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August 3, 2005

**HAND DELIVERY**

Honorable Ron Jones, Chairman  
c/o Sharla Dillon, Docket & Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

05-00217

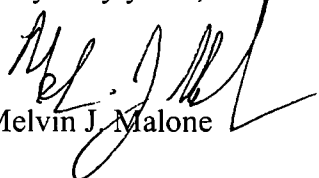
***RE: In Re: Petition of Knology Inc. and Knology of Tennessee, Inc.  
For Financing Approval***

Dear Chairman Jones:

Enclosed please find an original and thirteen (13) copies of The Petition of Knology Inc. and Knology of Tennessee, Inc. For Financing Approval.

Also enclosed are two (2) additional copies to be "File Stamped" for our records. If you have any questions or require additional information, please let me know.

Very truly yours,

  
Melvin J. Malone

MJM cgb

Enclosures

cc Felix Boccucci

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

IN RE )  
 )  
PETITION OF KNOLOGY INC ) Docket Number \_\_\_\_\_  
AND KNOLOGY OF TENNESSEE, INC )  
FOR FINANCING APPROVAL )  
 )  
 )

**PETITION OF KNOLOGY INC. AND KNOLOGY OF TENNESSEE, INC.  
FOR FINANCING APPROVAL**

Knology Inc and Knology of Tennessee, Inc , (“Knology-Tennessee”) (collectively the “Petitioners”), through their undersigned counsel, hereby submit this Petition For Financing Approval (the “Petition”) pursuant to Tenn Code Ann § 65-4-109, as applied by the Tennessee Regulatory Authority (“TRA” or “Authority”) The Petitioners respectfully seek the requisite approval to consummate the financing transactions described hereunder and for authority to do all things related thereto

Given the importance of timeliness with respect to financial transactions, the Petitioners request that the Authority review and approve the Petition on an expedited basis and issue an order memorializing said approval on or before September 12, 2005 <sup>1</sup>

In support of the Petition, the Petitioners respectfully show that

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<sup>1</sup> See, e g , Order Approving Financing Transactions, *In Re Petition of Kentucky Utilities For An Order Authorizing the Issuance of Securities And The Assumption of Obligations*, TRA Docket No 05-00144 (June 20, 2005) (expedited 40-day review and approval requested and received) See also, Order Approving Financing Transactions, *In Re Petition of Appalachian Power Company For Financing Up To \$950,000,000 Through December 31, 2005*, TRA Docket No 04-00371 (Jan 10, 2005) (At the Petitioner’s request, the Authority approved the petition and issued the order memorializing the same on the same day)

## I.

### THE PETITIONERS

Knology-Tennessee, a Tennessee competing telecommunications services provider, is a corporation originally organized under the laws of the State of Delaware and was qualified to do business in the State of Tennessee on July 17, 1998<sup>2</sup> Through its subsidiaries, Knology, Inc currently provides competitive broadband services to consumers and businesses in the City of Knoxville and Knox County These services include analog and digital video services, traditional local and long distance telephone services, voice over internet services to enterprise customers and high speed internet services These services are provided using a state of the art fiber to the curb broadband network Knology, Inc has invested in excess of \$67 million to construct this network, and its subsidiaries currently employ over 75 full time employees in the Knoxville area

Knology-Tennessee holds the Certificate of Convenience and Necessity under which telephone services are provided in Tennessee utilizing the broadband network discussed above Knology-Tennessee's corporate office is 1241 O G Skinner Drive, West Point, Georgia 31833 Knology-Tennessee, along with other subsidiaries of Knology Inc , is wholly-owned and controlled by Knology, Inc , a West Point, Georgia-based holding company (the "Parent")

The Parent's consolidated revenues exceeded \$210 million for the fiscal year ended December 31, 2004 In addition to its incumbent local exchange carrier ("ILEC")

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<sup>2</sup> See, e g , Initial Order Granting Amendment to Certificate of Public Convenience and Necessity, *In Re Application of Knology of Tennessee, Inc To Amend Its Certificate Of Public Convenience And Necessity To Provide Telecommunications Services In The State Of Tennessee*, TRA Docket No 04-00092 (June 10, 2004) Knology-Tennessee was first certificated in Tennessee on May 22, 2000 See Order Granting Certificate of Public Convenience and Necessity, *In Re Application of Knology of Tennessee, Inc For A Certificate Of Public Convenience And Necessity As A Competing Telecommunications Services Provider*, TRA Docket No 00-00058 (May 22, 2000)

businesses in Georgia and Alabama, the Parent, through its subsidiaries, has competing local exchange carrier ("CLEC") operations in Columbus, Augusta and Newnan, Georgia, Huntsville and Montgomery, Alabama, Knoxville, Tennessee, Charleston, South Carolina, Panama City and Pinellas County, Florida. Its CLEC businesses operate under the "Knology" name and provide a bundled set of services, including advanced cable services, local and long distance telephone services and high-speed Internet access services. The Knology subsidiaries operate through their facilities-based networks in each market.<sup>3</sup>

## II.

### **DESIGNATED CONTACTS**

The names, addresses and telephone and fax numbers of designated contacts in connection with this matter are

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Attorneys for the Petitioners

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<sup>3</sup> Exhibits 3 and 4 to the Application of Knology of Tennessee, Inc. for a Certificate of Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange Service, Intrastate Interexchange Service, and Access Service Within Tennessee, TRA Docket No. 00-00058 (Jan. 28, 2000), contains various information related to Parent's other subsidiaries existing at that time.



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### III.

#### **STATEMENT OF JURISDICTION**

Pursuant to Tenn Code Ann § 65-4-109, the Authority has asserted jurisdiction over all financing transactions entered into by Tennessee public utilities under its jurisdiction <sup>4</sup>

### IV.

#### **DESCRIPTION OF THE PROPOSED TRANSACTION**

The Petitioners seek an order of approval from the Authority for Knology-Tennessee to participate, along with the other subsidiaries of Parent, in a loan transaction in which the Parent has entered into a First Lien Credit Agreement and a Second Lien Credit Agreement (collectively, the "Credit Agreements") Attached hereto as **Exhibit**

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<sup>4</sup> See, e.g., Order Approving Transfers of Authority and Financing Transactions, *In Re Joint Application of ITC^DeltaCom, Inc., Southern Digital Network, Inc., d/b/a FDN Communications, Inc. and Network Telephone Corporation For Approval Of The Acquisition of FDN And NT By ITC^DeltaCom, Inc. And For Consent To The Indirect Transfer Of Control of (1) Interstate Fibernet, Inc., (2) Business Telecom, Inc. d/b/a BTI, And (3) ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom And d/b/a Grapevine*, TRA Docket No 04-00287, p 2 (June 21, 2005) ("[P]ublic utilities must obtain Authority approval for any indebtedness payable more than one (1) year from its issuance") Hence, this Petition For Financing Approval is not submitted voluntarily with the understanding that no approval is required Notwithstanding Tennessee Attorney General's Opinion No 99-119, Tenn Op Atty Gen No 99-119 (May, 14, 1999), and a 1939 Tennessee Attorney General's Opinion, Tenn Op Atty Gen (Sept 2, 1939), based upon recent Authority orders the Petitioners respectfully submit the Petition for approval because the Authority appears to have asserted authority to review and approve all financing transactions entered into by Tennessee public utilities under its jurisdiction

“A-2” are copies of the First Lien Credit Agreement and the Second Lien Credit Agreement. The Credit Agreements include three (3) credit facilities. The Credit Facilities entered into by the Parent consists of (1) a 5-year First Lien Revolving Credit Facility, (2) a 5-year First Lien Term Loan, and (3) a 6-year Second Lien Term Loan. The total amount of the transaction is \$308,958,333. The First Lien Revolving Credit Facility is in the amount of \$25 million. The aggregate amount of the First Lien Term Loan and the Second Lien Term Loan is \$283,958,333.

The borrower under the Credit Facilities is the Parent. The Credit Facilities are guaranteed by the Parent’s direct and indirect subsidiaries. In total, there are twenty-two (22) subsidiaries of the Parent that are guarantors of the Credit Facilities. The lenders under the Credit Facilities consist of a syndicate of banks, financial institutions and other institutional lenders (collectively the “Lenders”). The Administrative Agent for the Lenders is Credit Suisse First Boston (“CSFB”).

(a) The First Lien Revolving Credit Facility The First Lien Revolving Credit Facility will mature on the fifth anniversary of the funding date. The interest rate under this facility is set forth on “Exhibit A-1” hereto. Amounts repaid under the First Lien Revolving Credit Facility may be re-borrowed.

(b) The First Lien Term Loan The First Lien Term Loan will mature on the fifth anniversary of the funding date and will amortize in equal quarterly installments in an aggregate annual amount equal to 1% of the original principal amount of the facility, with the balance payable on the maturity date of the facility. The interest rate on the First Lien Term Loan is set forth on “Exhibit A-1” hereto.

(c) The Second Lien Term Loan The Second Lien Term Loan will mature on the sixth anniversary of the funding date and the outstanding principal amount, including any paid-in-kind amount, will be payable on the maturity date of the facility. The Second Lien Term Loan will be repaid at maturity in one lump sum and there is no amortization. The interest rate on the Second Lien Term Loan is set forth on Exhibit "A-1" hereto.

(d) Guarantors The obligations of Parent under the Credit Facilities are unconditionally guaranteed by each existing and subsequently acquired and organized domestic and, in certain cases, foreign subsidiaries of Parent. A copy of the corporate organizational chart of Parent and its subsidiaries is attached hereto as Exhibit "D." The First Lien Guaranty is attached hereto as Exhibit "A-3." The First Lien Guaranty will not be executed by Knology-Tennessee unless and until the Authority either approves this Petition or determines that approval is not required.

(e) Collateral The First Lien Revolving Credit Facility and the First Lien Term Loan are secured by substantially all of the assets of Parent and each Guarantor, including, but not limited to, the following: (a) a perfected first priority pledge of all the capital stock of each subsidiary of Parent, and (b) a perfected first priority security interest in, and mortgages on, substantially all tangible and intangible assets of the Parent and each Guarantor, including, but not limited to, accounts receivable, inventory, equipment, general intangibles, investment property, intellectual property, real property, rights-of-way, cash, deposit and securities accounts, claims, letter of credit rights, intercompany notes and proceeds of the foregoing (the "Liens"). The Second Lien Term Loan is secured on a second priority basis by all of the collateral securing the First Lien facilities. The Liens are evidenced by a Pledge and Security Agreement in favor of the

Lenders, which is attached hereto as Exhibit "A-4" The Pledge and Security Agreement will not be executed by Knology-Tennessee unless and until the Authority either approves this Petition or determines that approval is not required

(f) Terms of the Credit Agreements The Credit Agreements contain customary provisions regarding commitment fees, mandatory prepayments and voluntary prepayments, representations and warranties, affirmative, negative and financial covenants, events of defaults, and indemnifications

(g) Use of Proceeds The proceeds from the Credit Facilities are expected to be used as follows

- Refinance the existing \$15 million Wachovia Credit Facility, which is evidenced by the Amended and Restated Credit Agreement, dated October 22, 2002, as amended, among certain Knology affiliates and a syndicate of financial institutions with Wachovia, as administrative agent,
- Refinance the existing \$32 million Co-Bank Facility, which is evidenced by the Master Loan Agreement, dated as of June 6, 2002, as amended and supplemented, among Interstate Telephone and Valley Telephone Company LLC, as borrowers, and CoBank ACB, as lender,
- Refinance Parent's existing \$237 million 12 0% Senior Notes due 2009,
- Pay for the transaction costs for the Credit Facilities, and

- Provide liquidity in the form of the \$25 million revolving credit facility

The Credit Agreements were executed on or about June 29, 2005. Pursuant to the terms of the Credit Agreements, Knology-Tennessee will be a guarantor of the Credit Facilities. But, its assets will not be subject to liens or security interests under the Credit Facilities unless and until the Authority either approves this Petition or determines that approval is not required.<sup>5 6</sup>

## V.

### **ADDITIONAL BACKGROUND INFORMATION AND ACKNOWLEDGEMENTS**

To aid the Authority in its review, various background information and acknowledgements are set forth below

A Financial Statements Attached hereto as Exhibit "B" are the consolidated audited financial statements of the Parent and its subsidiaries (including Knology-Tennessee) as of and for the fiscal year ended December 31, 2004

B Statement of Desired Issues The Parent has entered into the Credit Agreements as described in Section IV above. Obligations under the Credit Agreements will bear interest as described in Section IV above. As set forth in Section IV herein, the

<sup>5</sup> See, e.g., *In Re Petition of Time Warner Telecom, Inc., Time Warner Telecom Holdings, Inc., And Time Warner Telecom of the Mid-South, LLC For Approval To Issue Debt*, TRA Docket No. 04-00051 (April 3, 2004) (Response to Data Request No. 3) (TRA approved financing transactions even though transactions had been closed at the parent or holding company level where local operating companies' participation as guarantors were not effective until after regulatory approval)

<sup>6</sup> As concerning the financing transactions that are the subject matter of this Petition, other than Tennessee, only Georgia required approval. The Georgia Public Service Commission Order granting approval is attached hereto as **Exhibit E**.

Parent's obligations under the Credit Agreements are guaranteed by each state level operating subsidiary via a guaranty and pledge of their stock, interest and assets

C     Use of Proceeds from Desired Issues     Net proceeds derived from the proposed transactions will be used for the purposes set forth in Section IV hereof

D     Property to be Acquired, How Service is to be improved     At this time, the Petitioners do not have any plans to undertake any material acquisition of property. The proceeds from the proposed transactions, however, will benefit Parent and its subsidiaries by allowing for, among other things, financial flexibility, overall enhancements to business operations and improvements in service capabilities

E     Copies of All Contracts to be Filed     Copies of the transaction documents relating to the new Credit Facilities are attached hereto at Exhibits "A-2," "A-3" and "A-4."

F     Consolidation or Merger     The financing transactions are not the result of, or in any way associated with, a merger or consolidation

G     Reference Where Chartered by General Law     Attached hereto as collective Exhibit "C" are certified copies of the Certificate or Articles of Incorporation of Knology Inc and Knology-Tennessee. Also, the Certificate or Articles of Incorporation and the Certificate of Authority to Transact Business in Tennessee of Knology-Tennessee are attached respectively as Exhibits 1 and 2 to the Application of Knology of Tennessee, Inc for a Certificate of Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange Service, Intrastate Interexchange Service, and Access Service Within Tennessee, TRA Docket No 00-00058 (Jan 28, 2000)

H     Law Must be Complied With   Petitioners shall comply with all applicable Tennessee laws and the Rules and Regulations of the Authority

I     All Proceeds Must be Used for Purposes Approved   The proceeds derived from the proposed transaction will be used for the lawful purposes described herein

J     No Federal Approvals Required   No federal agency approval is required with respect to the financing transactions set forth herein   As required, documentation reflecting the financing transactions set forth herein has been filed with the Securities and Exchange Commission

K     No Voluntary Requests for Approval in Other States   The Petitioners have not sought any voluntary (non-required) regulatory approval in any state

## VI.

### **APPROVAL IS IN THE PUBLIC INTEREST**

The Authority's approval of this Petition serves the public interest in many respects   From the proceeds of the Credit Facilities, Parent will be in a position to refinance and pay in full all of its outstanding long-term debt, including its senior secured credit facilities with Wachovia and CoBank and also its \$237 million 12% Senior Notes   The existing secured debt and Senior Notes will be replaced by a single set of credit agreements, with a single set of covenants and with a single administrative agent   In addition, this comprehensive refinancing will permit the subsidiaries, including Knology-Tennessee, to extend current debt maturities, lower overall interest costs and accelerate the achievement of cash flow goals

In connection with the Credit Facilities, the Parent successfully completed the private placement of \$9.2 million in additional equity in the form of a new class of preferred stock. Combined with the proceeds of this equity financing, the Parent's existing unrestricted cash, and the proceeds from the Parent's planned sale of its Cerritos, California operations, the proposed Credit Facilities should provide the Parent and its subsidiaries with substantial liquidity to further implement their business plans and minimize the blended cost of financing. In addition, the proceeds of the Credit Facilities, together with the other equity and cash sources cited above, will provide Parent and the subsidiaries with a greater cash "cushion" to further enhance their balance sheets and operations.

The Petitioners believe that the aggregate benefits that will flow from the Credit Facilities will enable the Parent and its subsidiaries to continue to improve their business operations and service capabilities for the benefit of their customers. The Petitioners are fulfilling this Authority's goal of providing meaningful competition to the consumers of the State of Tennessee. The requested financing authority will strengthen the subsidiaries' ability to compete in local exchange service markets by providing access to greater financial resources. These resources will allow them to respond to competitive pressures in the evolving telecommunications market and to continue to provide consumers with full facilities-based competitive choice.

In summary, the Petitioners respectfully maintain and assert that Authority approval of this Petition will foster the Authority's long-stated goal of encouraging competition in the telecommunications market and is, therefore, in the public interest.



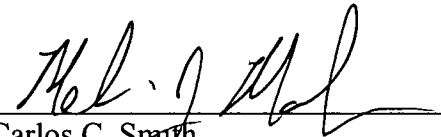
**WHEREFORE**, the Petitioners respectfully request the Authority to issue an order

(i) approving this Petition and Knology-Tennessee's participation as a guarantor under the Credit Facilities in favor of the Lenders and their successors and assigns (including without limitation the execution, delivery and performance of the Guaranty and the Pledge and Security Agreement) and the creation and perfection of the liens on the collateral owned by Knology-Tennessee in favor of the Lenders and their successors and assigns, in the manner and for the purpose contemplated in the Credit Agreements, and

(ii) approving the consummation of all transactions undertaken, and the execution of all related documents, in connection with the foregoing

Respectfully submitted August 3, 2005

**Miller & Martin PLLC**

  
\_\_\_\_\_  
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Attorneys for Knology, Inc and Knology of  
Tennessee, Inc

## EXHIBIT “A”

### TRANSACTION DOCUMENTS

The following documents are attached as

Exhibit “A-1” – Interest Rate Schedule

Exhibit “A-2” – First Lien Credit Agreement and Second Lien Credit Agreement

Exhibit “A-3” – First Lien Guaranty

Exhibit “A-4” – First Lien Pledge and Security Agreement

Exhibit "A-1"  
Interest Rate Schedule

First Lien Credit Agreement

LIBOR + 5.5% - Cash paid quarterly

Second Lien Credit Agreement

LIBOR + 10.0%

8.5% - Cash paid quarterly

1.5% - Payment in kind

Interest Rate Cap

Knology purchased a 3 year, 5% cap on 90 day LIBOR for \$280 million of exposure

Exhibit "A-2"

**\$210,000,000**

**FIRST LIEN CREDIT AGREEMENT**

**Dated as of June 29, 2005**

among

**KNOLOGY, INC.**  
as Borrower

and

**THE LENDERS AND ISSUERS PARTY HERETO**

and

**CREDIT SUISSE, CAYMAN ISLANDS BRANCH**  
as Administrative Agent and Collateral Agent

and

**CREDIT SUISSE, CAYMAN ISLANDS BRANCH**  
as Sole Bookrunner and Sole Lead Arranger

WEIL, GOTSHAL & MANGES LLP  
767 FIFTH AVENUE  
NEW YORK, NEW YORK 10153-0119

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**CREDIT AGREEMENT**, dated as of June 29, 2005, among KNOLOGY, INC , a Delaware corporation (the "*Borrower*"), the Lenders (as defined below), the Issuers (as defined below) and CREDIT SUISSE, acting through one or more of its branches, as agent for the Lenders and the Issuers (in such capacity, the "*Administrative Agent*") and as agent for the Secured Parties (as defined below) under the Collateral Documents (as defined below) (in such capacity, the "*Collateral Agent*")

## **WITNESSETH**

WHEREAS, the Borrower has requested that the Lenders and Issuers make available for the purposes specified in this Agreement, a term loan, revolving credit and letter of credit facility, and

WHEREAS, the Lenders and Issuers are willing to make available to the Borrower such term loan, revolving credit and letter of credit facility upon the terms and subject to the conditions set forth herein,

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows.

## **ARTICLE I**

### **DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS**

#### ***Section 1.1 Defined Terms***

As used in this Agreement, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined)

"*Account*" has the meaning given to such term in the UCC.

"*Account Debtor*" has the meaning given to such term in the UCC.

"*Administrative Agent*" has the meaning specified in the preamble to this Agreement

"*Affected Lender*" has the meaning specified in *Section 2 17 (Substitution of Lenders)*

"*Affiliate*" means, with respect to any Person, any other Person directly or indirectly controlling or that is controlled by or is under common control with such Person, each officer, director, general partner or joint-venturer of such Person, and each Person that is the beneficial owner of 5% or more of any class of Voting Stock of such Person. For the purposes of this definition, "*control*" means the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise

"*Agent Affiliate*" has the meaning specified in *Section 10 3 (Posting of Approved Electronic Communications)*

"*Agents*" means each of the Administrative Agent and the Collateral Agent.

"*Agreement*" means this Credit Agreement.

"*Annualized*" means for purposes of calculating EBITDA in connection with determining the Leverage Ratio or the First Lien Leverage Ratio, (a) with respect to any amount of EBITDA attributable to one Fiscal Quarter, such amount *multiplied* by four, (b) with respect to any amount of EBITDA attributable to two Fiscal Quarters, such amount *multiplied* by two, and (c) with respect to any amount of EBITDA attributable to three Fiscal Quarters, such amount divided by 0.75.

"*Applicable Lending Office*" means, with respect to each Lender, its Domestic Lending Office in the case of a Base Rate Loan, and its Eurodollar Lending Office in the case of a Eurodollar Rate Loan

"*Applicable Margin*" means with respect to Term Loans, Revolving Loans or Swing Loans maintained (a) as Base Rate Loans, a rate equal to 4.5% *per annum* and (b) as Eurodollar Rate Loans, a rate equal to 5 5% *per annum*. Notwithstanding the foregoing, the Applicable Margin shall be successively increased on each date set forth below by the corresponding amount set forth below under "Margin Increase" if, on such date, the Borrower shall have failed to cause each Subsidiary listed on *Schedule 8.10(b) (Restricted Subsidiaries)* to (i) obtain the PUC Authorizations required by *Section 8.10(b) (Limitations on Restrictions on Subsidiary Distributions, No New Negative Pledge, Restricted Subsidiaries)* and (ii) satisfy Subsidiary Guaranty Requirements.

DATE	MARGIN INCREASE
September 1, 2005	25 basis points
November 1, 2005	25 basis points
April 1, 2006	25 basis points

On the date on which all of the foregoing requirements have been satisfied, the Applicable Margin shall, from and after such date, revert to the rates set forth in *clauses (a) and (b)* above.

"*Applicable Prepayment Premium*" means, with respect to any optional prepayment of the Term Loans pursuant to *Section 2.8(b) (Optional Prepayments)* or any purchase of Term Loans of a Non-Consenting Lender pursuant to *Section 11.1(c) (Amendments, Waivers, Etc)*, an amount determined by multiplying (as applicable) the principal amount of the Term Loans being prepaid or purchased by the applicable percentage set forth below under the caption "*Prepayment Percentage*" opposite the then applicable period set forth below:

PERIOD	PREPAYMENT PERCENTAGE
On or before June 29, 2006	3 0%
After June 29, 2006 but on or before June 29, 2007	2 0%
After June 29, 2007 but on or before June 29, 2008	1 0%
After June 29, 2008	0 0%

*“Applicable Unused Commitment Fee Rate”* means:

(a) during the period commencing on the Closing Date and ending on the last day of the first full Fiscal Quarter ending after the Closing Date 0 75% *per annum*; and

(b) thereafter, a *per annum* rate equal to the unused commitment fee rate set forth below opposite the applicable daily amount of Revolving Credit Outstandings (exclusive of Swing Loans), expressed as a percentage of the aggregate Revolving Credit Commitments, on each day during the preceding Fiscal Quarter set forth below:

AVERAGE QUARTERLY REVOLVING CREDIT OUTSTANDINGS	APPLICABLE UNUSED COMMITMENT FEE RATE
Below or equal to 33%	0 75%
Above 33% but below 66%	0 5%
Equal to or above 66%	0 375%

*“Approved Deposit Account”* means a Deposit Account that is the subject of an effective Deposit Account Control Agreement and that is maintained by any Loan Party with a Deposit Account Bank. *“Approved Deposit Account”* includes all monies on deposit in a Deposit Account and all certificates and instruments, if any, representing or evidencing such Deposit Account.

*“Approved Electronic Communications”* means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, including (a) any supplement to the Guaranty, any joinder to the Pledge and Security Agreement and any other written Contractual Obligation delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and (b) any Financial Statement, financial and other report, notice, request, certificate and other information material; *provided, however*, that, *“Approved Electronic Communication”* shall exclude (i) any Notice of Borrowing, Letter of Credit Request, Swing Loan Request, Notice of Conversion or Continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice pursuant to *Section 2 8 (Optional Prepayments)* and *Section 2 9 (Mandatory Prepayments)* and any other notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any

Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in *Article III (Conditions To Loans And Letters Of Credit)* or *Section 2 4(a) (Letters of Credit)* or any other condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement.

*"Approved Electronic Platform"* has the meaning specified in *Section 10 3 (Posting of Approved Electronic Communications)*

*"Approved Fund"* means any Fund that is advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or Affiliate of an entity that advises, administers or manages a Lender or another Fund

*"Approved Securities Intermediary"* means a *"securities intermediary"* or *"commodity intermediary"* (as such terms are defined in the UCC) selected or approved by the Administrative Agent.

*"Arranger"* means CSFB.

*"Asset Sale"* has the meaning specified in *Section 8 4 (Sale of Assets)*.

*"Assignment and Acceptance"* means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of *Exhibit A (Form of Assignment and Acceptance)*

*"Available Credit"* means, at any time, (a) the then effective Revolving Credit Commitments *minus* (b) the aggregate Revolving Credit Outstandings at such time

*"Bankruptcy Code"* means title 11, United States Code.

*"Base Rate"* means, for any period, a rate *per annum* (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day *plus* ½ of 1%. For purposes hereof *"Prime Rate"* shall mean the rate of interest determined from time to time by the Administrative Agent as being its reference rate then in effect for determining interest rates on Dollar denominated commercial loans made by it in the U.S. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually available. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, or the Federal Funds Effective Rate, respectively

*"Base Rate Loan"* means any Swing Loan or any other Loan during any period in which it bears interest based on the Base Rate.

*"Borrower"* has the meaning specified in the preamble to this Agreement

*"Borrower's Accountants"* means Deloitte & Touche LLP or other independent nationally-recognized public accountants acceptable to the Administrative Agent.

*"Borrowing"* means a Revolving Credit Borrowing or a Term Loan Borrowing

*"Broadband Account"* means the treasury liquidity account #3404914806 maintained by Knology Broadband, Inc. at Capital City Bank.

*"Broadband Services"* means all broadband communication services, including Broadband Carrier Services, cable television, telephone, other telecommunications and high-speed internet access service, provided by any Person to residential, business or other customers.

*"Broadband Carrier Services"* means, collectively, the provision of certain wholesale telecommunication transport services over the broadband hybrid-fiber coax network (*"Broadband Network"*), primarily to Interexchange Carriers (*"IXC"*), Internet Service Providers (*"ISP"*) and large multi-location commercial enterprises desiring high capacity connectivity within a Metropolitan Service Area (*"MSA"*). These services are termed (a) Internal Local Transport (*"ILT"*) by which ISP's are connected from their point-of-presence (*"POP"*) to end-users at wholesale transport revenue rates per customer (as distinguished from the provision of high-speed Internet access at retail revenue rates using the Olobahn brand name), (b) Local Exchange Transport (*"LET"*) by which IXCs are connected to end-users, Local Exchange Carriers (*"LEC"*) or other IXCs via the Broadband Network and/or twisted pair cabling, (c) Private Line Services by which carriers or commercial businesses operating in multiple locations within the MSA are interconnected via point-to-point facilities owned or leased by any Person and (d) Special Access Services by which corporate locations or central offices are directly connected to an IXS point-of-presence.

*"Business Day"* means a day of the year on which banks are not required or authorized to close in New York City and, if the applicable Business Day relates to notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, a day on which dealings in Dollar deposits are also carried on in the London interbank market

*"Cable Act"* means the Cable Television Communications Policy Act of 1984, as amended by the Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as further amended or supplemented from time to time

*"Capital Expenditures"* means, with respect to the Borrower and its Subsidiaries, for any period, the aggregate of amounts that would be reflected as additions to property, plant or equipment on a Consolidated balance sheet of such Person and its Subsidiaries (in accordance with GAAP) but excluding (a) interest capitalized during construction (b) expenditures on such property, plant or equipment funded with Net Cash Proceeds from any Asset Sale, Equity Issuance or Property Loss Event or funded from Excess Cash Flow and (c) expenditures in connection with Permitted MDU Transactions and Permitted CIU Transactions, in each case, to the extent treated as Capital Lease Obligations in accordance with GAAP (except, in the case of expenditures under this *clause (c)*, expenditures funded from available cash of the Borrower or its Subsidiaries)

*"Capital Lease"* means, with respect to any Person, any lease of, or other arrangement conveying the right to use, property by such Person as lessee that would be accounted for as a capital lease on a balance sheet of such Person prepared in conformity with GAAP



*"Capital Lease Obligations"* means, with respect to any Person, the capitalized amount of all Consolidated obligations of such Person or any of its Subsidiaries under Capital Leases

*"Cash Collateral Account"* means any Deposit Account or Securities Account that is established (a) by the Administrative Agent or Collateral Agent from time to time in its sole discretion to receive cash and Cash Equivalents (or purchase cash or Cash Equivalents with funds received) from the Loan Parties or Persons acting on their behalf pursuant to the Loan Documents, (b) with such depositaries and securities intermediaries as the Administrative Agent may determine in its sole discretion, (c) in the name of the Administrative Agent or Collateral Agent (although such account may also have words referring to the Borrower and the account's purpose), (d) under the control of the Administrative Agent or Collateral Agent and (e) as a Securities Account, with respect to which the Administrative Agent or Collateral Agent shall be the Entitlement Holder and the only Person authorized to give Entitlement Orders with respect thereto

*"Cash Equivalents"* means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States of America or issued by any agency thereof and backed by the full faith and credit of the United States of America or any agency, state or territory thereof, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits or overnight bank deposits having maturities of 364 days or less from the date of acquisition issued by any Lender or by any commercial bank or trust company organized under the laws of the United States of America or any state thereof and having combined capital and surplus of not less than \$500,000,000; (c) commercial paper, bonds, notes or debentures of an issuer rated at least "A-2" by S&P or "P-2" by Moody's or carrying an equivalent rating by a nationally recognized rating agency, if all of the three named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within 364 days from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of *clause (b)* of this definition, having a term of not more than 30 days with respect to securities issued or fully guaranteed or insured by the United States of America; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least "A" by S&P, or "A" by Moody's, (f) securities with maturities of 364 days or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of *clause (b)* of this definition, and (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of any of *clauses (a)* through *(f)* of this definition

*"Cash Interest Expense"* means, with respect to the Borrower for any period, the sum of the Interest Expense of the Borrower for such period *less* the Non-Cash Interest Expense of the Borrower for such period and (b) the amount of dividends paid in cash during such period in respect of the New Preferred Stock and any other Stock of the Borrower with terms substantially similar to the New Preferred Stock.

*"CATV Franchise"* means (a) any franchise, license, permit, wire agreement or easement granted by any local Governmental Authority, including any local franchising authority, pursuant to which any Person has the right or license to provide Broadband Services or to operate

any cable distribution system for the purpose of receiving and distributing audio, video, digital, other broadcast signals or information or telecommunications by cable, optical, antenna, microwave or satellite transmission and (b) any law, regulation, ordinance, agreement or other instrument or document expressly setting forth all or any part of the terms of any franchise, license, permit, wire agreement or easement described in *clause (a)* of this definition (excluding any law, regulation, ordinance, agreement, instrument or document which relates to but does not expressly set forth any terms of any such franchise, license, permit, wire agreement or easement).

“*Cerritos Sale*” the sale of substantially all of the assets of Knology Broadband of California, Inc., a Delaware corporation, pursuant to the Asset Purchase Agreement, dated March 24th, 2005, between Knology Broadband of California, Inc. and WaveDivision Holdings LLC, a Delaware limited liability company or any replacement agreement with any Person (other than an Affiliate of the Borrower) containing substantially the same economic terms and otherwise reasonably satisfactory to the Administrative Agent.

“*Change of Control*” means the occurrence of any of the following:

(a) any person or group of persons (within the meaning of the Exchange Act) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Exchange Act) of 50% or more of the issued and outstanding Voting Stock of Borrower;

(b) during any period of twelve consecutive calendar months, individuals who, at the beginning of such period, constituted the board of directors of Borrower (together with any new directors whose election by the board of directors of Borrower or whose nomination for election by the stockholders of Borrower was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office; or

(c) any “*Change of Control*” (or equivalent term) as defined in any Constituent Document relating to the New Preferred Stock of the Borrower or any additional preferred stock of the Borrower.

“*Closing Date*” means the first date on which any Loan is made or any Letter of Credit is Issued.

“*Code*” means the U S Internal Revenue Code of 1986, as currently amended.

“*Collateral*” means all property and interests in property and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted under any Collateral Document

“*Collateral Agent*” has the meaning specified in the preamble to the Agreement

“*Collateral Documents*” means the Pledge and Security Agreement, the Mortgages, the Deposit Account Control Agreements, the Securities Account Control Agreements and any other document executed and delivered by a Loan Party granting a Lien on any of its property to secure payment of the Secured Obligations

*"Commitment"* means, with respect to any Lender, such Lender's Revolving Credit Commitment, if any, and such Lender's Term Loan Commitment, if any, and *"Commitments"* means the aggregate Revolving Credit Commitments and Term Loan Commitments of all Lenders.

*"Commitment Termination Date"* means June 29, 2010.

*"Commodity Account"* has the meaning given to such term in the UCC.

