such day. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or Federal Funds Rate.

"Applicable Lending Office" means, with respect to each Lender, and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan on the signature pages hereof or such other office of such Lender (or an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower by written notice in accordance with the terms hereof as the office by which its Loans of such Type are to be made and maintained.

"Applicable Margin" means, at the time of any determination thereof, for purposes of all Loans, the margin of interest over the Alternate Base Rate or the Eurodollar Rate, as the case may be, which is applicable at the time of any determination of interest rates under this Agreement, which Applicable Margin shall be adjusted based on the Borrower's Senior Unsecured Long-Term Debt Rating (as hereinafter defined), as determined as of the last day of the immediately preceding fiscal quarter of the Borrower, as follows:

Borrower's Senior Unsecured Long-Term Debt Rating	Eurodollar Loan Margin	Base Rate Loan Margin
---	---------------------------	--------------------------

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A or A2 or better	30.0 basis points	0 basis points
A- or A3	37.5 basis points	0 basis points
BBB+ or Baa1	50.0 basis points	0 basis points
BBB or Baa2	62.5 basis points	0 basis points
below BBB or Baa2	75.0 basis points	0 basis points

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Notwithstanding the foregoing, in the event that (i) the Borrower's Senior Unsecured Long-Term Debt Rating is below BBB or Baa2 and (ii) the outstanding principal balance of the Facility A Loans or the Facility B Loans equals or exceeds one-third of the Total Facility A Commitment or the Total Facility B Commitment, as the case may be, then the Applicable Margin for such Facility A Loans or Facility B Loans shall be 87.5 basis points rather than 75.0 basis points.

"Arrangers" is defined in the introduction to this Agreement.

"Asset Purchase Agreements" means that certain Amended and Restated Asset Purchase Agreement between GTE Arkansas Incorporated, GTE Midwest Incorporated, GTE Southwest Incorporated and CenturyTel, Inc. dated as of June 29, 1999, that certain Asset Purchase Agreement between GTE Midwest Incorporated and Spectra Communications Group LLC dated as of July 8, 1999, that certain Asset Purchase Agreement between GTE North Incorporated and Telephone USA of Wisconsin, LLC dated August 19, 1999, and that certain Asset Purchase Agreement between GTE North Incorporated and CenturyTel, Inc. dated October 11, 1999, as any of the same may have been amended or modified prior to the date hereof.

"Bank of America" means Bank of America, N.A., a national banking association.

"Base Rate Loan" means any Loan with respect to which the Borrower shall have selected an interest rate based on the Alternate Base Rate in accordance with the provisions of Section 2.

"Board" means the Board of Governors of the Federal Reserve System of the United States.

"Borrower" is defined in the introduction to this Agreement.

"Borrowing" means a Facility A Borrowing or a Facility B Borrowing.

"Borrowing Date" means the Business Day upon which the proceeds of any Borrowing are to be made available to the Borrower.

"Business Day" means a day when the Administrative Agent and each Lender's Applicable Lending Office are open for business, other than a Saturday or Sunday, and if the applicable Business Day relates to any Eurodollar Loan, a day on which dealings in dollar deposits are carried on in the London interbank market and commercial banks are open for domestic or international business in London, England, in New York, New York, and in Dallas, Texas.

"Code" means the Internal Revenue Code of 1986, as amended, together with rules and regulations promulgated thereunder.

"Commitment" means, with respect to any Lender, collectively, its Facility A Commitment and Facility B Commitment.

"Commitment Fee" is defined in Section 2.6.

"Commitment Fee Percentage" is defined in Section 2.6

"Companies" means, collectively, Borrower and its Subsidiaries and "Company" means any of the same.

"Consolidated Net Worth" means, as of the date of determination, the amount of stated capital plus (or minus, in the case of a deficit) the capital surplus and earned surplus of the Companies, as calculated in accordance with GAAP (but treating Minority Interests in Subsidiaries as liabilities and excluding the contra-equity account resulting from the Borrower's obligations under its employee stock ownership plan commitments). For purposes of this Agreement, Consolidated Net Worth shall exclude the effect of Statements No. 101 and 106 of the Financial Accounting Standards Board.

"Current Date" means any date after March 31, 2000.

"Current Financials" means the consolidated Financial Statements of the Companies for the fiscal year ended December 31, 1999, and the fiscal quarter ended March 31, 2000.

"Debt" means (without duplication), for any Person, all obligations, contingent or otherwise (including, without limitation, contingent obligations in connection with letters of credit), which in accordance with GAAP should be classified upon such Person's balance sheet as liabilities, but in any event including, without limitation, whether or not such obligations in accordance with GAAP should be classified as



liabilities, (a) liabilities secured (or for which the holder of such Debt has an existing Right, contingent or otherwise, to be so secured) by any Lien existing on property owned or acquired by such Person or a Subsidiary thereof (whether or not the liability secured thereby shall have been assumed), (b) obligations which have been or under GAAP should be capitalized for financial reporting purposes, (c) all guaranties, endorsements, and other contingent obligations with respect to Debt of others, including, but not limited to, any obligations to purchase, sell, or furnish property or services intended by a Company primarily for the purpose of enabling such other Person to make payment of any of such Person's Debt, or to otherwise assure the holder of any of such Debt against loss with respect thereto, and (d) liabilities under any interest rate swap, collar, floor, cap or similar contract.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, fraudulent transfer or conveyance, suspension of payments, or similar Laws from time to time in effect affecting the Rights of creditors generally.

"Default" means the occurrence of any event which with the giving of notice or the passage of time or both would become an Event of Default.

"Default Rate" means an annual interest rate equal to the lesser of (a) 2% plus the greater of (i) the Alternate Base Rate and (ii) the Eurodollar Rate and (b) the Highest Lawful Rate.

"EBIT" means, for any period, net income before income Tax expense and interest expense and excluding the effects of nonrecurring and/or unusual non-cash transactions that reduce net income and items that do not reduce the cash flow of the Companies (e.g., write-off of intangibles, write-down of assets, effect of new accounting pronouncements, etc.).

"EBITDA" means, for any period, the sum of (a) EBIT, plus (b) depreciation and amortization.

"Eligible Assignee" means (a) any Lender and any Affiliate of any Lender so long as such Affiliate directly or through one or more of its Subsidiaries engages in commercial financing transactions in the ordinary course of its business, and (b) any other commercial bank, savings and loan association, savings bank, finance company, insurance company, mutual fund or other financial institution, fund or investor which has been approved in writing by the Borrower and the Administrative Agent as an Eligible Assignee for purposes of this Agreement, provided that in each such case such approval shall not be unreasonably withheld.

"Environmental Law" means any Law that relates to the environment or handling or control of Hazardous Substances.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

"ERISA Affiliate" means any company or trade or business (whether or not incorporated) which, for purposes of Title IV of ERISA, is a member of a group of which Borrower is a member and which is under common control with Borrower within the meaning of section 414 of the Code.

"Eurocurrency Liabilities" is defined in Regulation D.

"Eurodollar Loan" means any Loan with respect to which the Borrower shall have selected an interest rate based on the Eurodollar Rate in accordance with the provisions of Section 2.

"Eurodollar Rate" means, for any Interest Period for any Eurodollar Loan, an interest rate per annum (rounded upward to the nearest whole multiple of 0.01% per annum) obtained by dividing (a) the rate per annum appearing on the Dow Jones Telerate Page 3750 (or any successor page) as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period by (b) a percentage equal to 100% minus the Eurodollar Rate Reserve Percentage for such Interest Period.

If for any reason the rate specified in subsection (a) above is not available, the applicable rate for purposes of subsection (a) shall be the rate per annum appearing on Reuters Screen LIBO Page as the London interbank offered rate for deposits in Dollars at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified on Reuters Screen LIBO Page, the applicable rate shall be the arithmetic mean of all such rates (rounded upwards, if necessary, to the nearest 1/100 of 1%).

"Eurodollar Rate Reserve Percentage" for any Interest Period for any Eurodollar Loan means the reserve percentage applicable two Business Days before the first day of such Interest Period under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the interest rate on Eurodollar Loans is determined) having a term equal to such Interest Period.

"Event of Default" means any of the events described in Section 6, provided there has been satisfied any requirement in connection therewith

for the giving of notice, lapse of time, or happening of any further condition, event, or act.

"Existing Credit Agreement" means that certain Competitive Advance and Revolving Credit Facility Agreement dated as of August 28, 1997, by and among CenturyTel, Inc. (formerly known as Century Telephone Enterprises, Inc.), the lenders party thereto from time to time, and Bank of America, N.A. (formerly known as NationsBank, N.A. and successor by merger to NationsBank of Texas, N.A.), as agent for such lenders and as auction administrative agent, as the same has been and may be amended, restated, supplemented or modified from time to time.

"Facility A Commitment" means, with respect to each Lender, the amount set forth opposite the name of such Lender on Schedule 1, as amended from time to time.

"Facility A Borrowing" means a borrowing consisting of simultaneous Facility A Loans from each of the Lenders distributed ratably among the Lenders in accordance with their respective Facility A Commitments.

"Facility A Loan" means a Loan by a Lender to the Borrower under Facility A pursuant to Section 2.1, and shall be either a Eurodollar Loan or a Base Rate Loan.

"Facility A Note" means a promissory note of the Borrower payable to the order of each Lender, in substantially the form of Exhibit B-1 hereto, with the blanks appropriately completed, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Facility A Loans made by such Lender to the Borrower, together with all modifications, extensions, renewals, and rearrangements thereof.

"Facility A Termination Date" means, at any time, July 30, 2001, or such later date, if any, to which the Total Facility A Commitment is extended pursuant to Section 2.3, subject, however, to termination in whole of the Total Facility A Commitment pursuant to Section 2.7.

"Facility B Commitment" means, with respect to each Lender, the amount set forth opposite the name of such Lender on Schedule 1, as amended from time to time.

"Facility B Borrowing" means a borrowing consisting of simultaneous Facility B Loans from each of the Lenders distributed ratably among the Lenders in accordance with their respective Facility B Commitments.

"Facility B Loan" means a Loan by a Lender to the Borrower under Facility B pursuant to Section 2.2, and shall be either a Eurodollar Loan or a Base Rate Loan.

"Facility B Note" means a promissory note of the Borrower payable to the order of each Lender, in substantially the form of Exhibit B-2 hereto, with the blanks appropriately completed, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Facility B Loans made by such Lender to the Borrower, together with all modifications, extensions, renewals, and rearrangements thereof.

"Facility B Termination Date" means, at any time, July 30, 2001, or the earlier date of termination in whole of the Total Facility B Commitment pursuant to Section 2.7.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Administrative Agent (in its individual capacity) on such day on such transactions as determined by the Administrative Agent.

"Financial Report Certificate" means a certificate substantially in the form of Exhibit D.

"Financial Statements" means balance sheets, income statements, statements of stockholders' equity, and statements of cash flow prepared in comparative form to the corresponding period of the preceding fiscal year.

"Funded Debt" shall mean and include, as of any date as of which the amount thereof is to be determined, (i) all funded indebtedness of the Companies, (ii) all funded indebtedness of any Subsidiary (other than funded indebtedness of such Subsidiary owing to the Borrower or another Subsidiary), and (iii) all indebtedness for borrowed money, but not (iv) indebtedness secured by or borrowed against the cash surrender value of life insurance policies up to the amount of such cash surrender value.

"GAAP" means generally accepted accounting principles of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board which are applicable as of the date of the Financial Statements in question.

"GTE Entities" means GTE Arkansas Incorporated, GTE Midwest Incorporated, GTE North Incorporated and GTE Southwest Incorporated, collectively.

"Guaranty" means by any particular Person, all obligations of such Person guaranteeing or in effect guaranteeing any Debt, dividend or other obligation of any other Person (the "primary obligor") in any manner whether directly or indirectly, including, without limitation of the generality of the foregoing, obligations incurred through an agreement, contingent or otherwise, by such particular Person (i) to purchase such Debt or obligation or any property or assets constituting security therefor, (ii) to advance or supply funds (x) for the purchase or payment of such Debt or obligation or (y) to maintain working capital or equity capital or otherwise to advance or make available funds for the purchase or payment of such Debt or obligation, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of such Debt or obligation of the ability of the primary obligor to make payment of the Debt or obligation or (iv) otherwise to assure the owner of the Debt or obligation of the primary obligor against loss in respect thereof.

"Hazardous Substance" means any hazardous or toxic waste, pollutant, contaminant, or substance.

"Highest Lawful Rate" means at the particular time in question the maximum rate of interest which, under applicable Laws, the Lenders are then permitted to charge the Borrower on the Obligation. If the maximum rate of interest which, under applicable Laws, the Lenders are permitted to charge the Borrower on the Obligation shall change after the date hereof, the Highest Lawful Rate shall be automatically increased or decreased, as the case may be, as of the effective time of such change without notice to the Borrower.

"Indemnified Parties" is defined in Section 9.23.

"Interest Payment Date" means (i) with respect to any Base Rate Loan, each Quarterly Payment Date, or if earlier the Facility A Termination Date or the Facility B Termination Date, as applicable, or the date of prepayment of such Loan or conversion of such Loan to a Eurodollar Loan, and (ii) with respect to any Eurodollar Loan, the last day of the Interest Period applicable thereto and, in addition in the case of a Eurodollar Loan with an Interest Period longer than three months, each day that would have been the Interest Payment Date for such Loan had an Interest Period of three months been applicable to such Loan.

"Interest Period" means, with respect to each Loan, the duration of such Loan and as to any Eurodollar Loan, the period commencing on the date of such Loan and ending on the numerically corresponding day (or if there is no corresponding day, the last day) in the calendar month that is one, two, three, or six months thereafter, as the Borrower may elect; provided, however, (i) if any Interest Period would end on a day which shall not be a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) no Interest Period may be selected that ends later than the Facility B Termination Date or the Facility A Termination Date, as applicable. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Laws" means all applicable statutes, laws, treaties, ordinances, rules, regulations, orders, writs, injunctions, decrees, judgments, or opinions of any Tribunal.

"Lenders" means those lenders signatory hereto and other financial institutions which from time to time become party hereto pursuant to the provisions of this Agreement.

"Lien" means any lien, mortgage, security interest, pledge, assignment, charge, title retention agreement, or encumbrance of any kind, and any other Right of or arrangement with any creditor to have his claim satisfied out of any property or assets, or the proceeds therefrom, prior to the general creditors of the owner thereof.

"Litigation" means any action conducted, pending, or threatened by or before any Tribunal.

"Loan" means a Facility A Loan, a Facility B Loan, a Eurodollar Loan or a Base Rate Loan.

"Loan Papers" means (i) this Agreement, certificates delivered pursuant to this Agreement, and exhibits and schedules hereto, (ii) any notes, security documents, guaranties, and other agreements in favor of the Agents and the Lenders, or any or some of them, ever delivered in connection with this Agreement, and (iii) all renewals, extensions, or restatements of, or amendments or supplements to, any of the foregoing.

"Majority Lenders" means at any time the Lenders holding at least 51% of the then aggregate unpaid principal amount of the Loans or, if no Loans are outstanding, the Lenders having at least 51% of the available Commitments.

"Margin Stock" means "margin stock" within the meaning of Regulations T, U, or X of the Board.

"Material Adverse Effect" means any set of one or more circumstances or events which, individually or collectively, will result in any of the following:

(a) a material and adverse effect upon the validity or enforceability of any Loan Paper, (b) a material and adverse effect on the consolidated financial condition of the Companies represented in the later of the Current Financials or the most recent audited consolidated Financial Statements, (c) a Default or (d) the issuance of an accountant's report on the Companies' consolidated Financial Statements containing an explanatory paragraph about the entity's ability to continue as a going concern (as defined in accordance with Generally Accepted Auditing Standards).

"Material Agreement" of any Person means any material written or oral agreement, contract, commitment, or understanding to which such Person is a party, by which such Person is directly or indirectly bound, or to which any assets of such Person may be subject, and which is not cancelable by such Person upon 30 days or less notice without liability for further payment other than nominal penalty, and which requires such Person to pay more than 1 percent of Consolidated Net Worth during any 12-month period.