*"Communications License"* means any local telecommunications, long distance telecommunications, or other license, permit, consent, certificate of compliance, franchise, approval, waiver or authorization granted or issued by the FCC or other applicable federal Governmental Authority pertaining to the provision of Broadband Services, including any of the foregoing authorizing or permitting the acquisition, construction or operation of any Interactive Broadband Network

*"Compliance Certificate"* has the meaning specified in *Section 6 l(d) (Financial Statements)*

*"Confidential Information Memorandum"* means the Confidential Information Memorandum, dated as of May 2005, prepared by the Borrower in connection with the syndication of the Facilities.

*"Consolidated"* means, with respect to any Person, the consolidation of accounts of such Person and its Subsidiaries in accordance with GAAP.

*"Consolidated Current Assets"* means, with respect to any Person at any date, the total Consolidated current assets (other than cash and Cash Equivalents) of such Person and its Subsidiaries at such date.

*"Consolidated Current Liabilities"* means, with respect to any Person at any date, all liabilities of such Person and its Subsidiaries at such date that should be classified as current liabilities on a Consolidated balance sheet of such Person and its Subsidiaries, but excluding, in the case of the Borrower the sum of (a) the principal amount of any current portion of long-term Financial Covenant Debt and (b) (without duplication of *clause (a)* above) the then outstanding principal amount of the Loans

*"Consolidated Net Income"* means, for any Person, for any period, the Consolidated net income (or loss) of such Person and its Subsidiaries for such period; *provided, however,* that (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third party (which interest does not cause the net income of such other Person to be Consolidated into the net income of such Person) shall be included only to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is subject to any restriction or limitation on the payment of dividends or the making of other distributions shall be excluded to the extent of such restriction or limitation, (c) extraordinary and non-recurring gains and losses and any one-time increase or decrease to net income that is required to be recorded because of the adoption of new accounting policies, practices or standards required by GAAP shall be excluded and (d) net income from or attributable to discontinued operations of such Person and its Subsidiaries shall be excluded.

*"Constituent Documents"* means, with respect to any Person, (a) the articles of incorporation, certificate of incorporation, constitution or certificate of formation (or the equivalent organizational documents) of such Person, (b) the by-laws, operating agreement (or the equivalent governing documents) of such Person and (c) any document setting forth the manner of election or duties of the directors or managing members of such Person (if any) and the designation, amount or relative rights, limitations and preferences of any class or series of such Person's Stock.

*"Contaminant"* means any material, substance or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including any petroleum or petroleum-derived substance or waste, asbestos and polychlorinated biphenyls.

*"Contractual Obligation"* of any Person means any obligation, agreement, undertaking or similar provision of any Security issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject

*"Control Account"* means a Securities Account or Commodity Account that is the subject of an effective Securities Account Control Agreement and that is maintained by any Loan Party with an Approved Securities Intermediary. *"Control Account"* includes all Financial Assets held in a Securities Account or a Commodity Account and all certificates and instruments, if any, representing or evidencing the Financial Assets contained therein

*"Corporate Chart"* means a corporate organizational chart, list or other similar document in each case in form reasonably acceptable to the Administrative Agent and setting forth, for each Person that is a Loan Party, that is subject to *Section 7.11 (Additional Collateral and Guaranties)* or that is a Subsidiary of any of them, (a) the full legal name of such Person (and any trade name, fictitious name or other name such Person may have had or operated under), (b) the jurisdiction of organization, the organizational number (if any) and the tax identification number (if any) of such Person, (c) the location of such Person's chief executive office (or sole place of business) and (d) the number of shares of each class of such Person's Stock authorized (if applicable), the number outstanding as of the date of delivery and the number and percentage of such outstanding shares for each such class owned (directly or indirectly) by any Loan Party or any Subsidiary of any of them

*"CSFB"* means Credit Suisse, acting through one or more of its branches and any Affiliate thereof

*"Customary Permitted Liens"* means, with respect to any Person, any of the following Liens

(a) Liens with respect to the payment of taxes, assessments or governmental charges in each case that are not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP,

(b) Liens of landlords arising by statute and liens of suppliers, mechanics, carriers, materialmen, warehousemen or workmen and other similar Liens, in each case

(i) imposed by law or arising in the ordinary course of business, (ii) for amounts not yet due or that are being contested in good faith by appropriate proceedings and (iii) with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

(c) deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits or to secure the performance of bids, tenders, sales, contracts (other than for the repayment of borrowed money) and surety, appeal, customs or performance bonds-entered into in the ordinary course of business,

(d) encumbrances arising by reason of zoning restrictions, easements, licenses, reservations, covenants, rights-of-way, utility easements, building restrictions and other similar encumbrances on the use of real property not materially detracting from the value of such real property or not materially interfering with the ordinary conduct of the business conducted and proposed to be conducted at such real property,

(e) encumbrances arising under leases or subleases of real property that do not, in the aggregate, materially detract from the value of such real property or interfere with the ordinary conduct of the business conducted and proposed to be conducted at such real property;

(f) financing statements with respect to a lessor's rights in and to personal property leased to such Person in the ordinary course of such Person's business other than through a Capital Lease;

(g) Liens created in the ordinary course of business on assets subject to rights-of-way, pole attachment, use of conduit, use of trenches or similar agreements securing any Loan Party's obligations under such agreements; *provided, however*, that such Liens apply only to the assets subject to any of the foregoing agreements;

(h) judgment Liens in existence for less than 45 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance maintained with nationally recognized insurance companies and which do not otherwise result in a Default or Event of Default, and

(i) Liens consisting of rights of set-off of a customary nature or bankers' liens on an amount of deposit, whether arising by contract or operation of law, incurred in the ordinary course of business so long as such deposits are not intended as collateral for any obligation.

"*Debt Issuance*" means the incurrence of Indebtedness of the type specified in clause (a) or (b) of the definition of "*Indebtedness*" by the Borrower or any of its Subsidiaries

"*Declining Lender*" has the meaning specified in Section 2.9(e) (*Mandatory Prepayments*).

"*Default*" means any event that, with the passing of time or the giving of notice or both, would become an Event of Default

*"Deposit Account"* has the meaning given to such term in the UCC.

*"Deposit Account Bank"* means a financial institution selected or approved by the Administrative Agent.

*"Deposit Account Control Agreement"* has the meaning specified in the Pledge and Security Agreement.

*"Disclosure Documents"* means, collectively, the Form 10-K, Form 10-Q and Form 8-K filed by the Borrower with the Securities and Exchange Commission, as amended from time to time.

*"Dollar Equivalent"* of any amount means, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in a currency other than Dollars, the equivalent of such amount in Dollars determined by using the rate of exchange quoted by CSFB in New York, New York at 10 00 a.m. (New York time) on the date of determination (or, if such date is not a Business Day, the last Business Day prior thereto) to prime banks in New York for the spot purchase in the New York foreign exchange market of such amount of Dollars with such other currency and (c) if such amount is denominated in any currency not quoted by CSFB in New York, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate.

*"Dollars"* and the sign "\$" each mean the lawful money of the United States of America.

*"Domestic Lending Office"* means, with respect to any Lender, the office of such Lender specified as its *"Domestic Lending Office"* opposite its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)* or on the Assignment and Acceptance by which it became a Lender or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

*"Domestic Person"* means any *"United States person"* under and as defined in Section 7701(a)(30) of the Code.

*"Domestic Subsidiary"* means any Subsidiary of the Borrower organized under the laws of any state of the United States of America or the District of Columbia.

*"EBITDA"* means, with respect to any Person for any period, (a) Consolidated Net Income of such Person for such period *plus* (b) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication, (i) any provision for income taxes, (ii) Interest Expense, (iii) loss from extraordinary items, litigation expenses not exceeding \$1,000,000 in the aggregate over the term of this Agreement, cash charges resulting from hurricanes, floods, tornadoes, earthquakes or other natural disasters, (iv) depreciation, depletion and amortization expenses, (v) all other non-cash charges and non-cash losses for such period, including the amount of any compensation deduction as the result of any grant of Stock or Stock Equivalents to employees, officers, directors or consultants, *provided*, that to the extent any amount of non-cash charges for any period are subsequently paid in cash, EBITDA shall be reduced by such cash payment for that period, (vi) with respect to the first Fiscal Quarter of 2005, a one-time severance benefit charge of \$198,027, (vii) all cash expenses incurred in connection with (A) the Facilities, the Second Lien Credit Agreement, the issuance of New Preferred Stock

and the refinancing of the Existing Indebtedness (B) any capital markets transaction (including any merger or acquisition transaction) for the issuance of any debt, equity or convertible security, whether or not such transaction is completed and (C) any Asset Sale whether or not such Asset Sale is completed, *provided, that*, with respect to transactions specified in *clauses (B) and (C)* above that are not completed, the aggregate amount of such cash expenses shall not exceed \$500,000 during any Fiscal Year, (viii) fees and costs associated with the early extinguishment of Indebtedness and (ix) non-cash losses from Asset Sales *minus* (c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication, (i) any credit for income taxes, (ii) interest income, (iii) gains from extraordinary items for such period, (iv) any aggregate net gain from the sale, exchange or other disposition of capital assets by such Person and (v) any other non-cash gains or other items which have been added in determining Consolidated Net Income, including any reversal of a change referred to in *clause (b)(v)* above by reason of a decrease in the value of any Stock or Stock Equivalent

"*Eligible Assignee*" means (a) a Lender or an Affiliate or Approved Fund of any Lender, (b) a commercial bank having total assets whose Dollar Equivalent exceeds \$5,000,000,000, (c) a finance company, insurance company or any other financial institution or Fund, in each case reasonably acceptable to the Administrative Agent and regularly engaged in making, purchasing or investing in loans or (d) a savings and loan association or savings bank organized under the laws of the United States or any state thereof having a net worth, determined in accordance with GAAP, whose Dollar Equivalent exceeds \$250,000,000.

"*Entitlement Holder*" has the meaning given to such term in the UCC.

"*Entitlement Order*" has the meaning given to such term in the UCC

"*Environmental Laws*" means all applicable Requirements of Law now or hereafter in effect and as amended or supplemented from time to time, relating to pollution or the regulation and protection of human or animal health, safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*), the Hazardous Material Transportation Act, as amended (49 U.S.C. § 5101 *et seq.*); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*), the Toxic Substance Control Act, as amended (15 U.S.C. § 2601 *et seq.*); the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*), the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*); and each of their state and local counterparts or equivalents and any transfer of ownership notification or approval statute, including the Industrial Site Recovery Act (N.J. Stat. Ann. § 13:1K-6 *et seq.*)

"*Environmental Liabilities and Costs*" means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute and whether arising under any Environmental Law, Permit, order or agreement with any Governmental Authority or other Person, in each case relating to any environmental, health or safety condition or to any Release or threatened Release and resulting from the past, present or future operations of, or ownership of property by, such Person or any of its Subsidiaries

*"Environmental Lien"* means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

*"Equipment"* has the meaning given to such term in the UCC.

*"Equity Issuance"* means the issue or sale of any Stock of the Borrower or any Subsidiary of the Borrower by the Borrower or any Subsidiary of the Borrower to any Person other than the Borrower or any Subsidiary of the Borrower.

*"ERISA"* means the United States Employee Retirement Income Security Act of 1974.

*"ERISA Affiliate"* means any trade or business (whether or not incorporated) under common control or treated as a single employer with the Borrower or any of its Subsidiaries within the meaning of Section 414(b), (c), (m) or (o) of the Code.

*"ERISA Event"* means (a) a reportable event described in Section 4043(b) or 4043(c)(1), (2), (3), (5), (6), (8) or (9) of ERISA with respect to a Title IV Plan or a Multiemployer Plan, (b) the withdrawal of the Borrower, any of its Subsidiaries or any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (c) the complete or partial withdrawal of the Borrower, any of its Subsidiaries or any ERISA Affiliate from any Multiemployer Plan, (d) notice of reorganization or insolvency of a Multiemployer Plan, (e) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to a Title IV Plan or Multiemployer Plan, (h) the imposition of a lien under Section 412 of the Code or Section 302 of ERISA on the Borrower or any of its Subsidiaries or any ERISA Affiliate or (i) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA

*"Escrow Agreement"* means the escrow agreement, dated the date hereof, among the Borrower, the Administrative Agent and CSFB, as escrow agent.

*"Eurocurrency Reserve Requirements"* means, for any period, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves) under any regulations of the Federal Reserve Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as *"Eurocurrency Liabilities"* in Regulation D of the Board) maintained by a member bank of the Federal Reserve System

*"Eurodollar Base Rate"* means, with respect to each day during each Interest Period, the rate *per annum* determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the



Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) as of 11:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate is not ascertainable pursuant to the foregoing provisions of this definition, the "*Eurodollar Base Rate*" for purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying Eurodollar rates as may be selected by the Administrative Agent

"*Eurodollar Lending Office*" means, with respect to any Lender, the office of such Lender specified as its "*Eurodollar Lending Office*" opposite its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)* or on the Assignment and Acceptance by which it became a Lender (or, if no such office is specified, its Domestic Lending Office) or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

"*Eurodollar Rate*" means, with respect to any Interest Period for any Eurodollar Rate Loan, an interest rate *per annum* determined for such day in accordance with the following formula:

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}$$

"*Eurodollar Rate Loan*" means any Loan that, for an Interest Period, bears interest based on the Eurodollar Rate

"*Event of Default*" has the meaning specified in *Section 9.1 (Events of Default)*

"*Excess Cash Flow*" means, for the Borrower for any period, (a) EBITDA of the Borrower for such period *plus* (b) the excess, if any, of the Working Capital of the Borrower at the beginning of such period over the Working Capital of the Borrower at the end of such period *minus* (c) the sum of (without duplication) (i) Cash Interest Expense (including fees and costs associated with the early extinguishment of Indebtedness and amounts under Capital Lease Obligations allocable as an interest component), (ii) scheduled cash principal payments on the Loans and the Second Lien Term Loans during such period and optional cash principal payments on the Loans and the Second Lien Term Loans during such period (but only, in the case of any payment in respect of Revolving Loans, to the extent that the Revolving Credit Commitments are permanently reduced by the amount of such payments), (iii) scheduled cash principal payments made by the Borrower or any of its Subsidiaries during such period on other Indebtedness to the extent such other Indebtedness and payments are permitted by this Agreement, (iv) scheduled payments made by the Borrower or any of its Subsidiaries on Capital Lease Obligations to the extent such Capital Lease Obligations and payments are permitted by this Agreement, (v) Capital Expenditures made by the Borrower or any of its Subsidiaries during such period to the extent permitted by this Agreement, (vi) the excess, if any, of the Working Capital of the Borrower at the end of such period over the Working Capital of the Borrower at the beginning of such period, (vii) cash income taxes paid during such period and (viii) cash payments (other than from proceeds of Equity Issuances) with respect to Investments made during such period and permitted under *Section 8.3 (Investments)* (other than investments pursuant to *clause (b)* thereof)

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended

*"Excluded Foreign Subsidiary"* means any Subsidiary that is not a Domestic Subsidiary in respect of which either (a) the pledge of all of the Stock of such Subsidiary as Collateral to secure payment of the Obligations of the Borrower, (b) the grant of a Lien on any of its property as Collateral to secure payment of the Obligations of the Borrower or (c) the guaranteeing by such Subsidiary of the Obligations of the Borrower, would, in the good faith judgment of the Borrower based on an analysis reasonably satisfactory to the Administrative Agent, result in materially adverse tax consequences to the Loan Parties and their Subsidiaries, taken as a whole.

*"Existing CoBank Credit Agreement"* means the Master Loan Agreement, dated as of June 6, 2002, as amended and supplemented, among Interstate Telephone Company, Inc. and Valley Telephone Company LLC, as borrowers, and CoBank, ACB, as lender.

*"Existing Credit Agreements"* means, collectively, the Existing CoBank Credit Agreement and Existing Wachovia Credit Agreement.

*"Existing Indebtedness"* means all amounts outstanding or owed, including principal, accrued and unpaid interest, fees and expenses, under or in connection with the Existing Notes and the Existing Credit Agreements

*"Existing Indenture"* means the Indenture, dated November 6, 2002, as amended and supplemented, between the Borrower, as issuer, and Wilmington Trust Company, as trustee.

*"Existing Notes"* means the 12% senior notes due 2009 issued pursuant to the Existing Indenture.

*"Existing Wachovia Credit Agreement"* means the Amended and Restated Credit Agreement, dated as of October 22, 2002, as amended, among Knology Broadband, as guarantor, certain subsidiaries of Knology Broadband named therein, as borrowers, the institutions party thereto as lenders and issuing banks and the administrative agent named therein.

*"Facilities"* means (a) the Term Loan Facility and (b) the Revolving Credit Facility

*"Fair Market Value"* means (a) with respect to any asset or group of assets (other than a marketable Security) at any date, the value of the consideration obtainable in a sale of such asset at such date assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the board of directors of the Borrower or, if such asset shall have been the subject of a relatively contemporaneous appraisal by an independent third party appraiser, the basic assumptions underlying which have not materially changed since its date, the value set forth in such appraisal and (b) with respect to any marketable Security at any date, the closing sale price of such Security on the Business Day next preceding such date, as appearing in any published list of any national securities exchange or the NASDAQ Stock Market or, if there is no such closing sale price of such Security, the final price for the purchase of such Security at face value quoted on such Business Day by a financial institution of recognized standing regularly dealing in Securities of such type and selected by the Administrative Agent

"FCC" means the Federal Communications Commission or any successor Governmental Authority.

"Federal Funds Rate" means, for any period, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it

"Federal Reserve Board" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"Fee Letter" shall mean the letter, dated as of May 4, 2005, addressed to the Borrower from the Arranger and accepted by the Borrower on May 4, 2005, with respect to certain fees to be paid from time to time to CSFB.

"Financial Asset" has the meaning given to such term in the UCC.

"Financial Covenant Debt" means, as of any date of determination, the aggregate amount of the Indebtedness of the Borrower and its Subsidiaries of the type specified, without duplication, in (i) clauses (a), (b), (d), (e), (f), (g) and (h) of the definition of "Indebtedness", (ii) non-contingent obligations of the type specified in clause (c) of such definition and (iii) obligations of the type specified in clauses (i) and (j) of such definition to the extent such obligations constitute balance sheet indebtedness under GAAP (but excluding (x) Indebtedness under any notes permitted pursuant to clause (j) of the Section 8.1 (Indebtedness) and (y) Indebtedness in respect of the Existing Notes to the extent an amount equal to such Indebtedness is deposited by the Borrower with CSFB pursuant to the Escrow Agreement).

"Financial Statements" means the financial statements of the Borrower and its Subsidiaries delivered in accordance with Section 4.4 (Financial Statements) and Section 6.1 (Financial Statements)

"First Lien Covenant Debt" means, as of any date of determination, the aggregate amount of Consolidated Financial Covenant Debt outstanding on such date *minus* the aggregate amount of Indebtedness outstanding under the Second Lien Credit Agreement on such date

"First Lien Leverage Ratio" means, with respect to the Borrower and its Subsidiaries on a Consolidated basis, as of any date of determination, the ratio of (a) First Lien Covenant Debt outstanding as of such date to (b) EBITDA for the last full four Fiscal Quarter period ending on or before such date, *provided, however*, that if on such date the number of Fiscal Quarters which have ended subsequent to the Closing Date is less than four, EBITDA used for determining such ratio shall be Annualized based on the number of Fiscal Quarters which have then ended subsequent to the Closing Date.

"Fiscal Quarter" means each of the three-month fiscal periods of the Borrower ending on March 31, June 30, September 30 and December 31.

"Fiscal Year" means the twelve-month fiscal period of the Borrower ending on December 31

“*Fund*” means any Person (other than a natural Person) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its operations

“*GAAP*” means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, that are applicable to the circumstances as of the date of determination

“*General Intangible*” has the meaning given to such term in the UCC.

“*Governmental Authority*” means any nation, sovereign or government, any state or other political subdivision thereof and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any central bank or stock exchange and including the FCC and each PUC

“*Guarantor*” means each Subsidiary of the Borrower party to or that becomes party to the Guaranty

“*Guaranty*” means the guaranty, in substantially the form of *Exhibit G (Form of Guaranty)*, executed by the Guarantors.

“*Guaranty Obligation*” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose or intent of such Person in incurring the Guaranty Obligation is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if in the case of any agreement described under *clause (b)(i), (ii), (iii), (iv) or (v)* above the primary purpose or intent thereof is to provide assurance that Indebtedness of another Person will be paid or discharged, that any agreement relating thereto will be complied with or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported

“*Hedging Contracts*” means all Interest Rate Contracts, foreign exchange contracts, currency swap or option agreements, forward contracts, commodity swap, purchase or option agreements, other commodity price hedging arrangements and all other similar agreements or arrangements designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices

“*Indebtedness*” of any Person means without duplication (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments or that bear interest, (c) all reimbursement and all obligations with respect to letters of credit, bankers’ acceptances, surety bonds and performance bonds, whether or not matured, (d) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business that are not more than 60 days overdue, (e) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (f) all Capital Lease Obligations of such Person and the present value of future rental payments under all synthetic leases, (g) all Guaranty Obligations of such Person, (h) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any Stock or Stock Equivalents of such Person, valued, in the case of redeemable preferred stock, at the greater of its voluntary liquidation preference and its involuntary liquidation preference *plus* accrued and unpaid dividends, in each case, if such obligation is (or may be) required to be paid prior to the first anniversary of Term Loan Maturity Date (except for the New Preferred Stock or preferred stock of the Borrower having substantially the same redemption terms as such New Preferred Stock), (i) all payments that such Person would have to make in the event of an early termination on the date Indebtedness of such Person is being determined in respect of Hedging Contracts of such Person and (j) all Indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including Accounts and General Intangibles) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“*Indemnified Matter*” has the meaning specified in *Section 11.4 (Indemnities)*

“*Indemnitee*” has the meaning specified in *Section 11.4 (Indemnities)*.

“*Interactive Broadband Network*” means any two-way, interactive, high-capacity hybrid fiber-coaxial networks (including networks being constructed or to be converted or upgraded to meet such criteria) owned or leased or operated by any Person which provides Broadband Services

“*Intercreditor Agreement*” means the Intercreditor Agreement in substantially the form of *Exhibit I (Form of Intercreditor Agreement)*, to be executed and delivered by the Borrower, the Administrative Agent, the Collateral Agent and the administrative agent and collateral agent under the Second Lien Credit Agreement

“*Interest Coverage Ratio*” means, with respect to the Borrower and its Subsidiaries on a Consolidated basis, for any period of determination, the ratio of (a) EBITDA to (b) Cash Interest Expense for such period (excluding any Interest Expense in respect of Indebtedness outstanding under the Existing Notes to the extent such Indebtedness is deposited by the Borrower with CSFB pursuant to the Escrow Agreement)

*"Interest Expense"* means, for any Person for any period, (a) Consolidated total interest expense of such Person and its Subsidiaries for such period and including, in any event, interest capitalized during such period and net costs under Interest Rate Contracts for such period (excluding fees and costs associated with the early extinguishment of Indebtedness) *minus* (b) Consolidated net gains of such Person and its Subsidiaries under Interest Rate Contracts for such period and *minus* (c) any Consolidated interest income of such Person and its Subsidiaries for such period.

*"Interest Period"* means, in the case of any Eurodollar Rate Loan, (a) initially, the period commencing on the date such Eurodollar Rate Loan is made, on the date of conversion of a Base Rate Loan to such Eurodollar Rate Loan, or on the date of the continuation of a Eurodollar Rate Loan as a Eurodollar Rate Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion or Continuation given to the Administrative Agent pursuant to *Section 2.2 (Borrowing Procedures)* or *Section 2.11 (Conversion/Continuation Option)*, *provided, however*, that (notwithstanding the foregoing) prior to the Syndication Completion Date, no such period shall exceed one month unless the Administrative Agent otherwise consents and *provided, further* that all of the foregoing provisions relating to Interest Periods in respect of Eurodollar Rate Loans are subject to the following:

- (i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless the result of such extension would be to extend such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;
- (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month,
- (iii) the Borrower may not select any Interest Period that ends after the date of a scheduled principal payment on the Loans as set forth in *Article II (The Facilities)* unless, after giving effect to such selection, the aggregate unpaid principal amount of the Loans for which Interest Periods end after such scheduled principal payment shall be equal to or less than the principal amount to which the Loans are required to be reduced after such scheduled principal payment is made,
- (iv) the Borrower may not select any Interest Period in respect of Loans having an aggregate principal amount of less than \$1,000,000; and
- (v) there shall be outstanding at any one time no more than six Interest Periods in the aggregate.

*"Interest Rate Contracts"* means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest-rate insurance

*"Interstate Account"* means the money market account #3404717501 maintained by Interstate Telephone Co. at Capital City Bank

*"Inventory"* has the meaning given to such term in the UCC

*"Investment"* means, with respect to any Person, (a) any purchase or other acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or a significant part of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any other Person, (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business as presently conducted) or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business, and (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person.

*"IRS"* means the Internal Revenue Service of the United States or any successor thereto.

*"Issue"* means, with respect to any Letter of Credit, to issue, extend the expiry of, renew or increase the maximum face amount (including by deleting or reducing any scheduled decrease in such maximum face amount) of, such Letter of Credit. The terms *"Issued"* and *"Issuance"* shall have a corresponding meaning.

*"Issuer"* means one or more Lenders or Affiliates of Lenders that in each case (a) is listed on the signature pages hereof as an *"Issuer"* or (b) hereafter become an Issuer with the approval of the Administrative Agent and the Borrower by agreeing pursuant to an agreement with and in form and substance satisfactory to the Administrative Agent and the Borrower to be bound by the terms hereof applicable to Issuers.

*"Knology Broadband"* means Knology Broadband, Inc., a Delaware corporation.

*"Knology Georgia"* means Knology of Georgia Inc., a Delaware corporation.

*"Land"* of any Person means all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased or purported to be owned, leased or hereafter acquired or leased (including, in respect of the Loan Parties, as reflected in the most recent Financial Statements) by such Person.

*"Leases"* means, with respect to any Person, all of those leasehold estates in real property of such Person, as lessee, as such may be amended, supplemented or otherwise modified from time to time

*"Lender"* means the Swing Loan Lender and each other financial institution or other entity that (a) is listed on the signature pages hereof as a *"Lender"* or (b) from time to time becomes a party hereto by execution of an Assignment and Acceptance

*"Letter of Credit"* means any standby letter of credit Issued pursuant to Section 2.4 (*Letters of Credit*)

*"Letter of Credit Obligations"* means, at any time, the aggregate of all liabilities at such time of the Borrower to all Issuers with respect to Letters of Credit, whether or not any

such liability is contingent, including, without duplication, the sum of (a) the Reimbursement Obligations at such time and (b) the Letter of Credit Undrawn Amounts at such time.

*"Letter of Credit Reimbursement Agreement"* has the meaning specified in Section 2.4(a) (Letters of Credit).

*"Letter of Credit Request"* has the meaning specified in Section 2.4(c) (Letters of Credit).

*"Letter of Credit Sublimit"* means \$5,000,000.

*"Letter of Credit Undrawn Amounts"* means, at any time, the aggregate undrawn face amount of all Letters of Credit outstanding at such time.

*"Leverage Ratio"* means, with respect to the Borrower and its Subsidiaries on a Consolidated basis, as of any date of determination, the ratio of (a) Consolidated Financial Covenant Debt outstanding as of such date to (b) EBITDA for the last full four Fiscal Quarter period ending on or before such date; *provided, however*, that (i) if on such date the number of Fiscal Quarters which have ended subsequent to the Closing Date is less than four, EBITDA used for determining such ratio shall be Annualized based on the number of Fiscal Quarters which have then ended subsequent to the Closing Date and (ii) on any date of calculation, the amount of Financial Covenant Debt consisting of principal under the Second Lien Term Loan shall be deemed to equal (A) (x) the original face amount of the Second Lien Term Loan (i.e. \$98,958,333) *minus* any principal repayments of the Second Lien Term Loan from the Closing Date to the date of calculation *multiplied* by (y) a percentage equal to (1) 96% plus (2) 0.1667% for each successive Fiscal Quarter following the Closing Date elapsed as of the date of such calculation *plus* (B) any interest on the Second Lien Term Loan which has been paid-in-kind (to the extent outstanding).

*"Lien"* means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever intended to assure payment of any Indebtedness or the performance of any other obligation, including any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease and any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable law of any jurisdiction naming the owner of the asset to which such Lien relates as debtor.

*"Loan"* means any loan made by any Lender pursuant to this Agreement.

*"Loan Documents"* means, collectively, this Agreement, the Notes (if any), the Guaranty, the Fee Letter, each Letter of Credit Reimbursement Agreement, each Hedging Contract between any Loan Party and any Person that is a Lender, an Agent or an Affiliate of an Agent at the time it enters into such Hedging Contract, the Collateral Documents, the Intercreditor Agreement, the Escrow Agreement, and each certificate, agreement or document executed by a Loan Party and delivered to any Agent or any Lender in connection with or pursuant to any of the foregoing.

*"Loan Party"* means each of the Borrower, each Guarantor and each other Subsidiary of the Borrower that executes and delivers a Loan Document.



*"Material Adverse Change"* means a material adverse change in any of (a) the business, assets, liabilities, operations, condition (financial or otherwise), operations, results or Projections of the Borrower or the Borrower and its Subsidiaries taken as a whole, (b) the legality, validity or enforceability of any Loan Document or any Second Lien Loan Document, (c) the perfection or priority of the Liens granted pursuant to the Collateral Documents, (d) the ability of the Borrower to repay the Obligations or of the other Loan Parties to perform their respective obligations under the Loan Documents or (e) the rights and remedies of the Agents, the Lenders or the Issuers under the Loan Documents.

*"Material Adverse Effect"* means an effect that results in or causes, or could reasonably be expected to result in or cause, a Material Adverse Change

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

*"Mortgage Supporting Documents"* means, with respect to each Mortgage for a parcel of Real Property. (a) a mortgagee's title insurance policy or marked-up and signed unconditional binder for such insurance which shall: (i) be in an amount satisfactory to the Administrative Agent; (ii) insure that the Mortgage insured thereby creates a valid lien on such Real Property free and clear of all defects and encumbrances except as disclosed therein, which defects and encumbrances shall be reasonably acceptable to the Administrative Agent; (iii) name the Administrative Agent for the benefit of the Secured Parties as the insured thereunder, (iv) be in the form of ALTA Loan Policy – 1992 (or equivalent policies); (v) contain such endorsements and affirmative coverage as the Administrative Agent may reasonably request; and (vi) be issued by a title company satisfactory to the Administrative Agent; (b) copies of all recorded document referred to, or listed as exceptions to title in, the title policy referred to in clause (a) above and a copy of all other material documents affecting the Real Property, (c) a current ALTA survey of the Real Property (in form that is sufficiently acceptable to the title insurer issuing title insurance to the Administrative Agent for such title insurer to deliver endorsements to such title insurance as reasonably requested by the Administrative Agent), together with a surveyor's certificate reasonably acceptable to the Administrative Agent; (d) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage in form and substance reasonably satisfactory to the Administrative Agent; (e) legal opinions delivered to the Administrative Agent relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent, and (f) evidence satisfactory to the Administrative Agent that all premiums in respect of the title policy, all charges for mortgage recording tax, and all related expenses, if any, have been paid.

*"Mortgages"* means the mortgages, deeds of trust or other real estate security documents made or required herein to be made by the Borrower or any other Loan Party, each in form and substance satisfactory to the Administrative Agent.

*"Multiemployer Plan"* means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Borrower, any of its Subsidiaries or any ERISA Affiliate has any obligation or liability, contingent or otherwise

*"Net Cash Proceeds"* means proceeds received by the Borrower or any of its Subsidiaries after the Closing Date in cash or Cash Equivalents from any (a) Asset Sale made pursuant to Section 8.4 (Sale of Assets) (other than clauses (a) through (e) thereof) net of (i) the reasonable cash costs of sale, assignment or other disposition, (ii) taxes paid or reasonably

estimated to be payable as a result thereof, (iii) any amount required to be paid or prepaid on Indebtedness (other than the Obligations) secured by the assets subject to such Asset Sale and (iv) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustments associated with any disposition or any liabilities retained by the Borrower or any of its Subsidiaries associated with assets sold in such disposition (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), *provided, however*, that evidence of each of *clauses (i), (ii) and (iii)* above is provided to the Administrative Agent in form and substance reasonably satisfactory to it, (b) Property Loss Event or (c)(i) Equity Issuance (other than any such issuance of common Stock of Borrower occurring in the ordinary course of business to any director, member of the management or employee of the Borrower or its Subsidiaries) or (ii) any Debt Issuance other than Debt Issuances permitted under *Section 8.1(i) (Indebtedness)*, in each case, net of brokers' and advisors' fees and other costs incurred in connection with such transaction, *provided, however*, that in the case of this *clause (c)*, evidence of such costs is provided to the Administrative Agent in form and substance satisfactory to it

*"Network Agreement"* means any document or agreement entered into by any Loan Party or any Subsidiary of a Loan Party regarding the use, operation or maintenance of, or otherwise concerning, any Interactive Broadband Network

*"New Preferred Stock"* means the preferred stock of the Borrower, to be issued before the Closing Date, in an aggregate amount of at least \$9,200,000.

*"New Preferred Rights Offering"* means any Rights Offering or Rights Offerings by the Borrower after the Closing Date resulting in the first \$10,800,000 in proceeds to the Borrower from Rights Offerings

*"Non-Cash Interest Expense"* means, with respect to any Person for any period, the sum of the following amounts to the extent included in the definition of Interest Expense (a) the amount of debt discount and debt issuance costs amortized, (b) charges relating to write-ups or write-downs in the book or carrying value of existing Financial Covenant Debt, (c) interest payable in evidences of Indebtedness or by addition to the principal of the related Indebtedness and (d) other non-cash interest

*"Non-Consenting Lender"* has the meaning specified in *Section 11.1(c) (Amendments, Waivers, Etc)*

*"Non-Declining Lender"* has the meaning specified in *Section 2.9(e) (Mandatory Prepayments)*.

*"Non-Funding Lender"* has the meaning specified in *Section 2.2(d) (Borrowing Procedures)*

*"Non-US Lender"* means each Lender or Issuer (or the Administrative Agent) that is a Non-US Person

*"Non-US Person"* means any Person that is not a Domestic Person.

*"Note"* means any Revolving Credit Note or Term Loan Note.

"*Notice of Borrowing*" has the meaning specified in *Section 2.2(a) (Borrowing Procedures)*.

"*Notice of Conversion or Continuation*" has the meaning specified in *Section 2.11 (Conversion/Continuation Option)*.

"*Obligations*" means the Loans, the Letter of Credit Obligations and all other amounts, obligations, covenants and duties owing by the Borrower to the Administrative Agent, any Lender, any Issuer, any Affiliate of any of them or any Indemnitee, of every type and description (whether by reason of an extension of credit, issuance or amendment of a letter of credit or payment of any draft drawn or other payment thereunder, loan, guaranty, indemnification, foreign exchange or currency swap transaction, interest rate hedging transaction or otherwise), present or future, arising under this Agreement, any other Loan Document (including Hedging Contracts that are Loan Documents), whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and whether or not evidenced by any note, guaranty or other instrument or for the payment of money, including all letter of credit, cash management and other fees, interest, charges, expenses, attorneys' fees and disbursements and other sums chargeable to the Borrower under this Agreement, any other Loan Document (including Hedging Contracts that are Loan Documents) and all obligations of the Borrower under any Loan Document to provide cash collateral for any Letter of Credit Obligation.

"*PBGC*" means the Pension Benefit Guaranty Corporation or any successor thereto.

"*Permit*" means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under an applicable Requirement of Law.

"*Permitted Acquisition*" means any Proposed Acquisition subject to the satisfaction of each of the following conditions:

(a) the Administrative Agent shall receive at least 30 days' prior written notice of such Proposed Acquisition, which notice shall include a reasonably detailed description of such Proposed Acquisition,

(b) such Proposed Acquisition shall only involve assets located in the United States and comprising a business, or those assets of a business, of the type engaged in by the Borrower and its Subsidiaries as of the Closing Date (or any business reasonably related or ancillary thereto, as determined in good faith by the board of directors);

(c) such Proposed Acquisition shall be consensual and shall have been approved by the Proposed Acquisition Target's board of directors,

(d) no additional Indebtedness or other liabilities shall be incurred, assumed or otherwise be reflected on a Consolidated balance sheet of the Borrower and Proposed Acquisition Target after giving effect to such Proposed Acquisition, except (i) Loans made hereunder, (ii) ordinary course trade payables and accrued expenses and (iii) Indebtedness of the Proposed Acquisition Target, *provided*, that, after giving effect to such Permitted Acquisition, (A) such Indebtedness (together with all other Indebtedness of the Borrower and its Subsidiaries) is permitted under *Section 8.1*

(*Indebtedness*) and (B) the Leverage Ratio and the First Lien Leverage Ratio are, respectively, on a pro forma basis no greater than prior to such Proposed Acquisition.

(e) the Dollar Equivalent of the sum of all amounts payable in connection with such Proposed Acquisition and all other Permitted Acquisitions consummated on or prior to the date of the consummation of such Proposed Acquisition (including all transaction costs and all Indebtedness, liabilities and Guaranty Obligations incurred or assumed in connection therewith or otherwise reflected in a Consolidated balance sheet of the Borrower and Target) shall not in aggregate exceed \$2,000,000 in any Fiscal Year and \$5,000,000 during the term of this Agreement; *provided, however*, that neither of the foregoing limits shall apply to the extent the purchase consideration for such Proposed Acquisition (i) is in the form of an Equity Issuance or is funded with the Net Cash Proceeds of any Equity Issuance not used to prepay Loans under *Section 2 9 (Mandatory Prepayments)* or (ii) is funded with the Net Cash Proceeds of an Asset Sale permitted by *Section 8 4 (Sale of Assets)* and subject to a Reinvestment Event; *provided*, that such Proposed Acquisition is consummated by the corresponding Reinvestment Prepayment Date;

(f) within 30 days of the closing of such Proposed Acquisition, the Borrower (or the Subsidiary making such Proposed Acquisition) and the Proposed Acquisition Target shall have executed such documents and taken such actions as may be required under *Section 7 11 (Additional Collateral and Guaranties)* and *Section 7 14 (Real Property)*,

(g) the Borrower shall have delivered to the Administrative Agent, in form and substance satisfactory to the Administrative Agent and sufficiently in advance and in any case no later than 21 days prior to such Proposed Acquisition, such other financial information, financial analysis, documentation or other information relating to such Proposed Acquisition and the pro forma certifications required by *clause (h)* below, in each case, as the Administrative Agent or any Lender shall reasonably request;

(h) (i) such Proposed Acquisition Target's EBITDA for the most recent four fiscal quarter period is greater than zero and (ii) on or prior to the date of such Proposed Acquisition, the Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent, a certificate of the chief financial officer of the Borrower demonstrating pro forma (A) that at the time of such Proposed Acquisition and after giving effect thereto, (1) compliance with the financial covenants set forth in *Article V (Financial Covenants)*, (2) compliance with the other terms of the Loan Documents and (3) the aggregate amount of the Borrower's cash and Cash Equivalents (which in each case are subject to a first-priority perfected Lien of the Collateral Agent) and the Available Credit shall equal at least \$10,000,000, (B) copies of the acquisition agreement, related Contractual Obligations and instruments and (C) all opinions, certificates, lien search results and other documents reasonably requested by the Administrative Agent,

(i) at the time of such Proposed Acquisition and after giving effect thereto, (A) no Default or Event of Default shall have occurred and be continuing and (B) all representations and warranties contained in *Article IV (Representations and Warranties)* and in the other Loan Documents shall be true and correct in all material respects.

*"Permitted CIU Transactions"* means any agreement for a fixed term entered into by the Borrower or any of its Subsidiaries with a Person with respect to the construction, operation and maintenance of communications networks to provide telecommunications, cable, broadband or other communications services in commercial buildings or developments which transaction or agreement is not entered into for the purpose of raising financing.

*"Permitted MDU Transaction"* means any agreement for a fixed term entered into by the Borrower or any of its Subsidiaries with a Person with respect to the construction, operation and maintenance of communications networks to provide telecommunications, cable, broadband or the communications services in residential buildings or developments, or other sites containing multiple dwelling units, which transaction or agreement is not entered into for the purpose of raising financing.

*"Person"* means an individual, partnership, corporation (including a business trust), joint stock company, estate, trust, limited liability company, unincorporated association, joint venture or other entity or a Governmental Authority.

*"Pledge and Security Agreement"* means an agreement, in substantially the form of *Exhibit H (Form of Pledge and Security Agreement)*, executed by the Borrower and each Guarantor

*"Pledged Stock"* has the meaning specified in the Pledge and Security Agreement

*"Pole Agreement"* means any pole attachment agreement or underground conduit use agreement entered into in connection with the operation of any Interactive Broadband Network

*"Proceeds"* has the meaning given to such term in the UCC.

*"Prohibited Person"* shall mean any Person:

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism;

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, such Executive Order,

(c) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list, or

(d) who is an Affiliate of, or affiliated with, a Person listed above.

*"Projections"* means the detailed business plan or projections of the Borrower and its Subsidiaries, dated May, 2005, for the Fiscal Years 2005 through 2009 and for the Fiscal

Quarters beginning with the second Fiscal Quarter of 2005 and through the fourth Fiscal Quarter of 2006

*"Property Loss Event"* means (a) any loss of or damage to property of the Borrower or any of its Subsidiaries that results in the receipt by such Person of proceeds of insurance which exceed \$500,000 (individually or in the aggregate) or (b) any taking of property of the Borrower or any of its Subsidiaries that results in the receipt by such Person of proceeds in respect thereof which exceed \$500,000 (individually or in the aggregate).

*"Proposed Acquisition"* means the proposed acquisition by the Borrower or any of its Subsidiaries of all or substantially all of the assets or Stock of any Proposed Acquisition Target, or the merger of any Proposed Acquisition Target with or into the Borrower or any Subsidiary of the Borrower (and, in the case of a merger with the Borrower, with the Borrower being the surviving corporation).

*"Proposed Acquisition Target"* means any Person or any operating division thereof subject to a Proposed Acquisition

*"PUC"* means any state, provincial or other regulatory agency or body that exercises jurisdiction over (a) the rates, services or provision of Broadband Services or (b) the ownership, construction or operation of any Interactive Broadband Network or long distance telecommunications system or (c) Persons who own, construct or operate any Interactive Broadband Network or long distance telecommunications systems, in each case, by reason of the nature or type of the business subject to regulation and not pursuant to laws and regulations of general applicability to Persons conducting business in any such jurisdiction.

*"PUC Authorization"* means any registration with, and any written validation, exemption, franchise, waiver, approval, order or authorization, consent, license, certificate and permit, regarding the provision of Broadband Services, issued to any Person from any PUC

*"Purchasing Lender"* has the meaning specified in *Section 11.7 (Sharing of Payments, Etc.)*.

*"Ratable Portion"* or (other than in the expression *"equally and ratably"*) *"ratably"* means, with respect to any Lender, (a) with respect to the Revolving Credit Facility, the percentage obtained by dividing (i) the Revolving Credit Commitment of such Lender by (ii) the aggregate Revolving Credit Commitments of all Lenders (or, at any time after the Revolving Credit Termination Date, the percentage obtained by dividing the aggregate outstanding principal balance of the Revolving Credit Outstandings owing to such Lender (or in which such Lender owns a participation) by the aggregate outstanding principal balance of the Revolving Credit Outstandings owing to all Lenders) and (b) with respect to the Term Loan Facility, the percentage obtained by dividing (i) the Term Loan Commitment of such Lender by (ii) the aggregate Term Loan Commitments of all Lenders (or, at any time after the Closing Date, the percentage obtained by dividing the principal amount of such Lender's Term Loans by the aggregate Term Loans of all Lenders).

*"Real Property"* of any Person means the Land of such Person, together with the right, title and interest of such Person, if any, in and to the streets, the Land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, the air space and development rights pertaining to the Land and the right to use such air space and development rights, all rights

of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land, including all alley, vault, drainage, mineral, water, oil and gas rights, together with all of the buildings and other improvements now or hereafter erected on the Land and any fixtures appurtenant thereto.

“*Register*” has the meaning specified in *Section 2 7(b) (Evidence of Debt)*

“*Reimbursement Date*” has the meaning specified in *Section 2 4(h) (Letters of Credit)*

“*Reimbursement Obligations*” means, as and when matured, the obligation of the Borrower to pay, on the date payment is made or scheduled to be made to the beneficiary under each such Letter of Credit (or at such other date as may be specified in the applicable Letter of Credit Reimbursement Agreement) and in the currency drawn (or in such other currency as may be specified in the applicable Letter of Credit Reimbursement Agreement), all amounts of each draft and other requests for payments drawn under Letters of Credit, and all other matured reimbursement or repayment obligations of the Borrower to any Issuer with respect to amounts drawn under Letters of Credit

“*Reinvestment Deferred Amount*” means, with respect to any Net Cash Proceeds of any Reinvestment Event, the portion of such Net Cash Proceeds subject to a Reinvestment Notice.

“*Reinvestment Event*” means the receipt of Net Cash Proceeds with respect to any Asset Sale or Property Loss Event in respect of which the Borrower has delivered a Reinvestment Notice.

“*Reinvestment Notice*” means a written notice executed by a Responsible Officer of the Borrower stating that no Default or Event of Default has occurred and is continuing and that the Borrower (directly or indirectly through one of its Subsidiaries) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Property Loss Event to acquire assets (including a Permitted Acquisition of 100% of the equity interests of another Person) useful in its or one of its Subsidiaries’ businesses or, in the case of a Property Loss Event, to effect repairs.

“*Reinvestment Prepayment Date*” means, with respect to any Net Cash Proceeds of any Reinvestment Event, the earlier of (a) the date occurring 360 days after such Reinvestment Event and (b) the date that is five Business Days after the date on which the Borrower shall have notified the Administrative Agent of the Borrower’s determination not to acquire assets useful in the Borrower’s or a Subsidiary’s business (or, in the case of a Property Loss Event, not to effect repairs) with all or any portion of the relevant Reinvestment Deferred Amount for such Net Cash Proceeds.

“*Release*” means, with respect to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration, in each case, of any Contaminant into the indoor or outdoor environment or into or out of any property owned, leased or operated by such Person, including the movement of Contaminants through or in the air, soil, surface water, ground water or property.

*"Remedial Action"* means all actions required to (a) clean up, remove, treat or in any other way address any Contaminant in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release so that a Contaminant does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

*"Requirement of Law"* means, with respect to any Person, the common law and all federal, state, local and foreign laws, treaties, rules and regulations, orders, judgments, decrees and other determinations of, concessions, grants, franchises, licenses and other Contractual Obligations with, any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

*"Requisite Lenders"* means, collectively, Lenders having (a) on and prior to the Closing Date, more than fifty percent (50%) of the aggregate outstanding amount of the Commitments, (b) after the Closing Date and on and prior to the Revolving Credit Termination Date, more than fifty percent (50%) of the sum of the aggregate outstanding amount of the Revolving Credit Commitments and the principal amount of all Term Loans then outstanding and (c) after the Revolving Credit Termination Date, more than fifty percent (50%) of the sum of the aggregate Revolving Credit Outstandings and the principal amount of all Term Loans then outstanding. A Non-Funding Lender shall not be included in the calculation of *"Requisite Lenders"*

*"Requisite Revolving Credit Lenders"* means, collectively, Revolving Credit Lenders having more than fifty percent (50%) of the aggregate outstanding amount of the Revolving Credit Commitments or, after the Revolving Credit Termination Date, more than fifty percent (50%) of the aggregate Revolving Credit Outstandings. A Non-Funding Lender shall not be included in the calculation of *"Requisite Revolving Credit Lenders."*

*"Requisite Term Loan Lenders"* means, collectively, Term Loan Lenders having more than fifty percent (50%) of the aggregate outstanding amount of the Term Loan Commitments or, after the Closing Date, more than fifty percent (50%) of the principal amount of all Term Loans then outstanding

*"Responsible Officer"* means, with respect to any Person, any of the principal executive officers, managing members or general partners of such Person but, in any event, with respect to financial matters, the chief financial officer, treasurer or controller of such Person

*"Restricted Payment"* means (a) any dividend, distribution or any other payment whether direct or indirect, on account of any Stock or Stock Equivalent of the Borrower or any of its Subsidiaries now or hereafter outstanding and (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalent of the Borrower or any of its Subsidiaries now or hereafter outstanding.

*"Revolving Credit Borrowing"* means a borrowing consisting of Revolving Loans made on the same day by the Revolving Credit Lenders ratably according to their respective Revolving Credit Commitments

*"Revolving Credit Commitment"* means, with respect to each Revolving Credit Lender, the commitment of such Revolving Credit Lender to make Revolving Loans and acquire



interests in other Revolving Credit Outstandings in the aggregate principal amount outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on *Schedule I (Commitments)* under the caption "*Revolving Credit Commitment*," as amended to reflect each Assignment and Acceptance executed by such Revolving Credit Lender and as such amount may be reduced pursuant to this Agreement.

"*Revolving Credit Facility*" means the Revolving Credit Commitments and the provisions herein related to the Revolving Loans, Swing Loans and Letters of Credit.

"*Revolving Credit Lender*" means each Lender that (a) has a Revolving Credit Commitment, (b) holds a Revolving Loan or (c) participates in any Letter of Credit.

"*Revolving Credit Note*" means a promissory note of the Borrower payable to the order of any Revolving Credit Lender in a principal amount equal to the amount of such Revolving Credit Lender's Revolving Credit Commitment evidencing the aggregate Indebtedness of the Borrower to such Revolving Credit Lender resulting from the Revolving Loans owing to such Revolving Credit Lender.

"*Revolving Credit Outstandings*" means, at any particular time, the sum of (a) the principal amount of the Revolving Loans outstanding at such time, (b) the Letter of Credit Obligations outstanding at such time and (c) the principal amount of the Swing Loans outstanding at such time.

"*Revolving Credit Termination Date*" shall mean the earliest of (a) the Scheduled Termination Date, (b) the date of termination of all of the Revolving Credit Commitments pursuant to *Section 2.5 (Reduction and Termination of Commitments)* and (c) the date on which the Obligations become due and payable pursuant to *Section 9.2 (Remedies)*

"*Revolving Loan*" has the meaning specified in *Section 2.1 (The Commitments)*.

"*Rights Offering*" means any offer to the Borrower's existing equity holders, by or on behalf of the Borrower of any rights to purchase Stock or Stock Equivalents in the Borrower, including any such Stock or Stock Equivalents purchased or assumed by a financial intermediary in connection with a standby commitment or similar arrangement

"*S&P*" means Standard & Poor's Rating Services.

"*Sarbanes-Oxley Act*" means the United States Sarbanes-Oxley Act of 2002.

"*Scheduled Termination Date*" means June 29, 2010

"*Second Lien Loan Documents*" means the Second Lien Credit Agreement, the "Guaranty" and the "Pledge and Security Agreement", each as defined in the Second Lien Credit Agreement, and any other agreements, mortgages or other documents executed by the Borrower or any of its Subsidiaries in connection with the Second Lien Credit Agreement

"*Second Lien Term Loan*" means the term loan made to the Borrower pursuant to the Second Lien Credit Agreement in a principal face amount not exceeding \$99,000,000

*"Second Lien Credit Agreement"* means the Second Lien Credit Agreement, dated as of the date hereof, among the Borrower, CSFB, as administrative agent and collateral agent, and the other agents and Lenders party thereto, as it may be, subject to the terms of the Intercreditor Agreement, amended, restated, supplemented or otherwise modified from time to time.

*"Secured Obligations"* means, in the case of the Borrower, the Obligations, and, in the case of any other Loan Party, the obligations of such Loan Party under the Guaranty and the other Loan Documents to which it is a party

*"Secured Parties"* means the Lenders, the Issuers, the Administrative Agent and any other holder of any Secured Obligation.

*"Securities Account"* has the meaning given to such term in the UCC.

*"Securities Account Control Agreement"* has the meaning specified in the Pledge and Security Agreement.

*"Security"* means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

*"Selling Lender"* has the meaning specified in *Section 11.7 (Sharing of Payments, Etc.)*.

*"Solvent"* means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets of such Person (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to pay all liabilities of such Person as such liabilities mature and (c) such Person does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

*"Special Purpose Vehicle"* means any special purpose funding vehicle identified as such in writing by any Lender to the Administrative Agent

*"Stock"* means shares of capital stock (whether denominated as common stock or preferred stock), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting.

*"Stock Equivalents"* means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable

*"Subsidiary"* means, with respect to any Person, any corporation, partnership, limited liability company or other business entity of which an aggregate of 50% or more of the

outstanding Voting Stock is, at the time, directly or indirectly, owned or controlled by such Person or one or more Subsidiaries of such Person.

*"Subsidiary Guaranty Requirements"* means, the entering by a Subsidiary of the Borrower into a *'Guaranty Supplement'* (as such term is defined in the Guaranty), a joinder agreement to the Pledge and Security Agreement and all other Collateral Documents required by *Sections 7.11 (Additional Collateral and Guaranties)* and *7.14 (Real Property)* and the delivery to the Administrative Agent of such legal opinions in connection therewith which are, in each case, in form and substance and from counsel reasonably satisfactory to the Administrative Agent

*"Substitute Institution"* has the meaning specified in *Section 2.17 (Substitution of Lenders)*.

*"Substitution Notice"* has the meaning specified in *Section 2.17 (Substitution of Lenders)*

*"Swing Loan"* has the meaning specified in *Section 2.3 (Swing Loans)*

*"Swing Loan Lender"* means CSFB or any other Revolving Credit Lender that becomes the Administrative Agent or agrees, with the approval of the Administrative Agent and the Borrower, to act as the Swing Loan Lender hereunder, in each case in its capacity as the Swing Loan Lender hereunder.

*"Swing Loan Request"* has the meaning specified in *Section 2.3(b) (Swing Loans)*.

*"Swing Loan Sublimit"* means \$3,000,000

*"Syndication Completion Date"* means the earlier to occur of (a) the 60<sup>th</sup> day following the Closing Date and (b) the date upon which the Arranger determines in its sole discretion that the primary syndication of the Loans and Revolving Credit Commitments has been completed

*"Tax Affiliate"* means, with respect to any Person, (a) any Subsidiary of such Person and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated, combined or unitary tax returns.

*"Tax Return"* has the meaning specified in *Section 4.8(a) (Taxes)*

*"Taxes"* has the meaning specified in *Section 2.16(a) (Taxes)*.

*"Term Loan"* has the meaning specified in *Section 2.1(b) (The Commitments)*.

*"Term Loan Borrowing"* means a borrowing consisting of Term Loans made on the same day by the Term Loan Lenders ratably according to their respective Term Loan Commitments.

*"Term Loan Commitment"* means, with respect to each Term Loan Lender, the commitment of such Lender to make Term Loans to the Borrower in the aggregate principal

amount outstanding not to exceed the amount set forth opposite such Lender's name on *Schedule I (Commitments)* under the caption "*Term Loan Commitment*" as amended to reflect each Assignment and Acceptance executed by such Lender and as such amount may be reduced pursuant to this Agreement.

"*Term Loan Facility*" means the Term Loan Commitments and the provisions herein related to the Term Loans

"*Term Loan Lender*" means each Lender that has a Term Loan Commitment or that holds a Term Loan

"*Term Loan Maturity Date*" means June 29, 2010

"*Term Loan Note*" means a promissory note of the Borrower payable to the order of any Term Loan Lender in a principal amount equal to the amount of the Term Loan owing to such Lender

"*Title IV Plan*" means a pension plan, other than a Multiemployer Plan, covered by Title IV of ERISA and to which the Borrower, any of its Subsidiaries or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

"*UCC*" has the meaning specified in the Pledge and Security Agreement.

"*Unfunded Pension Liability*" means, with respect to the Borrower or any of its Subsidiaries at any time, the sum of (a) the amount, if any, by which the present value of all accrued benefits under each Title IV Plan (other than any Title IV Plan subject to Section 4063 of ERISA) exceeds the fair market value of all assets of such Title IV Plan allocable to such benefits in accordance with Title IV of ERISA, as determined as of the most recent valuation date for such Title IV Plan using the actuarial assumptions in effect under such Title IV Plan, (b) the aggregate amount of withdrawal liability that could be assessed under Section 4063 with respect to each Title IV Plan subject to such section, separately calculated for each such Title IV Plan as of its most recent valuation date and (c) for a period of five years following a transaction reasonably likely to be covered by Section 4069 of ERISA, the liabilities (whether or not accrued) that could be avoided by the Borrower, any of its Subsidiaries or any ERISA Affiliate as a result of such transaction

"*Unused Commitment Fee*" has the meaning specified in *Section 2 12(a) (Fees)*

"*US Lender*" means each Lender or Issuer (or the Administrative Agent) that is a Domestic Person

"*Voting Stock*" means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency)

"*Wholly-Owned Subsidiary*" of any Person means any Subsidiary of such Person, all of the Stock of which (other than director's qualifying shares, as may be required by law) is owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries of such Person

*"Withdrawal Liability"* means, with respect to the Borrower or any of its Subsidiaries at any time, the aggregate liability incurred (whether or not assessed) with respect to all Multiemployer Plans pursuant to Section 4201 of ERISA or for increases in contributions required to be made pursuant to Section 4243 of ERISA

*"Working Capital"* means, for any Person at any date, the amount, if any, by which the Consolidated Current Assets of such Person at such date exceeds the Consolidated Current Liabilities of such Person at such date

### ***Section 1.2 Computation of Time Periods***

In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word *"from"* means *"from and including"* and the words *"to"* and *"until"* each mean *"to but excluding"* and the word *"through"* means *"to and including"*

### ***Section 1.3 Accounting Terms and Principles***

(a) Except as set forth below, all accounting terms not specifically defined herein shall be construed in conformity with GAAP and all accounting determinations required to be made pursuant hereto (including for purpose of measuring compliance with *Article V (Financial Covenants)*) shall, unless expressly otherwise provided herein, be made in conformity with GAAP

(b) If any change in the accounting principles used in the preparation of the most recent Financial Statements referred to in *Section 6.1 (Financial Statements)* is hereafter required or permitted by the rules, regulations, pronouncements and opinions of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successors thereto) and such change is adopted by the Borrower with the agreement of the Borrower's Accountants and results in a change in any of the calculations required by *Article V (Financial Covenants)* or *VIII (Negative Covenants)* that would not have resulted had such accounting change not occurred, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such change such that the criteria for evaluating compliance with such covenants by the Borrower shall be the same after such change as if such change had not been made; provided, however, that no change in GAAP that would affect a calculation that measures compliance with any covenant contained in *Article V (Financial Covenants)* or *VIII (Negative Covenants)* shall be given effect until such provisions are amended to reflect such changes in GAAP

(c) For purposes of making all financial calculations to determine compliance with *Article V (Financial Covenants)*, all components of such calculations shall be adjusted to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any business or assets that have been acquired by the Borrower or any of its Subsidiaries (including through Permitted Acquisitions) after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by the Borrower on a pro forma basis

#### **Section 1.4 Conversion of Foreign Currencies**

(a) *Financial Covenant Debt* Financial Covenant Debt denominated in any currency other than Dollars shall be calculated using the Dollar Equivalent thereof as of the date of the Financial Statements on which such Financial Covenant Debt is reflected.

(b) *Dollar Equivalents* The Administrative Agent shall determine the Dollar Equivalent of any amount as required hereby, and a determination thereof by the Administrative Agent shall be conclusive absent manifest error. The Administrative Agent may, but shall not be obligated to, rely on any determination made by any Loan Party in any document delivered to the Administrative Agent. The Administrative Agent may determine or redetermine the Dollar Equivalent of any amount on any date either in its own discretion or upon the request of any Lender or Issuer.

(c) *Rounding-Off* The Administrative Agent may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

#### **Section 1.5 Certain Terms**

(a) The terms "*herein*," "*hereof*," "*hereto*" and "*hereunder*" and similar terms refer to this Agreement as a whole and not to any particular Article, Section, subsection or clause in, this Agreement.

(b) Unless otherwise expressly indicated herein, (i) references in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement and (ii) the words "*above*" and "*below*", when following a reference to a clause or a sub-clause of any Loan Document, refer to a clause or sub-clause within, respectively, the same Section or clause.

(c) Each agreement defined in this *Article I* shall include all appendices, exhibits and schedules thereto. Unless the prior written consent of the Requisite Lenders is required hereunder for an amendment, restatement, supplement or other modification to any such agreement and such consent is not obtained, references in this Agreement to such agreement shall be to such agreement as so amended, restated, supplemented or modified.

(d) References in this Agreement to any statute shall be to such statute as amended or modified from time to time and to any successor legislation thereto, in each case as in effect at the time any such reference is operative.

(e) The term "*including*" when used in any Loan Document means "*including without limitation*" except when used in the computation of time periods.

(f) The terms "*Lender*," "*Issuer*" and "*Administrative Agent*" include their respective successors.

(g) Upon the appointment of any successor Administrative Agent pursuant to *Section 10.7 (Successor Agent)*, references to CSFB in *Section 10.4 (The Agents Individually)*

in the definitions of Base Rate, Dollar Equivalent, and Eurodollar Rate shall be deemed to refer to the financial institution then acting as the Administrative Agent or one of its Affiliates if it so designates

## ARTICLE II

### THE FACILITIES

#### ***Section 2.1 The Commitments***

(a) *Revolving Credit Commitments.* On the terms and subject to the conditions contained in this Agreement, each Revolving Credit Lender severally agrees to make loans in Dollars (each a “*Revolving Loan*”) to the Borrower from time to time on any Business Day during the period from the date hereof until the Revolving Credit Termination Date in an aggregate principal amount at any time outstanding for all such loans by such Revolving Credit Lender not to exceed such Revolving Credit Lender’s Revolving Credit Commitment; *provided, however,* that at no time shall any Revolving Credit Lender be obligated to make a Revolving Loan in excess of such Revolving Credit Lender’s Ratable Portion of the Available Credit. Within the limits of the Revolving Credit Commitment of each Revolving Credit Lender, amounts of Revolving Loans repaid may be reborrowed under this *Section 2.1*.

(b) *Term Loan Commitments.* On the terms and subject to the conditions contained in this Agreement, each Term Loan Lender severally agrees to make a loan (each a “*Term Loan*”) in Dollars to the Borrower on the Closing Date, in an amount not to exceed such Lender’s Term Loan Commitment. Amounts of Term Loans repaid or prepaid may not be reborrowed.

#### ***Section 2.2 Borrowing Procedures***

(a) Each Borrowing shall be made on notice given by the Borrower to the Administrative Agent not later than 11.00 a.m. (New York time) (i) one Business Day, in the case of a Borrowing of Base Rate Loans and (ii) three Business Days, in the case of a Borrowing of Eurodollar Rate Loans, prior to the date of the proposed Borrowing. Each such notice shall be in substantially the form of *Exhibit C (Form of Notice of Borrowing)* (a “*Notice of Borrowing*”), specifying, (A) the date of such proposed Borrowing (which, in the case of the Term Loan Borrowing, shall be the Closing Date), (B) the aggregate amount of such proposed Borrowing, (C) whether any portion of the proposed Borrowing will be of Base Rate Loans or Eurodollar Rate Loans, (D) for each Eurodollar Rate Loan, the initial Interest Period or Periods thereof. Loans shall be made as Base Rate Loans unless, subject to *Section 2.14 (Special Provisions Governing Eurodollar Rate Loans)*, the Notice of Borrowing specifies that all or a portion thereof shall be Eurodollar Rate Loans and (E) remittance instructions. Notwithstanding anything to the contrary contained in *Section 2.3(a) (Swing Loans)*, if any Notice of Borrowing requests a Borrowing of Base Rate Loans, the Administrative Agent may make a Swing Loan available to the Borrower in an aggregate amount not to exceed such proposed Borrowing, and the aggregate amount of the corresponding proposed Borrowing shall be reduced accordingly by the principal amount of such Swing Loan. Each Borrowing (other than a Swing Loan) shall be in an aggregate amount of not less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(b) The Administrative Agent shall give to each Lender prompt notice of the Administrative Agent's receipt of a Notice of Borrowing and, if Eurodollar Rate Loans are properly requested in such Notice of Borrowing, the applicable interest rate determined pursuant to *Section 2 14(a) (Determination of Interest Rate)*. Each Lender shall, before 1 00 p.m. (New York time) on the date of the proposed Borrowing, make available to the Administrative Agent at its address referred to in *Section 11 8 (Notices, Etc)*, in immediately available funds, such Lender's Ratable Portion of such proposed Borrowing. Upon fulfillment (or due waiver in accordance with *Section 11 1 (Amendments, Waivers, Etc)*) (i) on the Closing Date, of the applicable conditions set forth in *Section 3 1 (Conditions Precedent to Initial Loans and Letters of Credit)* and (ii) at any time (including the Closing Date), of the applicable conditions set forth in *Section 3 2 (Conditions Precedent to Each Loan and Letter of Credit)*, and after the Administrative Agent's receipt of such funds, the Administrative Agent shall make such funds available to the Borrower.

(c) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any proposed Borrowing that such Lender will not make available to the Administrative Agent such Lender's Ratable Portion of such Borrowing (or any portion thereof), the Administrative Agent may assume that such Lender has made such Ratable Portion available to the Administrative Agent on the date of such Borrowing in accordance with this *Section 2 2* and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such Ratable Portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate for the first Business Day and, thereafter, at the interest rate applicable at the time to the Loans comprising such Borrowing. If such Lender shall repay to the Administrative Agent such corresponding amount, such corresponding amount so repaid shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement. If the Borrower shall repay to the Administrative Agent such corresponding amount, such payment shall not relieve such Lender of any obligation it may have hereunder to the Borrower.

(d) The failure of any Lender to make on the date specified any Loan or any payment required by it (such Lender being a "Non-Funding Lender"), including any payment in respect of its participation in Swing Loans and Letter of Credit Obligations, shall not relieve any other Lender of its obligations to make such Loan or payment on such date but no such other Lender shall be responsible for the failure of any Non-Funding Lender to make a Loan or payment required under this Agreement.

### ***Section 2.3 Swing Loans***

(a) On the terms and subject to the conditions contained in this Agreement, the Swing Loan Lender may, in its sole discretion, make, in Dollars, loans (each a "Swing Loan") otherwise available to the Borrower under the Revolving Credit Facility from time to time on any Business Day during the period from the date hereof until the Revolving Credit Termination Date in an aggregate principal amount at any time outstanding (together with the aggregate outstanding principal amount of any other Loan made by the Swing Loan Lender hereunder in its capacity as a Lender or the Swing Loan Lender) not to exceed the lesser of the Available Credit and the



Swing Loan Sublimit. Each Swing Loan shall be a Base Rate Loan and shall be repaid no later than the Revolving Credit Termination Date. Within the limits set forth in the first sentence of this *clause (a)*, amounts of Swing Loans repaid may be reborrowed under this *clause (a)*.

(b) In order to request a Swing Loan, the Borrower shall provide to the Swing Loan Lender a duly completed request in substantially the form of *Exhibit D (Form of Swing Loan Request)*, setting forth the requested amount and date of such Swing Loan (a "*Swing Loan Request*") Subject to the terms of this Agreement, the Swing Loan Lender may make a Swing Loan available to the Borrower on the date of the relevant Swing Loan Request. The Swing Loan Lender shall not make any Swing Loan in the period commencing on the first Business Day after it receives written notice from the Administrative Agent or any Revolving Credit Lender that one or more of the conditions precedent contained in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* shall not on such date be satisfied, and ending when such conditions are satisfied. The Swing Loan Lender shall not otherwise be required to determine that, or take notice whether, the conditions precedent set forth in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* have been satisfied in connection with the making of any Swing Loan.

(c) The Swing Loan Lender may demand at any time that each Revolving Credit Lender pay to the Administrative Agent, for the account of the Swing Loan Lender, in the manner provided in *clause (e)* below, such Revolving Credit Lender's Ratable Portion of all or a portion of the outstanding Swing Loans, which demand shall be made through the Administrative Agent, shall be in writing and shall specify the outstanding principal amount of Swing Loans demanded to be paid.