"Minority Interest" means, with respect to any Subsidiary, an amount determined by valuing preferred stock held by Persons other than the Borrower and its wholly-owned Subsidiaries at the voluntary or involuntary liquidating value of such preferred stock, whichever is greater, and by valuing common stock or partnership interests held by Persons other than the Borrower and its wholly-owned Subsidiaries at the book value of capital and surplus applicable thereto on the books of such Subsidiary adjusted, if necessary, to reflect any changes from the book value of common stock required by the foregoing method of valuing Minority Interest attributable to preferred stock.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in sections 3(37) or 4001(a)(3) of ERISA or section 414 of the Code to which any Company or any ERISA Affiliate is making, or has made, or is accruing, or has accrued, an obligation to make contributions.

"Net Cash Proceeds" means the cash proceeds received by the Borrower from (a) a sale of its assets (including, without limitation, all cash proceeds received by way of (i) deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received and (ii) receivables and other assets retained by the Borrower as part of the sales consideration, minus payments made to retire Debt secured by such assets being sold or otherwise disposed of where payment of such Debt is required in connection with such sale or disposition) or (b) the issuance of any public or privately placed Debt or equity, in either case net of all ordinary reasonable legal expenses, commissions and other fees and expenses paid or to be paid to Persons not Affiliates of the Companies and all Taxes assessed in connection therewith.

"Note" means a Facility A Note or a Facility B Note.

"Notice of Borrowing" is defined in Section 2.4.

"Obligation" means all present and future indebtedness, obligations, and liabilities, and all renewals, extensions, and modifications thereof, owed to the Agents and the Lenders, or any or some of them, by the Borrower, arising pursuant to any Loan Paper, together with all interest thereon and costs, expenses, and attorneys' fees incurred in the enforcement or collection thereof.

"Participant" is defined in Section 9.20(b).

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereof, established pursuant to ERISA.

"Permitted Liens" means the Liens described on Schedule 2.

"Person" means and includes an individual, partnership, joint venture, corporation, trust, limited liability company, limited liability partnership, or other entity, Tribunal, unincorporated organization, or government, or any department, agency, or political subdivision thereof.

"Plan" means any plan defined in Section 4021(a) of ERISA in respect of which the Borrower is an "employer" or a "substantial employer" as such terms are defined in ERISA.

"Prime Rate" means the per annum rate of interest established from time to time by Bank of America as its prime rate, which rate may not be the lowest rate of interest charged by Bank of America to its customers.

"Purchaser" is defined in Section 9.20(c).

"Quarterly Payment Date" means the last Business Day of each March, June, September and December of each year, the first of which shall be the first such day after the date of this Agreement.

"Regulation D" means Regulation D of the Board, as the same is from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Regulatory Change" means, with respect to any Lender, (a) any adoption or change after the date hereof of or in United States federal, state or foreign Laws (including Regulation D) or guidelines applying to a class of banks including such Lender, (b) the adoption or making after the date hereof of any interpretations, directives or requests applying to a class of banks including such Lender of or under any United States federal, state or foreign Laws or guidelines (whether or not having the force of law) by any Tribunal, monetary authority, central bank, or comparable agency charged with the interpretation or administration thereof, or (c) any change in the interpretation or administration of any United States federal, state or foreign Laws or guidelines applying to a class of banks including such Lender by any Tribunal, monetary authority, central bank, or comparable agency charged with the interpretation or administration thereof.

"Restricted Payment" means

(a) the declaration or payment of dividends by the Borrower, or distribution (in cash, property, obligations or other securities or any combination thereof) on account of any shares of any class of capital stock of the Borrower, or

(b) other payments or distributions by the Borrower whether by reduction of capital or otherwise on account of any shares of any class of capital stock of the Borrower, or

(c) the setting apart of money for a sinking or other analogous fund by the Borrower for the purchase, redemption, retirement or other acquisition of any shares of any class of capital stock of the Borrower, or any warrant, option or other right to acquire any capital stock of the Borrower; but in each case in

(a), (b) and (c) above, excluding dividends or other distributions payable solely in common stock of the Borrower.

"Rights" means rights, remedies, powers, and privileges.

"S&P" means Standard and Poor's Ratings Services, Inc., a division of The McGraw Hill Companies, Inc.

"Senior Unsecured Long-Term Debt Rating" means, as of any date, the public debt rating that has been most recently announced by S&P and Moody's for that class of non-credit enhanced, senior unsecured debt with an original term of longer than one year issued by the Borrower which has the lowest rating of all classes of non-credit enhanced, senior unsecured debt with an original term of longer than one year issued by the Borrower. For purposes of the foregoing,

(a) if only one of S&P and Moody's shall have in effect a public debt rating, the Applicable Margin and the Commitment Fee Percentage (as set forth in Section 2.6) shall be determined by reference to the available rating; (b) if the ratings established by S&P and Moody's shall fall within different levels, the Applicable Margin and the Commitment Fee Percentage shall be based upon the higher rating, except that if the difference is two or more levels, the Applicable Margin and the Commitment Fee Percentage shall be based on the rating that is one level below the higher rating; (c) if any rating established by S&P or Moody's shall be changed, such change shall be effective as of the date on which such change is first announced publicly by the rating agency making such change; (d) if S&P or Moody's shall change the basis on which ratings are established, each reference to the public debt rating announced by S&P or Moody's, as the case may be, shall refer to the then equivalent rating by S&P or Moody's, as the case may be; (e) if neither S&P nor Moody's shall have in effect a public debt rating but at least one of S&P and Moody's has in effect a rating for any class of senior secured debt with an original term of longer than one year issued by the Borrower, the Applicable Margin and Commitment Fee Percentage shall be determined by reference to a rating that is one level lower than the rating that has been most recently announced by S&P and Moody's for such class of debt; and (f) if neither S&P nor Moody's shall have in effect either a public debt rating or a rating for any class of senior secured debt with an original term of longer than one year issued by the Borrower, the Applicable Margin and Commitment Fee Percentage shall be set in accordance with the lowest level rating and highest percentage rate set forth in the respective tables relating to "Applicable Margin" and "Commitment Fee Percentage", as the case may be.

"Significant Subsidiary" means a Subsidiary of the Borrower (i) the assets of which equal or exceed 5% of all assets of the Borrower and its Subsidiaries as shown on a consolidated balance sheet of the Borrower and its Subsidiaries, (ii) the operating revenue of which, for the most recently ended period of twelve consecutive months, equals or exceeds 5% of the operating revenues of the Borrower and its Subsidiaries for such period, or (iii) the net income of which, for the most recently ended period of twelve consecutive months, equals or exceeds 5% of the net income of the Borrower and its Subsidiaries for such period.

"Solvent" means, as to any Person at the time of determination, that

(a) the aggregate fair value of such Person's assets exceeds the present value of its liabilities (whether contingent, subordinated, unmatured, unliquidated, or otherwise), and (b) such Person has sufficient cash flow to enable it to pay its Debts as they mature.

"Subsidiary" means any Person with respect to which Borrower or any one or more Subsidiaries owns directly or indirectly 50% or more of the issued and outstanding voting stock (or equivalent interests).

"Syndication Agent" is defined in the introduction to this Agreement.

"Taxes" means all taxes, assessments, fees, or other charges at any time imposed by any Laws or Tribunal.

"Total Commitments" means, at any time the aggregate amount of the Lenders' Facility A Commitments and Facility B Commitments, as in effect at such time.

"Total Facility A Commitment" means at any time the aggregate amount of the Lenders' Facility A Commitments, as in effect at such time.

"Total Facility B Commitment" means at any time the aggregate amount of the Lenders' Facility B Commitments, as in effect at such time.

"Tribunal" means any municipal, state, commonwealth, federal, foreign, territorial, or other court, governmental body, subdivision, agency, department, commission, board, bureau, or instrumentality.

"Type" shall mean any type of Loan (i.e., a Base Rate Loan or Eurodollar Loan).

"United States" and "U.S." each means United States of America.

"Voting Stock" shall mean securities (as such term is defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

1.2 Number and Gender of Words. Whenever in any Loan Paper the singular number is used, the same shall include the plural where appropriate and vice versa, and words of any gender shall include each other gender where appropriate.

1.3 Accounting Principles. All accounting and financial terms used in the Loan Papers and the compliance with each financial covenant therein shall be determined in accordance with GAAP as in effect on the date of this Agreement, and all accounting principles shall be applied on a consistent basis so that the accounting principles in a current period are comparable in all material respects to those applied in the consolidated Financial Statements for the Companies for the twelve months ended December 31, 1999.

## SECTION 2. FACILITIES.

2.1 Facility A Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender, severally and not jointly, agrees to make revolving credit loans ("Facility A Loans") to the Borrower, at any time and from time to time on and after the date hereof and until the Facility A Termination Date. Notwithstanding the foregoing, the aggregate principal amount of all Facility A Loans of a Lender shall not exceed at any time outstanding such Lender's Facility A Commitment. Within the foregoing limits, the Borrower may borrow, repay, prepay, and reborrow hereunder, on and after the date hereof and prior to the Facility A Termination Date, subject to the terms, provisions, and limitations set forth herein.

2.2 Facility B Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender, severally and not jointly, agrees to make revolving credit loans ("Facility B Loans") to the Borrower, at any time and from time to time on and after the date hereof and until the Facility B Termination Date. Notwithstanding the foregoing, the aggregate principal amount of all Facility B Loans of a Lender shall not exceed at any time outstanding such Lender's Facility B Commitment. Within the foregoing limits, the Borrower may borrow, repay, prepay and reborrow hereunder, on and after the date hereof and prior to the Facility B Termination Date, subject to the terms, provisions, and limitations set forth herein.

2.3 Extension of Facility A Termination Date. (a) The Borrower may request an extension of the Facility A Termination Date by submitting a request for an extension to the Administrative Agent (an "Extension Request") not more than 60, nor less than 45, days prior to the Facility A Termination Date. The new Facility A Termination Date shall be no more than 364 days after the Facility A Termination Date in effect at the time the Extension Request is received, including the Facility A Termination Date as one of the days in the calculation of the days elapsed. Promptly following receipt of an Extension Request, the Administrative Agent shall notify each Lender of the Extension Request and shall specify the date (which must be at least 15 days after the Extension Request is delivered to the Lenders) as of which the Lenders must respond to the Extension Request (the "Reply Date"). No extension of the Facility A Termination Date shall be effective as to a particular Lender without the approval of such extension by such Lender, and no Lender may submit its approval more than 45 days prior to the existing Facility A Termination Date. Approval or disapproval of such extension shall be in the sole and absolute discretion of each Lender. Each Lender shall notify the Administrative Agent and the Borrower in writing prior to the Reply Date whether it will extend the Facility A Termination Date. If all Lenders approve such extension on or before the Reply Date, the Facility A Termination Date specified in the Extension Request shall become effective on the existing Facility A Termination Date and the Administrative Agent shall promptly notify the Borrower and each Lender of the new Facility A Termination Date. If Lenders holding less than 66-2/3% of the then aggregate principal amount of the Facility A Loans fail to approve such extension on or before the Reply Date, the Facility A Termination Date shall not be extended.

(b) If Lenders holding at least 66-2/3%, but less than 100%, of the then aggregate principal amount of the Facility A Loans approve such extension on or before the Reply Date, the Borrower may, by notice given to the Administrative Agent within ten days of the Administrative Agent's notification to the Borrower of the failure of all such Lenders to approve such extension, elect to take one of the following actions with respect to all Lenders (each a "Non-Consenting Facility A Lender") that do not approve such extension: (i) terminate the Facility A Commitments of the Non-Consenting Facility A Lenders, in which case the Borrower shall pay in full the amounts owing in respect of the Facility A Loans of all Non-Consenting Facility A Lenders no later than the existing Facility A Termination Date and the Facility A Commitments of all Non-Consenting Facility A Lenders shall terminate on such date; or (ii) replace the Non-Consenting Facility A Lenders in accordance with subsection (c) below or, to the extent that the Non-Consenting Facility A Lenders are not entirely replaced, the Borrower shall pay in full the amounts owing in respect of the Facility A Loans of such Non-Consenting Facility A Lenders and their Facility A Commitments shall be terminated as of the existing Facility A Termination Date. Provided the Borrower gives the Administrative Agent timely notice of such election and pays or causes to be paid to each of the Non-Consenting Facility A Lenders, on or before the existing Facility A Termination Date, an amount equal to all sums owing to such Non-Consenting Facility A Lenders in respect of their Facility A Loans, then (A) the Facility A Termination Date shall be extended with respect to all Lenders that approved such extension and (B) the Total Facility A Commitment shall be reduced by the amount of the Non-Consenting Facility A Lenders' Facility A Commitments (except as such are replaced in accordance with Section 2.3(c)). Notwithstanding the foregoing, if the Borrower shall fail to give timely notice of an election under clauses (i) or (ii) above, or, having given such notice, shall fail to pay or cause to be paid to the Non-Consenting Facility A Lenders, on or before the existing Facility A Termination Date, the amounts required to be paid hereunder, then the Facility A Termination Date shall not be extended and the Total Facility A Commitment shall terminate.

(c) In the event a Lender (the "Affected Lender") is a Non-Consenting Facility A Lender, the Borrower may, upon written notice to such

Affected Lender and to the Administrative Agent, require such Affected Lender to assign, and such Affected Lender shall assign, within five Business Days after the date of such notice, to one or more assignees selected by the Borrower and that are Eligible Assignees and otherwise comply with the provisions of Section 9.20(c) (each, a "Replacement Lender"), all of such Affected Lender's Facility A Commitment and Facility A Loans. With respect to any such assignment, the Affected Lender shall concurrently with such assignment receive payment in full of all amounts due and owing to it hereunder or under any of the other Loan Documents with respect to the Loans and Commitment so assigned, including without limitation the aggregate outstanding principal amount of such Loans owed to such Affected Lender, together with accrued interest thereon through the r date of such assignment, amounts payable to such Affected Lender under Section 2.14 with respect to such Loans and all fees payable to such Affected Lender hereunder with respect to such Loans and Commitment so assigned. Any assignment to a Replacement Lender pursuant to the provisions of this Section 2.3 shall be in accordance with the provisions of Section 9.20(c) hereof.

2.4 Borrowing Procedure. In order to effect a Borrowing, the Borrower shall hand deliver or telecopy to the Administrative Agent a duly completed request for Borrowing, substantially in the form of Exhibit A hereto (a "Notice of Borrowing"), (i) in the case of Eurodollar Loans, not later than 11:00 a.m., Dallas, Texas time, three Business Days before the Borrowing Date specified for a proposed Borrowing, and (ii) in the case of Base Rate Loans, not later than 11:00 a.m., Dallas, Texas time, on the Business Day which is the Borrowing Date specified for a proposed Borrowing. No Facility B Loan shall be requested or made after the Facility B Termination Date. Such notice shall be irrevocable and shall in each case refer to this Agreement and specify (w) whether the Loans then being requested are to be made as Facility A Loans or Facility B Loans, (x) whether the Loans then being requested are to be Eurodollar Loans or Base Rate Loans, (y) the Borrowing Date of such Loans (which shall be a r Business Day) and the aggregate amount thereof (which shall not be less than \$5,000,000 and shall be an integral multiple of \$1,000,000), and (z) in the case of a Eurodollar Loan, the Interest Period with respect thereto (which shall not end later than the Facility A Termination Date or the Facility B Termination Date, as applicable). If no Interest Period with respect to any Eurodollar Loan is specified in any such Notice of Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly, and in any event on the same day the Administrative Agent receives a Notice of Borrowing pursuant to this Section 2.4, if such notice is received by 10:00 a.m., Dallas, Texas time on a Business Day and otherwise on the next succeeding Business Day, the Administrative Agent shall advise the other Lenders of such Notice of Borrowing and of each Lender's portion of the requested Facility A or Facility B Borrowing by telecopier. Each Borrowing shall consist of Loans of the same Type made on the same day and having the same Interest Period.

2.5 Conversions. Subject to the conditions and limitations set forth in this Agreement, the Borrower shall have the right from time to time to convert all or part of one Type of Loan into another Type of Loan or to continue all or a part of any Loan that is a Eurodollar Loan from one Interest Period to another Interest Period by giving the Administrative Agent written notice (by means of a Notice of Borrowing) (i) in the case of Eurodollar Loans, not later than 10:00 a.m., Dallas, Texas time, three Business Days before the date specified for such proposed conversion or continuation, and (ii) in the case of Base Rate Loans, not later than 10:00 a.m., Dallas, Texas time, on the Business Day which is the date specified for such proposed conversion or continuation. Such notice shall specify (A) the proposed date for conversion or continuation, (B) the amount of the Loan to be converted or continued, (C) in the case of conversions, the Type of Loan to be converted into, and (D) in the case of a continuation of or conversion into a Eurodollar Loan, the duration of the Interest Period applicable thereto; provided that (1) Eurodollar Loans may be converted only on the last day of the applicable Interest Period, (2) except for conversions to Base Rate Loans, no conversion shall be made while a Default or Event of Default has occurred and is continuing and no continuations of any Eurodollar Loan from one Interest Period to another Interest Period shall be made while a Default or Event of Default has occurred and is continuing, unless such conversion or continuation has been approved by Majority Lenders, and (3) each such conversion or continuation shall be in an amount not less than \$5,000,000 and shall be an integral multiple of \$1,000,000. All notices given under this Section shall be irrevocable. If the Borrower shall fail to give the Administrative Agent the notice as specified above for continuation or conversion of a Eurodollar Loan prior to the end of the Interest Period with respect ase thereto, such Eurodollar Loan shall automatically be converted into a Base Rate Loan on the last day of the Interest Period for such Eurodollar Loan.

2.6 Commitment Fees. The Borrower agrees to pay to each Lender, through the Administrative Agent, on each Quarterly Payment Date and on the Facility A Termination Date or the Facility B Termination Date, as applicable, in immediately available funds, a commitment fee (a "Commitment Fee") calculated on both the unused Facility A Commitment and the unused Facility B Commitment by multiplying the applicable percentage (the "Commitment Fee Percentage") set forth below by the average daily unused portion of the Facility A Commitment and the Facility B Commitment of such Lender, as applicable, during the preceding quarter (or shorter period commencing with the date hereof and/or ending with the Facility A Termination Date or the Facility B Termination Date, as applicable):

Borrower's Senior Unsecured Long-Term Debt Rating	Commitment Fee Percentage
-----	-----
A or A2 or better	.065 percent
A- or A3	.08 percent
BBB+ or Baa1	.10 percent
BBB or Baa2	.125 percent
below BBB or Baa2	.15 percent
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Notwithstanding the foregoing, the Commitment Fee Percentage from the date hereof until completion of the primary general syndication of the Loans shall be .10 percent so long as the Borrower's Senior Unsecured Long-Term Debt Rating is BBB or Baa2 or better.

All Commitment Fees shall be computed by the Administrative Agent on the basis of the actual number of days elapsed in a year of 365 days, and shall be conclusive and binding for all purposes, absent manifest error. The Commitment Fee due to each Lender shall commence to accrue on the date hereof and shall cease to accrue on the earlier of the Facility A Termination Date or the Facility B Termination Date, as applicable, and the termination of the Facility A Commitment or Facility B Commitment, as applicable, of such Lender as provided herein. No

Commitment Fee shall be payable on the Facility B Commitment after the Facility B Termination Date. Notwithstanding the foregoing, in no event shall any Lender be permitted to receive any compensation hereunder constituting interest in excess of the Highest Lawful Rate.

**2.7 Optional Termination and Reduction of Commitments.**(a) Subject to

Section 2.13(b), the Borrower may permanently terminate, or from time to time in part permanently reduce, either or both of the Total Facility A Commitment or the Total Facility B Commitment, in each case upon at least two Business Days prior written notice to the Administrative Agent (who shall promptly forward a copy thereof to each Lender). Such notice shall specify the date and the amount of the termination or reduction of either or both of the Total Facility A Commitment or the Total Facility B Commitment. Each such partial reduction of either or both of the Total Facility A Commitment or the Total Facility B Commitment shall be in a minimum aggregate principal amount of \$5,000,000 and in an integral multiple of \$1,000,000.

(b) On the Facility A Termination Date the Total Facility A Commitment shall be zero.

(c) On the Facility B Termination Date, the Total Facility B Commitment shall be zero.

(d) Each reduction in the Total Facility A Commitment or the Total Facility B Commitment pursuant to this paragraph shall be made ratably among the Lenders in accordance with their respective Facility A Commitments or Facility B Commitments, as applicable.

(e) Simultaneously with any termination or reduction of the Facility A Commitments or Facility B Commitments pursuant to this paragraph, the Borrower shall pay to the Administrative Agent for the accounts of the Lenders the Commitment Fees on the amount of the Total Facility A or Facility B Commitment, as applicable, so terminated or reduced, accrued through the date of such termination or reduction.

**2.8 Loans.** (a) Each Borrowing made by the Borrower on any date shall be in an integral multiple of \$1,000,000 and in a minimum aggregate principal amount of \$5,000,000. Loans shall be made by the Lenders ratably in accordance with their respective Commitments on the Borrowing Date of the Borrowing; provided, however, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder.

(b) Each Loan shall be a Eurodollar Loan or a Base Rate Loan, as the Borrower may request subject to and in accordance with Section 2.4. Each Lender may at its option make any Eurodollar Loan by causing a foreign branch of such Lender to make such Loan; provided, however, that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of the applicable Note and this Agreement. Loans of more than one interest rate option may be outstanding at the same time; provided, however, that the Borrower shall not be entitled to request any Loan which, if made, would result in an aggregate of more than 10 separate Borrowings being outstanding hereunder at any one time. For purposes of the foregoing, Loans having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Loans.

(c) Subject to Section 2.5, each Lender shall make its portion of each Borrowing on the proposed Borrowing Date thereof by paying the amount required to the Administrative Agent in Dallas, Texas in immediately available funds not later than 12:00 noon, Dallas, Texas time, and the Administrative Agent shall by 2:00 p.m., Dallas, Texas time, credit the amounts so received to the general deposit account of the Borrower with the Administrative Agent or, if Loans are not made on such date because any condition precedent to a Borrowing herein specified shall not have been met, return the amounts so received to the respective Lenders as soon as practicable; provided, however, if and to the extent the Administrative Agent fails to return any such amounts to a Lender on the Borrowing Date for such Borrowing, the Administrative Agent shall pay interest on such unreturned amounts, for each day from such Borrowing Date to the date such amounts are returned to such Lender, at the Federal Funds Rate.

(d) The outstanding principal amount of each Loan which is a Eurodollar Loan shall be due and payable on the last day of the Interest Period applicable to such Loan, as the case may be, and the outstanding principal balance of each Loan which is a Base Rate Loan shall be due and payable on the Facility A Termination Date or the Facility B Termination Date, as applicable.

**2.9 Notes.** The Facility A Loans made by each Lender shall be evidenced by a single Facility A Note, payable to the order of such Lender in a principal amount equal to the Facility A Commitment of such Lender. The Facility B Loans made by each Lender shall be evidenced by a single Facility B Note payable to the order of such Lender in a principal amount equal to the Facility B Commitment of such Lender. Each Note shall bear interest from the date thereof on the outstanding principal balance thereof as set forth in Section 2.10 and Section 2.11. Each Lender shall, and is hereby authorized by the Borrower to, make in its records relating to such Note an appropriate notation evidencing the date and amount of each Loan of such Lender, and each payment or prepayment of principal of any Loan. The aggregate unpaid principal amount so recorded shall be presumptive evidence of the principal amount owing by the Borrower to a Lender and unpaid under the Note of such Lender. The failure of any Lender to make such a notation or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans made by such Lender in accordance with the terms of the relevant Note.

**2.10 Interest on Loans.** (a) Subject to the provisions of Section 2.11, each Eurodollar Loan shall bear interest at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the lesser of (i) the Highest Lawful Rate and (ii) the Eurodollar Rate for the Interest Period in effect for such Loan, plus the Applicable Margin. Interest on each Eurodollar Loan shall be payable on each Interest Payment Date applicable thereto. The applicable Eurodollar Rate for each Interest Period shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.



(b) Subject to the provisions of Section 2.11, each Base Rate Loan shall bear interest at the rate per annum (computed on the basis of the actual number of days elapsed over a year of (x) 365 or 366 days, as the case may be if the Base Rate is based on the Prime Rate or (y) 360 days if the Base Rate is based on the Federal Funds Rate) equal to the lesser of (i) the Highest Lawful Rate and (ii) the Base Rate plus the Applicable Margin. Interest on each Base Rate Loan shall be payable on each Quarterly Payment Date applicable thereto. The applicable Base Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

2.11 Interest on Overdue Amounts. If the Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, the Borrower shall on demand from time to time pay interest, to the extent permitted by Law, on such defaulted amount up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum equal to the lesser of (i) the Highest Lawful Rate and (ii) the Default Rate.

2.12 Alternate Rate of Interest for Eurodollar Loans. In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Loan, the Administrative Agent shall have determined that dollar deposits in the amount of the requested principal amount of such Eurodollar Loan are not generally available in the London interbank market, or that dollar deposits are not generally available in the London interbank market for the requested Interest Period, or that the rate at which such dollar deposits are being offered will not adequately and fairly reflect the cost to any Lender of making or maintaining such Eurodollar Loan during such Interest Period, or that reasonable means do not exist for ascertaining the Eurodollar Rate, the Administrative Agent shall, as soon as practicable thereafter, give telecopy notice of such determination, stating the specific reasons therefor, to the Borrower and the Lenders. In the event of any such determination, any request by the Borrower for a Eurodollar Loan shall, until the circumstances giving rise to such notice no longer exist, be deemed to be a request for a Base Rate Loan. Each determination by the Administrative Agent hereunder shall be conclusive absent manifest error.

2.13 Mandatory and Optional Prepayment of Loans. (a) Prior to the Facility A Termination Date or the Facility B Termination Date, as applicable, the Borrower shall have the right at any time to prepay any Borrowing, in whole or in part, subject to the requirements of Section 2.16 and Section 2.17 but otherwise without premium or penalty, but prepayment of Eurodollar Loans shall require at least two Business Days prior written notice to the Administrative Agent; provided, however, that each such partial prepayment shall be in an integral multiple of \$1,000,000 and in a minimum aggregate principal amount of \$2,000,000. Each notice of prepayment shall specify the prepayment date and the aggregate principal amount of each Borrowing to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein.

(b) On the date of any termination or reduction of the Total Facility A Commitment or the Total Facility B Commitment pursuant to Section 2.7(a), the Borrower shall pay or prepay so much of the Loans as shall be necessary in order that the aggregate principal amount of the Loans outstanding will not exceed the Total Facility A Commitment or the Total Facility B Commitment following such termination or reduction. Subject to the foregoing and the requirements of Section 2.7, any such payment or prepayment shall be applied to such Borrowing or Borrowings as the Borrower shall select. All prepayments under this paragraph shall be subject to Section 2.16 and Section 2.17.

(c) All Facility A Loans, together with accrued and unpaid interest thereon, shall be due and payable in full on the Facility A Termination Date.

(d) All Facility B Loans, together with accrued and unpaid interest thereon, shall be due and payable in full on the Facility B Termination Date.

(e) Upon the sale by the Borrower or any Subsidiary of any of its assets, the Borrower shall prepay the Facility B Loans in an amount equal to 100% of the Net Cash Proceeds received above five percent of the Consolidated Net Worth of the Companies by the Borrower or any Subsidiary; provided that no prepayment shall be required if the proceeds of such asset sale are reinvested in equivalent assets within the 12-month period immediately following the sale; and provided, further, that no prepayment shall be required unless and until Borrower has first made any prepayment required pursuant to Section 2.13(e) of the Existing Credit Agreement. Any prepayment made under this Section 2.13(e) shall reduce the Total Facility B Commitment by the amount of such prepayment.

(f) Upon the issuance by the Borrower of any public or privately placed Debt or equity securities, the Borrower shall prepay the Facility B Loans in an amount equal to 100% of the Net Cash Proceeds received by the Borrower; provided however, the Borrower shall not be required to make any prepayments under this Section 2.13(f) if such issuance by the Borrower is of privately placed equity or equity-linked securities. Any prepayment made under this Section 2.13(f) shall reduce the total Facility B Commitment by the amount of such prepayment.

(g) All prepayments under this Section 2.13 shall be accompanied by accrued interest on the principal amount being prepaid to the date of prepayment.

2.14 Reserve Requirements; Change in Circumstances. (a) Notwithstanding any other provision herein, if after the date of this Agreement any Regulatory Change (i) shall change the basis of taxation of payments to any Lender of the principal of or interest on any Eurodollar Loan made by such Lender or any other fees or amounts payable hereunder (other than (x) Taxes imposed on or measured by the capital, receipts or franchises of such Lender or the overall gross or net income of such Lender by the jurisdiction in which such Lender has its principal office or by any political subdivision or taxing authority therein (or any Tax which is enacted or adopted by such jurisdiction, political subdivision, or taxing authority as a direct substitute for any such Taxes) or (y) any Tax, assessment, or other governmental charge that would not have been imposed but for the failure of any Lender to comply with any certification, information, documentation, or other reporting requirement), (ii) shall impose, modify, or deem applicable any reserve, special deposit, or similar requirement with respect to any Eurodollar Loan, against assets of, deposits with or for the account of, or credit extended by, such Lender under this Agreement, or (iii) with respect to any Eurodollar Loan, shall impose on such Lender or the London interbank market any other condition affecting this Agreement or any Eurodollar Loan made

by such Lender, and the result of any of the foregoing shall be to increase the cost to such Lender of maintaining its Commitment or of making or maintaining any Eurodollar Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest, or otherwise) in respect thereof by an amount deemed in good faith by such Lender to be material, then the Borrower shall pay to the Administrative Agent for the account of such Lender such additional amount or amounts as will compensate such Lender for such increase or reduction to such Lender, to the extent such amounts have not been included in the calculation of the Eurodollar Rate, upon demand by such Lender (through the Administrative Agent). Notwithstanding the foregoing, in no event shall any Lender be permitted to receive any compensation hereunder constituting interest in excess of the Highest Lawful Rate.

(b) If any Lender shall have determined in good faith that any Regulatory Change regarding capital adequacy or compliance by any Lender (or its parent or any lending office of such Lender) with any request or directive regarding capital adequacy (whether or not having the force of Law) of any Tribunal, monetary authority, central bank, or comparable agency, has or would have the effect of reducing the rate of return on such Lender's (or its parent's) capital as a consequence of its obligations hereunder to a level below that which such Lender (or its parent) could have achieved but for such Regulatory Change, or compliance (taking into consideration such Lender's policies with respect to capital adequacy) by an amount deemed in good faith by such Lender to be material, then from time to time, the Borrower shall pay to the Administrative Agent for the account of such Lender such additional amount or amounts as will compensate such Lender for such reduction upon demand by such Lender (through the Administrative Agent). Notwithstanding the foregoing, in no event shall any Lender be permitted to receive any compensation hereunder constituting interest in excess of the Highest Lawful Rate.

(c) A certificate of a Lender setting forth in reasonable detail

(i) the Regulatory Change or other event giving rise to such costs,

(ii) such amount or amounts as shall be necessary to compensate such Lender as specified in paragraph (a) or (b) above, as the case may be, and (ii) the calculation of such amount or amounts under clause (a)(i), shall be delivered to the Borrower (with a copy to the Administrative Agent) promptly after such Lender determines it is entitled to compensation under this Section 2.14, and shall be conclusive and binding absent manifest error. The Borrower shall pay to the Administrative Agent for the account of such Lender the amount shown as due on any such certificate within 15 days after its receipt of the same. In preparing such certificate, such Lender may employ such assumptions and allocations of costs and expenses as it shall in good faith deem reasonable and may use any reasonable averaging and attribution method.

(d) Failure on the part of any Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any Interest Period shall not constitute a waiver of such Lender's rights to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to such Interest Period or any other Interest Period. The protection of this

Section 2.14 shall be available to each Lender regardless of any possible contention of invalidity or inapplicability of the law, regulation, or condition which shall have been imposed.

(e) In the event any Lender shall seek compensation pursuant to this Section 2.14, the Borrower may, provided no Event of Default has occurred and is continuing, give notice to such Lender (with copies to the Agents) that it wishes to seek one or more Eligible Assignees to assume the Commitment of such Lender and to purchase its outstanding Loans and Notes (if any). Each Lender requesting compensation pursuant to this Section 2.14 agrees to sell its Commitment, Loans, Notes, and interest in this Agreement and the other Loan Papers to any such Eligible Assignee for an amount equal to the sum of the outstanding unpaid principal of and accrued interest on such Loans and Notes plus all other fees and amounts (including, without limitation, any compensation claimed by such Lender under this Section 2.14 and as to which such Lender has delivered the certificate required by Section 2.14(c) on or before the date such Commitment, Loans, and Notes are purchased) due such Lender hereunder calculated, in each case, to the date such Commitment, Loans, Notes (if any), and interest are purchased, whereupon such Lender shall have no further Commitment or other obligation to the Borrower hereunder or under any other Loan Paper.