(d) The Administrative Agent shall forward each demand referred to in *clause (c)* above to each Revolving Credit Lender on the day such demand is received by the Administrative Agent (except that any such demand received by the Administrative Agent after 2:00 p.m. (New York time) on any Business Day or any such demand received on a day that is not a Business Day shall not be required to be forwarded to the Revolving Credit Lenders by the Administrative Agent until the next succeeding Business Day), together with a notice specifying the amount of each Revolving Credit Lender's Ratable Portion of the aggregate principal amount of the Swing Loans demanded to be paid pursuant to such demand, and, notwithstanding whether or not the conditions precedent set forth in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* and *2.1(a) (Revolving Credit Commitments)* shall have been satisfied (which conditions precedent the Revolving Credit Lenders hereby irrevocably waive), each Revolving Credit Lender shall, before 11:00 a.m. (New York time) on the Business Day next succeeding the date of such Revolving Credit Lender's receipt of such demand, make available to the Administrative Agent, in immediately available funds, for the account of the Swing Loan Lender, the amount specified in such statement. Upon such payment by a Revolving Credit Lender, such Revolving Credit Lender shall, except as provided in *clause (f)* below, be deemed to have made a Revolving Loan to the Borrower. The Administrative Agent shall use such funds to repay the Swing Loans to the Swing Loan Lender. To the extent that any Revolving Credit Lender fails to make such payment available to the Administrative Agent for the account of the Swing Loan Lender, the Borrower shall repay such Swing Loan on demand.

(e) Upon the occurrence of a Default under *Section 9.1(f) (Events of Default)*, each Revolving Credit Lender shall acquire, without recourse or warranty, an undivided participation in each Swing Loan otherwise required to be repaid by such Revolving Credit Lender pursuant to *clause (c)* above, which participation shall be in a principal amount equal to

such Revolving Credit Lender's Ratable Portion of such Swing Loan, by paying to the Swing Loan Lender on the date on which such Revolving Credit Lender would otherwise have been required to make a payment in respect of such Swing Loan pursuant to *clause (c)* above, in immediately available funds, an amount equal to such Revolving Credit Lender's Ratable Portion of such Swing Loan. If all or part of such amount is not in fact made available by such Revolving Credit Lender to the Swing Loan Lender on such date, the Swing Loan Lender shall be entitled to recover any such unpaid amount on demand from such Revolving Credit Lender together with interest accrued from such date at the Federal Funds Rate for the first Business Day after such payment was due and, thereafter, at the rate of interest then applicable to Base Rate Loans

(f) From and after the date on which any Revolving Credit Lender (i) is deemed to have made a Revolving Loan pursuant to *clause (e)* above with respect to any Swing Loan or (ii) purchases an undivided participation interest in a Swing Loan pursuant to *clause (f)* above, the Swing Loan Lender shall promptly distribute to such Revolving Credit Lender such Revolving Credit Lender's Ratable Portion of all payments of principal of and interest received by the Swing Loan Lender on account of such Swing Loan other than those received from a Revolving Credit Lender pursuant to *clause (e)* or *(f)* above.

#### ***Section 2.4 Letters of Credit***

(a) On the terms and subject to the conditions contained in this Agreement, each Issuer agrees to Issue at the request of the Borrower and for the account of the Borrower one or more Letters of Credit from time to time on any Business Day during the period commencing on the Closing Date and ending on the earlier of the Revolving Credit Termination Date and 30 days prior to the Scheduled Termination Date; *provided, however*, that no Issuer shall be under any obligation to Issue (and, upon the occurrence of any of the events described in *clauses (ii), (iii), (iv) and (vi)(A)* below, shall not Issue) any Letter of Credit upon the occurrence of any of the following

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall purport by its terms to enjoin or restrain such Issuer from Issuing such Letter of Credit or any Requirement of Law applicable to such Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuer shall prohibit, or request that such Issuer refrain from, the Issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuer with respect to such Letter of Credit any restriction or reserve or capital requirement (for which such Issuer is not otherwise compensated) not in effect on the date of this Agreement or result in any unreimbursed loss, cost or expense that was not applicable, in effect or known to such Issuer as of the date of this Agreement and that such Issuer in good faith deems material to it;

(ii) such Issuer shall have received any written notice of the type described in *clause (d)* below,

(iii) after giving effect to the Issuance of such Letter of Credit, the aggregate Revolving Credit Outstandings would exceed the aggregate Revolving Credit Commitments in effect at such time;

(iv) after giving effect to the Issuance of such Letter of Credit, the sum of (A) the Letter of Credit Undrawn Amounts at such time and (B) the Reimbursement Obligations at such time exceeds the Letter of Credit Sublimit;

(v) such Letter of Credit is requested to be denominated in any currency other than Dollars, or

(vi) (A) any fees due in connection with a requested Issuance have not been paid, (B) such Letter of Credit is requested to be Issued in a form that is not acceptable to such Issuer or (C) the Issuer for such Letter of Credit shall not have received, in form and substance reasonably acceptable to it and, if applicable, duly executed by such Borrower, applications, agreements and other documentation (collectively, a "*Letter of Credit Reimbursement Agreement*") such Issuer generally employs in the ordinary course of its business for the Issuance of letters of credit of the type of such Letter of Credit.

None of the Revolving Credit Lenders (other than the Issuers in their capacity as such) shall have any obligation to Issue any Letter of Credit.

(b) In no event shall the expiration date of any Letter of Credit (other than the Letter of Credit issued on the date hereof for the benefit of CoBank ACB) (i) be more than one year after the date of issuance thereof or (ii) be less than five Business Days prior to the Scheduled Termination Date; *provided, however*, that any Letter of Credit with a term less than or equal to one year may provide for the renewal thereof for additional periods less than or equal to one year, as long as, (x) on or before the expiration of each such term and each such period, the Borrower and the Issuer of such Letter of Credit shall have the option to prevent such renewal and (y) neither the Issuer nor the Borrower shall permit any such renewal to extend the expiration date of any Letter beyond the date set forth in *clause (u)* above.

(c) In connection with the Issuance of each Letter of Credit, the Borrower shall give the relevant Issuer and the Administrative Agent at least two Business Days' prior written notice, in substantially the form of *Exhibit E (Form of Letter of Credit Request)* (or in such other written or electronic form as is acceptable to the Issuer), of the requested Issuance of such Letter of Credit (a "*Letter of Credit Request*") Such notice shall be irrevocable and shall specify the Issuer of such Letter of Credit, face amount of the Letter of Credit requested, the date of Issuance of such requested Letter of Credit, the date on which such Letter of Credit is to expire (which date shall be a Business Day) and, in the case of an issuance, the Person for whose benefit the requested Letter of Credit is to be issued. Such notice, to be effective, must be received by the relevant Issuer and the Administrative Agent not later than 11:00 a.m. (New York time) on the second Business Day prior to the requested Issuance of such Letter of Credit

(d) Subject to the satisfaction of the conditions set forth in this *Section 2.4*, the relevant Issuer shall, on the requested date, Issue a Letter of Credit on behalf of the Borrower in accordance with such Issuer's usual and customary business practices. No Issuer shall Issue any Letter of Credit in the period commencing on the first Business Day after it receives written notice from any Revolving Credit Lender that one or more of the conditions precedent contained in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* or *clause (a)* above (other than those conditions set forth in *clauses (a)(i), (a)(vi)(B)* and *(C)* above and, to the extent such clause relates to fees owing to the Issuer of such Letter of Credit and its Affiliates, *clause (a)(vi)(A)* above) are not on such date satisfied or duly waived and ending when such conditions

are satisfied or duly waived. No Issuer shall otherwise be required to determine that, or take notice whether, the conditions precedent set forth in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* have been satisfied in connection with the Issuance of any Letter of Credit.

(e) The Borrower agrees that, if requested by the Issuer of any Letter of Credit, it shall execute a Letter of Credit Reimbursement Agreement in respect to any Letter of Credit Issued hereunder. In the event of any conflict between the terms of any Letter of Credit Reimbursement Agreement and this Agreement, the terms of this Agreement shall govern.

(f) Each Issuer shall comply with the following

(i) give the Administrative Agent written notice (or telephonic notice confirmed promptly thereafter in writing), which writing may be a telecopy, of the Issuance of any Letter of Credit Issued by it, of all drawings under any Letter of Credit Issued by it and of the payment (or the failure to pay when due) by the Borrower of any Reimbursement Obligation when due (which notice the Administrative Agent shall promptly transmit by telecopy to each Revolving Credit Lender);

(ii) upon the request of any Revolving Credit Lender, furnish to such Revolving Credit Lender copies of any Letter of Credit Reimbursement Agreement to which such Issuer is a party and such other documentation as may reasonably be requested by such Revolving Credit Lender, and

(iii) on the first Business Day of each Fiscal Quarter, provide to the Administrative Agent (and the Administrative Agent shall provide a copy to each Revolving Credit Lender requesting the same) and the Borrower separate schedules for Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the aggregate Letter of Credit Obligations, in each case outstanding at the end of such Fiscal Quarter and any information requested by the Borrower or the Administrative Agent relating thereto.

(g) Immediately upon the issuance by an Issuer of a Letter of Credit in accordance with the terms and conditions of this Agreement, such Issuer shall be deemed to have sold and transferred to each Revolving Credit Lender, and each Revolving Credit Lender shall be deemed irrevocably and unconditionally to have purchased and received from such Issuer, without recourse or warranty, an undivided interest and participation, to the extent of such Revolving Credit Lender's Ratable Portion of the Revolving Credit Commitments, in such Letter of Credit and the obligations of the Borrower with respect thereto (including all Letter of Credit Obligations with respect thereto) and any security therefor and guaranty pertaining thereto.

(h) The Borrower agrees to pay to the Issuer of any Letter of Credit the amount of all Reimbursement Obligations owing to such Issuer under any Letter of Credit issued for its account no later than the date that is the next succeeding Business Day after the date that payment has been made under such Letter of Credit (the "*Reimbursement Date*") (as shall be notified in writing by such Issuer to the Borrower), irrespective of any claim, set-off, defense or other right that the Borrower may have at any time against such Issuer or any other Person. In the event that any Issuer makes any payment under any Letter of Credit and the Borrower shall not have repaid such amount to such Issuer pursuant to this *clause (h)* or any such payment by the Borrower is rescinded or set aside for any reason, such Reimbursement Obligation shall be

payable on demand with interest thereon computed (i) from the date on which such Reimbursement Obligation arose to the Reimbursement Date, at the rate of interest applicable during such period to Revolving Loans that are Base Rate Loans and (ii) from the Reimbursement Date until the date of repayment in full, at the rate of interest applicable during such period to past due Revolving Loans that are Base Rate Loans, and such Issuer shall promptly notify the Administrative Agent, which shall promptly notify each Revolving Credit Lender of such failure, and each Revolving Credit Lender shall promptly and unconditionally pay to the Administrative Agent for the account of such Issuer the amount of such Revolving Credit Lender's Ratable Portion of such payment in immediately available Dollars. If the Administrative Agent so notifies such Revolving Credit Lender prior to 11 00 a.m. (New York time) on any Business Day, such Revolving Credit Lender shall make available to the Administrative Agent for the account of such Issuer its Ratable Portion of the amount of such payment on such Business Day in immediately available funds. Upon such payment by a Revolving Credit Lender, such Revolving Credit Lender shall, except during the continuance of a Default or Event of Default under *Section 9.1(f) (Events of Default)* and notwithstanding whether or not the conditions precedent set forth in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* shall have been satisfied (which conditions precedent the Revolving Credit Lenders hereby irrevocably waive), be deemed to have made a Revolving Loan to the Borrower in the principal amount of such payment. Whenever any Issuer receives from the Borrower a payment of a Reimbursement Obligation as to which the Administrative Agent has received for the account of such Issuer any payment from a Revolving Credit Lender pursuant to this *clause (h)*, such Issuer shall pay over to the Administrative Agent any amount received in excess of such Reimbursement Obligation and, upon receipt of such amount, the Administrative Agent shall promptly pay over to each Revolving Credit Lender, in immediately available funds, an amount equal to such Revolving Credit Lender's Ratable Portion of the amount of such payment adjusted, if necessary, to reflect the respective amounts the Revolving Credit Lenders have paid in respect of such Reimbursement Obligation.

(i) If and to the extent such Revolving Credit Lender shall not have so made its Ratable Portion of the amount of the payment required by *clause (h)* above available to the Administrative Agent for the account of such Issuer, such Revolving Credit Lender agrees to pay to the Administrative Agent for the account of such Issuer forthwith on demand any such unpaid amount together with interest thereon, for the first Business Day after payment was first due at the Federal Funds Rate and, thereafter, until such amount is repaid to the Administrative Agent for the account of such Issuer, at a rate *per annum* equal to the rate applicable to Base Rate Loans under the Facility.

(j) The Borrower's obligation to pay each Reimbursement Obligation and the obligations of the Revolving Credit Lenders to make payments to the Administrative Agent for the account of the Issuers with respect to Letters of Credit shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, including the occurrence of any Default or Event of Default, and irrespective of any of the following:

(i) any lack of validity or enforceability of any Letter of Credit or any Loan Document, or any term or provision therein,

(ii) any amendment or waiver of or any consent to departure from all or any of the provisions of any Letter of Credit or any Loan Document,

(iii) the existence of any claim, set-off, defense or other right that the Borrower, any other party guaranteeing, or otherwise obligated with, the Borrower, any Subsidiary or other Affiliate thereof or any other Person may at any time have against the beneficiary under any Letter of Credit, any Issuer, the Administrative Agent or any Lender or any other Person, whether in connection with this Agreement, any other Loan Document or any other related or unrelated agreement or transaction,

(iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by the Issuer under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; and

(vi) any other act or omission to act or delay of any kind of the Issuer, the Lenders, the Administrative Agent or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this *Section 2.4*, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

Any action taken or omitted to be taken by the relevant Issuer under or in connection with any Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not result in any liability of such Issuer to the Borrower or any Lender. In determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, the Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and, in making any payment under any Letter of Credit, the Issuer may rely exclusively on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever, and any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute willful misconduct or gross negligence of the Issuer.

### ***Section 2.5 Reduction and Termination of Commitments***

The Borrower may, upon at least three Business Days' prior notice to the Administrative Agent, terminate in whole or reduce in part ratably the unused portions of the respective Revolving Credit Commitments of the Revolving Credit Lenders; *provided, however*, that (a) each partial reduction shall be in an aggregate amount of not less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof and (b) no such termination or reduction shall be permitted unless the Borrower shall at the same time pay any Applicable Prepayment Premium which is payable with respect thereto pursuant to *Section 2.12(c) (Fees)*. All outstanding Revolving Credit Commitments shall terminate on the Revolving Credit Termination Date

**Section 2.6 Repayment of Loans**

(a) The Borrower promises to repay the entire unpaid principal amount of the Revolving Loans and the Swing Loans on the Scheduled Termination Date or earlier, if otherwise required by the terms hereof.

(b) The Borrower promises to repay the Term Loans at the dates and in the amounts set forth below:

<u>Date</u>	<u>Amount</u>
September 30, 2005	\$462,500
December 31, 2005	\$462,500
March 31, 2006	\$462,500
June 30, 2006	\$462,500
September 30, 2006	\$462,500
December 31, 2006	\$462,500
March 31, 2007	\$462,500
June 30, 2007	\$462,500
September 30, 2007	\$462,500
December 31, 2007	\$462,500
March 31, 2008	\$462,500
June 30, 2008	\$462,500
September 30, 2008	\$462,500
December 31, 2008	\$462,500
March 31, 2009	\$462,500
June 30, 2009	\$462,500
September 30, 2009	\$462,500
December 31, 2009	\$462,500
March 31, 2010	\$462,500
Term Loan Maturity Date	\$176,212,500

*provided, however*, that the Borrower shall repay the entire unpaid principal amount of the Term Loans on the Term Loan Maturity Date

**Section 2.7 Evidence of Debt**

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(b) (i) The Administrative Agent, acting as agent of the Borrower solely for this purpose and for tax purposes, shall establish and maintain at its address referred to in *Section 11.8 (Notices, Etc)* a record of ownership (the "Register") in which the Administrative Agent agrees to register by book entry the Administrative Agent's, each Lender's and each Issuer's interest in each Loan, each Letter of Credit and each Reimbursement Obligation, and in the right to receive any payments hereunder and any assignment of any such interest or rights. In addition, the Administrative Agent, acting as agent of the Borrower solely for this purpose and for tax purposes, shall establish and maintain accounts in the Register in accordance with its usual practice in which it shall

record (A) the names and addresses of the Lenders and the Issuers, (B) the Commitments of each Lender from time to time, (C) the amount of each Loan made and, if a Eurodollar Rate Loan, the Interest Period applicable thereto (except with respect to Swing Loans which shall be recorded by the Swing Loan Lender), (D) the amount of any principal or interest due and payable, and paid, by the Borrower to, or for the account of, each Lender hereunder, (E) the amount that is due and payable, and paid, by the Borrower to, or for the account of, each Issuer, including the amount of Letter Credit Obligations (specifying the amount of any Reimbursement Obligations) due and payable to an Issuer, and (F) the amount of any sum received by the Administrative Agent hereunder from the Borrower, whether such sum constitutes principal or interest (and the type of Loan to which it applies), fees, expenses or other amounts due under the Loan Documents and each Lender's and Issuer's, as the case may be, share thereof, if applicable.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Loans (including the Notes evidencing such Loans) and the Reimbursement Obligations are registered obligations and the right, title, and interest of the Lenders and the Issuers and their assignees in and to such Loans or Reimbursement Obligations, as the case may be, shall be transferable only upon notation of such transfer in the Register. A Note shall only evidence the Lender's or a registered assignee's right, title and interest in and to the related Loan, and in no event is any such Revolving Credit Note to be considered a bearer instrument or obligation. This *Section 2.7(b)* and *Section 11.2(Assignments and Participations)* shall be construed so that the Loans and Reimbursement Obligations are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (or any successor provisions of the Code or such regulations).

(c) The entries made in the Register and in the accounts therein maintained pursuant to *clauses (a) and (b)* above shall, to the extent permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms. In addition, the Loan Parties, the Administrative Agent, the Lenders and the Issuers shall treat each Person whose name is recorded in the Register as a Lender or as an Issuer, as applicable, for all purposes of this Agreement. Information contained in the Register with respect to any Lender or Issuer shall be available for inspection by the Borrower, the Administrative Agent, such Lender or such Issuer at any reasonable time and from time to time upon reasonable prior notice.

(d) Notwithstanding any other provision of the Agreement, in the event that any Lender requests that the Borrower execute and deliver a promissory note or notes payable to such Lender in order to evidence the Indebtedness owing to such Lender by the Borrower hereunder, the Borrower shall promptly execute and deliver a Note or Notes to such Lender evidencing any Term Loans and Revolving Loans, as the case may be, of such Lender, substantially in the forms of *Exhibit B-1 (Form of Revolving Credit Note)* or *Exhibit B-2 (Form of Term Note)*, respectively.

## **Section 2.8      Optional Prepayments**

(a) *Revolving Loans.* The Borrower may prepay the outstanding principal amount of the Revolving Loans and the Swing Loans in whole or in part at any time, *provided*,



however, that (i) each partial prepayment of a Revolving Loan shall be in an aggregate amount not less than \$5,000,000 or integral multiples of \$1,000,000 in excess thereof and (ii) if any prepayment of any Eurodollar Rate Loan is made by the Borrower other than on the last day of an Interest Period for such Loan, the Borrower shall also pay any amount owing pursuant to *Section 2.14(e) (Breakage Costs)*.

(b) *Term Loans* The Borrower may prepay the outstanding principal amount of the Term Loans, in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; *provided, however*, (i) the Borrower shall provide the Administrative Agent with notice stating the proposed date and aggregate principal amount of such prepayment not later than 11.00 a.m. (New York time) (a) one Business Day, in the case of a Borrowing of Base Rate Loans and (b) three Business Days, in the case of a Borrowing of Eurodollar Rate Loans, prior to the date of the proposed prepayment; (ii) if any prepayment of any Eurodollar Rate Loan is made by the Borrower other than on the last day of an Interest Period for such Loan, the Borrower shall also pay any amounts owing pursuant to *Section 2.14(e) (Breakage Costs)*; (iii) each partial prepayment shall be in an aggregate amount not less than \$5,000,000 or integral multiples of \$1,000,000 in excess thereof and that any such partial prepayment shall be applied to reduce the remaining installments of such outstanding principal amount of the Term Loans pro rata to such installments; and (iv) no such prepayment shall be permitted unless paid together with any Applicable Prepayment Premium which is payable pursuant to *Section 2.12(c) (Fees)*. Upon the giving of such notice of prepayment, the principal amount of the Term Loans specified to be prepaid shall become due and payable on the date specified for such prepayment.

(c) The Borrower shall have no right to prepay the principal amount of any Revolving Loan or any Term Loan other than as provided in this *Section 2.8*

### ***Section 2.9 Mandatory Prepayments***

(a) Upon receipt by the Borrower or any of its Subsidiaries of Net Cash Proceeds arising (i) from an Asset Sale (excluding, unless a Default or Event of Default has occurred which is continuing on the date of receipt, the Net Cash Proceeds received pursuant to the Cerritos Sale, *provided*, that such Net Cash Proceeds are used for working capital requirements and general corporate purposes of the Borrower and its Subsidiaries), Property Loss Event, New Preferred Rights Offering or Debt Issuance, the Borrower shall immediately prepay the Loans (or provide cash collateral in respect of Letters of Credit, if applicable) in an amount equal to 100% of such Net Cash Proceeds (except Net Cash Proceeds subject to a Reinvestment Event as provided below) and (ii) from an Equity Issuance (other than a New Preferred Rights Offering or an Equity Issuance to the extent applied to the purchase consideration for a Permitted Acquisition within 180 days of such Equity Issuance), the Borrower shall immediately prepay the Loans (or provide cash collateral in respect of Letters of Credit) in an amount equal to 50% of such Net Cash Proceeds, *provided, however*, that if the Leverage Ratio as of the last day of the most recently ended Fiscal Quarter is (A) less than 5.5 to 1.0, then the foregoing percentage with respect to Equity Issuances shall be reduced to 25% or (B) less than 4.5 to 1.0, then such percentage shall be reduced to 0%. Any such mandatory prepayment shall be applied as provided in *clause (c)* below, *provided, however*, that, in the case of any Net Cash Proceeds subject to a Reinvestment Event, the Borrower shall, pending application of such Net Cash Proceeds, (x) immediately upon receipt of such Net Cash Proceeds deposit an amount equal to 100% of such Net Cash Proceeds in a Cash Collateral Account or (y) at the Borrower's option, to the extent that there are Revolving Credit Outstandings at such time, prepay the Revolving Loans

or provide cash collateral in respect of Letters of Credit (but which shall not result in any permanent reduction in the Revolving Credit Commitments). On any Reinvestment Prepayment Date, the Borrower shall prepay the Loans in an amount equal to the remaining Reinvestment Deferred Amount which has not been reinvested as of such date in accordance with the applicable Reinvestment Notice, which prepayment shall be applied as provided in *clause (c)* below. Notwithstanding the foregoing, for any Fiscal Year, the amount of Net Cash Proceeds from Asset Sales subject to a Reinvestment Event shall not exceed \$1,000,000.

(b) The Borrower shall prepay the Loans within 95 days after the last day of each Fiscal Year, in an amount equal to 75% of Excess Cash Flow for such Fiscal Year; *provided, however*, that if the Leverage Ratio as of the last day of such Fiscal Year is less than 5.5 to 1.0, then such percentage shall be reduced to 50% for such Fiscal Year, *provided, further* that no such prepayment shall be required prior to calendar year 2006. Any such mandatory prepayment shall be applied in accordance with *clause (c)* below.

(c) Subject to the provisions of *Section 2.13(g) (Payments and Computations)*, any mandatory prepayments made by the Borrower required to be applied in accordance with this *clause (c)* shall be applied (subject, with respect to mandatory prepayments pursuant to *clause (a)* above, to *clause (e)* below) as follows: first, to the prepayment of the Term Loans to repay the outstanding principal balance of the Term Loans, until such Term Loans shall have been prepaid in full; second, to repay the outstanding principal balance of the Swing Loans until such Swing Loans shall have been repaid in full; third, to repay the outstanding principal balance of the Revolving Loans until such Revolving Loans shall have been paid in full, and then, to provide cash collateral for any Letter of Credit Obligations in an amount equal to 105% of such Letter of Credit Obligations in the manner set forth in *Section 9.3 (Action in respect of Letters of Credit)* until all such Letter of Credit Obligations have been fully cash collateralized in the manner set forth therein. All repayments of the Term Loans made pursuant to this *clause (c)* shall be applied to reduce the remaining installments of such outstanding principal amounts of the Term Loans pro rata to such installments.

(d) If at any time, the aggregate principal amount of Revolving Credit Outstandings exceeds the aggregate Revolving Credit Commitments at such time, the Borrower shall forthwith prepay the Swing Loans first and then the Revolving Loans then outstanding in an amount equal to such excess. If any such excess remains after repayment in full of the aggregate outstanding Swing Loans and Revolving Loans, the Borrower shall provide cash collateral for the Letter of Credit Obligations in the manner set forth in *Section 9.3 (Action in Respect of Letters of Credit)* in an amount equal to 105% of such excess.

(e) In connection with any mandatory prepayment pursuant to *clause (a)* above which is to be made in accordance with *clause (c)* above, the Borrower shall give the Administrative Agent 10 Business Days prior notice of any such mandatory prepayment, whereupon the Administrative Agent shall promptly notify each Term Loan Lender thereof. Any Term Loan Lender may, at its option, elect not to accept such prepayment of its Term Loan (any Term Loan Lender making such election being a "Declining Lender"); *provided* that each Declining Lender shall give written notice thereof to the Administrative Agent not later than 11:00 a.m. New York City time on the eighth Business Day preceding the date of the applicable mandatory prepayment. The Administrative Agent shall offer the aggregate amount of the mandatory prepayments declined by the Declining Lenders to the Term Loan Lenders who are not Declining Lenders (each, a "Non-Declining Lender") no later than the fifth Business Day preceding the date of the applicable mandatory prepayment. Each Non-Declining Lender shall be

permitted to elect to receive such Non-Declining Lender's pro rata share of such remaining amount, among those Non-Declining Lenders who have accepted such payment of such amount, by giving written notice no later than 11:00 a.m. New York City time on the third Business Day preceding the date of the applicable mandatory prepayment. The aggregate amount of the mandatory prepayments declined by the Non-Declining Lenders shall be applied in accordance with the mandatory prepayment provisions of the Second Lien Credit Agreement. On such date of prepayment, (i) an amount equal to that portion of the Term Loans then to be prepaid to the Term Loan Lenders (less the amount thereof that would otherwise be payable to Declining Lenders) shall be paid to the Term Loan Lenders that are not Declining Lenders and (ii) an amount equal to that portion of the Term Loans that would otherwise be payable to Declining Lenders shall be applied first in prepayment of the Second Lien Term Loans in accordance with the provisions of the Second Lien Credit Agreement (to the extent that the lenders under the Second Lien Credit Agreement have not declined such prepayment), second to the prepayment of the Revolving Credit Obligations and Swing Loans and the cash collateralization of Letters of Credit, in each case on the basis provided in *Section 2.9(c)* above, and third, to the extent there are proceeds remaining, to the Borrower for application for any purpose permitted by this Agreement. In the event that the Administrative Agent has not, with respect to any prepayment, received a notice from a Term Loan Lender in accordance with this *clause (e)*, such Term Loan Lender shall be deemed to have waived its rights under this *clause (e)* to decline receipt thereof. The provisions of this *clause (e)* shall not apply to mandatory prepayments pursuant to *clause (b)* above and no Lender shall not have the right to decline such mandatory prepayments.

### ***Section 2.10 Interest***

(a) *Rate of Interest* All Loans and the outstanding amount of all other Obligations (other than pursuant to Hedging Contracts that are Loan Documents, to the extent such Hedging Contracts provide for the accrual of interest on unpaid obligations) shall bear interest, in the case of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in *clause (c)* below, as follows:

(i) if a Base Rate Loan or such other Obligation, at a rate *per annum* equal to the sum of (A) the Base Rate as in effect from time to time and (B) the Applicable Margin; and

(ii) if a Eurodollar Rate Loan, at a rate *per annum* equal to the sum of (A) the Eurodollar Rate determined for the applicable Interest Period and (B) the Applicable Margin in effect from time to time during such Eurodollar Interest Period.

(b) *Interest Payments.* (i) Interest accrued on each Base Rate Loan shall be payable in arrears (A) on the first Business Day of each Fiscal Quarter, commencing on September 30, 2005 and, thereafter, on the first such day following the making of such Base Rate Loan, (B) in the case of Base Rate Loans that are Term Loans, upon the payment or prepayment thereof in full or in part and (C) if not previously paid in full, at maturity (whether by acceleration or otherwise) of such Base Rate Loan, (ii) interest accrued on each Eurodollar Rate Loan shall be payable in arrears (A) on the last day of each Interest Period applicable to such Loan and, if such Interest Period has a duration of more than three months, on each date during such Interest Period occurring every three months from the first day of such Interest Period, (B) upon the payment or prepayment thereof in full or in part and (C) if not previously paid in full, at maturity (whether by

acceleration or otherwise) of such Eurodollar Rate Loan and (iii) interest accrued on the amount of all other Obligations shall be payable on demand from and after the time such Obligation becomes due and payable (whether by acceleration or otherwise).

(c) *Default Interest.* Notwithstanding the rates of interest specified in *clause (a)* above or elsewhere herein, effective immediately upon the occurrence of an Event of Default and for as long thereafter as such Event of Default shall be continuing, the principal balance of all Loans and the amount of all other Obligations then due and payable shall bear interest at a rate that is two percent *per annum* in excess of the rate of interest applicable to such Loans or other Obligations from time to time. Such interest shall be payable on the date that would otherwise be applicable to such interest pursuant to *clause (b)* above or otherwise on demand

### **Section 2.11 Conversion/Continuation Option**

(a) The Borrower may elect (i) at any time on any Business Day to convert Base Rate Loans (other than Swing Loans) or any portion thereof to Eurodollar Rate Loans and (ii) at the end of any applicable Interest Period, to convert Eurodollar Rate Loans or any portion thereof into Base Rate Loans or to continue such Eurodollar Rate Loans or any portion thereof for an additional Interest Period; *provided, however*, that the aggregate amount of the Eurodollar Loans for each Interest Period must be in the amount of at least \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof. Each conversion or continuation shall be allocated among the Loans of each Lender in accordance with such Lender's Ratable Portion. Each such election shall be in substantially the form of *Exhibit F (Form of Notice of Conversion or Continuation)* (a "Notice of Conversion or Continuation") and shall be made by giving the Administrative Agent at least (x) three Business Days' prior written notice in the case of a conversion to, or continuation of, Eurodollar Rate Loans or (y) one Business Day's prior written notice in the case of a conversion to Base Rate Loans, each such notice specifying, as applicable, (A) the amount and type of Loan being converted or continued, (B) in the case of a conversion to, or a continuation of, Eurodollar Rate Loans, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion.

(b) The Administrative Agent shall promptly notify each Lender of its receipt of a Notice of Conversion or Continuation and of the options selected therein. Notwithstanding the foregoing, no conversion in whole or in part of Base Rate Loans to Eurodollar Rate Loans and no continuation in whole or in part of Eurodollar Rate Loans upon the expiration of any applicable Interest Period shall be permitted at any time at which (i) a Default or an Event of Default shall have occurred and be continuing or (ii) the continuation of, or conversion into, a Eurodollar Rate Loan would violate any provision of *Section 2.14 (Special Provisions Governing Eurodollar Rate Loans)*. If, within the time period required under the terms of this *Section 2.11*, the Administrative Agent does not receive a Notice of Conversion or Continuation from the Borrower containing a permitted election to continue any Eurodollar Rate Loans for an additional Interest Period or to convert any such Loans, then, upon the expiration of the applicable Interest Period, such Loans shall be automatically converted to Base Rate Loans; provided, further that if any Notice of Conversion or Continuation (i) fails to specify whether the applicable Loans shall be converted to or continued as Base Rate Loans or as Eurodollar Rate Loans, such Loans shall be converted to or continued as Base Rate Loans and (ii) in the case of a conversion to or a continuation of Eurodollar Rate Loans, fails to indicate the term of the applicable Interest Period, such Interest Period shall be deemed to be for a one-month period. Each Notice of Conversion or Continuation shall be irrevocable

## **Section 2.12 Fees**

(a) *Unused Commitment Fee* The Borrower agrees to pay on October 1, 2005 and, thereafter, quarterly in arrears (on the first Business Day of such Fiscal Quarter) to each Revolving Credit Lender a commitment fee (the "*Unused Commitment Fee*") on the actual daily amount by which the Revolving Credit Commitment of such Revolving Credit Lender exceeds such Lender's Ratable Portion of (i) the average daily excess of the amount then effective Revolving Loan Commitments over the Revolving Credit Outstandings (exclusive of any outstanding Swing Loans) *multiplied* by (ii) the Applicable Unused Commitment Fee Rate. The Unused Commitment Fee shall be payable in arrears (x) on the first Business Day of each Fiscal Quarter, commencing on the first such Business Day following the Closing Date and (y) on the Revolving Credit Termination Date. The Unused Commitment Fee shall be calculated on the basis of a year of 360 days, in each case, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such Unused Commitment Fee is payable.

(b) *Letter of Credit Fees* The Borrower agrees to pay the following amounts with respect to Letters of Credit issued by any Issuer.

(i) to the Administrative Agent for the account of each Issuer of a Letter of Credit, with respect to each Letter of Credit issued by such Issuer, an issuance fee equal to 0.25% *per annum* of the maximum undrawn face amount of such Letter of Credit, payable in arrears (A) on the first Business Day of each Fiscal Quarter, commencing on the first such Business Day following the issuance of such Letter of Credit and (B) on the Revolving Credit Termination Date,

(ii) to the Administrative Agent for the ratable benefit of the Revolving Credit Lenders, with respect to each Letter of Credit, a fee accruing in Dollars at a rate *per annum* equal to the Applicable Margin for Revolving Loans that are Eurodollar Rate Loans on the maximum undrawn face amount of such Letter of Credit, payable in arrears (A) on the first Business Day of each Fiscal Quarter, commencing on the first such Business Day following the issuance of such Letter of Credit and (B) on the Revolving Credit Termination Date; *provided, however*, that during the continuance of an Event of Default, such fee shall be increased by two percent *per annum* (instead of, and not in addition to, any increase pursuant to *Section 2.10(c) (Interest)*) and shall be payable on demand; and

(iii) to the Issuer of any Letter of Credit, with respect to the issuance, amendment or transfer of each Letter of Credit and each drawing made thereunder, documentary and processing charges in accordance with such Issuer's standard schedule for such charges in effect at the time of issuance, amendment, transfer or drawing, as the case may be.