(f) If the Borrower is required to pay additional amounts to or for the account of any Lender pursuant to this Section 2.14, then such Lender will agree to use reasonable efforts to change the jurisdiction of its Applicable Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Lender, is not otherwise disadvantageous to such Lender.

(g) Without prejudice to the survival of any other obligations of the Borrower hereunder, the obligations of the Borrower under this Section 2.14 shall survive for one year after the termination of this Agreement and/or the payment or assignment of any of the Loans or Notes.

**2.15 Change in Legality.** (a) Notwithstanding anything to the contrary herein contained, if any Regulatory Change shall make it unlawful for any Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby, then, by written notice to the Borrower and to the Administrative Agent, such Lender may:

(i) declare that Eurodollar Loans will not thereafter be made by such Lender hereunder, whereupon the Borrower shall be prohibited from requesting Eurodollar Loans from such Lender hereunder unless such declaration is subsequently withdrawn; and

(ii) if such unlawfulness shall be effective prior to the end of any Interest Period of an outstanding Eurodollar Loan, require that all outstanding Eurodollar Loans with such Interest Periods made by it be converted to Base Rate Loans, in which event (A) all such Eurodollar Loans shall be automatically converted to Base Rate Loans as of the effective date of such notice as provided in paragraph (b) below and (B) all payments and prepayments of principal which would otherwise have been applied to repay the converted Eurodollar Loans shall instead be applied to repay the Base Rate Loans resulting from the conversion of such Eurodollar Loans.

(b) For purposes of this Section 2.15, a notice to the Borrower (with a copy to the Administrative Agent) by any Lender pursuant to paragraph

(a) above shall be effective on the date of receipt thereof by the Borrower.

2.16 INDEMNITY. THE BORROWER SHALL INDEMNIFY EACH LENDER AGAINST ANY LOSS OR REASONABLE EXPENSE WHICH SUCH LENDER MAY SUSTAIN OR INCUR AS A CONSEQUENCE OF (A) ANY FAILURE BY THE BORROWER TO FULFILL ON THE DATE OF ANY BORROWING HEREUNDER THE APPLICABLE CONDITIONS SET FORTH IN SECTION 4, (B) ANY FAILURE BY THE BORROWER TO BORROW HEREUNDER AFTER A NOTICE OF BORROWING PURSUANT TO SECTION 2 HAS BEEN GIVEN, (C) ANY PAYMENT, PREPAYMENT, OR CONVERSION OF A EURODOLLAR LOAN REQUIRED BY ANY OTHER PROVISION OF THIS AGREEMENT OR OTHERWISE MADE ON A DATE OTHER THAN THE LAST DAY OF THE APPLICABLE INTEREST PERIOD FOR ANY REASON, INCLUDING WITHOUT LIMITATION THE ACCELERATION OF OUTSTANDING LOANS AS A RESULT OF ANY EVENT OF DEFAULT, (D) ANY FAILURE BY THE BORROWER FOR ANY REASON

(INCLUDING WITHOUT LIMITATION THE EXISTENCE OF A DEFAULT OR AN EVENT OF DEFAULT) TO PAY, PREPAY OR CONVERT A EURODOLLAR LOAN ON THE DATE FOR SUCH PAYMENT, PREPAYMENT OR CONVERSION, SPECIFIED IN THE RELEVANT NOTICE OF PAYMENT, PREPAYMENT OR CONVERSION UNDER THIS AGREEMENT. THE INDEMNITY OF THE BORROWER PURSUANT TO THE IMMEDIATELY PRECEDING SENTENCE SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OR REASONABLE EXPENSE SUSTAINED OR INCURRED OR TO BE SUSTAINED OR INCURRED IN LIQUIDATING OR EMPLOYING DEPOSITS FROM THIRD PARTIES ACQUIRED TO EFFECT OR MAINTAIN SUCH LOAN OR ANY PART THEREOF AS A EURODOLLAR LOAN. SUCH LOSS OR REASONABLE EXPENSE SHALL INCLUDE, WITHOUT LIMITATION, AN AMOUNT EQUAL TO THE EXCESS, IF ANY, AS REASONABLY DETERMINED BY EACH LENDER OF (I) ITS COST OF OBTAINING THE FUNDS FOR THE LOAN BEING PAID, PREPAID, OR CONVERTED OR NOT BORROWED, PAID, PREPAID OR CONVERTED (BASED ON THE EURODOLLAR RATE APPLICABLE THERETO) FOR THE PERIOD FROM THE DATE OF SUCH PAYMENT, PREPAYMENT, OR CONVERSION OR FAILURE TO BORROW, PAY, PREPAY OR CONVERT TO THE LAST DAY OF THE INTEREST PERIOD FOR SUCH LOAN (OR, IN THE CASE OF A FAILURE TO BORROW, PAY, PREPAY OR CONVERT, THE INTEREST PERIOD FOR THE LOAN WHICH WOULD HAVE COMMENCED ON THE DATE OF SUCH FAILURE TO BORROW, PAY, PREPAY OR CONVERT) OVER (II) THE AMOUNT OF INTEREST (AS REASONABLY DETERMINED BY SUCH LENDER) THAT WOULD BE REALIZED BY SUCH LENDER IN REEMPLOYING THE FUNDS SO PAID, PREPAID, OR CONVERTED OR NOT BORROWED, PAID, PREPAID OR CONVERTED FOR SUCH PERIOD OR INTEREST PERIOD, AS THE CASE MAY BE. A CERTIFICATE OF EACH LENDER SETTING FORTH ANY AMOUNT OR AMOUNTS AND, IN REASONABLE DETAIL, THE COMPUTATIONS THEREOF, WHICH SUCH LENDER IS ENTITLED TO RECEIVE PURSUANT TO THIS SECTION 2.16 SHALL BE DELIVERED TO THE BORROWER (WITH A COPY TO THE ADMINISTRATIVE AGENT) AND SHALL BE CONCLUSIVE, IF MADE IN GOOD FAITH, ABSENT MANIFEST ERROR. THE BORROWER SHALL PAY TO THE ADMINISTRATIVE AGENT FOR THE ACCOUNT OF EACH LENDER THE AMOUNT SHOWN AS DUE ON ANY CERTIFICATE WITHIN 30 DAYS AFTER ITS RECEIPT OF THE SAME. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ANY LENDER BE PERMITTED TO RECEIVE ANY COMPENSATION HEREUNDER CONSTITUTING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE. WITHOUT PREJUDICE TO THE SURVIVAL OF ANY OTHER OBLIGATIONS OF THE BORROWER HEREUNDER, THE OBLIGATIONS OF THE BORROWER UNDER THIS SECTION 2.16 SHALL SURVIVE FOR ONE YEAR AFTER THE TERMINATION OF THIS AGREEMENT AND/OR THE PAYMENT OR ASSIGNMENT OF ANY OF THE LOANS OR NOTES.

2.17 Pro Rata Treatment. (a) Unless otherwise specifically provided herein, each payment or prepayment of principal and each payment of interest with respect to a Borrowing shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans extended by each Lender, if any, with respect to such Borrowing, and (b) conversions of Loans to Loans of another Type and continuations of Loans that are Eurodollar Loans from one Interest Period, shall be made pro rata among the Lenders in accordance with their respective Commitments.

2.18 Sharing of Setoffs. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff, or counterclaim against the Borrower, including, but not limited to, a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable Debtor Relief Law or otherwise, obtain payment (voluntary or involuntary) in respect of the Note held by it (other than pursuant to Section 2.14 or Section 2.16) as a result of which the unpaid principal portion of the Note held by it shall be proportionately less than the unpaid principal portion of the Note held by any other Lender, it shall be deemed to have simultaneously purchased from such other Lender a participation in the Note held by such other Lender, so that the aggregate unpaid principal amount of the Note and participations in Notes held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Notes then outstanding as the principal amount of the Note held by it prior to such exercise of banker's lien, setoff, or counterclaim was to the principal amount of all Notes outstanding prior to such exercise of banker's lien, setoff, or counterclaim; provided, however, that if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.18 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Note deemed to have been so purchased may, upon the existence of an Event of Default, exercise any and all rights of banker's lien, setoff, or counterclaim with respect to any and all moneys owing by the Borrower to such Lender as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation.

2.19 Payments. (a) The Borrower shall make each payment hereunder and under any instrument delivered hereunder not later than 1:00 p.m. (Dallas, Texas time) on the day when due in dollars to the Administrative Agent at its address referred to on Schedule 1 for the account of the Lenders, in immediately available funds. The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal of or interest on Loans (other than pursuant to Section 2.14 and Section 2.16) or Commitment Fees ratably to the Lenders and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement.

(b) Whenever any payment hereunder or under any Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in all such case be included in the computation of payment of interest or Commitment Fee, as the case may be; provided, however, if such extension would cause payment of interest on or principal of a Eurodollar Loan to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made or will make such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Administrative Agent, each Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate.

(d) All payments (whether of principal, interest, fees, reimbursements, or otherwise) by the Borrower under this Agreement shall be made without setoff or counterclaim and shall be made free and clear of and without deduction for any present or future Tax, levy, impost, or any other charge against the Borrower, if any, of any nature whatsoever now or hereafter imposed by any Tribunal excluding, in the case of each Lender and the Agents, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the Laws of which such Lender (or its Applicable Lending Office) or such Agent (as the case may be) is organized or any political subdivision thereof. If the making of such payments by the Borrower is prohibited by Law unless such a Tax, levy, impost, or other charge is deducted or withheld therefrom, the Borrower shall pay to the Administrative Agent, on the date of each such payment, such additional amounts (without duplication of any other amounts required to be paid by the Borrower pursuant to Section 2.14) as may be necessary in order that the net amounts received by the Lenders after such deduction or withholding shall equal the amounts which would have been received if such deduction or withholding were not required. The Borrower shall confirm that all applicable Taxes, if any, imposed on this Agreement or transactions hereunder shall have been properly and legally paid by it to the appropriate taxing authorities by sending official Tax receipts or notarized copies of such receipts to the Administrative Agent within 30 days after payment of any applicable Tax.

(e) So long as no Event of Default has occurred and is continuing, payments and prepayments of the Obligation shall be applied first to accrued interest then due and payable and to the remaining Obligation in the order and manner as the Borrower may direct; provided, however, unless a Default or Event of Default has occurred and is continuing, any payments and prepayments made pursuant to Section 2.7(a) or Sections 2.13(a) through (f) shall be applied first to accrued interest then due and payable, then to principal of Facility B Loans and finally to principal of Facility A Loans. At any time during which an Event of Default has occurred and is continuing or if the Borrower fails to give direction, any payment or prepayment shall be applied in the following order: (i) to expenses and fees for which the Agents and the Lenders have not been reimbursed in accordance with the Loan Papers; (ii) to accrued interest; and (iii) to the remaining Obligation in the order and manner as the Majority Lenders deem appropriate.

2.20 Calculation of Eurodollar Rate. The provisions of this Agreement relating to calculation of the Eurodollar Rate are included only for the purpose of determining the rate of interest or other amounts to be paid hereunder that are based upon such rate, it being understood that each Lender shall be entitled to fund and maintain its funding of all or any part of a Eurodollar Loan as it sees fit. All such determinations hereunder, however, shall be made as if each Lender had actually funded and maintained funding of each Eurodollar Loan through the purchase in the London interbank market of one or more eurodollar deposits, in an amount equal to the principal amount of such Loan and having a maturity corresponding to the Interest Period for such Loan.

2.21 Booking Loans. Any Lender may make, carry, or transfer Loans at, to, or for the account of any of its branch offices.

2.22 Quotation of Rates. It is hereby acknowledged that the Borrower may call the Administrative Agent on or before the date on which notice of a Borrowing is to be delivered by the Borrower in order to receive an indication of the rate or rates then in effect, but that such projection shall not be binding upon the Administrative Agent or any Lender nor affect the rate of interest which thereafter is actually in effect when the election is made.

SECTION 3. REPRESENTATIONS AND WARRANTIES. The Borrower represents and warrants to the Agents and the Lenders as follows:

3.1 Purpose of Credit Facility. The Borrower will use Loan proceeds only (i) to finance the Acquisitions, (ii) to repay indebtedness of the Borrower with respect to commercial paper issued by it or for its account, and (iii) for working capital and other lawful corporate purposes of the Companies. The proceeds loaned hereunder will not be used directly or indirectly for the purpose of purchasing or carrying, or for the purpose of extending credit to others for the purpose of purchasing or carrying, any Margin Stock, or to repay any Debt which was created for such purposes.

3.2 Corporate Existence, Good Standing, and Authority. Each Company is, to the best of the Borrower's knowledge, duly organized, validly existing, and in good standing under the Laws of its state of incorporation (such jurisdictions being identified on Exhibit 21 of Borrower's most recent annual report filed with the Securities and Exchange Commission on Form 10-K). Except where failure would not reasonably be expected to have a Material Adverse Effect, each Company (a) is duly qualified to transact business and is in good standing as a foreign corporation in each jurisdiction where the nature and extent of its business and properties require the same, and (b) possesses all requisite authority, power, licenses, permits, and franchises to conduct its business as is now being, or is contemplated herein to be, conducted. The Borrower possesses all requisite authority, power, licenses, permits, and franchises to execute, deliver, and comply with the terms of the Loan

Papers, all which have been duly authorized and approved by all necessary corporate action and, except where failure would not reasonably be expected to have a Material Adverse Effect, for which no approval or consent of any Person or Tribunal is required which has not been obtained and no filing or other notification to any Person or Tribunal is required which has not been properly completed.

3.3 Subsidiaries. Exhibit 21 of Borrower's most recent annual report filed with the Securities and Exchange Commission on Form 10-K sets forth, in all material respects, all existing Subsidiaries of the Borrower and correctly lists, as to each Subsidiary, (a) its name and (b) its jurisdiction of incorporation. The shares of capital stock of each Subsidiary owned by the Borrower (either directly or indirectly through another Subsidiary) as set forth on Exhibit 21 of Borrower's most recent annual report filed with the Securities and Exchange Commission on Form 10-K are the duly authorized, validly issued, fully paid, and nonassessable shares of such Subsidiary and are owned by the Borrower free and clear of all Liens except Permitted Liens.

3.4 Financial Statements. The Current Financials were prepared in accordance with GAAP and present fairly the consolidated financial condition and the results of operations of the Companies as of, and for the periods ended, the dates thereof. There were no material (to the Companies taken as a whole) liabilities, direct or indirect, fixed or contingent, of any Company as of the date of the Current Financials which are not reflected therein. No Company has incurred any material (to the Companies taken as a whole) liability, direct or indirect, fixed or contingent, between the dates of the Current Financials and the date hereof, except in the ordinary course of business, such as in connection with acquisitions and financing activities.

3.5 Compliance with Laws, Charter, and Agreements. No Company is, nor will the execution, delivery, performance, or observance of the Loan Papers cause any Company to be, in violation of any Laws or any Material Agreements to which it is a party, other than such violations which would not reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any Significant Subsidiary is, nor will the execution, delivery, performance, or observance of the Loan Papers cause the Borrower or any Significant Subsidiary to be, in violation of its bylaws or charter.

3.6 Litigation. Except as described in the Form 10-Q filed by the Borrower for the quarterly period ended March 31, 2000 with the Securities and Exchange Commission and to the knowledge of the Borrower, no Company is aware of any "Material" Litigation, and there are no Material outstanding or unpaid judgments against any Company. Material for purpose of this Section 3.6 in relation to Litigation would include any actions or proceedings pending or threatened against any Company before any court or Tribunal seeking damages, net of insurance proceeds to the Company, in excess of \$10,000,000 in any case or 1% of Consolidated Net Worth in the aggregate, or which might result in any Material Adverse Effect.

3.7 Taxes. All Tax returns of each Company required to be filed have been filed (or extensions have been granted) except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, and all Taxes imposed upon each Company which are due and payable have been paid other than Taxes for which the criteria for Permitted Liens have been satisfied.

3.8 Environmental Matters. No Company's ownership of its assets violates any applicable Environmental Law, other than such violations which would not reasonably be expected to have a Material Adverse Effect. To the Borrower's knowledge, no investigation or review is pending or threatened by any Tribunal with respect to any alleged violation of any Environmental Law in connection with any Company's assets. None of any Company's assets have been used by such Company or, to the Borrower's knowledge, any other Person as a dump site for any Hazardous Substance except where such use would not reasonably be expected to have a Material Adverse Effect.