(c) *Prepayment Premium* In connection with, and as a condition to, any termination or reduction of the Revolving Credit Commitments pursuant to *Section 2.5(a) (Reduction and Termination of Commitments)* or any prepayment of all or a portion of the Term Loans pursuant to *Section 2.8(b) (Optional Prepayments)*, the Borrower shall pay to the Revolving Credit Lenders or the Term Loan Lenders, as applicable, in addition to any other amounts then due on the date of any such termination, reduction or prepayment, the Applicable

Prepayment Premium calculated with respect to the Revolving Credit Commitments so terminated or reduced or the Term Loans so prepaid as of the date thereof.

(d) *Additional Fees.* The Borrower has agreed to pay to the Administrative Agent and the Arranger additional fees, the amount and dates of payment of which are embodied in the Fee Letter

### ***Section 2.13 Payments and Computations***

(a) The Borrower shall make each payment hereunder (including fees and expenses) not later than 1:00 p.m. (New York time) on the day when due, in Dollars to the Administrative Agent or the Swing Loan Lender, as applicable, at its address referred to in *Section 11.8 (Notices, Etc.)* in immediately available funds without set-off or counterclaim. The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in *clause (f) or (g)* below, as applicable, for the account of their respective Applicable Lending Offices; *provided, however*, that amounts payable pursuant to *Section 2.15 (Capital Adequacy)*, *Section 2.16 (Taxes)* or *Section 2.14(c) or (d) (Special Provisions Governing Eurodollar Rate Loans)* shall be paid only to the affected Lender or Lenders and amounts payable with respect to Swing Loans shall be paid only to the Swing Loan Lender. Payments received by the Administrative Agent after 1:00 p.m. (New York time) shall be deemed to be received on the next Business Day (in the Administrative Agent's sole discretion).

(b) All computations of interest and of fees shall be made by the Administrative Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest and fees are payable except for interest in connection with Base Rate Loans which shall be calculated on the basis of the actual number of calendar days in the applicable year. Each determination by the Administrative Agent of a rate of interest hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Each payment by the Borrower of any Loan, Reimbursement Obligation (including interest or fees in respect thereof) and each reimbursement of various costs, expenses or other Obligation shall be made in the currency in which such Loan was made, such Letter of Credit issued or such cost, expense or other Obligation was incurred; *provided, however*, that (i) the Letter of Credit Reimbursement Agreement for a Letter of Credit may specify another currency for the Reimbursement Obligation in respect of such Letter of Credit and (ii) other than for payments in respect of a Loan or Reimbursement Obligation, Loan Documents duly executed by the Administrative Agent or any Hedging Contract may specify other currencies of payment for Obligations created by or directly related to such Loan Document or Hedging Contract.

(d) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be; *provided, however*, that if such extension would cause payment of interest on or principal of any Eurodollar Rate Loan to be made in the next calendar month, such payment shall be made on the immediately preceding Business Day. All repayments of (i) any Revolving Loans shall be applied as follows. *first*, to repay such Loans outstanding as Base Rate Loans and *then*, to repay such Loans outstanding as

Eurodollar Rate Loans, with those Eurodollar Rate Loans having earlier expiring Eurodollar Interest Periods being repaid prior to those having later expiring Eurodollar Interest Periods, and (ii) any Term Loans shall be applied pro rata to repay such Loans outstanding as Base Rate Loans and Eurodollar Rate Loans.

(e) Unless the Administrative Agent shall have received notice from the Borrower to the Lenders prior to the date on which any payment is due hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made 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 that the Borrower shall not have 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 (at the Federal Funds Rate for the first Business Day and, thereafter, at the rate applicable to Base Rate Loans) 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.

(f) Except for payments and other amounts received by the Administrative Agent and applied in accordance with the provisions of *clause (g)* below (or required to be applied in accordance with *Section 2.9(c) (Mandatory Prepayments)*), all payments and any other amounts received by the Administrative Agent from or for the benefit of the Borrower shall be applied as follows *first*, to pay principal of, and interest on, any portion of the Loans the Administrative Agent may have advanced pursuant to the express provisions of this Agreement on behalf of any Lender, for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower, *second*, to pay all other Obligations then due and payable and *third*, as the Borrower so designates. Payments in respect of Swing Loans received by the Administrative Agent shall be distributed to the Swing Loan Lender; payments in respect of Revolving Loans received by the Administrative Agent shall be distributed to each Revolving Credit Lender in accordance with such Lender's Ratable Portion of the Revolving Credit Commitments; payments in respect of the Term Loans received by the Administrative Agent shall be distributed to each Term Loan Lender in accordance with such Lender's Ratable Portion of the Term Loans; and all payments of fees and all other payments in respect of any other Obligation shall be allocated among such of the Lenders and Issuers as are entitled thereto and, for such payments allocated to the Lenders, in proportion to their respective Ratable Portions.

(g) The Borrower hereby irrevocably waives the right to direct the application of any and all payments in respect of the Obligations and any proceeds of Collateral after the occurrence and during the continuance of an Event of Default and agrees that, notwithstanding the provisions of *Section 2.9(c) (Mandatory Prepayments)* and *clause (f)* above, each Agent may, and, upon either (A) the written direction of the Requisite Lenders or (B) the acceleration of the Obligations pursuant to *Section 9.2 (Remedies)* shall, deliver a blockage notice to each Deposit Account Bank for each Approved Deposit Account and apply, subject to the terms of the Intercreditor Agreement, all payments in respect of any Obligations and all funds on deposit in any Cash Collateral Account (including all proceeds arising from a Reinvestment Event that are held in the Cash Collateral Account pending application of such proceeds as specified in a Reinvestment Notice) and all other proceeds of Collateral in the following order

(i) *first*, to pay interest on and then principal of any portion of the Revolving Loans that the Administrative Agent may have advanced on behalf of any

Lender for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower,

(ii) second, to pay Secured Obligations in respect of any expense reimbursements or indemnities then due to the Agents;

(iii) third, to pay Secured Obligations in respect of any expense reimbursements or indemnities then due to the Lenders and the Issuers;

(iv) fourth, to pay Secured Obligations in respect of any fees then due to the Administrative Agent, the Collateral Agent, the Lenders and the Issuers;

(v) fifth, to pay interest then due and payable in respect of the Loans and Reimbursement Obligations;

(vi) sixth, to pay or prepay principal amounts on the Loans and Reimbursement Obligations and to provide cash collateral for outstanding Letter of Credit Undrawn Amounts in the manner described in *Section 9.3 (Action in respect of Letters of Credit)* and amounts owing with respect to Hedging Contracts which are Loan Documents, ratably to the aggregate principal amount of such Loans, Reimbursement Obligations and Letter of Credit Undrawn Amounts, and Obligations owing with respect to Hedging Contracts; and

(vii) seventh, to the ratable payment of all other Secured Obligations;

*provided, however*, that if sufficient funds are not available to fund all payments to be made in respect of any Secured Obligation described in any of *clauses (i), (ii), (iii), (iv), (v), (vi) and (vii)* above, the available funds being applied with respect to any such Secured Obligation (unless otherwise specified in such clause) shall be allocated to the payment of such Secured Obligation ratably, based on the proportion of the Administrative Agent's and each Lender's or Issuer's interest in the aggregate outstanding Secured Obligations described in such clauses; *provided, however*, that payments that would otherwise be allocated to the Revolving Credit Lenders shall be allocated *first* to repay Swing Loans until such Loans are repaid in full and *then* to repay the Revolving Loans. The order of priority set forth in *clauses (i), (ii), (iii), (iv), (v), (vi) and (vii)* above may at any time and from time to time be changed by the agreement of the Requisite Lenders without necessity of notice to or consent of or approval by the Borrower, any Secured Party that is not a Lender or Issuer or by any other Person that is not a Lender or Issuer; *provided, however*, that the order of priority set forth in *clauses (v), (vi) and (vii)* shall not be changed without the prior consent of each Lender adversely affected thereby. The order of priority set forth in *clauses (i), (ii), (iii) and (iv)* above may be changed only with the prior written consent of the Administrative Agent in addition to that of the Requisite Lenders

#### ***Section 2.14 Special Provisions Governing Eurodollar Rate Loans***

##### ***(a) Determination of Interest Rate***

The Eurodollar Rate for each Interest Period for Eurodollar Rate Loans shall be determined by the Administrative Agent pursuant to the procedures set forth in the definition of "Eurodollar Rate". The Administrative Agent's determination shall be presumed to be correct absent manifest error and shall be binding on the Borrower.



(b) *Interest Rate Unascertainable, Inadequate or Unfair*

In the event that (i) the Administrative Agent determines that adequate and fair means do not exist for ascertaining the applicable interest rates by reference to which the Eurodollar Rate then being determined is to be fixed or (ii) the Requisite Lenders notify the Administrative Agent that the Eurodollar Rate for any Interest Period will not adequately reflect the cost to the Lenders of making or maintaining such Loans for such Interest Period, the Administrative Agent shall forthwith so notify the Borrower and the Lenders, whereupon each Eurodollar Loan shall automatically, on the last day of the current Interest Period for such Loan, convert into a Base Rate Loan and the obligations of the Lenders to make Eurodollar Rate Loans or to convert Base Rate Loans into Eurodollar Rate Loans shall be suspended until the Administrative Agent shall notify the Borrower that the Requisite Lenders have determined that the circumstances causing such suspension no longer exist.

(c) *Increased Costs*

If at any time any Lender determines that the introduction of, or any change in or in the interpretation of, any law, treaty or governmental rule, regulation or order (other than any change by way of imposition or increase of reserve requirements included in determining the Eurodollar Rate) or the compliance by such Lender with any guideline, request or directive from any central bank or other Governmental Authority (whether or not having the force of law), shall have the effect of increasing the cost to such Lender of agreeing to make or making, funding or maintaining any Eurodollar Rate Loans, then the Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to the Borrower and the Administrative Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(d) *Illegality*

Notwithstanding any other provision of this Agreement, if any Lender determines that the introduction of, or any change in or in the interpretation of, any law, treaty or governmental rule, regulation or order after the date of this Agreement shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Lender or its Eurodollar Lending Office to make Eurodollar Rate Loans or to continue to fund or maintain Eurodollar Rate Loans, then, on notice thereof and demand therefor by such Lender to the Borrower through the Administrative Agent, (i) the obligation of such Lender to make or to continue Eurodollar Rate Loans and to convert Base Rate Loans into Eurodollar Rate Loans shall be suspended, and each such Lender shall make a Base Rate Loan as part of any requested Borrowing of Eurodollar Rate Loans and (ii) if the affected Eurodollar Rate Loans are then outstanding, the Borrower shall immediately convert each such Loan into a Base Rate Loan. If, at any time after a Lender gives notice under this clause (d), such Lender determines that it may lawfully make Eurodollar Rate Loans, such Lender shall promptly give notice of that determination to the Borrower and the Administrative Agent, and the Administrative Agent shall promptly transmit the notice to each other Lender. The Borrower's right to request, and such Lender's obligation, if any, to make Eurodollar Rate Loans shall thereupon be restored.

(e) *Breakage Costs*

In addition to all amounts required to be paid by the Borrower pursuant to *Section 2.10 (Interest)*, the Borrower shall compensate each Lender, upon demand, for all actual losses, expenses and liabilities (including any actual loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain such Lender's Eurodollar Rate Loans to the Borrower but excluding any loss of the Applicable Margin on the relevant Loans) that such Lender may sustain (i) if for any reason (other than solely by reason of such Lender being a Non-Funding Lender) a proposed Borrowing, conversion into or continuation of Eurodollar Rate Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Conversion or Continuation given by the Borrower or in a telephonic request by it for borrowing or conversion or continuation or a successive Interest Period does not commence after notice therefor is given pursuant to *Section 2.11 (Conversion/Continuation Option)*, (ii) if for any reason any Eurodollar Rate Loan is prepaid (including mandatorily pursuant to *Section 2.9 (Mandatory Prepayments)*) on a date that is not the last day of the applicable Interest Period, (iii) as a consequence of a required conversion of a Eurodollar Rate Loan to a Base Rate Loan as a result of any of the events indicated in *clause (d)* above or (iv) as a consequence of any failure by the Borrower to repay Eurodollar Rate Loans when required by the terms hereof. The Lender making demand for such compensation shall deliver to the Borrower concurrently with such demand a written statement as to such losses, expenses and liabilities, and this statement shall be conclusive as to the amount of compensation due to such Lender, absent manifest error.

### ***Section 2.15 Capital Adequacy***

If at any time any Lender determines that (a) the adoption of, or any change in or in the interpretation of, any law, treaty or governmental rule, regulation or order after the date of this Agreement regarding capital adequacy, (b) compliance with any such law, treaty, rule, regulation or order or (c) compliance with any guideline or request or directive from any central bank or other Governmental Authority (whether or not having the force of law) shall have the effect of reducing the rate of return on such Lender's (or any corporation controlling such Lender's) capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such adoption, change, compliance or interpretation, then, upon demand from time to time by such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such reduction. A certificate as to such amounts submitted to the Borrower and the Administrative Agent by such Lender shall be conclusive and binding for all purposes absent manifest error.

### ***Section 2.16 Taxes***

(a) Except as otherwise provided in this *Section 2.16*, any and all payments by any Loan Party under each Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (i) in the case of each Lender, each Issuer and the Administrative Agent (A) taxes measured by its net income, and franchise taxes imposed on it, and similar taxes imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender, such Issuer or the Administrative Agent (as the case may be) is organized and (B) any US withholding taxes payable with respect to payments under the Loan Documents under laws (including any statute, treaty or regulation) in effect on the Closing Date (or, in the case of (x) an Eligible Assignee, the date of the Assignment and Acceptance, (y) a

successor Administrative Agent, the date of the appointment of such Administrative Agent, and (z) a successor Issuer, the date such Issuer becomes an Issuer) applicable to such Lender, such Issuer or the Administrative Agent, as the case may be, but not excluding any U.S. withholding taxes payable as a result of any change in such laws occurring after the Closing Date (or the date of such Assignment and Acceptance or the date of such appointment of such Administrative Agent or the date such Issuer becomes an Issuer) and (ii) in the case of each Lender or each Issuer, taxes measured by its net income, and franchise taxes imposed on it as a result of a present or former connection between such Lender or such Issuer (as the case may be) and the jurisdiction of the Governmental Authority imposing such tax or any taxing authority thereof or therein (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "*Taxes*"). If any Taxes shall be required by law to be deducted from or in respect of any sum payable under any Loan Document to any Lender, any Issuer or the Administrative Agent (w) the sum payable shall be increased as may be necessary so that, after making all required deductions (including deductions applicable to additional sums payable under this *Section 2.16*, such Lender, such Issuer or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (x) the relevant Loan Party shall make such deductions, (y) the relevant Loan Party shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (z) the relevant Loan Party shall deliver to the Administrative Agent evidence of such payment.

(b) In addition, each Loan Party agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any political subdivision thereof or any applicable foreign jurisdiction, and all liabilities with respect thereto, in each case arising from any payment made under any Loan Document or from the execution, delivery or registration of, or otherwise with respect to, any Loan Document (collectively, "*Other Taxes*")

(c) Each Loan Party shall, jointly and severally, indemnify each Lender, each Issuer and the Administrative Agent for the full amount of Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this *Section 2.16*) paid by such Lender, such Issuer or the Administrative Agent (as the case may be) and any liability (including for penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date such Lender, such Issuer or the Administrative Agent (as the case may be) makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes or Other Taxes by any Loan Party, the Borrower shall furnish to the Administrative Agent, at its address referred to in *Section 11.8 (Notices, Etc.)*, the original or a certified copy of a receipt evidencing payment thereof.

(e) Without prejudice to the survival of any other agreement of any Loan Party hereunder or under the Guaranty, the agreements and obligations of such Loan Party contained in this *Section 2.16* shall survive the payment in full of the Obligations

(f) (i) Each Non-U.S. Lender that is entitled to an exemption from U.S. withholding tax, or that is subject to such tax at a reduced rate under an applicable tax treaty, shall (v) on or prior to the Closing Date in the case of each Non-U.S. Lender that is a signatory hereto, (w) on or prior to the date of the Assignment and Acceptance

pursuant to which such Non-U.S. Lender becomes a Lender, the date a successor Issuer becomes an Issuer, or the date a successor Administrative Agent becomes the Administrative Agent hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it to the Borrower and the Administrative Agent, and (z) from time to time if requested by the Borrower or the Administrative Agent, provide the Administrative Agent and the Borrower with two completed originals of each of the following, as applicable.

(A) Form W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business) or any successor form;

(B) Form W-8BEN (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty) or any successor form;

(C) in the case of a Non-U.S. Lender claiming exemption under Sections 871(h) or 881(c) of the Code, a Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form, or

(D) any other applicable form, certificate or document prescribed by the IRS certifying as to such Non-U.S. Lender's entitlement to such exemption from U.S. withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender under the Loan Documents

Unless the Borrower and the Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender are not subject to U.S. withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, the Loan Parties and the Administrative Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate

(ii) Each U.S. Lender shall (v) on or prior to the Closing Date in the case of each U.S. Lender that is a signatory hereto, (w) on or prior to the date of the Assignment and Acceptance pursuant to which such U.S. Lender becomes a Lender, the date a successor Issuer becomes an Issuer or the date a successor Administrative Agent becomes the Administrative Agent hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it to the Borrower and the Administrative Agent, and (z) from time to time if requested by the Borrower or the Administrative Agent, provide the Administrative Agent and the Borrower with two completed originals of Form W-9 (certifying that such U.S. Lender is entitled to an exemption from U.S. backup withholding tax) or any successor form. Solely for purposes of this *Section 2.16(f)*, a U.S. Lender shall not include a Lender, an Issuer or an Administrative Agent that may be treated as an exempt recipient based on the indicators described in Treasury Regulation section 1.6049-4(c)(1)(ii)

(g) Any Lender claiming any additional amounts payable pursuant to this *Section 2 16* shall use its reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that would be payable or may thereafter accrue and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

### ***Section 2.17 Substitution of Lenders***

(a) In the event that (i)(A) any Lender makes a claim under *Section 2 14(c) (Increased Costs)* or *Section 2 15 (Capital Adequacy)*, (B) it becomes illegal for any Lender to continue to fund or make any Eurodollar Rate Loan and such Lender notifies the Borrower pursuant to *Section 2.14(d) (Illegality)*, (C) any Loan Party is required to make any payment pursuant to *Section 2 16 (Taxes)* that is attributable to a particular Lender or (D) any Lender becomes a Non-Funding Lender, (ii) in the case of clause (i)(A) above, as a consequence of increased costs in respect of which such claim is made, the effective rate of interest payable to such Lender under this Agreement with respect to its Loans materially exceeds the effective average annual rate of interest payable to the Requisite Lenders under this Agreement and (iii) in the case of clause (i)(A),(B) and (C) above, Lenders holding at least 75% of the Commitments are not subject to such increased costs or illegality, payment or proceedings (any such Lender, an "Affected Lender"), the Borrower may substitute any Lender and, if reasonably acceptable to the Administrative Agent, any other Eligible Assignee (a "Substitute Institution") for such Affected Lender hereunder, after delivery of a written notice (a "Substitution Notice") by the Borrower to the Administrative Agent and the Affected Lender within a reasonable time (in any case not to exceed 90 days) following the occurrence of any of the events described in clause (i) above that the Borrower intends to make such substitution, provided, however, that, if more than one Lender claims increased costs, illegality or right to payment arising from the same act or condition and such claims are received by the Borrower within 30 days of each other, then the Borrower may substitute all, but not (except to the extent the Borrower has already substituted one of such Affected Lenders before the Borrower's receipt of the other Affected Lenders' claim) less than all, Lenders making such claims

(b) If the Substitution Notice was properly issued under this *Section 2 17*, the Affected Lender shall sell, and the Substitute Institution shall purchase, all rights and claims of such Affected Lender under the Loan Documents and the Substitute Institution shall assume, and the Affected Lender shall be relieved of, the Affected Lender's Revolving Credit Commitments and all other prior unperformed obligations of the Affected Lender under the Loan Documents (other than in respect of any damages (which pursuant to *Section 11 5 (Limitations of Liability)*, do not include exemplary or punitive damages, to the extent permitted by applicable law) in respect of any such unperformed obligations). Such purchase and sale (and the corresponding assignment of all rights and claims hereunder) shall be recorded in the Register maintained by the Administrative Agent and shall be effective on (and not earlier than) the later of (i) the receipt by the Affected Lender of its Ratable Portion of the Revolving Credit Outstandings, the Term Loans, together with any other Obligations owing to it, (ii) the receipt by the Administrative Agent of an agreement in form and substance satisfactory to it and the Borrower whereby the Substitute Institution shall agree to be bound by the terms hereof and (iii) the payment in full to the Affected Lender in cash of all fees, unreimbursed costs and expenses and indemnities accrued and unpaid through such effective date. Upon the effectiveness of such sale, purchase and assumption, the Substitute Institution shall become a "Lender" hereunder for

all purposes of this Agreement having a Commitment in the amount of such Affected Lender's Commitment assumed by it and such Commitment of the Affected Lender shall be terminated, *provided, however*, that all indemnities under the Loan Documents shall continue in favor of such Affected Lender.

(c) Each Lender agrees that, if it becomes an Affected Lender and its rights and claims are assigned hereunder to a Substitute Institution pursuant to this *Section 2.17*, it shall execute and deliver to the Administrative Agent an Assignment and Acceptance to evidence such assignment, together with any Note (if such Loans are evidenced by a Note) evidencing the Loans subject to such Assignment and Acceptance; *provided, however*, that the failure of any Affected Lender to execute an Assignment and Acceptance shall not render such assignment invalid.

### ARTICLE III

#### CONDITIONS TO LOANS AND LETTERS OF CREDIT

##### *Section 3.1 Conditions Precedent to Initial Loans and Letters of Credit*

The obligation of each Lender to make the Loans requested to be made by it on the Closing Date and the obligation of each Issuer to Issue Letters of Credit on the Closing Date is subject to the satisfaction or due waiver in accordance with *Section 11.1 (Amendments, Waivers, Etc.)* of each of the following conditions precedent:

(a) *Certain Documents.* The Administrative Agent shall have received on or prior to the Closing Date (and, to the extent any Borrowing of any Eurodollar Rate Loans is requested to be made on the Closing Date, in respect of the Notice of Borrowing for such Eurodollar Rate Loans, at least three Business Days prior to the Closing Date) each of the following, each dated the Closing Date unless otherwise indicated or agreed to by the Administrative Agent, in form and substance satisfactory to the Administrative Agent and in sufficient copies for each Lender:

(i) this Agreement, duly executed and delivered by the Borrower and, for the account of each Lender requesting the same, a Note of the Borrower conforming to the requirements set forth herein;

(ii) the Guaranty, duly executed by each Guarantor;

(iii) the Pledge and Security Agreement, duly executed by the Borrower and each Guarantor, together with each of the following:

(A) evidence satisfactory to the Administrative Agent that, upon the filing and recording of instruments delivered at the Closing, the Collateral Agent (for the benefit of the Secured Parties) shall have a valid and perfected first-priority security interest in the Collateral, including (x) such documents duly executed by each Loan Party as the Administrative Agent may request with respect to the perfection of its security interests in the Collateral (including financing statements under the UCC, patent, trademark and copyright security agreements suitable for filing with the Patent and Trademark Office or the Copyright Office, as the case may be, and other applicable documents under the laws of any jurisdiction with respect to the perfection of Liens created by the

Pledge and Security Agreement) and (y) copies of UCC search reports as of a recent date listing all effective financing statements that name any Loan Party as debtor, together with copies of such financing statements, none of which shall cover the Collateral except for those that shall be terminated on the Closing Date or are otherwise permitted hereunder (including financing statements with respect to the Second Lien Credit Agreement);

(B) all certificates, instruments and other documents representing all Pledged Stock being pledged pursuant to such Pledge and Security Agreement and stock powers for such certificates, instruments and other documents executed in blank,

(C) all Deposit Account Control Agreements (other than any Deposit Account Control Agreements subject to *Section 7.17 (Post-Closing Obligations)*, duly executed by the corresponding Deposit Account Bank and Loan Party, that, in the reasonable judgment of the Administrative Agent, shall be required for the Loan Parties to comply with *Section 7.13 (Control Accounts, Approved Deposit Accounts)*; and

(D) Securities Account Control Agreements duly executed by the appropriate Loan Party and (1) all "securities intermediaries" (as defined in the UCC) with respect to all Securities Accounts and securities entitlements of the Borrower and each Guarantor and (2) all "commodities intermediaries" (as defined in the UCC) with respect to all commodities contracts and commodities accounts held by the Borrower and each Guarantor;

(iv) the Intercreditor Agreement, duly executed by the Borrower, the Administrative Agent, the Collateral Agent, and the administrative agent and collateral agent under the Second Lien Credit Agreement;

(v) Mortgages for all of the Real Properties of the Loan Parties identified on *Schedule 4.19 (Real Property)* together with all Mortgage Supporting Documents relating thereto (except as may be agreed to by the Administrative Agent);

(vi) a favorable opinion of (A) Alston & Bird, LLP, counsel to the Loan Parties, addressed to the Administrative Agent, the Collateral Agent and the Lenders and in form satisfactory to the Administrative Agent, (B) Kelley Drye & Warren LLP, special counsel to the Loan Parties as to FCC matters, addressed to the Administrative Agent, the Collateral Agent and the Lenders and in form satisfactory to the Administrative Agent, and (C) counsel to the Loan Parties in the States of Alabama, Florida, Georgia, South Carolina, and Tennessee, in each case, addressed to the Administrative Agent, the Collateral Agent and the Lenders and addressing such other matters as any Lender through the Administrative Agent may reasonably request;

(vii) a copy of each Second Lien Loan Document, the documents governing the New Preferred Stock and each redemption notice and each other document executed by the Borrower, or its Subsidiaries, in connection with the redemption or repayment of the Existing Indebtedness, in each case, certified as being complete and correct by a Responsible Officer of the Borrower;

(viii) a copy of the articles or certificate of incorporation (or equivalent Constituent Document) of each Loan Party, certified as of a recent date by the Secretary of State of the state of organization of such Loan Party, together with certificates of such official attesting to the good standing of each such Loan Party;

(ix) a certificate of the Secretary or an Assistant Secretary of each Loan Party certifying (A) the names and true signatures of each officer of such Loan Party that has been authorized to execute and deliver any Loan Document or other document required hereunder to be executed and delivered by or on behalf of such Loan Party, (B) the by-laws (or equivalent Constituent Document) of such Loan Party as in effect on the date of such certification, (C) the resolutions of such Loan Party's board of directors (or equivalent governing body) approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and (D) that there have been no changes in the certificate of incorporation (or equivalent Constituent Document) of such Loan Party from the certificate of incorporation (or equivalent Constituent Document) delivered pursuant to *clause (viii)* above;

(x) a certificate of the chief financial officer of the Borrower, stating that the Borrower is Solvent after giving effect to the incurrence of Indebtedness hereunder, the application of the proceeds thereof in accordance with the terms of this Agreement and the Second Lien Credit Agreement and the payment of all estimated legal, accounting and other fees related thereto;

(xi) a certificate of a Responsible Officer to the effect that (A) the representations and warranties set forth in *Article IV (Representations and Warranties)* and in the other Loan Documents shall be true and correct on and as of the Closing Date, (B) no Default or Event of Default shall exist or be continuing on the Closing Date after giving effect to the borrowings hereunder and under the First Lien Credit Agreement, (C) the making of the Term Loans or the loans under the First Lien Facilities on such date does not violate any Requirement of Law on the date of or immediately following such date and is not enjoined, temporarily, preliminarily or permanently, (D) each condition set forth in *Section 3.2(b) (Conditions Precedent to Each Loan and Letter of Credit)* has been satisfied, and (E) no litigation not listed on *Schedule 4.7 (Litigation)* has been commenced against any Loan Party or any of its Subsidiaries that would have a Material Adverse Effect;

(xii) evidence satisfactory to the Administrative Agent that the insurance policies required by *Section 7.5 (Maintenance of Insurance)* and any Collateral Document are in full force and effect, together with, unless otherwise agreed by the Administrative Agent, endorsements naming the Collateral Agent, on behalf of the Secured Parties, as an additional insured or loss payee under all insurance policies to be maintained with respect to the properties of the Borrower and each other Loan Party,

(xiii) each of the representations and warranties set forth in *Article IV (Representations and Warranties)* and in the other Loan Documents shall be true and correct on and as of the Closing Date,

(xiv) Borrower shall have delivered to the Administrative Agent a Notice of Borrowing substantially in the form of *Exhibit C (Notice of Borrowing)*, and



(xv) such other certificates, documents, agreements and information respecting any Loan Party as any Lender through the Administrative Agent may reasonably request.

(b) *Fees and Expenses Paid.* There shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable, all fees and expenses (including reasonable fees and expenses of counsel) due and payable on or before the Closing Date (including all such fees described in the Fee Letter).

(c) *Refinancing of Existing Indebtedness.* Concurrently with the initial Borrowings hereunder, (i) the Existing Indebtedness under the Existing Wachovia Credit Agreement shall be paid-in-full and terminated on terms satisfactory to the Administrative Agent, (ii) the Existing CoBank Credit Agreement shall be purchased at par by, and assigned to, the Borrower and pledged to the Administrative Agent for the benefit of Lenders to secure the Obligations, in each case, on terms satisfactory to the Administrative Agent, (iii) the Administrative Agent shall have received a payoff letter duly executed and delivered by the Borrower and the applicable lenders or their agent under each Existing Credit Agreement and evidence of the release, or arrangements therefor, of all related Liens and guarantees, in each case, in form and substance satisfactory to the Administrative Agent and (iv) Borrower shall have deposited with CSFB an amount sufficient to redeem the Existing Notes in full and such deposit shall be subject to the terms of the Escrow Agreement

(d) *Debt Rating Condition.* The Facilities shall have been rated by S&P and by Moody's.

(e) *Second Lien Loan Documents.* Concurrently with the initial Borrowings hereunder, the Borrower shall have satisfied each of the conditions under *Section 3.1 (Condition Precedent to Initial Loans and Letters of Credit)* of the Second Lien Credit Agreement and shall have received at least \$95,000,000 in proceeds from the Second Lien Term Loan.

(f) *Consents, Etc.* The Administrative Agent shall have received copies of all CATV Franchises (and resolutions relating thereto), Pole Agreements, Communications Licenses, Programming Agreements, Network Agreements in existence as of the date hereof. each of the Borrower and its Subsidiaries shall have received all consents and authorizations required pursuant to any material Contractual Obligation with any other Person and shall have obtained all consents and Permits of, and effected all notices to and filings with, any Governmental Authority, including, in each case, in connection with all Communications Licenses, CATV Franchises and PUC Authorizations, in each case, as may be necessary to allow each of the Borrower and its Subsidiaries lawfully (i) to execute, deliver and perform, in all material respects, their respective obligations hereunder and under the Loan Documents to which each of them, respectively, is, or shall be, a party and each other agreement or instrument to be executed and delivered by each of them, respectively, pursuant thereto or in connection therewith and (ii) other than those required consents identified in *Schedule 7.12* hereof, to create and perfect the Liens on the Collateral to be owned by each of them in the manner and for the purpose contemplated by the Loan Documents.

(g) *New Preferred Stock Issuance* The Borrower shall have completed its issuance of the New Preferred Stock prior to the Closing Date on terms and conditions acceptable to the Administrative Agent and shall have received gross cash proceeds of not less than \$9,200,000 from such issuance

(h) *Capitalization* The Administrative Agent shall be reasonably satisfied with any changes to the capitalization, structure or equity ownership of the Borrower and its Subsidiaries from, in each case, that described in the Borrower's annual report filed on Form 10-K with the Securities and Exchange Commission for the year ended December 31, 2004; and, after giving effect to the transactions contemplated to occur on the Closing Date by this Agreement and the Second Lien Credit Agreement, the Borrower and its Subsidiaries shall have no outstanding Indebtedness or preferred stock other than (i) Indebtedness under this Agreement and the Second Lien Credit Agreement, (ii) the New Preferred Stock and (iii) other Indebtedness existing on the Closing Date (after giving effect to the transactions contemplated by this Agreement) as set forth on *Schedule 8.1 (Existing Indebtedness)*.

(i) *Financial Statements* The Administrative Agent shall have received (i) GAAP audited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for the 2002, 2003 and 2004 Fiscal Years, (ii) GAAP unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for (x) the Fiscal Quarter ended March 31, 2005 and each subsequent Fiscal Quarter ended 30 days before the Closing Date and (y) each fiscal month after the most recent Fiscal Quarter for which financial statements were received by the Administrative Agent and ended 30 days before the Closing Date, which financial statements, in each case, shall not be materially inconsistent with the financial statements or forecasts previously provided to the Administrative Agent and (iii) a certificate of the chief financial officer of the Borrower stating that the financial statements delivered pursuant to this *clause (i)* are accurate and complete in all respects.

(j) *EBITDA Certification.* The Administrative Agent shall have received (i) a certificate of the chief financial officer of the Borrower, satisfactory to the Administrative Agent, certifying (x) that the Borrower and its Subsidiaries, on a Consolidated basis, have achieved EBITDA equal to at least \$9,815,643 for the Fiscal Quarter ending March 31, 2005 and that EBITDA for the four Fiscal Quarters ending March 31, 2005 equals at least \$33,829,892, and (y) the ratio of (1) First Lien Financial Covenant Debt outstanding on the Closing Date, after giving effect to the making of the Loans and the application of the proceeds thereof, to (2) an amount equal to (A) four *multiplied* by (B) the EBITDA of the Borrower and its Subsidiaries for the three-month period ending May 31, 2005 does not exceed 4.5 to 1.0 and (ii) the Projections, showing EBITDA equal to at least \$45,000,000 for the Fiscal Year of 2005.

(k) *Regulatory Compliance.* The Administrative Agent shall have received, at least five Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

### ***Section 3.2 Conditions Precedent to Each Loan and Letter of Credit***

The obligation of each Lender on any date (including the Closing Date) to make any Loan and of each Issuer on any date (including the Closing Date) to Issue any Letter of Credit is subject to the satisfaction of each of the following conditions precedent:

(a) *Request for Borrowing or Issuance of Letter of Credit.* With respect to any Loan, the Administrative Agent shall have received a duly executed Notice of Borrowing (or, in the case of Swing Loans, a duly executed Swing Loan Request), and, with respect to any Letter

of Credit, the Administrative Agent and the Issuer shall have received a duly executed Letter of Credit Request.

(b) *Representations and Warranties, No Defaults.* The following statements shall be true on the date of such Loan or Issuance, both before and after giving effect thereto and, in the case of any Loan, to the application of the proceeds thereof:

(i) the representations and warranties set forth in *Article IV (Representations and Warranties)* and in the other Loan Documents shall be true and correct on and as of the Closing Date and shall be true and correct in all material respects on and as of any such date after the Closing Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date, and

(ii) no Default or Event of Default shall have occurred and be continuing

(c) *No Legal Impediments.* The making of the Loans or the Issuance of such Letter of Credit on such date does not violate any Requirement of Law on the date of or immediately following such Loan or Issuance of such Letter of Credit and is not enjoined, temporarily, preliminarily or permanently.

(d) *Additional Matters* The Administrative Agent shall have received such additional documents, information and materials as any Lender, through the Administrative Agent, may reasonably request.

Each submission by the Borrower to the Administrative Agent of a Notice of Borrowing or a Swing Loan Request and the acceptance by the Borrower of the proceeds of each Loan requested therein, and each submission by the Borrower to an Issuer of a Letter of Credit Request, and the Issuance of each Letter of Credit requested therein, shall be deemed to constitute a representation and warranty by the Borrower as to the matters specified in *clause (b)* above on the date of the making of such Loan or the Issuance of such Letter of Credit.

### ***Section 3.3 Determinations of Initial Borrowing Conditions***

For purposes of determining compliance with the conditions specified in *Section 3.1 (Conditions Precedent to Initial Loans and Letters of Credit)*, each Lender shall be deemed to have consented to, approved, accepted or be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the initial Borrowing, borrowing of Swing Loans or Issuance or deemed Issuance hereunder specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender's Ratable Portion of such Borrowing or Swing Loans

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

To induce the Lenders, the Issuers and the Administrative Agent to enter into this Agreement, the Borrower represents and warrants each of the following to the Lenders, the Issuers and the Administrative Agent, on and as of the Closing Date and after giving effect to the making of the Loans and the other financial accommodations on the Closing Date and on and as of each date as required by *Section 3 2(b)(i) (Conditions Precedent to Each Loan and Letter of Credit)*:

#### ***Section 4.1 Corporate Existence; Compliance with Law***

The Borrower and each of the Borrower's Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) is duly qualified to do business as a foreign entity and in good standing under the laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing would not, in the aggregate, have a Material Adverse Effect, (c) has all requisite power and authority and the legal right to own, pledge, mortgage and operate its properties, to lease the property it operates under lease and to conduct its business as now or currently proposed to be conducted, (d) is in compliance with its Constituent Documents, (e) is in compliance with all applicable Requirements of Law except where the failure to be in compliance would not, in the aggregate, have a Material Adverse Effect and (f) has all necessary Permits from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction, to the extent required for such ownership, operation and conduct, except for Permits or filings that can be obtained or made by the taking of ministerial action to secure the grant or transfer thereof or the failure to obtain or make would not, in the aggregate, have a Material Adverse Effect.

#### ***Section 4.2 Corporate Power; Authorization; Enforceable Obligations***

(a) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby

(i) are within such Loan Party's corporate, limited liability company, partnership or other powers;

(ii) have been or, at the time of delivery thereof pursuant to *Article III (Conditions To Loans And Letters Of Credit)* will have been duly authorized by all necessary action, including the consent of shareholders, partners and members where required;

(iii) do not and will not (A) contravene or violate such Loan Party's or any of its Subsidiaries' respective Constituent Documents, (B) violate any other Requirement of Law applicable to such Loan Party (including Regulations T, U and X of the Federal Reserve Board), or any order or decree of any Governmental Authority or arbitrator applicable to such Loan Party, (C) conflict with or result in the breach of, or constitute a default under, or result in or permit the termination or acceleration of, any material Contractual Obligation of such Loan Party or any of its Subsidiaries or (D) result in the creation or imposition of any Lien upon any property of such Loan Party or any of

its Subsidiaries, other than those in favor of the Secured Parties pursuant to the Collateral Documents; and

(iv) do not require the consent of, authorization by, approval of, notice to, or filing or registration with, any Governmental Authority or any other Person, other than those listed on *Schedule 4.2 (Consents)* and that have been or will be, prior to the Closing Date, obtained or made, copies of which have been or will be delivered to the Administrative Agent pursuant to *Section 3.1 (Conditions Precedent to Initial Loans and Letters of Credit)*, and each of which on the Closing Date will be in full force and effect and, with respect to the Collateral, filings required to perfect the Liens created by the Collateral Documents.

(b) This Agreement has been, and each of the other Loan Documents will have been upon delivery thereof pursuant to the terms of this Agreement, duly executed and delivered by each Loan Party party thereto. This Agreement is, and the other Loan Documents will be, when delivered hereunder, the legal, valid and binding obligation of each Loan Party party thereto, enforceable against such Loan Party in accordance with its terms.

#### ***Section 4.3 Ownership of Borrower; Subsidiaries***

(a) As of the Closing Date, the authorized capital stock of the Borrower consists of 200,000,000 shares of common stock, \$0.01 par value per share, of which 23,697,787 shares are issued and outstanding. All of the outstanding capital stock of the Borrower has been validly issued, is fully paid and non-assessable. As of the Closing Date, no Stock of the Borrower is subject to any option, warrant, right of conversion or purchase or any similar right except as disclosed in the Disclosure Documents. As of the Closing Date, there are no agreements or understandings to which the Borrower is a party with respect to the voting, sale or transfer of any shares of Stock of the Borrower or any agreement restricting the transfer or hypothecation of any such shares.

(b) Set forth on *Schedule 4.3 (Ownership of Subsidiaries)* is a complete and accurate list showing, as of the Closing Date, all Subsidiaries of the Borrower and, as to each such Subsidiary, the jurisdiction of its organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower. No Stock or any Subsidiary of the Borrower is subject to any outstanding option, warrant, right of conversion or purchase of any similar right. All of the outstanding Stock of each Subsidiary of the Borrower owned (directly or indirectly) by the Borrower has been validly issued, is fully paid and non-assessable (to the extent applicable) and is owned by the Borrower or a Subsidiary of the Borrower, free and clear of all Liens (other than the Lien in favor of the Secured Parties created pursuant to the Pledge and Security Agreement), options, warrants, rights of conversion or purchase or any similar rights. Neither the Borrower nor any such Subsidiary is a party to, or has knowledge of, any agreement restricting the transfer or hypothecation of any Stock of any such Subsidiary, other than the Loan Documents. Borrower does not own or hold, directly or indirectly, any Stock of any Person other than such Subsidiaries and Investments permitted by Section 8.3 (Investments).

#### **Section 4.4 Financial Statements**

(a) The audited Consolidated balance sheets of the Borrower and its Subsidiaries and related audited Consolidated statements of income, retained earnings and cash flows of the Borrower and its Subsidiaries delivered to the Administrative Agent pursuant to *Section 3 l(k) (Conditions Precedent to Initial Loans and Letters of Credit)* fairly present the Consolidated financial condition of the Borrower and its Subsidiaries as at such dates and the Consolidated results of the operations of the Borrower and its Subsidiaries for the period ended on such dates, as applicable, all in conformity with GAAP.

(b) Neither the Borrower nor any of the Borrower's Subsidiaries has any material obligation, contingent liability or liability for taxes, long-term leases or unusual forward or long-term commitment that is not reflected in the Financial Statements referred to in *clause (a)* above or in the notes thereto and not otherwise permitted by this Agreement

(c) The Projections have been prepared by the Borrower in light of the past operations of its business and are based upon estimates and assumptions stated therein, all of which the Borrower believes to be reasonable and fair in light of current conditions and current facts known to the Borrower and, as of the Closing Date, reflect the Borrower's good faith and reasonable estimates of the future financial performance of the Borrower and its Subsidiaries and of the other information projected therein for the periods set forth therein.

(d) The unaudited Consolidated balance sheets of the Borrower and its Subsidiaries and related statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries delivered to the Administrative Agent pursuant to *Section 3 l(k) (Conditions Precedent to Initial Loans and Letters of Credit)* have been prepared and reflect, as of the respective dates indicated, the Consolidated financial condition of the Borrower and its Subsidiaries.

#### **Section 4.5 Material Adverse Change**

Since December 31, 2004, there has been no Material Adverse Change and there have been no events or developments that, in the aggregate, have had a Material Adverse Effect.

#### **Section 4.6 Solvency**

Both before and after giving effect to (a) the extensions of credit under this Agreement and the Second Lien Credit Agreement, in each case, to be made on the Closing Date or such other date as requested hereunder, (b) the disbursement by the Borrower of the proceeds thereof as contemplated by this Agreement and the Second Lien Credit Agreement and (c) the payment and accrual of all transaction costs in connection with the foregoing, each Loan Party is Solvent

#### **Section 4.7 Litigation**

Except as set forth on *Schedule 4.7 (Litigation)*, there are no pending or, to the knowledge of the Borrower, threatened actions, investigations or proceedings affecting the Borrower or any of its Subsidiaries before any court, Governmental Authority or arbitrator other than those that, in the aggregate, would not have a Material Adverse Effect. The performance of

any action by any Loan Party required or contemplated by any Loan Document or Second Lien Loan Document is not restrained or enjoined (either temporarily, preliminarily or permanently).

#### ***Section 4.8 Taxes***

(a) All federal, state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "*Tax Returns*") required to be filed by the Borrower or any of its Tax Affiliates have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for non-payment thereof except where contested in good faith and by appropriate proceedings if adequate reserves therefor have been established on the books of the Borrower or such Tax Affiliate in conformity with GAAP. No Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by the Borrower and each of its Tax Affiliates from their respective employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities.

(b) None of the Borrower or any of its Tax Affiliates has (i) executed or filed with the IRS or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for the filing of any Tax Return or the assessment or collection of any charges, (ii) incurred any obligation under any tax sharing agreement or arrangement other than those of which the Administrative Agent has received a copy prior to the date hereof or (iii) been a member of an affiliated, combined or unitary group other than the group of which the Borrower (or its Tax Affiliate) is the common parent.

#### ***Section 4.9 Full Disclosure***

(a) All information prepared or furnished by or on behalf of the Borrower in connection with this Agreement or the Second Lien Loan Documents or the consummation of the transactions contemplated hereunder and thereunder taken as a whole, including the information contained in the Confidential Information Memorandum and in the Disclosure Documents, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading. All facts known to the Borrower and material to an understanding of the financial condition, business, properties or prospects of the Borrower and its Subsidiaries taken as one enterprise have been disclosed to the Lenders.

(b) The Borrower has delivered to each Lender a true, complete and correct copy of each Disclosure Document. The Disclosure Documents comply as to form in all material respects with all applicable requirements of all applicable state and Federal securities laws.

#### ***Section 4.10 Margin Regulations***

The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Federal Reserve Board), and no proceeds of any Loan will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock in contravention of Regulation T, U or X of the Federal Reserve Board.

#### ***Section 4.11 No Burdensome Restrictions; No Defaults***

(a) Neither the Borrower nor any Subsidiary of the Borrower (i) is a party to any Contractual Obligation the compliance with one or more of which would have, in the aggregate, a Material Adverse Effect or the performance of which by any thereof, either unconditionally or upon the happening of an event, would result in the creation of a Lien (other than a Lien permitted under *Section 8.2 (Liens, Etc )*) on the assets of any thereof or (ii) is subject to one or more charter or corporate restrictions that would, in the aggregate, have a Material Adverse Effect

(b) Neither the Borrower nor any Subsidiary of the Borrower is in default under or with respect to any Contractual Obligation owed by it and, to the knowledge of the Borrower, no other party is in default under or with respect to any Contractual Obligation owed to any Loan Party or to any Subsidiary of any Loan Party, other than, in either case, those defaults that, in the aggregate, would not have a Material Adverse Effect.

(c) No Default or Event of Default has occurred and is continuing.

(d) To the best knowledge of the Borrower, there are no Requirements of Law applicable to any Loan Party or any Subsidiary of any Loan Party the compliance with which by such Loan Party or such Subsidiary, as the case may be, would, in the aggregate, have a Material Adverse Effect

(e) Except as set forth on *Schedule 4.11 (Build-Out Obligations)*, neither the Borrower nor any Subsidiary of the Borrower has any outstanding Contractual Obligation to make capital expenditures (as defined in accordance with GAAP) in excess of \$2,000,000 in aggregate at any time

#### ***Section 4.12 Investment Company Act; Public Utility Holding Company Act***

None of the Borrower or any Subsidiary of the Borrower is (a) an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended or (b) a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company," as each such term is defined and used in the Public Utility Holding Company Act of 1935, as amended.

#### ***Section 4.13 Use of Proceeds***

The proceeds of the Term Loan are being used by the Borrower (and, to the extent distributed to them by the Borrower, each other Loan Party) solely (a) together with the proceeds of the Second Lien Term Loan and the New Preferred Stock, to refinance all Existing



Indebtedness and related transaction costs, fees and expenses and for the payment of transaction costs, fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby and (b) to provide for working capital and for general corporate purposes. The proceeds of the Revolving Loans and Letters of Credit will be used by the Borrower (and, to the extent distributed to them by the Borrower, each other Loan Party) solely to provide for working capital and for general corporate purposes. Letters of Credit will be used solely to support payment obligations incurred in the ordinary course of business by the Borrower and its Subsidiaries.

#### ***Section 4.14 Insurance***

All policies of insurance of any kind or nature of the Borrower or any of its Subsidiaries, including policies of life, fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation and employee health and welfare insurance, are in full force and effect and are of a nature and provide such coverage as is sufficient and as is customarily carried by businesses of the size and character of such Person. None of the Borrower or any of its Subsidiaries has been refused insurance for any material coverage for which it had applied or had any policy of insurance terminated (other than at its request).

#### ***Section 4.15 Labor Matters***

(a) There are no strikes, work stoppages, slowdowns or lockouts pending or threatened against or involving the Borrower or any of its Subsidiaries, other than those that, in the aggregate, would not have a Material Adverse Effect.

(b) There are no unfair labor practices, grievances, complaints or arbitrations pending, or, to the Borrower's knowledge, threatened, against or involving the Borrower or any of its Subsidiaries, nor are there any arbitrations or grievances threatened involving the Borrower or any of its Subsidiaries, other than those that, in the aggregate, would not have a Material Adverse Effect.

(c) Except as set forth on *Schedule 4.15 (Labor Matters)*, as of the Closing Date, there is no collective bargaining agreement covering any employee of the Borrower or its Subsidiaries.

(d) *Schedule 4.15 (Labor Matters)* sets forth, as of the date hereof, all material consulting agreements, executive employment agreements, executive compensation plans, deferred compensation agreements, employee stock purchase and stock option plans and severance plans of the Borrower and any of its Subsidiaries.

#### ***Section 4.16 ERISA***

(a) *Schedule 4.16 (List of Plans)* separately identifies as of the date hereof all Title IV Plans, all Multiemployer Plans and all of the employee benefit plans within the meaning of Section 3(3) of ERISA to which the Borrower or any of its Subsidiaries has any obligation or liability, contingent or otherwise.

(b) Each employee benefit plan of the Borrower or any of the Borrower's Subsidiaries intended to qualify under Section 401 of the Code does so qualify, and any trust

created thereunder is exempt from tax under the provisions of Section 501 of the Code, except where such failures, in the aggregate, would not have a Material Adverse Effect.

(c) Each Title IV Plan is in compliance in all material respects with applicable provisions of ERISA, the Code and other Requirements of Law except for non-compliances that, in the aggregate, would not have a Material Adverse Effect.

(d) There has been no, nor is there reasonably expected to occur, any ERISA Event other than those that, in the aggregate, would not have a Material Adverse Effect

(e) Except to the extent set forth on *Schedule 4 16 (List of Plans)*, none of the Borrower nor any of the Borrower's Subsidiaries or any ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal as of the date hereof from any Multiemployer Plan

#### ***Section 4.17 Environmental Matters***

(a) The operations of the Borrower and each of its Subsidiaries have been and are in compliance with all Environmental Laws, including obtaining and complying with all required environmental, health and safety Permits, other than non-compliances that, in the aggregate, would not have a reasonable likelihood of the Borrower and its Subsidiaries incurring Environmental Liabilities and Costs after the date hereof which would exceed \$1,000,000.

(b) None of the Borrower or any of its Subsidiaries or any Real Property currently or, to the knowledge of the Borrower, previously owned, operated or leased by or for the Borrower or any of its Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened, claim, order, agreement, notice of violation, notice of potential liability or is the subject of any pending or threatened proceeding or governmental investigation under or pursuant to Environmental Laws other than those that, in the aggregate, are not reasonably likely to result in the Borrower and its Subsidiaries incurring Environmental Liabilities and Costs which would exceed \$1,000,000

(c) Except as disclosed on *Schedule 4 17 (Environmental Matters)*, none of the Borrower or any of its Subsidiaries is a treatment, storage or disposal facility requiring a Permit under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the regulations thereunder or any state analog

(d) There are no facts, circumstances or conditions arising out of or relating to the operations or ownership of the Borrower or of Real Property owned, operated or leased by the Borrower or any of its Subsidiaries that are not specifically included in the financial information furnished to the Lenders other than those that, in the aggregate, would not have a reasonable likelihood of the Borrower and its Subsidiaries incurring Environmental Liabilities and Costs in excess of \$1,000,000

(e) As of the date hereof, no Environmental Lien has attached to any property of the Borrower or any of its Subsidiaries and, to the knowledge of the Borrower, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property

(f) The Borrower and each of its Subsidiaries has provided the Lenders with copies of all environmental, health or safety audits, studies, assessments, inspections, investigations or other environmental health and safety reports relating to the operations of the Borrower or any of its Subsidiaries or any Real Property of any of them that are in the possession, custody or control of the Borrower or any of its Subsidiaries.

#### ***Section 4.18 Intellectual Property***

The Borrower and its Subsidiaries own or license or otherwise have the right to use all licenses, permits, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, Internet domain names, franchises, authorizations and other intellectual property rights (including all Intellectual Property as defined in the Pledge and Security Agreement) that are necessary for the operations of their respective businesses, without infringement upon or conflict with the rights of any other Person with respect thereto, including all trade names associated with any private label brands of the Borrower or any of its Subsidiaries, except those that would not have a Material Adverse Effect. To the Borrower's knowledge, no license, permit, patent, patent application, trademark, trademark application, service mark, trade name, copyright, copyright application, Internet domain name, franchise, authorization, other intellectual property right (including all "*Intellectual Property*" as defined in the Pledge and Security Agreement), slogan or other advertising device, product, process, method, substance, part or component, or other material now employed, or now contemplated to be employed, by the Borrower or any of its Subsidiaries infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened.

#### ***Section 4.19 Title; Real Property***

(a) Each of the Borrower and its Subsidiaries has good and marketable title to, or valid leasehold interests in, all Real Property and good title to all personal property, in each case that is purported to be owned or leased by it, including those reflected on the most recent Financial Statements delivered by the Borrower, and none of such properties and assets is subject to any Lien, except Liens permitted under *Section 8.2 (Liens, Etc.)*. The Borrower and its Subsidiaries have received all deeds, assignments, waivers, consents, non-disturbance and recognition or similar agreements, bills of sale and other documents in respect of, and have duly effected all recordings, filings and other actions necessary to establish, protect and perfect, the Borrower's and its Subsidiaries' right, title and interest in and to all such property.

(b) Set forth on *Schedule 4.19 (Real Property)* is a complete and accurate list of all Real Property of each Loan Party and showing, as of the Closing Date, the current street address (including, where applicable, county, state and other relevant jurisdictions), record owner and, where applicable, lessee thereof.

(c) As of the Closing Date, no Loan Party nor any of its Subsidiaries owns or holds, or is obligated under or a party to, any lease, option, right of first refusal or other contractual right to purchase, acquire, sell, assign, dispose of or lease any Real Property of such Loan Party or any of its Subsidiaries.

(d) As of the Closing Date, no portion of any Real Property of any Loan Party or any of its Subsidiaries has suffered any material damage by fire or other casualty loss that has not heretofore been completely repaired and restored to its original condition. Except as

disclosed to the Administrative Agent, no portion of any Real Property of any Loan Party or any of its Subsidiaries is located in a special flood hazard area as designated by any federal Governmental Authority

(e) All Permits required to have been issued or appropriate to enable all Real Property of the Borrower or any of its Subsidiaries to be lawfully occupied and used for all of the purposes for which they are currently occupied and used have been lawfully issued and are in full force and effect, other than those that, in the aggregate, would not have a Material Adverse Effect

(f) None of the Borrower or any of its Subsidiaries has received any notice, or has any knowledge, of any pending, threatened or contemplated condemnation proceeding affecting any Real Property of the Borrower or any of its Subsidiaries or any part thereof, except those that, in the aggregate, would not have a Material Adverse Effect.

**Section 4.20 Interactive Broadband Networks and Communications Law Matters.**

(a) *Interactive Broadband Networks* Schedule 4 20(a) hereto sets forth, as of the Closing Date, a true and complete list of each Interactive Broadband Network owned or operated by any Loan Party identified by the jurisdiction served by such Interactive Broadband Network.

(b) *CATV Franchises* Schedule 4 20(b) hereto sets forth, as of the Closing Date, a true and complete list of the CATV Franchises (and expiration dates thereof) of each Loan Party and the jurisdiction served thereby

(c) *Local Authorizations.* Schedule 4 20(c) hereto sets forth, as of the Closing Date, a true and complete list of all Communications Licenses and other PUC Authorizations (and the expiration dates thereof) of each Loan Party pertaining to the provision of local telecommunications services and high-speed internet access and, if applicable, the jurisdiction served thereby

(d) *Long Distance Authorizations.* Schedule 4 20(d) hereto sets forth, as of the Closing Date, a true and complete list of all Communications Licenses and other PUC Authorizations (and the expiration dates thereof) of each Loan Party pertaining to the provision of long distance telecommunications services and high-speed internet access and, if applicable, the jurisdiction served thereby.

(e) *Other Authorizations* Schedule 4 20(e) hereto sets forth, as of the Closing Date, a true and complete list of all Communications Licenses and other PUC Authorizations (and the expiration dates thereof) not listed on any other Schedule hereto of any Loan Party, and, if applicable, the jurisdiction served thereby.

(f) *Network Agreements* Schedule 4 20(f) hereto sets forth, as of the Closing Date, a true and complete list of the Network Agreements of each Loan Party which constitute material Contractual Obligations, each of which is in full force and effect and neither any Loan Party nor, to the best knowledge of any Loan Party, any of the other parties thereto, is in default of any of the provisions thereof in any material respect

(g) *Communications Law* No Loan Party is in violation of any duty or obligation required by any Communications Law, the Cable Act or any other Requirement of Law pertaining to or regulating the operation of any Interactive Broadband Network or the provision of Broadband Services, except where such violation could not reasonably be expected to result in a Material Adverse Effect

(h) *Broadband Approvals* Except as set forth on *Schedule 7.12*, each Loan Party possess approvals from each Governmental Authority necessary (i) to enter into and perform the respective obligations of each Loan Party under each Loan Document to which it is a party (including the granting of guarantees and security interests thereunder) and (ii) to own and operate any Interactive Broadband Network or any other long distance telecommunications systems presently operated by such Loan Party or otherwise for the operations of their businesses and are not in violation thereof, except (in the case of *clause (ii)* only) where the failure to so possess could not reasonably be expected to have a Material Adverse Effect All material approvals from each Governmental Authority are in full force and effect and no event has occurred that permits, or after notice or lapse of time could permit, the revocation, termination or material and adverse modification of any such approval.

(i) *Communications Licenses* There is not pending or, to the best knowledge of any Loan Party, threatened, any action by the FCC or any other Governmental Authority to revoke, cancel, suspend or refuse to renew any Communications License, CATV Franchise or PUC Authorization held by any Loan Party or any of its Subsidiaries There is not pending or, to the best knowledge of any Loan Party, threatened, any action by the FCC or any other Governmental Authority to modify adversely, revoke, cancel, suspend or refuse to renew any other approvals from any Governmental Authority To the knowledge of the Loan Parties, no event has occurred and is continuing which could reasonably be expected to (i) result in the imposition of a material forfeiture or the revocation, termination or adverse modification of any such Communications License or PUC Authorization or (ii) materially and adversely affect any rights of any Loan Party thereunder Each Loan Party has no reason to believe and has no knowledge that any of its Communications Licenses or PUC Authorizations will fail to be renewed in the ordinary course

(j) *Rate Regulation* Except as set forth on *Schedule 4.20(j)*, as of the Closing Date, no franchising authority has notified any Loan Party of its application to be certified to regulate rates as provided in Section 76.910 of the FCC rules implementing the rate regulation provisions of the Cable Act and no Governmental Authority that has issued a CATV Franchise to any Loan Party has notified any Loan Party that it has been certified and has adopted regulations required to commence regulation as provided in Section 76.910(c)(2) of such rate regulation rules.

(k) *Proceedings* There is not issued or outstanding or, to the best knowledge of any Loan Party, threatened, any notice of any hearing, violation or complaint against any Loan Party with respect to the provision of Broadband Services by any Loan Party or with respect to the operation of any portion of any Interactive Broadband Network, except for any such hearing, violation or complaint which could not reasonably be expected to have a Material Adverse Effect and, as of the Closing Date, no Loan Party has any knowledge that any Person intends to contest renewal of any Communication License, PUC Authorization, CATV Franchise or other approval from any Governmental Authority or Pole Agreement

(l) *Copyrights.* All notices, statements of account, supplements and other documents required under Section 111 of the Copyright Act of 1976 and under the rules of the Copyright Office with respect to the carriage of off-air signals by the Interactive Broadband Networks have been duly filed, and the proper amount of copyright fees have been paid on a timely basis, and each such Interactive Broadband Network qualifies for the compulsory license under Section 111 of the Copyright Act of 1976, except where failure to so file, pay or qualify could not reasonably be expected to result in a Material Adverse Effect.

(m) *Off-air Signals* The carriage of all off-air signals by the Interactive Broadband Networks is permitted by valid retransmission consent agreements or by must-carry elections by broadcasters, or is otherwise permitted under Requirement of Law.

(n) *Condition of Systems* All of the material properties, equipment and systems of each Loan Party, including the Interactive Broadband Networks, are, and all those to be added in connection with any contemplated system expansion or construction will be, in good repair and condition, ordinary wear and tear excepted, and in working order and condition which is in accordance with applicable industry standards, and are and will be in compliance with all standards or rules imposed by any Governmental Authority, except where failure to be in such condition or to so comply could not reasonably be expected to result in a Material Adverse Effect

(o) *Fees* Each Loan Party has paid all franchise, license or other fees and charges material to the CATV Franchises, Communications Licenses, PUC Authorizations, any Interactive Broadband Network and other matters respecting the operation of its business which have become due pursuant to any approval from any Governmental Authority or other permit in respect of its business, except where the failure to so pay could not reasonably be expected to result in a Material Adverse Effect.

#### ***Section 4.21 Prohibited Persons; Trade Restrictions***

No Loan Party nor any of their respective Affiliates is a Prohibited Person. None of the funds or other assets of any Loan Party constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U S law, including the International Emergency Economic Powers Act, The Trading with the Enemy Act, and any Executive Orders or regulations promulgated thereunder with the result that any transaction contemplated by this Agreement (whether directly or indirectly), is prohibited by law or the Loans or any extensions of credit hereunder are in violation of law None of the funds of any Loan Party have been derived from any unlawful activity with the result that any transaction contemplated by this Agreement (whether directly or indirectly), is prohibited by law or the Loans or any extensions of credit hereunder are in violation of law

### **ARTICLE V**

#### **FINANCIAL COVENANTS**

The Borrower agrees with the Lenders, the Issuers and the Administrative Agent to each of the following as long as any Obligation or any Revolving Credit Commitment remains outstanding and, in each case, unless the Requisite Lenders otherwise consent in writing

**Section 5.1 Maximum Leverage Ratio**

The Borrower shall maintain, on each day of each Fiscal Quarter set forth below, a Leverage Ratio of not more than the maximum ratio set forth below opposite such Fiscal Quarter:

FISCAL QUARTER ENDING	MAXIMUM LEVERAGE RATIO
June 30, 2005	6.75 to 1
September 30, 2005	6.75 to 1
December 31, 2005	6.75 to 1
March 31, 2006	6.75 to 1
June 30, 2006	6.75 to 1
September 30, 2006	6.75 to 1
December 31, 2006	6.75 to 1
March 31, 2007	6.75 to 1
June 30, 2007	6.60 to 1
September 30, 2007	6.50 to 1
December 31, 2007	6.35 to 1
March 31, 2008	6.20 to 1
June 30, 2008	5.85 to 1
September 30, 2008	5.75 to 1
December 31, 2008	5.70 to 1
March 31, 2009	5.65 to 1
June 30, 2009	5.65 to 1
September 30, 2009	5.65 to 1
December 31, 2009	5.60 to 1
March 31, 2010	5.60 to 1

**Section 5.2 First Lien Leverage Ratio**

The Borrower shall maintain, on each day of each Fiscal Quarter set forth below, a First Lien Leverage Ratio of not more than the maximum ratio set forth below opposite such Fiscal Quarter.

FISCAL QUARTER ENDING	FIRST LIEN LEVERAGE RATIO
June 30, 2005	4.50 to 1
September 30, 2005	4.50 to 1
December 31, 2005	4.50 to 1
March 31, 2006	4.50 to 1
June 30, 2006	4.50 to 1
September 30, 2006	4.45 to 1
December 31, 2006	4.45 to 1
March 31, 2007	4.40 to 1
June 30, 2007	4.30 to 1
September 30, 2007	4.20 to 1
December 31, 2007	4.10 to 1
March 31, 2008	4.00 to 1
June 30, 2008	3.75 to 1
September 30, 2008	3.65 to 1
December 31, 2008	3.60 to 1
March 31, 2009	3.55 to 1

FISCAL QUARTER ENDING	FIRST LIEN LEVERAGE RATIO
June 30, 2009	3.50 to 1
September 30, 2009	3.50 to 1
December 31, 2009	3.50 to 1
March 31, 2010	3.50 to 1

### **Section 5.3 Minimum Interest Coverage Ratio**

The Borrower shall maintain an Interest Coverage Ratio, as determined as of the last day of each Fiscal Quarter set forth below, for the four Fiscal Quarters ending on such day, of at least the minimum ratio set forth below opposite such Fiscal Quarter:

FISCAL QUARTER ENDING	MINIMUM INTEREST COVERAGE RATIO
June 30, 2005	1.35 to 1
September 30, 2005	1.35 to 1
December 31, 2005	1.35 to 1
March 31, 2006	1.35 to 1
June 30, 2006	1.35 to 1
September 30, 2006	1.35 to 1
December 31, 2006	1.35 to 1
March 31, 2007	1.35 to 1
June 30, 2007	1.35 to 1
September 30, 2007	1.35 to 1
December 31, 2007	1.40 to 1
March 31, 2008	1.40 to 1
June 30, 2008	1.45 to 1
September 30, 2008	1.45 to 1
December 31, 2008	1.50 to 1
March 31, 2009	1.50 to 1
June 30, 2009	1.60 to 1
September 30, 2009	1.60 to 1
December 31, 2009	1.70 to 1
March 31, 2010	1.70 to 1

### **Section 5.4 Capital Expenditures**

The Borrower, together with its Subsidiaries, shall not make or incur, or permit to be made or incurred, Capital Expenditures during each of the Fiscal Years set forth below to be, in the aggregate, in excess of the maximum amount set forth below for such Fiscal Year

FISCAL YEAR ENDING	MAXIMUM CAPITAL EXPENDITURES (IN MILLIONS)
December 31, 2005	\$36.0
December 31, 2006	\$25.0
December 31, 2007	\$25.0
December 31, 2008	\$25.0
December 31, 2009	\$25.0



Notwithstanding the foregoing, (i) up to 100% of the amount of Capital Expenditures permitted above for any Fiscal Year, if not expended in the Fiscal Year for which it is permitted, may be carried over for expenditure in the next succeeding Fiscal Year and, (ii) Capital Expenditures made in any Fiscal Year shall be deemed to be made, first, in respect of the amounts permitted for such Fiscal Year as provided above and, second, in respect of amounts carried over from the prior Fiscal Year pursuant to *clause (i)* above, (iii) the maximum amount of Capital Expenditures for each Fiscal Year following the Fiscal Year ending December 31, 2005 may be increased by an additional amount not exceeding \$3,000,000 to the extent such Capital Expenditures consist of expenditures by the Borrower and its Subsidiaries for the construction, operation and maintenance of communications networks to serve in residential buildings, multiple dwelling units, commercial buildings or other developments and (iv) Capital Expenditures shall not include any items contained in *clauses (a), (b) or (c)* of the definition thereof.

## ARTICLE VI

### REPORTING COVENANTS

The Borrower agrees with the Lenders, the Issuers and the Administrative Agent to each of the following, as long as any Obligation or any Revolving Credit Commitment remains outstanding and, in each case, unless the Requisite Lenders otherwise consent in writing:

#### ***Section 6.1 Financial Statements***

The Borrower shall furnish to the Administrative Agent (who will make such information available to each of the Lenders) each of the following.