3.9 Employee Benefit Plans. (a) No employee benefit plan as defined in the Code and Title IV of ERISA of any Company has incurred an accumulated funding deficiency in an amount sufficient to have a Material Adverse Effect, (b) no Company has incurred liability to the PBGC in connection with any such plan where such liability could reasonably be expected to have a Material Adverse Effect, (c) no Company has withdrawn in whole or in part from participation in a Multiemployer Plan where the withdrawal could reasonably be expected to have a Material Adverse Effect, and (d) to the best of the Borrower's knowledge, no "prohibited transaction" (as defined in section 406 of ERISA or section 4975 of the Code) or "reportable event" (as defined in section 4043 of ERISA) has occurred which could reasonably be expected to have a Material Adverse Effect.

3.10 Properties; Liens. Each Company has good and marketable (except for Permitted Liens) title to all its property reflected on the Current Financials (except for dispositions of property in the ordinary course of business between the date or dates thereof and the date hereof). Except for Permitted Liens, there is no Lien on any property of any Company, and the execution, delivery, performance, or observance of the Loan Papers will not require or result in the creation of any Lien other than Permitted Liens.

3.11 Holding Company and Investment Company Status. The Borrower is not (a) a "holding company," a "subsidiary company" of a "holding company," an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," or a "public utility" within the meaning of the Public Utility Holding Company Act of 1935, as amended, (b) a "public utility" within the meaning of the Federal Power Act, as amended, (c) an "investment company" within the meaning of the Investment Company Act of 1940, as amended, (d) an "investment adviser" within the meaning of the Investment Advisers Act of 1940, as amended, or (e) directly subject to the jurisdiction of the Federal Communications Commission or any public service commission.

3.12 Transactions with Affiliates. Except as disclosed on Schedule 3.12, no Company is a party to a material transaction with any of its Affiliates other than transactions in the ordinary course of business and upon fair and reasonable terms not materially less favorable than such Company could obtain or could become entitled to in an arm's-length transaction with a Person that was not its Affiliate. For purposes of this Section 3.12, such transactions are "material" if they, individually or in the aggregate, require any Company to pay more than 1 percent of

Consolidated Net Worth over the course of such transactions.

3.13 Leases. All material leases under which any Company is lessee or tenant are in full force and effect, and no default or potential default exists thereunder.

3.14 Labor Matters. There are no actual or, to the Borrower's knowledge, threatened strikes, labor disputes, slow downs, walkouts, or other concerted interruptions of operations by any Company's employees, the effect of which would have a Material Adverse Effect.

3.15 Insurance. Each Company maintains with financially sound insurance companies or associations (or, as to workers' compensation or similar insurance, with an insurance fund or by self-insurance authorized by the jurisdictions in which it operates) insurance concerning its properties and businesses against such casualties and contingencies and of such types and in such amounts (and with co-insurance and deductibles) as is customary in the case of same or similar businesses; provided, however, a program of self-insurance in such amounts and against such risks as are prudent and which is consistent with accepted business practice shall constitute compliance with this Section 3.15.

3.16 Solvency. The Companies are, and after giving effect to the transactions contemplated under the Loan Papers will be, Solvent.

3.17 Business. The business of the Borrower, as presently conducted and as proposed to be conducted, is set forth on Schedule 3.17.

3.18 General. All writings exhibited or delivered to the Agents by or on behalf of any Company are and will be genuine and in all material respects what they purport and appear to be.

#### SECTION 4. CONDITIONS PRECEDENT.

4.1 Initial Loan. No Lender will be obligated to fund the initial Loan unless the Administrative Agent has received all of the following in form and substance satisfactory to the Administrative Agent and its special counsel:

(a) Loan Papers. This Agreement, the Notes, a Notice of Borrowing, and the Current Financials.

(b) Officers' Certificates. A certificate dated as of the date hereof, executed and delivered by the Borrower, certifying that (i) attached is a true, correct, and complete copy of (A) the Borrower's charter, certified by the appropriate state official and dated a Current Date, (B) the Borrower's bylaws, and (C) resolutions of the Borrower's board of directors authorizing the execution and delivery of each Loan Paper to which the Borrower is a party and (ii) the officers whose specimen signatures appear on such certificate hold the corporate office indicated and are authorized to sign agreements, documents, and instruments on behalf of the Borrower.

(c) Good Standing, Existence, and Authority. Certificates (dated a Current Date) relating to the Borrower's existence, good standing, and authority to transact business issued by appropriate state officials.

(d) Opinions of Borrower's Counsel. The favorable opinion, dated the Closing Date and substantially in the form of Exhibit C of Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., special counsel to the Borrower.

(e) Fees and Expenses. Payment from the Borrower of all fees then due the Agents or the Lenders pursuant to this Agreement or any other agreement.

(f) Other. Such other agreements, documents, instruments, opinions, certificates, and evidences as the Administrative Agent may reasonably request.

4.2 Acquisition Loans. No Lender will be obligated to fund any Loan to finance any Acquisition unless the Administrative Agent has received, in form and substance satisfactory to the Acquisition Agent and its special counsel:

(a) Closing of Acquisition. Evidence that all conditions precedent to the closing of such Acquisition (except payment of the purchase price) have been satisfied, together with copies of all of the executed Acquisition Documents relating thereto.

(b) Opinions of GTE Entities' Counsel. A letter from the GTE Entities' counsel stating that the Administrative Agent and the Lenders may rely on GTE Entities' counsel's opinion to the Borrower issued in connection with such Acquisition, together with a copy of such opinion, both in form and substance satisfactory to Administrative Agent.

4.3 Each Loan. In addition, the Lenders will not be obligated to fund any Loan unless at the time of such funding (a) the representations and warranties made in the Loan Papers are true and correct in all material respects (except to the extent that (i) the representations and warranties speak to a specific date or (ii) the facts on which such representations and warranties are based have been changed by transactions contemplated or permitted by this Agreement), (b) no Default or Event of Default shall have occurred and shall be continuing, (c) the funding of such Loan is permitted by Law, and (d) if requested by the Administrative Agent or the Majority Lenders, the Borrower shall have delivered to the Administrative Agent evidence substantiating any of the matters contained in this Agreement which are necessary to enable the Borrower to qualify for such Loan.

4.4 Materiality of Conditions. Each condition precedent herein is material to the transactions contemplated herein, and time is of the essence in respect of each thereof.

4.5 Waiver of Conditions. Subject to the provisions of Section 9.15, the Majority Lenders may elect to fund any Loan without all conditions being satisfied, but this shall not be deemed to be a waiver of the requirement that each such condition precedent be satisfied as a prerequisite for any subsequent Loan, unless the Majority Lenders (or, if required by Section 9.15, all Lenders) specifically waive each such item in writing.

SECTION 5. COVENANTS. So long as the Lenders are committed to make Loans under this Agreement and thereafter until the Obligation is paid and performed in full, unless the Borrower receives a prior written notice from the Majority Lenders (or, if required by Section 9.15, all Lenders) that they do not object to a deviation, the Borrower covenants and agrees with the Agents and the Lenders as follows:

5.1 Use of Proceeds. Proceeds of Loans advanced hereunder shall be used only as represented herein.

5.2 Books and Records. Each Company shall maintain, in accordance with GAAP, proper and complete books, records, and accounts which are necessary to prepare the financial statements required to be delivered hereunder.

5.3 Items to be Furnished. The Borrower shall cause the following to be furnished to the Administrative Agent:

(a) Promptly after preparation, and no later than 120 days after the last day of each fiscal year of the Borrower, Financial Statements showing the consolidated financial condition and results of operations of the Companies as of, and for the year ended on, such last day, accompanied by (i) the opinion of KPMG Peat Marwick LLP (or another firm of nationally-recognized independent certified public accountants reasonably acceptable to Majority Lenders), based on an audit using generally accepted auditing standards, that such Financial Statements were prepared in accordance with GAAP and present fairly the consolidated financial condition and results of operations of the Companies (and such accountants shall indicate in a letter to the Administrative Agent, that during their audit no Default or Event of Default not already reported was discovered or, if such Default or Event of Default was discovered, the nature and period of existence thereof) and (ii) a Financial Report Certificate with respect to such Financial Statements.

(b) Promptly after preparation, and no later than 60 days after the last day of each of the first three quarters of each fiscal year of the Borrower, (i) Financial Statements showing the consolidated financial condition and results of operations of the Companies as of, and for the period from the beginning of the current fiscal year to, such last day, and (ii) a Financial Report Certificate with respect to such Financial Statements.

(c) Promptly after preparation (and no later than the later of 15 days (a) after such filing is due or (b) after timely filing, if filed with the Securities and Exchange Commission), true copies of all regular and periodic reports, statements, documents, plans, and other written communications furnished by or on behalf of any Company to stockholders or to the Securities and Exchange Commission. However, only registration statements covering more than 2 percent of the Borrower's outstanding shares of common stock shall be required to be furnished unless specifically requested by the Administrative Agent.

(d) Promptly upon receipt thereof, copies of any notices received from any Tribunal (including, without limitation, state regulatory agencies) relating to the possible violation or violation of any Law which might adversely affect the material franchises, permits, or rights for the operation of the business of any Company.

(e) Notice, promptly after the Borrower knows or has reason to know of, (i) the existence of any Material Litigation as defined in Section 3.6, (ii) any material change in any material fact or circumstance represented or warranted in any Loan Paper, or (iii) a Default or Event of Default, specifying the nature thereof and what action the Borrower or any other Company has taken, is taking, or proposes to take with respect thereto.

(f) Notice, promptly after the Borrower knows or has reason to know of, a Subsidiary Encumbrance, as defined in Section 5.25(c).

(g) Promptly upon the Administrative Agent's reasonable request, such information (not otherwise required to be furnished under the Loan Papers) respecting the business affairs, assets, and liabilities of any Company, and any opinions, certifications, and documents, in addition to those mentioned herein.

5.4 Inspection. The Borrower shall allow the Administrative Agent and each Lender, when the Administrative Agent or such Lender reasonably deems necessary, at such Lender's own expense if no Default then exists, to inspect any of its properties, to review reports, files, and other records and to make and take away copies thereof, to conduct tests or investigations, and to discuss any of its affairs, conditions, and finances with any director, officer, or employee of such Company from time to time, upon reasonable notice during reasonable business hours, or otherwise when reasonably considered necessary.

5.5 Taxes. Each Company shall promptly pay when due any Taxes, except those which if unpaid would not cause a Material Adverse Effect and Taxes for which the criteria for Permitted Liens have been satisfied. No Company shall use any proceeds of Loans to pay the wages of employees unless a timely payment to or deposit with the United States of America of all amounts of Tax required to be deducted and withheld with respect to such wages is also made.

5.6 Payment of Obligations. Each Company shall promptly pay (or renew and extend) all of its material obligations as the same become due, but no Company will make any voluntary prepayment of the principal of any Debt other than the Obligation, whether subordinate to the Obligation or not, if a Default or Event of Default exists under any Loan Paper.

5.7 Expenses. The Borrower shall promptly pay (a) all reasonable and necessary out-of-pocket costs, fees, and expenses paid or incurred by the Administrative Agent incident to any Loan Paper (including, but not limited to, the reasonable fees and expenses of counsel to the Administrative Agent in connection with the negotiation, preparation, delivery, and execution of the Loan Papers and any related amendment, waiver, or consent); and (b) all out-of-pocket costs, fees and expenses paid or incurred by the Administrative Agent and any of the Lenders in connection with the enforcement of the obligations of any Company or the exercise of any Rights (including, but not limited to, reasonable attorneys' fees and court costs), all of which shall be a part of the Obligation.

5.8 Maintenance of Existence, Assets, Business, and Insurance. Except as permitted by Section 5.14, each Company shall at all times: Maintain its corporate existence and authority to transact business and good standing in its jurisdiction of incorporation or organization and all other jurisdictions where the failure to so maintain could reasonably be expected to have a Material Adverse Effect; maintain all licenses, permits, and franchises necessary for its business, where the failure to so maintain could reasonably be expected to have a Material Adverse Effect; keep all of its assets which are necessary to its business in good working order and condition (ordinary wear and tear excepted), and make all necessary repairs and replacements thereto; and maintain either (a) insurance with such insurers, in such amounts, and covering such risks, as shall be ordinary and customary in the industry or (b) a comparable self-insurance program.

5.9 Preservation and Protection of Rights. Each Company shall perform such acts and duly authorize, execute, acknowledge, deliver, file, and record any additional agreements, documents, instruments, and certificates as the Administrative Agent may reasonably deem necessary or appropriate in order to preserve and protect the Rights of the Agents or the Lenders under any Loan Paper.

5.10 Employee Benefit Plans. No Company will, directly or indirectly if it would have a Material Adverse Effect, (a) engage in any "prohibited transaction" (as defined in section 406 of ERISA or section 4975 of the Code), (b) permit the funding requirements under ERISA with respect to any employee benefit plan established or maintained by any Company to ever be less than the minimum required by ERISA, (c) permit any employee benefit plan established or maintained by any Company to ever be subject to involuntary termination proceedings, or (d) fully or partially withdraw from any Multiemployer Plan.

5.11 Liens. No Company will create, incur, or suffer or permit to be created or incurred or to exist any Lien (other than Permitted Liens) upon any of its assets unless the Obligations then outstanding shall be secured by such Lien equally and ratably with any and all obligations and indebtedness secured by such Lien.

5.12 Restricted Payments. The Borrower will not directly or indirectly make or declare any Restricted Payment, unless no Default has occurred and is continuing or would result from such Restricted Payment.

5.13 [Intentionally Omitted]

5.14 Acquisitions, Mergers, and Dissolutions. No Company will merge or consolidate with any Person other than any merger or consolidation whereby the Borrower (or another Company, if the Borrower is not a party thereto) is the surviving corporation and immediately after such merger or consolidation there shall not exist any Default or Event of Default.

5.15 Loans, Advances, and Investments. Except as permitted by Section 5.14, no Company will make any loan, advance, extension of credit, or capital contribution to, make any investment in, or purchase or commit to purchase any stock or other securities or evidences of Debt of, or interests in, any other Person, other than (a) the Acquisitions, (b) expense accounts for and other advances to directors, officers, and employees of such Company in the ordinary course of business not to exceed \$1,000,000 in the aggregate outstanding at any time; (c) investments in (or secured by) obligations of the United States of America and agencies thereof and obligations guaranteed by the United States of America maturing within one year from the date of acquisition; (d) certificates of deposit issued by any of the Lenders; (e) certificates of deposit which are fully insured by the Federal Deposit Insurance Corporation or are issued by commercial banks organized under the Laws of the United States of America or any state thereof and having combined capital, surplus, and undivided profits of not less than \$100,000,000 (as shown on such Person's most recently published statement of condition), and which certificates of deposit have one of the two highest ratings from Moody's or S&P, unless Borrower has a written commitment to borrow funds from such commercial bank; (f) commercial paper rated A-1 by Moody's or P-1 by S&P; (g) investments having one of the two highest ratings from Moody's or S&P; (h) extensions of credit in connection with trade receivables and overpayments of trade payables, in each case resulting from transactions in the ordinary course of business; (i) loans from any Company to any other Company, investments by any Company in any other Company, and Guaranties by any Company of the Debt of any other Company; (j) investments in the cash surrender value of life insurance policies issued by Persons with a financial rating from A. M. Best Company (as reported in Best's Insurance Reports) of at least "A+"; provided, however, that if such Person's financial rating is downgraded to less than "A+", then within 90 days following such downgrading, either (i) such cash value life insurance policies will be transferred to another insurance company with a financial rating of at least "A+", (ii) such cash value insurance policies will be collapsed and the cash value thereof will be collected by the investing Company, or (iii) such investment will become an investment subject to the limitations of subparagraph

(n) of this Section 5.15; (k) investments in the capital stock or securities of or loans to or Guaranties of the Debt of any Person engaged in business comparable to the general business of any Company (x) in which a Company possesses (or will possess, after such investment) an equity ownership interest in such Person or (y) secured by the borrower's interest in such business; (l) in the ordinary course of business, investments in the capital stock of the Rural Telephone Bank, National Bank for Cooperatives, or the National Rural Utilities Cooperative



Finance Corporation, or any other lender from whom the investing Company is intending to borrow money which requires such Company to make an equity investment in such lender in order to so borrow; (m) Guaranties of the Debt of the Borrower's Employee Stock Ownership Plan; and (n) other loans, advances, Guaranties, and investments which never exceed in the aggregate at any time 25% of Adjusted Consolidated Net Worth (valued on the basis of original cost, plus subsequent cash and stock additions, less any write-down in value).

5.16 Transactions with Affiliates. No Company will enter into any material transaction with any of its Affiliates, other than transactions in the ordinary course of business and upon fair and reasonable terms not materially less favorable than such Company could obtain or could become entitled to in an arm's-length transaction with a Person that was not its Affiliate. For purposes of this Section 5.16, such transactions are "material" if they, individually or in the aggregate, require any Company to pay more than 1 percent of Consolidated Net Worth over the course of such transactions.

5.17 Sale of Assets. No Company will sell, lease, or otherwise dispose of all or any substantial part of its assets other than (a) sales of inventory in the ordinary course of business, (b) sales of equipment for a fair and adequate consideration, provided that if any such equipment is sold, and a replacement is necessary for the proper operation of the business of such Company, such Company will replace such equipment with adequate equipment, (c) the exchange of assets -- other than equipment -- for similar assets of equal or greater value, (d) the sale, discount, or transfer of delinquent notes or accounts receivable in the ordinary course of business for purposes of collection, and (e) in any 12-month period, dispositions of assets (net of acquisitions of similar assets) that, when added to all other such dispositions by all Companies, do not exceed 10 percent of Consolidated Net Worth.

5.18 Compliance with Laws and Documents. No Company will violate the provisions of any Laws or any Material Agreement if such violation alone, or when aggregated with all other such violations, could reasonably be expected to have a Material Adverse Effect. No Company will violate the provisions of its charter or bylaws or modify, repeal, replace, or amend any provision of its charter or bylaws if such action could reasonably be expected to have a Material Adverse Effect. The Borrower will provide to the Administrative Agent a copy of each document that materially modifies, repeals, replaces, or amends the charter or bylaws of the Borrower.

5.19 New Businesses. No Company will engage in any material business other than the businesses in which it is presently engaged or businesses related thereto, as described on Schedule 3.17.

5.20 Assignment. The Borrower will not assign or transfer any of its Rights, duties, or obligations under any of the Loan Papers.

5.21 Fiscal Year and Accounting Methods. The Borrower will not change its fiscal year or accounting methods (other than immaterial changes and changes required by changes in GAAP) without the prior written consent of the Administrative Agent (which shall not be unreasonably withheld).

5.22 Holding Company and Investment Company Status. The Borrower will not conduct its business in such a way that it will become (a) a "holding company," a "subsidiary company" of a "holding company," an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," or a "public utility" within the meaning of the Public Utility Holding Company Act of 1935, as amended, (b) a "public utility" within the meaning of the Federal Power Act, as amended, (c) an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or (d) an "investment adviser" within the meaning of the Investment Advisers Act of 1940, as amended.

5.23 Environmental Laws. Each Company shall conduct its business so as to comply with all applicable Environmental Laws and shall promptly take corrective action to remedy any non-compliance with any Environmental Law, except where failure to so comply or take such action would not reasonably be expected to have a Material Adverse Effect. Each Company shall maintain a system which, in its reasonable business judgment, will assure its continued compliance with Environmental Laws.

5.24 Environmental Indemnification. Borrower shall indemnify, protect, and hold each Indemnified Party harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, proceedings, costs, expenses (including, without limitation, all reasonable attorneys' fees and legal expenses whether or not suit is brought), and disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against such Indemnified Parties, with respect to or as a direct or indirect result of the violation by any Company of any Environmental Law; or with respect to or as a direct or indirect result of any Company's generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence in connection with its properties of a Hazardous Substance including, without limitation, (a) all damages of any such use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence, or (b) the costs of any required or necessary environmental investigation, monitoring, repair, cleanup, or detoxification and the preparation and implementation of any closure, remedial, or other plans. The provisions of and undertakings and indemnification set forth in this paragraph shall survive the satisfaction and payment of the Obligation and termination of this Agreement for a period of time set forth in the statute of limitations in any applicable Environmental Law.

5.25 Financial Covenants.

(a) As calculated at the end of each fiscal quarter of the Borrower (but computed with respect to EBITDA for the four fiscal quarters ending on the last day of such fiscal quarter), the Borrower shall not permit the ratio of Funded Debt of the Companies to EBITDA of the Companies to exceed 4.00 to 1.0.

(b) As calculated at the end of each fiscal quarter of the Borrower (but computed with respect to EBITDA for the four fiscal quarters ending on

the last day of such fiscal quarter), the Borrower shall not permit the ratio of Funded Debt of its Subsidiaries to EBITDA of the Companies to exceed 1.50 to 1.0.

(c) As calculated at the end of each fiscal quarter of the Borrower (but computed for the four fiscal quarters ending on the last day of such fiscal quarter), the Borrower shall not permit the ratio of EBIT of the Companies to the sum of (i) consolidated interest expense of the Companies and (ii) dividends declared or paid by any Company (other than to another Company) on its preferred capital stock (but if such dividends are declared and paid during such four-quarter period, the amount shall not be counted twice) to be less than 1.50 to 1.0.

For purposes of this Section 5.25(c), EBIT and interest expense of any Subsidiary which is subject to any Subsidiary Encumbrance, shall be reduced to the extent such Subsidiary is restricted by the Subsidiary Encumbrance. As used in this Section 5.25(c), "Subsidiary Encumbrance" shall mean, so long as a default has occurred and is continuing under the agreement creating such encumbrance or restriction, any encumbrance or restriction on the ability of any Subsidiary to (i) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Borrower or any Subsidiary of the Borrower, or pay any Debt owed to the Borrower or a Subsidiary of the Borrower, (ii) make loans or advances to, or grant liens in favor of, the Borrower or any of the Borrower's Subsidiaries or (iii) transfer any of its properties or assets to the Borrower, except for such encumbrances or restrictions (A) existing on the date of this Agreement, (B) arising in connection with loans made to any Company by the Rural Electrification Administration, the Rural Utilities Service, the Rural Telephone Bank, or similar lenders such as the Rural Telephone Finance Cooperative, or (C) now existing or hereafter arising under or by reason of either (x) applicable Law or (y) this Agreement and the other Loan Papers.

(d) If at any time after the date of this Agreement the Borrower enters into any financing arrangement with a third party which requires the Borrower or the Companies as a whole to maintain a specified minimum net worth, then such minimum net worth requirement or covenant shall be incorporated herein by reference and made a part of this Agreement for all purposes as of the date such financing arrangement is entered into by the Borrower.

Further, for purposes of this Section 5.25 Funded Debt shall include any Company's Guaranty of Funded Debt of any Person other than another Company or the Borrower's Employee Stock Ownership Plan. For the first four quarters following any of the Acquisitions, calculations under this Section 5.25 shall be made on a pro forma basis as if the properties acquired in connection with such Acquisitions were properties of the Companies during the period of calculation.

**SECTION 6. DEFAULT.** The term "Event of Default" means the occurrence and continuance of any one or more of the following events (including the passage of time, if any, specified therefor) (provided that, if any such event occurs and the Lenders or Majority Lenders, as required by the provisions of Section 9.15, subsequently agree in writing that they will not exercise any remedies hereunder as a result thereof, the occurrence and continuance of such event shall no longer be deemed an Event of Default hereunder insofar as the state of facts giving rise to such event is concerned):

**6.1 Payment of Obligation.** The failure or refusal of the Borrower to pay any portion of the Obligation, as the same become due in accordance with the terms of the Loan Papers and, in the case of an interest payment, such failure or refusal continues for a period of 5 Business Days (no grace period being given for failure or refusal to make a principal payment). Notwithstanding the foregoing, the Borrower's failure to pay, if caused solely by a wire transfer malfunction or similar problem outside the Borrower's control, shall not be deemed an Event of Default.

#### **6.2 Covenants.**

(a) The failure or refusal of the Borrower (and, if applicable, any other Company) to punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in Sections 5.3(e)(iii), 5.11, 5.12, 5.14, 5.16, 5.19, 5.20, 5.21, 5.22 and 5.25.

(b) The failure or refusal of the Borrower (and, if applicable any other Company) to punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in any of the Loan Papers to which such Company is a party, other than covenants to pay the Obligation and the covenants listed in clause (a) preceding, and such failure or refusal continues for 10 days after notice from the Administrative Agent to the Borrower.

**6.3 Debtor Relief.** The Companies shall not be Solvent, or any Company (a) fails to pay its Debts generally as they become due, (b) voluntarily seeks, consents to, or acquiesces in the benefit of any Debtor Relief Law, or

(c) becomes a party to or is made the subject of any proceeding provided for by any Debtor Relief Law, other than as a creditor or claimant, that could suspend or otherwise adversely affect the Rights of the Agents or the Lenders granted in the Loan Papers (unless, in the event such proceeding is involuntary, the petition instituting same is dismissed within 60 days after its filing).

**6.4 Attachment.** The failure of any Company to have discharged within 60 days after commencement any attachment, sequestration, or similar proceeding which, individually or together with all such other proceedings then pending, affects assets of such Company having a value (individually or collectively) of 1 percent of Consolidated Net Worth or more.

**6.5 Payment of Judgments.** Any Company fails to pay any judgments or orders for the payment of money in excess of 1 percent of Consolidated Net Worth (individually or collectively) rendered against it or any of its assets and either (a) any enforcement proceedings shall have been commenced by any creditor upon any such judgment or order or (b) a stay of enforcement of any such judgment or order, by reason of pending appeal or otherwise, shall not be in effect prior to the time its assets may be lawfully sold to satisfy such judgment.

6.6 Default Under Other Agreements. A default exists under any Material Agreement to which any Company is a party, the effect of which is to cause, or which permits the holder thereof (or a trustee or representative of such holder) to cause, unpaid consideration of at least 2% of Consolidated Net Worth (individually or in the aggregate) to become due prior to the stated maturity or prior to the regularly scheduled dates of payment.

6.7 Antitrust Proceedings. A petition or complaint is filed before or by any Tribunal (including, without limitation, the Federal Trade Commission, the United States Justice Department, or the Federal Communications Commission) seeking to cause the Borrower or any Subsidiary to divest a significant portion of its assets or any of its Subsidiaries pursuant to any antitrust, restraint of trade, unfair competition, or similar Laws, and such petition or complaint is not dismissed or discharged within 270 days after the filing thereof.

6.8 Misrepresentation. Administrative Agent or any Lender discovers that any statement, representation, or warranty in the Loan Papers, any Financial Statement of the Borrower, or any writing ever delivered to Administrative Agent or any Lender pursuant to the Loan Papers is false, misleading, or erroneous when made or delivered in any material respect.

6.9 Change in Control. A Change of Control shall occur. For the purpose of this Section, a "Change of Control" shall be deemed to have occurred if:

(a) a third person, including a "group" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), but excluding any employee benefit plan or plans of Borrower and its Subsidiaries and Affiliates, becomes the beneficial owner, directly or indirectly, of thirty percent (30%) or more of the combined voting power of Borrower's outstanding voting securities ordinarily having the right to vote for the election of directors of Borrower; or

(b) the individuals who, as of June 30, 2000 constituted the Board of Directors of Borrower (the "Board" generally and as of June 30, 2000 the "Incumbent Board") cease for any reason to constitute at least two-thirds (2/3) of the Board, or in the case of a merger or consolidation of Borrower, do not constitute or cease to constitute at least two-thirds (2/3) of the board of directors of the surviving company (or in a case where the surviving corporation is controlled, directly or indirectly, by another corporation or entity do not constitute or cease to constitute at least two-thirds (2/3) of the board of such controlling corporation or do not have or cease to have at least two-thirds (2/3) voting seats on any body comparable to a board of directors of such controlling entity or, if there is no body comparable to a board of directors, at least two-thirds (2/3) voting control of such controlling entity), provided that any person becoming a director (or, in the case of a controlling non-corporate entity, obtaining a position comparable to a director or obtaining a voting interest in such entity) subsequent to June 30, 2000, whose election, or nomination for election, was approved by a vote of the persons comprising at least two-thirds (2/3) of the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board.

6.10 ERISA. Any one of the following shall have occurred: (a) any "Reportable Event" as such term is defined in ERISA under any Plan, (b) the appointment by an appropriate Tribunal of a trustee to administer any Plan, (c) the termination of any Plan within the meaning of Title IV of ERISA, or (d) any material accumulated funding deficiency within the meaning of ERISA exists under any Plan, and any of (a), (b), (c) or (d) results in a Material Adverse Effect.

6.11 Validity and Enforceability of Loan Documents. Any Loan Paper shall, at any time after its execution and delivery and for any reason, cease to be in full force and effect in any material respect or be declared to be null and void or the validity or enforceability thereof be contested by any Company party thereto or any Company shall deny that it has any liability or obligations under any Loan Paper to which it is a party.

## SECTION 7. RIGHTS AND REMEDIES.

### 7.1 Remedies Upon Event of Default.

(a) Should an Event of Default occur and be continuing under Section 6.3, the commitment of the Lenders to make Loans shall automatically terminate and the entire unpaid balance of the Obligation shall automatically become due and payable without any action of any kind whatsoever.

(b) Should any other Event of Default occur and be continuing, subject to any agreement among the Lenders, the Administrative Agent may (and shall upon the request of the Majority Lenders), at its (or the Majority Lenders') election, do any one or more of the following:

(i) If the maturity of the Obligation has not already been accelerated under Section 7.1(a), declare the entire unpaid balance of the Obligation, or any part thereof, immediately due and payable, whereupon it shall be due and payable (and notice of such declaration shall promptly be given thereafter by the Administrative Agent to the Borrower); (ii) terminate commitments to make Loans hereunder; (iii) reduce any claim to judgment; (iv) exercise (or request each Lender to exercise) the Rights of offset or banker's Lien against the interest of the Borrower in and to every account and other property of the Borrower which are in the possession of any Lender to the extent of the full amount of the Obligation; and (v) exercise any and all other legal or equitable Rights afforded by the Loan Papers, the Laws of the State of New York or any other jurisdiction as the Administrative Agent shall deem appropriate, or otherwise, including, but not limited to, the Right to bring suit or other proceedings before any Tribunal either for specific performance of any covenant or condition contained in any of the Loan Papers or in aid of the exercise of any Right granted to the Lenders in any of the Loan Papers.

7.2 Waivers. The Borrower hereby waives presentment and demand for payment, protest, notice of intention to accelerate, notice of acceleration, and notice of protest and nonpayment, and agrees that its liability with respect to the Obligation, or any part thereof, shall not be affected by any renewal or extension in the time of payment of the Obligation, by any indulgence, or by any release or change in any security for the payment of the Obligation.

7.3 Performance by Administrative Agent. If any covenant, duty, or agreement of any Company is not performed in accordance with the terms of the Loan Papers, the Administrative Agent may, at its option (but subject to the approval of the Majority Lenders), perform or attempt to perform such covenant, duty, or agreement on behalf of such Company. In such event, any amount expended by the Administrative Agent in such performance or attempted performance shall be reasonable, payable by the Borrower to the Administrative Agent on demand, shall become part of the Obligation, and shall bear interest at the Default Rate from the date of such expenditure by the Administrative Agent until paid. Notwithstanding the foregoing, it is expressly understood that the Administrative Agent does not assume and shall never have, except by its express written consent, any liability or responsibility for the performance of any covenant, duty, or agreement of any Company.

7.4 Delegation of Duties and Rights. The Administrative Agent and the Lenders may perform any of their duties or exercise any of their Rights under the Loan Papers by or through the Administrative Agent and their and the Administrative Agent's officers, directors, employees, attorneys, agents, or other representatives.

7.5 Lenders Not in Control. None of the covenants or other provisions contained in this Agreement or in any other Loan Paper shall, or shall be deemed to, give the Agents or the Lenders the Right to exercise control over the assets (including, without limitation, real property), affairs, or management of any Company, the power of the Agents and the Lenders being limited to the Right to exercise the remedies provided in this Section 7.

7.6 Waivers by Lenders. The acceptance by the Agents or the Lenders at any time and from time to time of partial payment on the Obligation shall not be deemed to be a waiver of any Event of Default then existing. No waiver by the Agents, the Majority Lenders, or all of the Lenders of any Event of Default shall be deemed to be a waiver of any other then-existing or subsequent Event of Default. No delay or omission by the Agents, the Majority Lenders, or all of the Lenders in exercising any Right under the Loan Papers shall impair such Right or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such Right preclude other or further exercise thereof, or the exercise of any other Right under the Loan Papers or otherwise.