(a) *Monthly Reports.* Not later than 30 days after the end of each fiscal month in each Fiscal Year, financial information regarding the Borrower and its Subsidiaries consisting of Consolidated unaudited balance sheets as of the close of such month and the related statements of income and cash flow for such month and that portion of the current Fiscal Year ending as of the close of such month, setting forth in comparative form the figures for the corresponding period in the prior year and the figures contained in the Projections or, if applicable, the latest business plan provided pursuant to *clause (f)* below for the current Fiscal Year and a calculation showing the aggregate amount of EBITDA for such Fiscal Month and number of access line accounts for the subsidiaries of the Borrowers that are independent local exchange carriers, in each case certified by a Responsible Officer of the Borrower as fairly presenting the Consolidated financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments)

(b) *Quarterly Reports.* Not later than 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year (or such earlier date on which the Borrower is required to file a Form 10-Q under the Exchange Act), financial information regarding the Borrower and its Subsidiaries consisting of Consolidated unaudited balance sheets as of the close of such quarter and the related statements of income and cash flow for such quarter and that portion of the Fiscal Year ending as of the close of such quarter, setting forth in comparative form the figures for the corresponding period in the prior year and the figures contained in the Projections or, if applicable, the latest business plan provided pursuant to *clause (f)* below for the

current Fiscal Year, in each case certified by a Responsible Officer of the Borrower as fairly presenting the Consolidated financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments)

(c) *Annual Reports.* Not later than 90 days after the end of each Fiscal Year (or such earlier date on which the Borrower is required to file a Form 10-K under the Exchange Act), financial information regarding the Borrower and its Subsidiaries consisting of Consolidated and consolidating balance sheets of the Borrower and its Subsidiaries as of the end of such year and related statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, all prepared in conformity with GAAP and certified, in the case of such Consolidated Financial Statements, without qualification as to the scope of the audit or as to the Borrower being a going concern by the Borrower's Accountants, together with the report of such accounting firm stating that (i) such Financial Statements fairly present the Consolidated financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which the Borrower's Accountants shall concur and that shall have been disclosed in the notes to the Financial Statements) and (ii) the examination by the Borrower's Accountants in connection with such Consolidated Financial Statements has been made in accordance with generally accepted auditing standards, and accompanied by a certificate stating that in the course of the regular audit of the business of the Borrower and its Subsidiaries such accounting firm has obtained no knowledge that a Default or Event of Default in respect of the financial covenants contained in *Article V (Financial Covenants)* has occurred and is continuing, or, if in the opinion of such accounting firm, a Default or Event of Default has occurred and is continuing in respect of such financial covenants, a statement as to the nature thereof.

(d) *Compliance Certificate.* Together with each delivery of any Financial Statement pursuant to *clause (b) or (c)* above, a certificate of a Responsible Officer of the Borrower (each, a "*Compliance Certificate*") (i) demonstrating compliance with each of the financial covenants contained in *Article V (Financial Covenants)* that is tested on a quarterly basis and (ii) stating that no Default or Event of Default has occurred and is continuing or, if a Default or an Event of Default has occurred and is continuing, stating the nature thereof and the action that the Borrower proposes to take with respect thereto.

(e) *Corporate Chart and Other Collateral Updates.* Together with each delivery of any Financial Statement pursuant to *clause (b) or (c)* above, (i) a certificate of a Responsible Officer of the Borrower certifying that the Corporate Chart attached thereto (or the last Corporate Chart delivered pursuant to this clause (e)) is true, correct, complete and current as of the date of such Financial Statement and (ii) a certificate of a Responsible Officer of the Borrower in form and substance satisfactory to the Administrative Agent that all certificates, statements, updates and other documents (including updated schedules) required to be delivered pursuant to the Pledge and Security Agreement by any Loan Party in the preceding Fiscal Quarter have been delivered thereunder (or such delivery requirement was otherwise duly waived or extended). The reporting requirements set forth in this clause (e) are in addition to, and are not intended to and shall not replace or otherwise modify, any obligation of any Loan Party under any Loan Document (including other notice or reporting requirements). Compliance with the reporting obligations in this clause (e) shall only provide notice to the Administrative Agent and

shall not, by itself, modify any obligation of any Loan Party under any Loan Document, update any Schedule to this Agreement or any schedule to any other Loan Document or cure, or otherwise modify in any way, any failure to comply with any covenant, or any breach of any representation or warranty, contained in any Loan Document or any other Default or Event of Default

(f) *Business Plan* Not later than 30 days after the end of each Fiscal Year, and containing substantially the types of financial information contained in the Projections, (i) the annual business plan of the Borrower and its Subsidiaries for the next succeeding Fiscal Year approved by the board of directors of the Borrower, (ii) forecasts prepared by management of the Borrower for each fiscal month in the next succeeding Fiscal Year and (iii) forecasts prepared by management of the Borrower for each of the succeeding Fiscal Years through the Fiscal Year ending December 31, 2010, including, in each instance described in *clauses (ii) and (iii)* above, (x) a projected Fiscal Quarter-end and Fiscal Year-end Consolidated balance sheet and income statement and statement of cash flows and (y) a statement of all of the material assumptions on which such forecasts are based

(g) *Management Letters, Etc* Within five Business Days after receipt thereof by any Loan Party, copies of each management letter, exception report or similar letter or report received by such Loan Party from its independent certified public accountants (including the Borrower's Accountants)

(h) *Intercompany Loan Balances* Together with each delivery of any Financial Statement pursuant to *clause (a)* above, a summary of the outstanding balance of all intercompany Indebtedness as of the last day of the fiscal month covered by such Financial Statement, certified by a Responsible Officer of the Borrower

### ***Section 6.2 Default Notices***

As soon as practicable, and in any event within five Business Days after a Responsible Officer of any Loan Party has actual knowledge of the existence of any Default, Event of Default or other event having had a Material Adverse Effect or having any reasonable likelihood of causing or resulting in a Material Adverse Change, the Borrower shall give the Administrative Agent notice specifying the nature of such Default or Event of Default or other event, including the anticipated effect thereof, which notice, if given by telephone, shall be promptly confirmed in writing on the next Business Day

### ***Section 6.3 Litigation and Regulatory Matters***

The Borrower shall provide the Administrative Agent:

(a) promptly after the commencement thereof, written notice of the commencement of all actions, suits and proceedings before any domestic or foreign Governmental Authority or arbitrator affecting the Borrower or any Subsidiary of the Borrower that (i) seeks injunctive or similar relief or (ii) in the reasonable judgment of the Borrower or such Subsidiary expose the Borrower or such Subsidiary to liability in an amount aggregating \$1,000,000 or more or that, if adversely determined, would have a Material Adverse Effect, and

(b) promptly, and in any event within 10 days, after filing, receipt or becoming aware thereof, copies of any filings or communications sent to and notices or other

communications received by any Borrower or any of its Subsidiaries from any Governmental Authority, including the Securities and Exchange Commission, the FCC, any PUC, or any other state utility commission, relating to (i) any material non-compliance by any Borrower or any of its Subsidiaries with any laws or regulations or with respect to any matter or proceeding the effect of which, if adversely determined, would have a Material Adverse Effect or (ii) any violation by any Borrower or any of its Subsidiaries of any Communication License, CATV Franchise, PUC Authorization or similar license, franchise or authorization

#### ***Section 6.4     Asset Sales***

Prior to any Asset Sale, the Borrower shall send the Administrative Agent a notice (a) describing such Asset Sale or the nature and material terms and conditions of such transaction and (b) stating the estimated Net Cash Proceeds anticipated to be received by the Borrower or any of its Subsidiaries

#### ***Section 6.5     Notices under Second Lien Loan Documents***

Promptly after the sending or filing thereof, the Borrower shall send the Administrative Agent copies of all material notices, certificates or reports delivered pursuant to, or in connection with, any Second Lien Loan Document

#### ***Section 6.6     SEC Filings; Press Releases***

Promptly after the sending or filing thereof, the Borrower shall send the Administrative Agent copies of (a) all reports that Borrower sends to its security holders generally, (b) all reports and registration statements that Borrower or any of its Subsidiaries files with the Securities and Exchange Commission or any national or foreign securities exchange or the National Association of Securities Dealers, Inc., (c) all press releases and (d) all other statements concerning material changes or developments in the business of such Loan Party made available by any Loan Party to the public or any other creditor.

#### ***Section 6.7     Labor Relations***

Promptly after becoming aware of the same, the Borrower shall give the Administrative Agent written notice of (a) any material labor dispute to which the Borrower or any of its Subsidiaries is or may become a party, including any strikes, lockouts or other disputes relating to any of such Person's plants and other facilities, and (b) any Worker Adjustment and Retraining Notification Act or related liability incurred with respect to the closing of any plant or other facility of any such Person

#### ***Section 6.8     Tax Returns***

Upon the request of any Lender, through the Administrative Agent, the Borrower shall provide copies of all federal, state, local tax returns and reports filed by the Borrower or any Subsidiary of the Borrower in respect of taxes measured by income (excluding sales, use and like taxes)

### ***Section 6.9 Insurance***

As soon as is practicable and in any event within 90 days after the end of each Fiscal Year, the Borrower shall furnish the Administrative Agent with (a) a report in form and substance reasonably satisfactory to the Administrative Agent and the Lenders outlining all material insurance coverage maintained as of the date of such report by the Borrower or any Subsidiary of the Borrower and the duration of such coverage and (b) an insurance broker's statement that all premiums then due and payable with respect to such coverage have been paid and confirming, with respect to any insurance maintained by the Borrower or any Loan Party, that the Administrative Agent has been named as loss payee or additional insured, as applicable

### ***Section 6.10 ERISA Matters***

The Borrower shall furnish the Administrative Agent (with sufficient copies for each of the Lenders) each of the following:

(a) promptly and in any event within 30 days after the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, written notice describing such event;

(b) promptly and in any event within 10 days after the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a written statement of a Responsible Officer of the Borrower describing such ERISA Event or waiver request and the action, if any, the Borrower, its Subsidiaries and ERISA Affiliates propose to take with respect thereto and a copy of any notice filed with the PBGC or the IRS pertaining thereto; and

(c) simultaneously with the date that the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate files a notice of intent to terminate any Title IV Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, a copy of each notice

### ***Section 6.11 Environmental Matters***

The Borrower shall provide the Administrative Agent promptly and in any event within 10 days after the Borrower or any Subsidiary of the Borrower learning of any of the following, written notice of each of the following

(a) that any Loan Party is or may be liable to any Person as a result of a Release or threatened Release that could reasonably be expected to subject such Loan Party to Environmental Liabilities and Costs in excess of \$1,000,000,

(b) the receipt by any Loan Party of notification that any Real Property or personal property of such Loan Party is or is reasonably likely to be subject to any Environmental Lien;

(c) the receipt by any Loan Party of any notice of violation of or potential liability under, or knowledge by such Loan Party that there exists a condition that could reasonably be expected to result in a violation of or liability under, any Environmental Law,

except for violations and liabilities the consequence of which, in the aggregate, would not be reasonably likely to subject the Loan Parties collectively to Environmental Liabilities and Costs in excess of \$1,000,000;

(d) the commencement of any judicial or administrative proceeding or investigation alleging a violation of or liability under any Environmental Law, that, in the aggregate, if adversely determined, would have a reasonable likelihood of subjecting the Loan Parties collectively to Environmental Liabilities and Costs in excess of \$1,000,000,

(e) any proposed acquisition of stock, assets or real estate, any proposed leasing of property or any other action by any Loan Party or any of its Subsidiaries other than those the consequences of which, in the aggregate, have reasonable likelihood of subjecting the Loan Parties collectively to Environmental Liabilities and Costs in excess of \$1,000,000,

(f) any proposed action by any Loan Party or any of its Subsidiaries or any proposed change in Environmental Laws that, in the aggregate, have a reasonable likelihood of requiring the Loan Parties to obtain additional environmental, health or safety Permits or make additional capital improvements to obtain compliance with Environmental Laws that, in the aggregate, would have cost \$1,000,000 or more or that shall subject the Loan Parties to additional Environmental Liabilities and Costs in excess of \$1,000,000; and

(g) upon written request by any Lender through the Administrative Agent, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report delivered pursuant to this Agreement

#### ***Section 6.12 Customer Contracts***

Promptly after any Loan Party becoming aware of the same, the Borrower shall give the Administrative Agent written notice of any cancellation, termination or loss of any material Contractual Obligation or other customer arrangement

#### ***Section 6.13 New Markets***

In advance of (a) the entrance into any new market by the Borrower or any of its Subsidiaries, (b) any material change of prospective markets by the Borrower or any of its Subsidiaries or (c) any deferral of any market, the Borrower shall deliver to the Administrative Agent a revised business plan, in form and substance reasonably satisfactory to the Administrative Agent, to include such new market, change in prospective market or deferral of any market, as applicable.

#### ***Section 6.14 Other Information***

The Borrower shall provide the Administrative Agent or any Lender with such other information respecting the business, properties, condition, financial or otherwise, or operations of the Borrower or any Subsidiary of the Borrower as the Administrative Agent or such Lender through the Administrative Agent may from time to time reasonably request

## ARTICLE VII

### AFFIRMATIVE COVENANTS

The Borrower agrees with the Lenders, the Issuers and the Administrative Agent to each of the following, as long as any Obligation or any Revolving Credit Commitment remains outstanding and, in each case, unless the Requisite Lenders otherwise consent in writing:

#### ***Section 7.1 Preservation of Corporate Existence, Etc.***

The Borrower shall, and shall cause each Subsidiary of the Borrower to, preserve and maintain its legal existence, rights (charter and statutory) and franchises, except as permitted by *Sections 8 4 (Sale of Assets)* and *8 7 (Restriction on Fundamental Changes; Permitted Acquisitions)* and *8 11 (Modification of Constituent Documents)*

#### ***Section 7.2 Compliance with Laws, Etc.***

The Borrower shall, and shall cause each Subsidiary of the Borrower to, comply with all applicable Requirements of Law, Contractual Obligations and Permits, except where the failure so to comply would not, in the aggregate, have a Material Adverse Effect.

#### ***Section 7.3 Conduct of Business***

The Borrower shall and the Borrower shall cause each Subsidiary of the Borrower to, use its best efforts, in the ordinary course and consistent with past practice, to preserve its business and the goodwill and business of the customers, advertisers, suppliers and others having business relations with the Borrower or any of its Subsidiaries, except in each case where the failure to comply with this covenant would not, in the aggregate, have a Material Adverse Effect.

#### ***Section 7.4 Payment of Taxes, Etc.***

The Borrower shall, and shall cause each Subsidiary of the Borrower to, pay and discharge before the same shall become delinquent, all lawful governmental claims, taxes, assessments, charges and levies, except where contested in good faith, by proper proceedings and adequate reserves therefor have been established on the books of the Borrower or the appropriate Subsidiary in conformity with GAAP.

#### ***Section 7.5 Maintenance of Insurance***

The Borrower shall (a) maintain for itself, and the Borrower shall cause to be maintained for each Subsidiary of the Borrower, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates, and, in any event, all insurance required by any Collateral Documents and (b) cause all such insurance relating to any Loan Party to name the Administrative Agent on behalf of the Secured Parties as additional insured or loss payee (subject to the terms of the Intercreditor Agreement), as appropriate, and to provide that no cancellation, material addition in amount or material change in coverage shall be effective until after 30 days' written notice thereof to the Administrative Agent

#### ***Section 7.6 Access***

The Borrower shall, and shall cause each Subsidiary of the Borrower to, from time to time permit the Administrative Agent and the Lenders or any agents or representatives thereof, within two Business Days after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to, (a) examine and make copies of and abstracts from the records and books of account of the Borrower and each Subsidiary of the Borrower, (b) visit the properties of the Borrower and each Subsidiary of the Borrower, (c) discuss the affairs, finances and accounts of the Borrower and each Subsidiary of the Borrower with any of their respective officers or directors and (d) after prior written notice to the Borrower, communicate directly with any of its certified public accountants (including the Borrower's Accountants); *provided, however*, that unless an Event of Default has occurred and is continuing, the Borrower shall only be obligated to pay the costs and expenses of the Administrative Agent incurred in connection with this *Section 7.6*. The Borrower shall authorize its certified public accountants (including the Borrower's Accountants), and shall cause the certified public accountants of any Subsidiary of the Borrower, if any, to disclose to the Administrative Agent or any Lender any and all financial statements and other information of any kind, as the Administrative Agent or any Lender reasonably requests and that such accountants may have with respect to the business, financial condition, results of operations or other affairs of the Borrower or any Subsidiary of the Borrower.

#### ***Section 7.7 Keeping of Books***

The Borrower shall, and shall cause each Subsidiary of the Borrower to keep, proper books of record and account, in which full and correct entries shall be made in conformity with GAAP of all financial transactions and the assets and business of the Borrower and each such Subsidiary.

#### ***Section 7.8 Maintenance of Properties, Etc.***

The Borrower shall, and shall cause each Subsidiary of the Borrower to, maintain and preserve (a) in good working order and condition all of its properties necessary in the conduct of its business, (b) all rights, permits, licenses, approvals and privileges (including all Permits) used or useful or necessary in the conduct of its business and (c) all registered patents, trademarks, trade names, copyrights and service marks with respect to its business, except where failure to so maintain and preserve the items set forth in *clauses (a), (b) and (c)* above would not, in the aggregate, have a Material Adverse Effect.

#### ***Section 7.9 Application of Proceeds***

The Borrower (and, to the extent distributed to them by the Borrower, each Loan Party) shall use the entire amount of the proceeds of the Loans and utilize the Letters of Credit as provided in *Section 4.13 (Use of Proceeds)*.

#### ***Section 7.10 Environmental***

The Borrower shall, and shall cause each Subsidiary of the Borrower to, comply in all material respects with Environmental Laws and, without limiting the foregoing, the Borrower shall, at its sole cost and expense, upon receipt of any notification or otherwise obtaining knowledge of any Release or other event that has any reasonable likelihood of the



Borrower or any Subsidiary of the Borrower incurring Environmental Liabilities and Costs in excess of \$1,000,000 in the aggregate, (a) conduct, or pay for consultants to conduct, tests or assessments of environmental conditions at such operations or properties, including the investigation and testing of subsurface conditions and (b) take such Remedial Action and undertake such investigation or other action as required by Environmental Laws or as any Governmental Authority requires or as is appropriate and consistent with good business practice to address the Release or event and otherwise ensure compliance with Environmental Laws.

### ***Section 7.11 Additional Collateral and Guaranties***

To the extent not delivered to the Administrative Agent on or before the Closing Date (including in respect of after-acquired property and Persons that become Subsidiaries of any Loan Party after the Closing Date) and subject to *Section 7.12 (Regulatory Consents for Guaranties and Security)*, the Borrower agrees promptly to do, or cause each Subsidiary of the Borrower to do, each of the following, unless otherwise agreed by the Administrative Agent and subject to the terms of the Intercreditor Agreement:

(a) deliver to the Administrative Agent such duly executed supplements and amendments to the Guaranty (or, in the case of any Subsidiary of any Loan Party that is not a Domestic Subsidiary or that holds shares in any Person that is not a Domestic Subsidiary, foreign guarantees and related documents), in each case in form and substance reasonably satisfactory to the Administrative Agent and as the Administrative Agent deems necessary or advisable in order to ensure that each Subsidiary of each Loan Party guaranties, as primary obligor and not as surety, the full and punctual payment when due of the Obligations or any part thereof, *provided, however*, in no event shall any Excluded Foreign Subsidiary be required to guaranty the payment of the Obligations, unless (x) the Borrower and the Administrative Agent otherwise agree or (y) such Excluded Foreign Subsidiary has entered into Guaranty Obligations in respect of other Indebtedness of the Borrower having substantially similar tax consequences,

(b) deliver to the Collateral Agent such duly-executed joinder and amendments to the Pledge and Security Agreement and, if applicable, other Collateral Documents (or, in the case of any such Subsidiary of any Loan Party that is not a Domestic Subsidiary or that holds shares in any Person that is not a Domestic Subsidiary, foreign charges, pledges, security agreements and other Collateral Documents), in each case in form and substance reasonably satisfactory to the Administrative Agent and as the Administrative Agent deems necessary or advisable in order to (i) effectively grant to the Collateral Agent, for the benefit of the Secured Parties, a valid, perfected and enforceable first-priority security interest in the Stock and Stock Equivalents and other debt Securities owned by any Loan Party and (ii) effectively grant to the Collateral Agent, for the benefit of the Secured Parties, a valid, perfected and enforceable first-priority security interest in all property interests and other assets of any Loan Party, *provided, however*, in no event shall (x) any Loan Party or any of its Subsidiaries, individually or collectively, be required to pledge in excess of 66% of the outstanding Voting Stock of any Excluded Foreign Subsidiary or (y) any assets of any Excluded Foreign Subsidiary be required to be pledged, unless the Borrower and the Administrative Agent otherwise agree,

(c) subject to the terms of the Intercreditor Agreement, deliver to the Collateral Agent all certificates, instruments and other documents representing all Pledged Stock and all other Stock, Stock Equivalents and other debt Securities being pledged pursuant to the joinders, amendments and foreign agreements executed pursuant to *clause (b)* above, together with (i) in the case of certificated Pledged Stock and other certificated Stock and Stock

Equivalents, undated stock powers endorsed in blank and (ii) in the case of other certificated debt Securities, endorsed in blank, in each case executed and delivered by a Responsible Officer of such Loan Party or such Subsidiary thereof, as the case may be;

(d) to take such other actions necessary or advisable to ensure the validity or continuing validity of the guaranties required to be given pursuant to *clause (a)* above or to create, maintain or perfect the security interest required to be granted pursuant to *clause (b)* above, including the filing of UCC financing statements in such jurisdictions as may be required by the Collateral Documents or by law or as may be reasonably requested by the Administrative Agent or the Collateral Agent, and

(e) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

***Section 7.12 Regulatory Consents for Guaranties and Security***

(a) At the request of the Administrative Agent, the Borrower shall, or cause its applicable Subsidiary to, use its respective best efforts to obtain each Permit of the applicable Governmental Authority or third party which is required for the Collateral Agent to hold a first-priority perfected security interest in the CATV Franchises set forth in *Schedule 7.12 (Regulatory Consents)* requiring prior approval of the applicable Government Authority.

(b) The Borrower shall, or cause its applicable Subsidiary to, use its respective best efforts to obtain each Permit of the applicable Governmental Authority or third party which is required for (i) the Collateral Agent to hold a first-priority perfected security interest in the rights under the PUC Authorizations set forth in *Schedule 7.12 (Regulatory Consents)* requiring prior approval of the applicable Government Authority or third party and (ii) Knology Georgia to fully guaranty the Obligations and to grant a first-priority perfected security interest in favor of the Collateral Agent over all or substantially all of its assets as security for such Guaranty.

(c) Promptly following the acquisition or assumption by or grant to any Loan Party of any Communications License, CATV Franchise or PUC Authorization, the Borrower shall, or cause its applicable Subsidiary to, use its respective best efforts to obtain each Permit of the applicable Governmental Authority or third party which is required for the Collateral Agent to hold a perfected security interest in such franchise, authorization or license to the extent permitted by applicable law

(d) For so long as any Permit set forth in *Schedule 7.12 (Regulatory Consents)* or required under *clauses (a), (b) or (c)* above has not been obtained, the Borrower shall deliver (i) a written report to the Administrative Agent on the first Business Day of every calendar month detailing the respective efforts made by the Borrower and its Subsidiaries to obtain each such Permit from the applicable Governmental Authority during the preceding calendar month and (ii) copies of any Permits obtained during such preceding calendar month.

(e) Immediately upon obtaining each applicable Permit referred to in *clauses (a) through (c)* above, the Borrower shall, or cause its applicable Subsidiary to, execute and/or deliver such documents and take such other action as may be required by the Administrative Agent to ensure that the Collateral Agent holds a first-priority perfected security interest in the

assets which are subject to such Permit and, as applicable, to ensure that Knology Georgia has fully guaranteed the Obligations and granted a first-priority perfected security interest in favor of the Collateral Agent over all or substantially all of its assets as security for such Guaranty

**Section 7.13 Control Accounts, Approved Deposit Accounts**

(a) The Borrower shall, and shall cause each of their respective Subsidiaries, with the exception of any Excluded Foreign Subsidiary, to (i) deposit in an Approved Deposit Account all cash they receive, (ii) not establish or maintain any Securities Account that is not a Control Account (other than any Securities Accounts maintained as a surety for insurance obligations as long as the aggregate balance in all such Securities Accounts does not at any time exceed \$2,750,000) and (iii) not establish or maintain any Deposit Account other than with a Deposit Account Bank, *provided, however*, that (i) the Borrower and each of its Subsidiaries shall be permitted to maintain payroll, withholding tax and other fiduciary accounts as long as the aggregate balance in all such accounts, does not at any time exceed \$2,500,000 and (ii) the provisions of this *Section 7.13* shall not apply to deposits or accounts subject to a Deposit Account Control Agreement subject to *Section 7.17 (Post-Closing Obligations)*.

(b) The Administrative Agent may establish one or more Cash Collateral Accounts with such depositaries and Securities Intermediaries as it in its sole discretion shall determine, *provided, however*, that no Cash Collateral Account shall be established with respect to the assets of any Excluded Foreign Subsidiary. The Borrower agrees that each such Cash Collateral Account shall meet the requirements set forth in the definition of "*Cash Collateral Account*" Without limiting the foregoing, funds on deposit in any Cash Collateral Account may be invested (but the Administrative Agent shall be under no obligation to make any such investment) in Cash Equivalents at the direction of the Administrative Agent and, except during the continuance of an Event of Default, the Administrative Agent agrees with the Borrower to issue Entitlement Orders for such investments in Cash Equivalents as requested by the Borrower; *provided, however*, that the Administrative Agent shall not have any responsibility for, or bear any risk of loss of, any such investment or income thereon Neither the Borrower nor any Subsidiary of the Borrower or any other Loan Party or Person claiming on behalf of or through the Borrower, any Subsidiary of the Borrower or any other Loan Party shall have any right to demand payment of any funds held in any Cash Collateral Account at any time prior to the termination of all outstanding Letters of Credit and the payment in full of all then outstanding and payable monetary Obligations The Administrative Agent shall apply all funds on deposit in a Cash Collateral Account as provided in *Section 2.9 (Mandatory Prepayments)*.

**Section 7.14 Real Property**

(a) The Borrower shall, and shall cause each of its Subsidiaries to, (i) comply in all material respects with all of their respective obligations under all of their respective Leases now or hereafter held respectively by them, including the Leases set forth on *Schedule 4.19 (Real Property)*, the failure to comply with which would not have a Material Adverse Effect, (ii) not modify, amend, cancel, extend or otherwise change in any materially adverse manner any term, covenant or condition of any such Lease if such change would have a Material Adverse Effect, (iii) not assign or sublet any other Lease if such assignment or sublet would have a Material Adverse Effect and (iv) provide the Administrative Agent with a copy of each notice of default under any Lease received by the Borrower or any Subsidiary of the Borrower immediately upon receipt thereof and deliver to the Administrative Agent a copy of

each notice of default sent by the Borrower or any Subsidiary of the Borrower under any Lease simultaneously with its delivery of such notice under such Lease.

(b) At least 15 Business Days prior to (i) entering into any Lease (other than a renewal of an existing Lease) for the principal place of business and chief executive office of the Borrower or any other Guarantor or any other Lease (including any renewal) in which the annual rental payments are anticipated to equal or exceed \$1,000,000 or (ii) acquiring any material owned Real Property, the Borrower shall, and shall cause such Guarantor to, provide the Administrative Agent written notice thereof.

(c) To the extent not previously delivered to the Administrative Agent, upon written request of the Administrative Agent, the Borrower shall, and shall cause each Guarantor to, execute and deliver to the Administrative Agent, for the benefit of the Secured Parties, promptly and in any event not later than 45 days (or such later period as the Administrative Agent may approve in its sole discretion) after receipt of such notice (or, if such notice is given by the Administrative Agent prior to the acquisition of such Real Property, immediately upon such acquisition), a Mortgage on any owned Real Property of the Borrower or such Guarantor, together with (i) if requested by the Administrative Agent and such Real Property is located in the United States, all Mortgage Supporting Documents relating thereto or (ii) documents similar to Mortgage Supporting Documents deemed by the Administrative Agent to be appropriate in the applicable jurisdiction to obtain the equivalent in such jurisdiction of a first-priority mortgage on such Real Property.

(d) To the extent not previously delivered to the Administrative Agent, the Borrower shall, and shall cause each Guarantor to (except as may be agreed to by the Administrative Agent), execute and deliver to the Administrative Agent, for the benefit of the Secured Parties, promptly and in any event not later than 60 days, all Mortgage Supporting Documents relating to each of the owned Real Properties of the Loan Parties identified on *Schedule 7.14 (Mortgage Documents)* and, to the extent requested, an environmental site assessment report prepared by a consultant acceptable to the Administrative Agent and in a form and scope satisfactory to the Administrative Agent

#### ***Section 7.15 Interest Rate Contracts***

The Borrower shall, within 30 days after the Closing Date, enter into an Interest Rate Contract or Contracts, on terms and with counterparties satisfactory to the Administrative Agent, to the extent necessary to ensure that no less than 50% of the Borrower's Consolidated Indebtedness (other than the Revolving Credit Outstandings) effectively bears interest at a fixed rate for a term of at least three consecutive years following the date thereof.

#### ***Section 7.16 Ratings***

The Borrower shall at all times maintain ratings with respect to the Facilities by each of S&P and Moody's

#### ***Section 7.17 Post-Closing Obligations***

(a) Within 5 Business Days of the Closing Date (or such later date as the Administrative Agent may agree), the Borrower shall cause the (i) Broadband Account to become subject to a Deposit Account Control Agreement entered into by Knology Broadband, Inc. or

transfer all amounts on deposit in such account to an account of the Borrower or a Guarantor which is subject to a Deposit Account Control Agreement entered into by the Borrower or such Guarantor and (ii) transfer, to the extent necessary to comply with the requirements of *Section 7.13 (Control Accounts, Approved Deposit Accounts)*, amounts on deposit in the Interstate Account to an account of the Borrower or a Guarantor that is subject to a Deposit Account Control Agreement entered into by the Borrower or such Guarantor

(b) Within 45 days of the Closing Date (or such later date as the Administrative Agent may agree), the Borrower shall deliver to the Administrative Agent (i) a landlord waiver with respect to the leased property at 1701 Boxwood Place, Columbus, Georgia in form satisfactory to the Administrative Agent and (ii) evidence of the satisfaction-in-full of the Existing Notes and the related termination of the Existing Indenture in form satisfactory to the Administrative Agent.

## ARTICLE VIII

### NEGATIVE COVENANTS

The Borrower agrees with the Lenders, the Issuers and the Administrative Agent to each of the following, as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Requisite Lenders otherwise consent in writing

#### *Section 8.1 Indebtedness*

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except for the following:

(a) the Secured Obligations (other than in respect of Hedging Contracts not permitted to be incurred pursuant to *clause (h)* below) and Guaranty Obligations with respect thereto which do not exceed the "Cap Amount" (excluding the amount set forth in *clause (b)* thereof) as defined in the Intercreditor Agreement;

(b) (i) Indebtedness existing on the date of this Agreement and disclosed on *Schedule 8.1 (Existing Indebtedness)*, and (ii) Indebtedness constituting "Secured Obligations" as defined in the Second Lien Credit Agreement;

(c) Guaranty Obligations incurred by the Borrower or any Guarantor in respect of Indebtedness of the Borrower or any Guarantor that is otherwise permitted by this *Section 8.1* (other than *clause (a)* above),

(d) Capital Lease Obligations and purchase money Indebtedness (i) set forth in *Schedule 8.1(d) (Capital Leases)* or (ii) incurred after the Closing Date by the Borrower or a Subsidiary of the Borrower to finance the acquisition of fixed assets; *provided, however*, that the Capital Expenditure related thereto is otherwise permitted by *Section 5.4 (Capital Expenditures)* and that the aggregate outstanding principal amount of all such Capital Lease Obligations and purchase money Indebtedness shall not exceed \$7,500,000 at any time during the term of this Agreement,

(e) Renewals, extensions, refinancings and refundings of Indebtedness permitted by *clauses (b) and (d) above, clause (k) below or this clause (e); provided, however,* that any such renewal, extension, refinancing or refunding (i) is in an aggregate principal amount not greater than the principal amount of (and accrued but unpaid interest on or premium, if any, under), and is on terms no less favorable to the Borrower or any Subsidiary of the Borrower obligated thereunder, including as to weighted average maturity and final maturity, than the Indebtedness being renewed, extended, refinanced or refunded and (ii), in the case of the Second Lien Term Loan, complies with the terms of the Intercreditor Agreement,

(f) Indebtedness arising from intercompany loans (i) from the Borrower to any Guarantor, (ii) from any Guarantor to the Borrower or any other Guarantor or (iii) from the Borrower or any Guarantor to any Subsidiary of the Borrower that is not a Guarantor; *provided, however,* that in each case the Investment in such intercompany loan is permitted under *Section 8.3 (Investments)*;

(g) Indebtedness arising under any performance or surety bond entered into in the ordinary course of business;

(h) Obligations under Interest Rate Contracts mandated by *Section 7.15 (Interest Rate Contract)*,

(i) unsecured Indebtedness not otherwise permitted under this *Section 8.1*; *provided, however,* that the aggregate outstanding principal amount of all such unsecured Indebtedness shall not exceed \$5,000,000 at any time;

(j) Indebtedness under unsecured promissory notes issued by the Borrower as consideration in connection with any Permitted Acquisition, *provided, however,* that (x)(i) the obligations under such notes are subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent, (ii) no principal in respect of such notes is, or may be, payable before the first anniversary of the Term Loan Maturity Date (iii) no interest in respect of such notes is required to be paid in cash prior to the Term Loan Maturity Date or (y) the aggregate outstanding principal amount of all such Indebtedness incurred, shall not exceed \$2,000,000 in any Fiscal Year and \$5,000,000 at any time during the term of this Agreement,

(k) Indebtedness assumed pursuant to a Permitted Acquisition; *provided that* (i) such Indebtedness was not created in contemplation of such Permitted Acquisition and (ii) the aggregate outstanding principal amount of all such Indebtedness shall not exceed \$5,000,000 at any time, and

(l) Permitted MDU Transactions and Permitted CIU Transactions, in each case, to the extent accounted for as Capital Lease Obligations

## ***Section 8.2 Liens, Etc.***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, create or suffer to exist, any Lien upon or with respect to any of its properties or assets, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, except for the following

(a) Liens created pursuant to the Loan Documents,

(b) Liens existing on the date of this Agreement and disclosed on *Schedule 8.2 (Existing Liens)*, including Liens securing the Second Lien Term Loan;

(c) Customary Permitted Liens on the assets of the Borrower and the Borrower's Subsidiaries;

(d) purchase money Liens granted by the Borrower or any of its Subsidiaries (including the interest of a lessor under a Capital Lease and purchase money Liens to which any property is subject at the time, on or after the date hereof, of the Borrower's or such Subsidiary's acquisition thereof) securing Indebtedness permitted under *Section 8.1(d) (Indebtedness)* and limited in each case to the property purchased with the proceeds of such purchase money Indebtedness or subject to such Capital Lease,

(e) any Lien securing the renewal, extension, refinancing or refunding of any Indebtedness secured by any Lien permitted by clauses (b) or (d) above, *clause (h)* below or this *clause (e)* without any change in the assets subject to such Lien and to the extent such renewal, extension, refinancing or refunding is permitted by *Section 8.1(e) (Indebtedness)*;

(f) Liens in favor of lessors securing operating leases to the extent such operating leases are permitted hereunder and, to the extent such transactions create a Lien, sale and leaseback transactions permitted by *Section 8.4(f) (Asset Sales)*;

(g) Liens not otherwise permitted by the foregoing clauses of this *Section 8.2* securing obligations or other liabilities of any Loan Party, *provided, however*, that the aggregate outstanding amount of all such obligations and liabilities shall not exceed \$500,000 at any time; and

(h) Liens securing Indebtedness permitted under *Section 8.1(k) (Indebtedness)*, *provided* that (i) such Liens were not created in contemplation of such Permitted Acquisitions and (ii) such Liens are purchase money Liens granted by the Proposed Acquisition Target or its Subsidiaries (including the interest of a lessor under a Capital Lease and purchase money Liens on any property of Proposed Acquisition Target or its Subsidiaries) and limited in each case to the property purchased with the proceeds of such purchase money Indebtedness or subject to such Capital Lease

### ***Section 8.3 Investments***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to make or maintain, directly or indirectly, any Investment except for the following:

(a) Investments existing on the date of this Agreement and disclosed on *Schedule 8.3 (Existing Investments)*;

(b) Investments in cash and Cash Equivalents held in a Deposit Account or a Control Account or otherwise in compliance with *Section 7.13 (Control Accounts, Approved Deposit Accounts)* or outside such accounts to the extent permitted by *Section 7.13(a) (Control Accounts, Approved Deposit Accounts)*

(c) Investments in payment intangibles, chattel paper (each as defined in the UCC) and Accounts, notes receivable and similar items arising or acquired in the ordinary course of business consistent with the past practice of the Borrower and its Subsidiaries;

(d) Investments received in settlement of amounts due to the Borrower or any Subsidiary of the Borrower effected in the ordinary course of business;

(e) Investments by (i) the Borrower or any Guarantor in the Borrower or any other Guarantor (other than Knology Georgia until such time as it has fully guaranteed the Obligations pursuant to the Guaranty and granted a Lien in favor of the Collateral Agent over substantially all of its assets as security for such Guaranty and has obtained all necessary Permits in connection therewith) or (ii) any Subsidiary of the Borrower that is not a Guarantor in the Borrower or any other Subsidiary of the Borrower.