7.7 Cumulative Rights. All Rights available to the Agents and the Lenders under the Loan Papers are cumulative of and in addition to all other Rights granted to the Agents and the Lenders at law or in equity, whether or not the Obligation is due and payable and whether or not the Agents or the Lenders have instituted any suit for collection, foreclosure, or other action in connection with the Loan Papers.

7.8 Application of Proceeds. Any and all proceeds ever received by the Agents or the Lenders from the exercise of any Rights pertaining to the Obligation shall be applied to the Obligations in the order and manner set forth in Section 2.19.

7.9 Certain Proceedings. The Borrower will promptly execute and deliver or cause the execution and delivery of, all applications, certificates, instruments, registration statements, and all other documents and papers the Agents or the Lenders may reasonably request in connection with the obtaining of any consent, approval, registration, qualification, permit, license, or authorization of any other Tribunal or other Person necessary or appropriate for the effective exercise of any Rights under the Loan Papers. Because the Borrower agrees that the Agents' and the Lenders' remedies at Law for failure of the Borrower to comply with the provisions of this paragraph would be inadequate and that such failure would not be adequately compensable in damages, the Borrower agrees that the covenants of this paragraph may be specifically enforced.

7.10 Setoff. If an Event of Default shall have occurred and is continuing, each Lender is hereby authorized at any time and from time to time, without prior notice to the Borrower (any such notice being hereby expressly waived by the Borrower), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and any other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower against any portion of the Obligation owing to such Lender, irrespective of whether or not all of the Obligation, or any part thereof, shall be then due. Each Lender agrees promptly to notify the Borrower (with a copy to the Administrative Agent) after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights and remedies of each Lender hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which such Lender may have.

## SECTION 8. AGREEMENT AMONG LENDERS.

### 8.1 Agents.

(a) Each Lender hereby irrevocably appoints and authorizes the Administrative Agents to act on its behalf and to exercise such powers under this Agreement as are specifically delegated to or required of the Administrative Agent by the terms hereto, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for by this Agreement or the Notes (including, without limitation, enforcement or collection of the Notes), the Administrative Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Lenders, and such instructions shall be binding upon all Lenders and all holders of Notes; provided, however, that the Administrative Agent shall not be required to take any action which exposes it to personal liability or which is contrary to this Agreement or applicable Law.

(b) The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower and may be removed as the Administrative Agent under this Agreement and the Notes at any time with cause by all Lenders other than the Administrative Agent (the "Removing Lenders"). Upon any such resignation or removal, the Majority Lenders shall have the right, with the consent of the Borrower, not to be unreasonably withheld, to appoint a successor Administrative Agent from among the Lenders (other than the resigning Administrative Agent). If no successor Administrative Agent shall have been so appointed by the Majority Lenders, and shall have accepted such appointment, within 30 calendar days after the retiring Administrative Agent's giving notice of resignation or the Removing Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders, with the consent of the Borrower, not to be unreasonably withheld, appoint a successor Administrative Agent, which shall be a commercial bank organized under the Laws of or authorized to do business in the United States of America or any state thereof and having a combined capital and surplus of at least \$100,000,000. Upon the acceptance of any appointment as the Administrative Agent hereunder and under the Notes by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the Notes. After any retiring Administrative Agent's resignation or removal as the Administrative Agent hereunder and under the Notes, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement and the Notes.

(c) Citibank, N.A. is hereby appointed to act as Syndication Agent hereunder. Banc of America Securities LLC and Salomon Smith Barney Inc. are hereby appointed as Joint Lead Arrangers and Joint Book Managers hereunder. Neither the Syndication Agent nor the Joint Lead Arrangers and Joint Book Managers shall have any Right, obligation, liability, responsibility or duty under this Agreement in such capacity.

(d) If Administrative Agent fails to take any action under any Loan Paper after an Event of Default and within a reasonable time after being reasonably requested to do so by any Lender (when such Lender is entitled to make such request under the Loan Papers and after such requesting Lender has obtained the concurrence of such other Lenders as may be required hereunder), the Administrative Agent shall not suffer or incur any liability as a result of such failure or refusal, but such requesting Lender may request the Administrative Agent to resign as the Administrative Agent, whereupon the Administrative Agent shall so resign upon receiving such request.

(e) The Administrative Agent, in its capacity as a Lender, shall have the same Rights under the Loan Papers as any other Lender and may exercise the same as though it were not acting as the Administrative Agent; the term "Lender" shall, unless the context otherwise indicates, include the Administrative Agent; and any resignation by the Administrative Agent hereunder shall not impair or otherwise affect any Rights which it has or may have in its capacity as an individual Lender.

(f) Subject in all respects to the terms and conditions of the Loan Papers, the Agents may be engaged in, or may hereafter engage in, one or more loan, letter of credit, leasing, or other financing transactions (collectively, the "other financings") not the subject of the Loan Papers, with one or more of the Companies, or may act as trustee on behalf of, or depository for, or otherwise engage in other business transactions with one or more of the Companies, in each case with no responsibility to account therefor to the Lenders. Without limiting Rights to which the Lenders are specifically entitled under the Loan Papers, no other Lenders shall have, by virtue of their being parties hereto, any interest in (i) any such other financings, (ii) any present or future guaranties by or for the account of any Company which are not contemplated or included in the Loan Papers, (iii) any present or future offset exercised by such Agent in respect of such other financings, or (iv) any present or future property taken as security for any such other financings, even if such property may become security for the obligations of any Company arising under the Loan Papers by reason of a general description of indebtedness related to any such other financings; provided that, if any payments in respect of such guaranties or such property or the proceeds thereof shall be applied to reduce the Obligation, then each Lender shall be entitled to share in such application according to its pro rata part thereof.

8.2 Expenses. Each Lender shall pay its pro rata part of any reasonable expenses (including, without limitation, court costs, reasonable attorneys' fees, and other costs of collection) incurred by the Administrative Agent in connection with any of the Loan Papers if the Administrative Agent does not receive reimbursement therefor from other sources within 60 days after incurred; provided that each Lender shall be entitled to receive its pro rata part of any reimbursement for such expenses, or part thereof, which the Administrative Agent subsequently receives from such other sources.

8.3 Proportionate Absorption of Losses. Except as herein provided, nothing in the Loan Papers shall be deemed to give any Lender any advantage over any other Lender insofar as the portion of the Obligation arising under the Loan Papers is concerned, or to relieve any Lender from absorbing its pro rata part of any losses sustained with respect to the Obligation (except to the extent unilateral actions or inactions by any Lender result in any credit, allowance, setoff, defense, or counterclaim solely with respect to all or any part of such Lender's pro rata part of the Obligation).

8.4 Delegation of Duties; Reliance. The Administrative Agent may exercise any of its duties under the Loan Papers by or through its officers, directors, employees, attorneys, or agents (collectively, "Representatives"), and the Administrative Agent and its Representatives shall (a) be entitled to rely upon (and shall be protected in relying upon) any writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telecopy, telegram or teletype message, statement, order, or other documents or conversation believed by it or them to be genuine and correct and to have been signed or made by the proper Person and, with respect to legal matters, upon opinion of counsel selected by the Administrative Agent, (b) be entitled to deem and treat each Lender as the owner and holder of its pro rata part of the Obligation for all purposes until, subject to Section 9.20, written notice of the assignment or transfer thereof shall have been given to and received by the Administrative Agent (and, any request, authorization, consent, or approval of any Lender shall be conclusive and binding on each subsequent holder, assignee, or transferee of such Lender's pro rata part of the Obligation or Participant therein), and (c) not be deemed to have notice of the occurrence of an Event of Default unless an officer of the Administrative Agent has actual knowledge thereof or the Administrative Agent has been notified thereof by a Lender or the Borrower.

## 8.5 Limitation of Liability.

(a) Neither the Administrative Agent nor any of its Representatives (as defined in Section 8.4) shall be liable for any action taken or omitted to be taken by it or them under the Loan Papers in good faith and believed by it or them to be within the discretion or power conferred upon it or them by the Loan Papers or be responsible for the consequences of any error of judgment, except for fraud, gross negligence, or willful misconduct (IT BEING THE EXPRESS INTENTION OF THE PARTIES THAT THE ADMINISTRATIVE AGENT AND ITS REPRESENTATIVES SHALL HAVE NO LIABILITY FOR ACTIONS AND OMISSIONS RESULTING FROM THEIR ORDINARY CONTRIBUTORY NEGLIGENCE), and neither the Administrative Agent nor any of its Representatives has a fiduciary relationship with any Lender by virtue of the Loan Papers (provided that nothing herein shall negate the obligation of Administrative Agent to account for funds received by it for the account of any Lender).

(b) Unless indemnified to its satisfaction against loss, cost, liability, and expense, the Administrative Agent shall not be compelled to do any act under the Loan Papers or to take any action toward the execution or enforcement of the powers thereby created or to prosecute or defend any suit in respect of the Loan Papers. If the Administrative Agent requests instructions from the Lenders or from the Majority Lenders, as the case may be, with respect to any act or action (including, but not limited to, any failure to act) in connection with any Loan Paper, the Administrative Agent shall be entitled (but shall not be required) to refrain (without incurring any liability to any Person by so refraining) from such act or action unless and until it has received such instructions. In no event, however, shall the Administrative Agent or any of its Representatives be required to take any action which it or they reasonably determine could incur for it or them criminal or onerous civil liability.

(c) The Administrative Agent shall not be responsible in any manner to any Lender or any Participant for, and each Lender represents and warrants that it has not relied upon the Administrative Agent in respect of, (i) the creditworthiness of the Borrower and the risks involved to such Lender, (ii) the effectiveness, enforceability, genuineness, validity, or the due execution of any Loan Paper, (iii) any representation, warranty, document, certificate, report, or statement made therein or furnished thereunder or in connection therewith, or (iv) observation of or compliance with any of the terms, covenants, or conditions of any Loan Paper on the part of any Company. Each Lender also acknowledges and agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. Each Lender agrees to indemnify the Administrative Agent and its Representatives and hold them harmless from and against (but limited to such Lender's pro rata part of) any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses, and reasonable disbursements of any kind or nature whatsoever which may be imposed on, asserted against, or incurred by any of them in any way relating to or arising out of the Loan Papers or any action taken or omitted by them under the Loan Papers, except to the extent the same result solely from fraud, gross negligence, or willful misconduct by the Administrative Agent or its Representatives (it being the express intention of the parties that the Administrative Agent and its Representatives shall have no liability for actions and omissions resulting from their ordinary contributory negligence).

8.6 Default. Upon the occurrence and continuance of an Event of Default, the Lenders agree to promptly confer in order that the Majority Lenders (or, if required by Section 9.15, all Lenders) may agree upon a course of action for the enforcement of the Rights of the Lenders; provided that the Administrative Agent shall be entitled (but not obligated) to proceed to take any actions necessary in its reasonable judgment to preserve the Rights of the Administrative Agent and the Lenders hereunder, pending agreement by the Majority Lenders (or, if required by Section 9.15, all Lenders) on the course of action to be taken.

8.7 Limitation of Liability of Lenders. No Lender or any Participant shall incur any liability to any other Lender or Participant except for acts or omissions in bad faith, and no Lender or any Participant shall incur any liability to any Company or any other Person for any act or omission of any other Lender or any Participant.

8.8 Relationship of Lenders. Nothing herein shall be construed as creating a partnership or joint venture among the Agents, the Agents and the Lenders, or the Lenders.

8.9 Foreign Lenders. Each Lender that is organized under the Laws of any jurisdiction other than the United States of America or any State thereof (a) represents to the Administrative Agent and the Borrower that (i) under applicable Laws and treaties no Taxes will be required to be withheld by the Administrative Agent or the Borrower with respect to any payments to be made to such Lender in respect of the Obligation and (ii) it has furnished to the Administrative Agent and the Borrower two duly completed copies of either U.S. Internal Revenue Service Form 4224 or U.S. Internal Revenue Service Form 1001 (wherein such Lender claims entitlement to complete exemption from U.S. federal withholding tax on all interest payments hereunder), and (b) covenants to (i) provide the Administrative Agent and the Borrower a new Form 4224 or Form 1001 upon the obsolescence of any previously delivered form in accordance with applicable U.S. Laws and amendments thereto duly executed and completed by such Lender and (ii) comply from time to time with all applicable U.S. Laws with regard to such withholding tax exemption.

8.10 Benefits of Agreement. Except for requiring the Borrower's consent under Section 8.1(b) and the representations and covenants in Section 8.9 in favor of the Borrower, none of the provisions of this Section 8 shall inure to the benefit of any Company or any Person other than the Agents, the Lenders, and the Participants; consequently, neither any Company nor any other Person shall be entitled to rely upon, or to raise as a defense, in any manner whatsoever, the failure of any Agent or any Lender to comply with such provisions.

## SECTION 9. MISCELLANEOUS.

9.1 Changes in GAAP. All accounting and financial terms used in any of the Loan Papers and the compliance with each covenant contained in the Loan Papers which relates to financial matters shall be determined in accordance with GAAP, except to the extent that a deviation therefrom is expressly stated in such Loan Papers. Should a change in GAAP require a change in any method of accounting or should any voluntary change in the accounting methods be permitted pursuant to Section 5.21, then such change shall not result in an Event of Default if, at the time of such change, such Event of Default had not occurred and was not then continuing, based upon the former methods of accounting used by or on behalf of the Borrower; provided that, after any such change in accounting methods, the Financial Statements required to be delivered shall either be (a) supplemented with financial information prepared in comparative form, in compliance with the former methods of accounting used prior to such change, as well as with the new method or methods of accounting and, for the purpose of determining whether an Event of Default has occurred, Lenders shall look solely to that portion of such supplemental information that complies with the former methods of accounting, or (b) supplemented with financial information prepared in compliance with such new method or methods of accounting but accompanied by such information, in form and detail satisfactory to Lenders, that will allow Lenders to readily determine the effect of such changes in accounting methods on such Financial Statements, and, for the purpose of determining whether an Event of Default has occurred, Lenders shall look solely to such supplemental information as adjusted to reflect compliance with such former method or methods of accounting.

9.2 Money and Interest. Unless stipulated otherwise (a) all references in any of the Loan Papers to "dollars," "money," "payments," or other similar financial or monetary terms are references to currency of the United States of America and (b) all references to interest are to simple and not compound interest.

9.3 Number and Gender of Words. Whenever in any Loan Paper the singular number is used, the same shall include the plural where appropriate, and vice versa; and words of any gender in any Loan Paper shall include each other gender where appropriate. The words "herein," "hereof," and "hereunder," and other words of similar import refer to the relevant Loan Paper as a whole and not to any particular part or subdivision thereof.

9.4 Headings. The headings, captions, and arrangements used in any of the Loan Papers are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of the Loan Papers, nor affect the meaning thereof.

9.5 Exhibits. If any Exhibit, which is to be executed and delivered, contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained and as contemplated herein prior to, at the time of, or after the execution and delivery thereof.

9.6 Communications. Unless specifically otherwise provided, whenever any Loan Paper requires or permits any consent, approval, notice, request, or demand from one party to another, such communication must be in writing (which may be by telecopy) to be effective and shall be deemed to have been given on the day actually delivered or, if mailed, on the Business Day it is received by the party to be notified at the address indicated on Schedule 1 (unless changed by notice pursuant hereto).

9.7 Form and Number of Documents. Each agreement, document, instrument, or other writing to be furnished under any provision of this Agreement must be in form and substance and in such number of counterparts as may be reasonably required by the Administrative Agent and its counsel.

9.8 Exceptions to Covenants. The Borrower shall not take any action or fail to take any action which is permitted as an exception to any of the covenants contained in any of the Loan Papers if such action or omission would result in the breach of any other covenant contained in any of the Loan Papers.

9.9 Survival. All covenants, agreements, undertakings, representations, and warranties made in any of the Loan Papers (a) shall survive all closings under the Loan Papers, (b) except as otherwise indicated, shall not be affected by any investigation made by any party, and (c) unless otherwise provided herein shall terminate upon the later of the termination of this Agreement and the payment in full of the Obligation.

9.10 Governing Law. The Laws (other than conflict-of-laws provisions thereof) of the State of New York and of the United States of America shall govern the Rights and duties of the parties hereto and the validity, construction, enforcement, and interpretation of the Loan Papers.

9.11 VENUE; SERVICE OF PROCESS; JURY TRIAL. EACH PARTY HERETO, IN EACH CASE FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY (a) IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE OF TEXAS AND AGREES AND CONSENTS THAT SERVICE OF PROCESS MAY BE MADE UPON IT IN ANY LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THE LOAN PAPERS AND THE OBLIGATION BY SERVICE OF PROCESS AS PROVIDED BY TEXAS LAW, (b) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THE LOAN PAPERS AND THE OBLIGATION BROUGHT IN DISTRICT COURTS OF DALLAS COUNTY, TEXAS, OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, (c) IRREVOCABLY WAIVES ANY CLAIMS THAT ANY LITIGATION BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, (d) AGREES TO DESIGNATE AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN DALLAS, TEXAS, IN CONNECTION WITH ANY SUCH LITIGATION AND TO DELIVER TO THE AGENT EVIDENCE THEREOF, IF REQUESTED, (e) IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH LITIGATION BY THE MAILING OF COPIES THEREOF BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, AT ITS ADDRESS SET FORTH HEREIN, (f) IRREVOCABLY AGREES THAT ANY LEGAL PROCEEDING AGAINST ANY PARTY HERETO

ARISING OUT OF OR IN CONNECTION WITH THE LOAN PAPERS ON THE OBLIGATION SHALL BE BROUGHT IN ONE OF THE AFOREMENTIONED COURTS, AND (g) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RIGHT TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THE LOAN PAPERS AND THE OBLIGATION.

9.12 Maximum Interest Rate. Regardless of any provision contained in any of the Loan Papers, no Lender shall ever be entitled to contract for, charge, take, reserve, receive, or apply, as interest on the Obligation, or any part thereof, any amount in excess of the Highest Lawful Rate, and, in the event the Lenders ever contract for, charge, take, reserve, receive, or apply as interest any such excess, it shall be deemed a partial prepayment without penalty of principal and treated hereunder as such and any remaining excess shall be refunded to the Borrower. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the Highest Lawful Rate, the Borrower and the Lenders shall, to the maximum extent permitted under applicable Law, (a) treat all Borrowings as but a single extension of credit (and the Lenders and the Borrower agree that such is the case and that provision herein for multiple Borrowings and multiple Notes is for convenience only), (b) characterize any nonprincipal payment as an expense, fee, or premium rather than as interest, (c) exclude voluntary prepayments and the effects thereof, and (d) "spread" the total amount of interest throughout the entire contemplated term of the Obligation; provided that, if the Obligation is paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the Highest Lawful Rate, the Lenders shall refund such excess, and, in such event, the Lenders shall not be subject to any penalties provided by any Laws for contracting for, charging, taking, reserving, or receiving interest in excess of the Highest Lawful Rate.

9.13 Invalid Provisions. If any provision in any Loan Paper is held to be illegal, invalid, or unenforceable, such provision shall be fully severable; the appropriate Loan Paper shall be construed and enforced as if such provision had never comprised a part thereof; and the remaining provisions thereof shall remain in full force and effect and shall not be affected by such provision or by its severance therefrom. Furthermore, in lieu of such provision there shall be added automatically as a part of such Loan Paper a provision as similar thereto as may be possible and be legal, valid, and enforceable.

9.14 Entire Agreement. THIS AGREEMENT (AS AMENDED IN WRITING FROM TIME TO TIME) AND THE OTHER WRITTEN LOAN PAPERS EXECUTED BY THE BORROWER, THE AGENTS, AND THE LENDERS (OR BY THE BORROWER FOR THE BENEFIT OF THE AGENTS OR ANY LENDER) REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

9.15 Amendments, Etc. No amendment or waiver of any provision of any Loan Paper nor consent to any departure therefrom by the Borrower shall be effective unless the same shall be in writing and signed by the Majority Lenders, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver, or consent shall, unless in writing and signed by all Lenders, do any of the following: (a) increase the Commitment, or extend the due date for payment of any of the Obligation (except as provided in Section 2.3), (b) reduce the principal amount of Loans due hereunder or any interest rate or the amount of fees applicable to the Obligation (except such reductions as are contemplated by this Agreement), (c) amend or waive compliance with this Section 9.15 or (d) amend the definition of Majority Lenders; provided that no amendment, waiver, or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this or any other Loan Paper.

9.16 Waivers. No course of dealing nor any failure or delay by the Administrative Agent, any Lender, or any of their respective officers, directors, employees, agents, representatives, or attorneys with respect to exercising any Right of the Lenders hereunder shall operate as a waiver thereof. A waiver must be in writing and signed by the Lenders (or the Majority Lenders to the extent permitted hereunder) to be effective, and such waiver will be effective only in the specific instance and for the specific purpose for which it is given.

9.17 Taxes. Any Taxes (excluding income, gross receipts and franchise taxes) payable or ruled payable by any Tribunal in respect of this Agreement or any other Loan Paper shall be paid by the Borrower, together with interest and penalties, if any.

9.18 Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, the Lenders shall not be obligated to extend credit to the Borrower in violation of any Law.

9.19 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one Agreement; but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. It is not necessary that each Lender execute the same counterpart so long as identical counterparts are executed by the Borrower and each Lender. This Agreement shall become effective when counterparts hereof shall have been executed and delivered to the Administrative Agent by each Lender, the Agents, and the Borrower, or, in the case only of the Lenders, when the Administrative Agent shall have received telecopied or other evidence satisfactory to it that each Lender has executed and is delivering to the Administrative Agent a counterpart hereof.

9.20 Successors and Assigns; Participations; Assignments.

(a) This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns, except that (i) the Borrower may not, directly or indirectly, assign or transfer, or attempt to assign or transfer, any of its Rights, duties, or obligations under



any Loan Papers to which it is a party without the express written consent of all Lenders, and (ii) except as permitted under Section 2.21 and this Section 9.20, no Lender may transfer, pledge, assign, sell participations in, or otherwise encumber its portion of the Obligation.

(b) Subject to the provisions of this Section 9.20, any Lender may sell to one or more Persons (each a "Participant") participating interests (in each case not less than \$5,000,000) in its portion of the Obligation; provided that the Administrative Agent and the Borrower shall have the right to approve any Participant which is not a financial institution. In the event of any such sale to a Participant, (i) such Lender shall remain a "Lender" under this Agreement and the Participant shall not constitute a "Lender" hereunder, (ii) such Lender's obligations under this Agreement shall remain unchanged, (iii) such Lender shall remain solely responsible for the performance thereof, (iv) such Lender shall remain the holder of its share of the Obligation for all purposes under this Agreement, and (v) the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's Rights and obligations under the Loan Papers. Participants shall have no Rights under the Loan Papers, other than certain voting rights as provided below. Each Lender shall be entitled to obtain (on behalf of its Participants) the benefits of Section 2 with respect to all participations in its Loans outstanding from time to time. No Lender shall sell any participating interest under which the Participant shall have any Rights to approve any amendment, modification, or waiver of any Loan Paper, except to the extent such amendment, modification, or waiver extends the due date for payment of any amount in respect of principal, interest, or fees due under the Loan Papers, or reduces the interest rate or the amount of principal or fees applicable to the Obligation (except such reductions as are contemplated by this Agreement); provided that in those cases where a Participant is entitled to the benefits of Section 2 or a Lender grants Rights to its Participants to approve amendments to or waivers of the Loan Papers respecting the matters previously described in this sentence, such Lender must include a voting mechanism in the relevant participation agreement whereby a majority of such Lender's portion of the Obligation (whether held by such Lender or participated) shall control the vote for all of such Lender's portion of the Obligation. Except in the case of the sale of a participating interest to a Lender, the relevant participation agreement shall not permit the Participant to transfer, pledge, assign, sell participations in, or otherwise encumber its portion of the Obligation.

(c) Subject to the provisions of this Section 9.20, any Lender may sell to one or more Eligible Assignees (each a "Purchaser") a proportionate part (in each case not less than \$5,000,000) of its Rights and obligations under the Loan Papers pursuant to an Assignment and Acceptance (herein so called) between such Purchaser and such Lender in the form of Exhibit E hereto. Upon (i) delivery of an executed copy of the Assignment and Acceptance to the Borrower and the Administrative Agent and (ii) payment of a fee of \$3,500 from such Lender to the Administrative Agent, from and after the assignment's effective date (which shall be after the date of such delivery), such Purchaser shall for all purposes be a Lender hereunder and shall have all the Rights and obligations of a Lender hereunder to the same extent as if it were an original party hereto with commitments as set forth in the Assignment and Acceptance, and the transferor Lender shall be released from its obligations hereunder to a corresponding extent. Upon any transfer pursuant to this Section 9.20(c), Schedule 1 shall automatically be deemed to reflect the name, address, and Commitment of such Purchaser and the Administrative Agent shall deliver to the Borrower and the Lenders an amended Schedule 1 reflecting such changes. A Purchaser shall be subject to all the provisions in this Section 9.20 the same as if it were a Lender as of the date hereof.

(d) If pursuant to Section 9.20(c) any interest in the Obligation is transferred to any Purchaser which is organized under the Laws of any jurisdiction other than the United States of America or any State thereof, the transferor Lender shall cause such Purchaser, concurrently with the effectiveness of such transfer, (i) to represent to the transferor Lender (for the benefit of the transferor Lender, the Administrative Agent, and the Borrower) that under applicable Laws and treaties no Taxes will be required to be withheld by the Administrative Agent, the Borrower, or the transferor Lender with respect to any payments to be made to such Purchaser in respect of the Obligation, (ii) to furnish to each of the transferor Lender, the Administrative Agent, and the Borrower two duly completed copies of either U.S. Internal Revenue Service Form 4224 or U.S. Internal Revenue Service Form 1001 (wherein such Purchaser claims entitlement to complete exemption from U.S. federal withholding tax on all interest payments hereunder), and (iii) to agree (for the benefit of the transferor Lender, the Administrative Agent, and the Borrower) to provide the transferor Lender, the Administrative Agent, and the Borrower a new Form 4224 or Form 1001 upon the obsolescence of any previously delivered form in accordance with applicable U.S. Laws and amendments thereto duly executed and completed by such Purchaser, and to comply from time to time with all applicable U.S. Laws with regard to such withholding tax exemption.

(e) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans and Notes hereunder to a Federal Reserve Bank in support of borrowings by such Lender from such Federal Reserve Bank.

**9.21 Confidentiality.** All nonpublic information furnished by the Companies to the Agents or the Lenders in connection with the Loan Papers and the transactions contemplated thereby will be treated as confidential, but nothing herein contained shall limit or impair any Agent's or any Lender's right, and each Agent and the Lenders shall be entitled, (a) to disclose the same to any Tribunal or as otherwise required by Law or to any prospective or actual Participant or Purchaser or to the respective affiliates, directors, officers, employees, attorneys, and agents of any prospective or actual Participant or Purchaser (provided that such prospective or actual Participant or Purchaser has agreed in writing to comply with this Section 9.21 and provided further that the Borrower has given its prior written consent to such distribution), (b) to use such information to the extent pertinent to an evaluation of the Obligation, (c) to enforce compliance with the terms and conditions of the Loan Papers, and (d) to take any action which such Agent or any Lender deems necessary to protect its interests if an Event of Default has occurred and is continuing.

**9.22 Conflicts and Ambiguities.** Any conflict or ambiguity between the terms and provisions herein and terms and provisions in any other Loan Paper shall be controlled by the terms and provisions herein.

**9.23 General Indemnification.** THE BORROWER SHALL INDEMNIFY, PROTECT, AND HOLD THE AGENTS AND THE LENDERS AND THEIR RESPECTIVE PARENTS, SUBSIDIARIES, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, AND ATTORNEYS (COLLECTIVELY, THE

"INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, CLAIMS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND LEGAL EXPENSES WHETHER OR NOT SUIT IS BROUGHT AND SETTLEMENT COSTS), AND DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST THE INDEMNIFIED PARTIES, IN ANY WAY RELATING TO OR ARISING OUT OF THE LOAN PAPERS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN (COLLECTIVELY, THE "INDEMNIFIED LIABILITIES"), TO THE EXTENT THAT ANY OF THE INDEMNIFIED LIABILITIES RESULTS, DIRECTLY OR INDIRECTLY, FROM ANY CLAIM MADE OR ACTION, SUIT, OR PROCEEDING COMMENCED BY OR ON BEHALF OF ANY PERSON OTHER THAN THE INDEMNIFIED PARTIES; PROVIDED, HOWEVER, THAT ALTHOUGH EACH INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO BE INDEMNIFIED FROM ITS OWN ORDINARY NEGLIGENCE, NO INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO BE INDEMNIFIED HEREUNDER FOR ITS OWN FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT. THE PROVISIONS OF AND UNDERTAKINGS AND INDEMNIFICATION SET FORTH IN THIS PARAGRAPH SHALL SURVIVE THE SATISFACTION AND PAYMENT OF THE OBLIGATION AND TERMINATION OF THIS AGREEMENT FOR THE PERIOD OF TIME SET FORTH IN ANY APPLICABLE STATUTE OF LIMITATIONS.

9.24 Investment Representation. The Notes are being acquired by the Lenders for their own respective account for investment and not with the view to, or for sale in connection with, any distribution thereof. The Lenders understand that the Notes will not be registered under the Securities Act of 1933 or any securities act of any state pursuant to an exemption from the registration provisions thereof. Each Lender shall indemnify the Borrower against and hold it harmless from any claim, and any cost or expense therefrom, that the Borrower shall have committed a violation of applicable Law by virtue of the exercise by such Lender of its right to sell participations or make assignments hereunder.

[Remainder of page left intentionally blank. Signature pages follow.]

EXECUTED as of the day and year first mentioned.

**CENTURYTEL, INC.**

By:

Name:  
Title:

**BANK OF AMERICA, N.A.  
as the Administrative Agent and a Lender**

By:

Name:  
Title:

**CITIBANK, N.A.,  
as the Syndication Agent and a Lender**

By:

Name:  
Title:

**BANC OF AMERICA SECURITIES LLC,  
as Joint Lead Arranger and Joint Book Manager**

By:

Name:  
Title:

**SALOMON SMITH BARNEY INC.,  
as Joint Lead Arranger and Joint Book Manager**

By:

Name:  
Title:

**FOR IMMEDIATE RELEASE: FOR MORE INFORMATION CONTACT:**

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patricia.cameron@centurytel.com  
Investors: Jeffrey S. Glover (318) 388-9648  
jeff.glover@centurytel.com

CenturyTel adds nearly 360,000 telephone access lines in two transactions

Monroe, La., July 31, 2000 - CenturyTel, Inc.(NYSE Symbol: CTL) acquired nearly 360,000 telephone access lines in two transactions finalized today.

The Louisiana-based communications company purchased about 231,000 access lines in Arkansas from Verizon Communications (formerly GTE) for approximately \$824 million in cash. With this purchase, CenturyTel now serves approximately 275,000 local exchange customers in Arkansas, making it the state's second largest telephone company. The company also provides Internet access, wireless, long distance and security monitoring services to approximately 87,000 Arkansas customers.

In a separate transaction, Spectra Communications Group, LLC, acquired about 127,000 access lines in Missouri for approximately \$290 million in cash. Spectra is a joint venture between CenturyTel; Spectronics Corporation, a Georgia-based, African-American-owned telecommunications contractor; Local Exchange Carriers, LLC, a private company based in Kansas City, Mo.; and other African-American co-investors.

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"CenturyTel is pleased to announce the completion of these two strategic acquisitions," Glen. F. Post, III, CenturyTel's president and chief executive officer, said. "CenturyTel now operates more than 1.65 million telephone access lines in 21 states. We expect these properties to make significant contributions to CenturyTel's future growth."

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Customers in the acquired markets will see no changes in area codes, telephone numbers or local calling numbers. In both transactions, employees in the former GTE serving areas retained their positions with CenturyTel and Spectra.

CenturyTel will finance these transactions through newly established credit facilities with Bank of America, N.A. and Citibank, N.A. Depending upon market conditions, the company expects to replace this facility with either a commercial paper program, the issuance of long-term debt, equity or equity-linked securities, monetization of non-core assets or some combination thereof.

CenturyTel, Inc. provides integrated communications services including local exchange, wireless, long distance, Internet access and security monitoring services to more than 2.8 million customers in 21 states. The company, headquartered in Monroe, Louisiana, is publicly traded on the New York Stock Exchange under the symbol CTL. CenturyTel is the 7th largest local exchange telephone company, based on access lines, and the 9th largest cellular company, based on population equivalents owned, in the United States.

Visit CenturyTel's corporate Web site at ([www.centurytel.com](http://www.centurytel.com))

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