(f) Investments by the Borrower or any Guarantor in a Permitted Acquisition;

(g) loans or advances to employees of the Borrower or any Subsidiaries of the Borrower in the ordinary course of business as presently conducted other than any loans or advances that would be in violation of Section 402 of the Sarbanes-Oxley Act; *provided, however*, that the aggregate principal amount of all loans and advances permitted pursuant to this clause (g) shall not exceed \$500,000 at any time;

(h) Guaranty Obligations permitted by *Section 8.1 (Indebtedness)*;

(i) Investments in promissory notes received in consideration for Asset Sales permitted by *Section 8.4(f) (Asset Sales)*, and

(j) Investments not otherwise permitted hereby, *provided, however*, that the aggregate outstanding amount of all such Investments shall not, at any time, exceed \$1,000,000

#### ***Section 8.4 Sale of Assets***

The Borrower shall not nor shall it permit any Subsidiary of the Borrower to, sell, convey, transfer, lease or otherwise dispose of, any of their respective assets or any interest therein (including the sale or factoring at maturity or collection of any accounts) to any Person or permit or suffer any other Person to acquire any interest in any of their respective assets, nor shall the Borrower permit any of its Subsidiaries to issue or sell any shares of their Stock or any Stock Equivalents (any such disposition being an "*Asset Sale*"), except for the following

(a) the sale or disposition of Cash Equivalents, Inventory, customer premise equipment and fiber optic cable, in each case, in the ordinary course of business,

(b) the sale or disposition of Equipment that has become obsolete or is replaced in the ordinary course of business; *provided, however*, that the aggregate Fair Market Value of all such equipment disposed of in any Fiscal Year shall not exceed \$500,000,

(c) a true lease or sublease of Real Property not constituting Indebtedness and not constituting a sale and leaseback transaction,



(d) assignments and licenses of intellectual property of the Borrower and its Subsidiaries in the ordinary course of business;

(e) any Asset Sale to the Borrower or any Guarantor;

(f) as long as no Default or Event of Default is continuing or would result therefrom, any other Asset Sale (including in the form of a sale and leaseback transaction) for Fair Market Value, payable at least 75% in cash upon such sale; *provided, however*, that with respect to any such Asset Sale pursuant to this *clause (f)*, (i) the aggregate consideration received (x) during any Fiscal Year for all such Asset Sales shall not exceed \$10,000,000 (provided that up to 100% of the amount in this *clause (x)*, if not received in the Fiscal Year for which it is permitted, may be carried over for receipt in the next succeeding Fiscal Year; *provided, further*, that consideration received in any Fiscal Year shall be deemed received, first, in respect of the amounts permitted for such Fiscal Year and, second, in respect of amounts carried over from the prior Fiscal Year) or (y) during the term of this Agreement shall not exceed \$20,000,000 for such Asset Sales and (ii) an amount equal to all Net Cash Proceeds of such Asset Sale are applied to the payment of the Obligations as set forth in, and to the extent required by, *Section 2.9 (Mandatory Prepayments)*;

(g) the Cerritos Sale; and

(h) any Asset Sale in the form of a divestiture of assets acquired after the Closing Date either in connection with a Permitted Acquisition or an Investment permitted by *clauses (f) or (i) of Section 8.3 (Investments)*; *provided, however*, an amount equal to all Net Cash Proceeds of such Asset Sale are applied to the payment of the Obligations as set forth in, and to the extent required by, *Section 2.9 (Mandatory Prepayments)*.

#### ***Section 8.5 Restricted Payments***

The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment except for the following

(a) Restricted Payments by any Subsidiary of the Borrower to the Borrower or any Guarantor;

(b) dividends and distributions declared and paid on the common Stock of the Borrower and payable only in common Stock of the Borrower;

(c) dividends and distributions declared and paid on New Preferred Stock of the Borrower and payable only in additional preferred stock with the same terms as such New Preferred Stock of the Borrower,

(d) cash dividends with respect to the New Preferred Stock and other Stock of the Borrower with terms substantially similar to the New Preferred Stock made in any Fiscal Year in an amount not to exceed the sum of the amount of (i) Excess Cash Flow of the Borrower for the preceding Fiscal Year not otherwise used to prepay Loans pursuant to *clause (b) of Section 2.9 (Mandatory Prepayments)* plus (ii) Net Cash Proceeds from Equity Issuances received after the Closing Date not otherwise used for Permitted Acquisitions or to prepay Loans under *clause (a) of Section 2.9 (Mandatory Prepayments)*, *provided*, that (x) such cash dividends

are funded from Excess Cash Flow and Net Cash Proceeds from Equity Issuances, (y) prior to the date of any such dividend, all interest in respect of the Second Lien Term Loans paid-in-kind or accrued and payable-in-kind shall have been paid in full in cash and (z) before and after giving effect to the payment of such dividends, the First Lien Leverage Ratio does not exceed 3.5 to 1.0;

(e) the redemption of the New Preferred Stock or other preferred stock of the Borrower (with terms substantially similar to the New Preferred Stock) with the Net Cash Proceeds of any Equity Issuance not otherwise used to prepay Loans under *Section 2.9 (Mandatory Prepayments)* or *clause (d)* above; *provided*, that, prior to the date of any such redemption, all interest in respect of the Second Lien Term Loans paid-in-kind or accrued and payable-in-kind shall have been paid in full in cash, and

(f) cash dividends in lieu of fractional shares of (i) common Stock of the Borrower payable in connection with the conversion of New Preferred Stock, or other preferred stock with terms substantially similar to the New Preferred Stock, into common Stock of the Borrower, or (ii) New Preferred Stock, or other preferred stock with terms substantially similar to the New Preferred Stock, payable in connection with scheduled dividend payments not to exceed \$200,000 in the aggregate;

*provided, however*, that such Restricted Payments shall not be permitted if an Event of Default or Default shall have occurred and be continuing at the date of declaration or payment thereof or would result therefrom.

#### ***Section 8.6 Prepayment and Cancellation of Indebtedness***

(a) The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, cancel any claim or Indebtedness owed to any of them except (i) in the ordinary course of business consistent with past practice and (ii) in respect of intercompany Indebtedness among the Borrower and the Guarantors that are Domestic Subsidiaries.

(b) The Borrower shall not, nor shall the Borrower permit any of its Subsidiaries to, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment (i) in violation of any subordination terms of any Indebtedness and (ii) of the Second Lien Term Loan or any other obligations under the Second Lien Credit Agreement (including any payment in violation of the Intercreditor Agreement), *provided, however*, that the Borrower and each Subsidiary of the Borrower may (i) prepay the Obligations in accordance with the terms of this Agreement, (ii) make regularly scheduled or otherwise required repayments or redemptions of Indebtedness, (iii) prepay in full the Existing Indebtedness with the proceeds of the initial Borrowings hereunder or proceeds from the Second Lien Credit Agreement, (iv) prepay Indebtedness payable to the Borrower by any of its Subsidiaries, (v) renew, extend, refinance and refund Indebtedness, as long as such renewal, extension, refinancing or refunding is permitted under *Section 8.1(e) (Indebtedness)*, (vi) prepay Capital Lease Obligations and purchase money Indebtedness permitted under *Section 8.1(d) (Indebtedness)* and (vii) make regularly scheduled payments of interest and fees and, to the extent permitted by this Agreement, mandatory (but not optional) principal payments of Indebtedness under the Second Lien Term Loan

(c) The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, pay in cash any interest in respect of the Second Lien Loans which is paid-in-kind or payable-in-kind except with Excess Cash Flow or the Net Cash Proceeds of Equity Issuances not

otherwise required to be applied to (or, in the case of Equity Issuances, offered to) the prepayment of Obligations in accordance with *clause (b) of Section 2.9 (Mandatory Prepayments)* (whether or not, in the case of Equity Issuances, in fact applied to such Obligations).

***Section 8.7      Restriction on Fundamental Changes; Permitted Acquisitions; Restricted Subsidiaries***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, (a) except in connection with a Permitted Acquisition, (i) merge or consolidate with any Person (other than with other Subsidiaries of the Borrower or the Borrower so long as the Borrower is the surviving Person following such merger or consolidation), (ii) acquire all or substantially all of the Stock or Stock Equivalents of any Person or (iii) acquire all or substantially all of the assets of any Person or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any Person, (b) enter into any joint venture or partnership with any Person (except as permitted by *Section 8.3(j) (Investments)*) or (c) acquire or create any Subsidiary unless, after giving effect to such creation or acquisition, such Subsidiary is a Wholly-Owned Subsidiary of the Borrower (unless such Subsidiary is permitted under *clause (j) of Section 8.3 (Investments)*), the Borrower is in compliance with *Section 7.11 (Additional Collateral and Guaranties)* and the Investment in such Subsidiary is permitted under *Section 8.3(c) (Investments)*.

***Section 8.8      Change in Nature of Business***

The Borrower shall not, and shall not permit any of its Subsidiaries to, make any material change in the nature or conduct of its business as carried on at the date hereof, whether in connection with a Permitted Acquisition or otherwise, except for the entry into business reasonably related or ancillary thereto.

***Section 8.9      Transactions with Affiliates***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, except as otherwise expressly permitted herein, do any of the following: (a) make any Investment in an Affiliate of the Borrower that is not a Subsidiary of the Borrower, (b) transfer, sell, lease, assign or otherwise dispose of any asset to any Affiliate of the Borrower that is not a Subsidiary of the Borrower, (c) merge into or consolidate with or purchase or acquire assets from any Affiliate of the Borrower that is not a Subsidiary of the Borrower, (d) repay prior to its scheduled maturity any Indebtedness, issued or incurred after the Closing Date, to any Affiliate of the Borrower that is not a Subsidiary of the Borrower, (e) enter into any other transaction directly or indirectly with or for the benefit of any Affiliate of the Borrower that is not a Guarantor (including guaranties and assumptions of obligations of any such Affiliate), except for, in the case of this *clause (e)*, (i) transactions in the ordinary course of business on a basis no less favorable to the Borrower or, as the case may be, such Subsidiary thereof as would be obtained in a comparable arm's length transaction with a Person not an Affiliate thereof (as determined in good faith by the board of directors of the Borrower) and (ii) salaries and other director or employee compensation to officers or directors of the Borrower or any of its Subsidiaries commensurate with current compensation levels.

**Section 8.10 Limitations on Restrictions on Subsidiary Distributions; No New Negative Pledge; Restricted Subsidiaries**

(a) Except pursuant to the Loan Documents, agreements governing purchase money Indebtedness or Capital Lease Obligations permitted by *Section 8.1(b), (d), (e) or (k) (Indebtedness)* (in the case of agreements permitted by such clauses, any prohibition or limitation shall only be effective against the assets financed thereby) and agreements relating to Asset Sales permitted under *Section 8.4 (Sales of Assets)* (in the case of such agreements, any prohibition or limitation shall only be effective against the assets or Stock subject to such Asset Sale), the Borrower shall not, and shall not permit any of its Subsidiaries to, (i) agree to enter into or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of such Subsidiary to pay dividends or make any other distribution or transfer of funds or assets or make loans or advances to or other Investments in, or pay any Indebtedness owed to, the Borrower or any other Subsidiary of the Borrower or (ii) enter into or suffer to exist or become effective any agreement prohibiting or limiting the ability of the Borrower or any Subsidiary of the Borrower to create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, to secure the Obligations, including any agreement requiring any other Indebtedness or Contractual Obligation to be equally and ratably secured with the Obligations

(b) Notwithstanding anything herein to the contrary, until the PUC Authorizations contemplated *Section 7.12(b) (Regulatory Consents)* are obtained and each Subsidiary listed on *Schedule 8.10(b) (Restricted Subsidiaries)* has satisfied the Subsidiary Guaranty Requirements, no such Subsidiary of the Borrower shall (i) conduct any business or engage in any activities other than the businesses related to the CATV Franchises or PUC Authorizations, as applicable; (ii) incur any Indebtedness directly or on behalf of the Borrower or any of its other Subsidiaries (other than the incurrence of accounts payable or accrued liabilities in the ordinary course of business; *provided* that such accounts payable or accrued liabilities do not exceed in the aggregate \$5,000,000 for all Subsidiaries listed on *Schedule 8.10(b) (Restricted Subsidiaries)*), or (iii) receive, collect, retain or hold any funds, proceeds or assets (other than such Permits) either directly or on behalf of the Borrower or any of its other Subsidiaries other than in the ordinary course of business; *provided*, that any funds, proceeds or assets are received by such Subsidiary other than in the ordinary course of business shall be immediately transferred to the Borrower.

**Section 8.11 Modification of Constituent Documents**

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to amend its Constituent Documents (including in the terms of its outstanding Stock), except for changes and amendments that do not materially affect the rights and privileges of the Borrower or any Subsidiary of the Borrower and do not materially adversely affect the interests of the Secured Parties under the Loan Documents or in the Collateral.

**Section 8.12 Modification of Second Lien Loan Documents**

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, (a) alter, rescind, terminate, amend, supplement, waive or otherwise modify any provision of any Second Lien Loan Document (except as permitted by the Intercreditor Agreement) or (b) permit any breach or default to exist under any Second Lien Loan Document or take or fail to take any action thereunder, if to do so would have a Material Adverse Effect

***Section 8.13 Accounting Changes; Fiscal Year***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, change its (a) accounting treatment and reporting practices or tax reporting treatment, except as required by GAAP or any Requirement of Law and disclosed to the Lenders and the Administrative Agent or (b) fiscal year.

***Section 8.14 Margin Regulations***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

***Section 8.15 Sale/Leasebacks***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, enter into any sale and leaseback transaction, except as permitted by *Section 8.4(f) (Asset Sales)*.

***Section 8.16 No Speculative Transactions***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, engage in any speculative transaction or in any transaction involving Hedging Contracts except as required by *Section 7.15 (Interest Rate Contract)* or for the sole purpose of hedging in the normal course of business and consistent with industry practices.

***Section 8.17 Compliance with ERISA***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower or any ERISA Affiliate to, cause or permit to occur, (a) an event that could result in the imposition of a Lien under Section 412 of the Code or Section 302 or 4068 of ERISA or (b) ERISA Events that would have a Material Adverse Effect in the aggregate

***Section 8.18 Environmental***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, allow a Release of any Contaminant in violation of any Environmental Law, *provided, however*, that the Borrower shall not be deemed in violation of this *Section 8.18* if all Environmental Liabilities and Costs incurred or reasonably expected to be incurred by the Loan Parties as the consequence of all such Releases shall not exceed \$1,000,000 in the aggregate

***Section 8.19 Patriot Act***

The Borrower shall not, nor shall it permit any Subsidiary of the Borrower to, take any action or permit any circumstance (whether directly or indirectly) the result of which would result in a breach of *Section 4.22 (Prohibited Persons, Trade Restrictions)*

## ARTICLE IX

### EVENTS OF DEFAULT

#### *Section 9.1 Events of Default*

Each of the following events shall be an Event of Default:

(a) the Borrower shall fail to pay any principal of any Loan or any Reimbursement Obligation when the same becomes due and payable, or

(b) the Borrower shall fail to pay any interest on any Loan, any fee under any of the Loan Documents or any other Obligation (other than one referred to in *clause (a)* above) and such non-payment continues for a period of three Business Days after the due date thereof; or

(c) any representation or warranty made or deemed made by any Loan Party in any Loan Document or by any Loan Party (or any of its officers) in connection with any Loan Document shall prove to have been incorrect in any material respect when made or deemed made; or

(d) any Loan Party shall fail to perform or observe (i) any term, covenant or agreement contained in *Article V (Financial Covenants), Section 6.1 (Financial Statements), 6.2 (Default Notices), 7.1 (Preservation of Corporate Existence, Etc.), 7.6 (Access), 7.9 (Application of Proceeds)* or *Article VIII (Negative Covenants)* or (ii) any other term, covenant or agreement contained in this Agreement or in any other Loan Document if such failure under this clause (ii) shall remain unremedied for 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower becomes aware of such failure and (B) the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender, or

(e) (i) the Borrower or any Subsidiary of the Borrower shall fail to make any payment on any Indebtedness of the Borrower or any such Subsidiary (other than the Obligations) or any Guaranty Obligation in respect of Indebtedness of any other Person, and, in each case, such failure relates to Indebtedness having a principal amount of \$1,000,000 or more, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness (including the occurrence of an "Event of Default" pursuant to, and as defined in, the Second Lien Credit Agreement) or (iii) any such Indebtedness shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof, or

(f) (i) the Borrower or any Subsidiary of the Borrower shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors, (ii) any proceeding shall be instituted by or against the Borrower or any Subsidiary of the Borrower seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts, under any Requirement of Law

relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee or other similar official for it or for any substantial part of its property; provided, however, that, in the case of any such proceedings instituted against the Borrower or any Subsidiary of the Borrower (but not instituted by the Borrower or any Subsidiary of the Borrower) either such proceedings shall remain undismissed or unstayed for a period of 30 days or more or any action sought in such proceedings shall occur or (iii) the Borrower or any Subsidiary of the Borrower shall take any corporate action to authorize any action set forth in *clauses (i) and (ii)* above; or

(g) one or more judgments or orders (or other similar process) involving, in the case of money judgments, an aggregate amount in excess of \$1,000,000, to the extent not covered by insurance, shall be rendered against one or more of the Borrower and its Subsidiaries and such judgment or order shall continue for a period of 30 days without being discharged, stayed or bonded pending appeal; or

(h) an ERISA Event shall occur and the amount of all liabilities and deficiencies resulting therefrom, whether or not assessed, exceeds \$1,000,000 in the aggregate, or

(i) any provision of any Loan Document after delivery thereof shall for any reason fail or cease to be valid and binding on, or enforceable against, any Loan Party party thereto, or any Loan Party shall so state in writing; or

(j) any Collateral Document shall for any reason fail or cease to create a valid and enforceable Lien on any Collateral purported to be covered thereby or, except as permitted by the Loan Documents, such Lien shall fail or cease to be a perfected and first-priority Lien, or any Loan Party shall so state in writing; or

(k) there shall occur any Change of Control; or

(l) the Borrower or any Subsidiary of the Borrower shall have entered into one or more consent or settlement decrees or agreements or similar arrangements with a Governmental Authority or one or more judgments, orders, decrees or similar actions shall have been entered against one or more of the Borrower or any Subsidiary of the Borrower based on or arising from the violation of or pursuant to any Environmental Law, or the generation, storage, transportation, treatment, disposal or Release of any Contaminant and, in connection with all the foregoing, the Borrower or any Subsidiary of the Borrower is likely to incur Environmental Liabilities and Costs exceeding \$1,000,000 in the aggregate that were not reflected in the Projections or the Financial Statements delivered pursuant to *Section 4.4 (Financial Statements)* prior to the date hereof; or

(m) the Borrower or any Subsidiary of the Borrower shall (i) default in any payment or payments (which payment or payments are material either individually or in the aggregate) when due of any material Contractual Obligation, or in the performance or observance, of any material obligation or condition of any material Contractual Obligation, unless, but only as long as, the existence of such default is being contested by the Borrower or such Subsidiary in good faith by appropriate proceedings and adequate reserves in respect thereof have been established to the extent required by GAAP, or (ii) allow any Communications License, CATV Franchise or PUC Authorization of the Borrower or of any Subsidiary of the Borrower to be revoked, suspended, cancelled or otherwise terminated and such revocation, suspension, cancellation or termination would have a Material Adverse Effect.

## **Section 9.2 Remedies**

During the continuance of any Event of Default, the Administrative Agent (a) may, and, at the request of the Requisite Lenders, shall, by notice to the Borrower declare that all or any portion of the Commitments be terminated, whereupon the obligation of each Lender to make any Loan and each Issuer to Issue any Letter of Credit shall immediately terminate and (b) may and, at the request of the Requisite Lenders, shall, by notice to the Borrower, declare the Loans, all interest thereon and all other amounts and Obligations payable under this Agreement to be forthwith due and payable, whereupon the Loans, all such interest and all such amounts and Obligations shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; *provided, however*, that upon the occurrence of the Events of Default specified in *Section 9 1(f) (Events of Default)*, (x) the Commitments of each Lender to make Loans and the commitments of each Lender and Issuer to Issue or participate in Letters of Credit shall each automatically be terminated and (y) the Loans, all such interest and all such amounts and Obligations shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower. In addition to the remedies set forth above, the Administrative Agent may exercise any remedies provided for by the Collateral Documents in accordance with the terms thereof or any other remedies provided by applicable law in each case, subject to the terms of the Intercreditor Agreement.

## **Section 9.3 Actions in Respect of Letters of Credit**

At any time (i) upon the Revolving Credit Termination Date, (ii) after the Revolving Credit Termination Date when the aggregate funds on deposit in Cash Collateral Accounts shall be less than 105% of the Letter of Credit Obligations, (iii) as may be required by *Section 2 9(c) or (d) (Mandatory Prepayments)*, the Borrower shall pay to the Administrative Agent in immediately available funds at the Administrative Agent's office referred to in *Section 11 8 (Notices, Etc )*, for deposit in a Cash Collateral Account, (x) in the case of *clauses (i) and (ii)* above, the amount required so that, after such payment, the aggregate funds on deposit in the Cash Collateral Accounts equals or exceeds 105% of the sum of all outstanding Letter of Credit Obligations and (y) in the case of *clause (iii)* above, the amount required by *Section 2.9(c) or (d) (Mandatory Prepayments)*. The Administrative Agent may, from time to time after funds are deposited in any Cash Collateral Account, apply funds then held in such Cash Collateral Account to the payment of any amounts, in accordance with *Section 2 9(c) or (d) (Mandatory Prepayments)* and *Section 2 13(g) (Payments and Computations)*, as shall have become or shall become due and payable by the Borrower to the Issuers or Lenders in respect of the Letter of Credit Obligations. The Administrative Agent shall promptly give written notice of any such application, *provided, however*, that the failure to give such written notice shall not invalidate any such application.

## **Section 9.4 Regulatory Approvals**

Upon any action by the Administrative Agent or Collateral Agent to commence the exercise of remedies hereunder or under the other Loan Documents, the Borrower hereby undertakes, and agrees to cause each of its Subsidiaries to undertake, to cooperate and join with the Administrative Agent or Collateral Agent in any application to any regulatory body (including the FCC or any PUC), administrative agency, court or other forum, with respect thereto and to provide such assistance in connection therewith as the Administrative Agent or the Collateral Agent may request, including the preparation of filings and appearances of officers and



employees of the Borrower or any of its Subsidiaries before any Governmental Authority, in each case, in support of any such application made by the Administrative Agent or the Collateral Agent and the Borrower shall not, nor shall the Borrower permit any of its Subsidiaries to, directly or indirectly, oppose any such action by the Administrative Agent or the Collateral Agent before any Governmental Authority.

#### ***Section 9.5      Rescission***

If at any time after termination of the Commitments or acceleration of the maturity of the Loans, the Borrower shall pay all arrears of interest and all payments on account of principal of the Loans and Reimbursement Obligations that shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified herein) and all Events of Default and Defaults (other than non-payment of principal of and accrued interest on the Loans due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to *Section 11.1 (Amendments, Waivers, Etc.)*, then upon the written consent of the Requisite Lenders and written notice to the Borrower, the termination of the Commitments or the acceleration and their consequences may be rescinded and annulled, *provided, however*, that such action shall not affect any subsequent Event of Default or Default or impair any right or remedy consequent thereon. The provisions of the preceding sentence are intended merely to bind the Lenders and the Issuers to a decision that may be made at the election of the Requisite Lenders, and such provisions are not intended to benefit the Borrower and do not give the Borrower the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

### **ARTICLE X**

#### **THE ADMINISTRATIVE AGENT**

#### ***Section 10.1      Authorization and Action***

(a) Each Lender and each Issuer hereby appoints Credit Suisse, acting through one or more of its branches, as the Administrative Agent and the Collateral Agent hereunder, and each Lender and each Issuer authorizes the Administrative Agent and the Collateral Agent to take such action as agent on their behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent or the Collateral Agent, as applicable, under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and each Issuer hereby authorizes the Administrative Agent and the Collateral Agent to execute and deliver, and to perform its respective obligations under, each of the Loan Documents to which it is a party, to exercise all rights, powers and remedies that the Administrative Agent or the Collateral Agent, as applicable, may have under such Loan Documents and, in the case of the Collateral Agent with respect to the Collateral Documents, to act as agent for the Lenders, the Issuers and the other Secured Parties under such Collateral Documents. In particular, each Lender agrees to the terms of the Intercreditor Agreement and to be bound by the terms thereof as if it were a party thereto (including *Section 5.6* thereof).

(b) As to any matters not expressly provided for by this Agreement and the other Loan Documents (including enforcement or collection), the Administrative Agent and the Collateral Agent 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 Requisite Lenders, and such instructions shall be binding upon all Lenders; *provided, however*, that the Administrative Agent and the Collateral Agent shall not be required to take any action that (i) the Administrative Agent or the Collateral Agent in good faith believes exposes it to personal liability unless it receives an indemnification satisfactory to it from the Lenders with respect to such action or (ii) is contrary to this Agreement or applicable law. The Administrative Agent and the Collateral Agent each agree to give to each Lender and each Issuer prompt notice of each notice given by any Loan Party pursuant to *Article II* hereof or as otherwise expressly required by the terms of this Agreement or the other Loan Documents.

(c) In performing its functions and duties hereunder and under the other Loan Documents, each of the Administrative Agent and the Collateral Agent is acting solely on behalf of the Lenders and the Issuers except to the limited extent provided in *Section 2.7(b) (Evidence of Debt)*, and their respective duties are entirely administrative in nature. Neither the Administrative Agent nor the Collateral Agent assume and shall not be deemed to have assumed any obligation other than as expressly set forth herein and in the other Loan Documents or any other relationship as the agent, fiduciary or trustee of or for any Lender or holder of any other Obligation. The Administrative Agent and the Collateral Agent may perform any of its duties under any Loan Document by or through its agents or employees.

(d) The Arranger shall have no obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity.

#### ***Section 10.2 Reliance by Agents, Etc.***

None of the Administrative Agent, the Collateral Agent, nor any of their respective Affiliates or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it, him, her or them under or in connection with this Agreement or the other Loan Documents, except for its, his, her or their own gross negligence or willful misconduct. Without limiting the foregoing, the Administrative Agent and the Collateral Agent (a) may treat the payee of any Note as its holder until such Note has been assigned in accordance with *Section 2.7 (Evidence of Debt)*, (b) may rely on the Register to the extent set forth in *Section 11.2 (Assignments and Participations)*, (c) may consult with legal counsel (including counsel to the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (d) makes no warranty or representation to any Lender or Issuer and shall not be responsible to any Lender or Issuer for any statements, warranties or representations made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document, (e) shall not have any duty to ascertain or to inquire either as to the performance or observance of any term, covenant or condition of this Agreement or any other Loan Document, as to the financial condition of any Loan Party or as to the existence or possible existence of any Default or Event of Default, (f) shall not be responsible to any Lender or Issuer for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto or thereto and (g) shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other

instrument or writing (which writing may be a telecopy or electronic mail) or any telephone message believed by it to be genuine and signed or sent by the proper party or parties.

***Section 10.3 Posting of Approved Electronic Communications***

(a) Each of the Lenders, the Issuers and the Borrower agree, and the Borrower shall cause each Guarantor to agree, that the Administrative Agent and the Collateral Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders and Issuers by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent and the Collateral Agent to be its electronic transmission system (the “*Approved Electronic Platform*”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Closing Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuers and the Borrower acknowledges and agrees, and the Borrower shall cause each Guarantor to acknowledge and agree, that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each of the Lenders, the Issuers and the Borrower hereby approves, and the Borrower shall cause each Guarantor to approve, distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes, and the Borrower shall cause each Guarantor to understand and assume, the risks of such distribution.

(c) The Approved Electronic Communications and the Approved Electronic Platform are provided “*as is*” and “*as available*” None of the Administrative Agent, the Collateral Agent or any of their respective Affiliates or any of their respective officers, directors, employees, agents, advisors or representatives (the “*Agent Affiliates*”) warrant the accuracy, adequacy or completeness of the Approved Electronic Communications and the Approved Electronic Platform and each expressly disclaims liability for errors or omissions in the Approved Electronic Communications and the Approved Electronic Platform No Warranty of any kind, express, implied or statutory (including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects) is made by the agent affiliates in connection with the approved electronic communications or the approved electronic platform.

(d) Each of the Lenders, the Issuers and the Borrower agree, and the Borrower shall cause each Guarantor to agree, that the Administrative Agent and the Collateral Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Administrative Agent’s generally-applicable document retention procedures and policies

#### ***Section 10.4 The Agents Individually***

With respect to its Ratable Portion, each Agent that is a Lender shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender. The terms "*Lenders*", "*Revolving Credit Lenders*", "*Term Loan Lenders*", "*Requisite Lenders*" and any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender, a Revolving Credit Lender, Term Loan Lender or as one of the Requisite Lenders. Each Agent and each of its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with, any Loan Party as if such Agent were not acting as an Agent.

#### ***Section 10.5 Lender Credit Decision***

Each Lender and each Issuer acknowledges that it shall, independently and without reliance upon any Agent or any other Lender conduct its own independent investigation of the financial condition and affairs of the Borrower and each other Loan Party in connection with the making and continuance of the Loans and with the issuance of the Letters of Credit. Each Lender and each Issuer also acknowledges that it shall, independently and without reliance upon the Agents 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 and other Loan Documents.

#### ***Section 10.6 Indemnification***

Each Lender agrees to indemnify the Administrative Agent, the Collateral Agent and, in each case, each of its Affiliates, and each of their respective directors, officers, employees, agents and advisors (to the extent not reimbursed by the Borrower), from and against such Lender's aggregate Ratable Portion of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements (including fees, expenses and disbursements of financial and legal advisors) of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against, the Administrative Agent, the Collateral Agent or any of its Affiliates, directors, officers, employees, agents and advisors in any way relating to or arising out of this Agreement or the other Loan Documents or any action taken or omitted by the Administrative Agent or the Collateral Agent under this Agreement or the other Loan Documents, *provided, however*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or Collateral Agent's or such Affiliate's gross negligence or willful misconduct. Without limiting the foregoing, each Lender agrees to reimburse the Administrative Agent and Collateral Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including fees, expenses and disbursements of financial and legal advisors) incurred by the Administrative Agent or the Collateral Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement or the other Loan Documents, to the extent that the Administrative Agent or the Collateral Agent is not reimbursed for such expenses by the Borrower or another Loan Party.

### ***Section 10.7 Successor Agents***

The Administrative Agent and the Collateral Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Administrative Agent or Collateral Agent, as applicable. If no successor Administrative Agent or Collateral Agent shall have been so appointed by the Requisite Lenders, and shall have accepted such appointment, within 30 days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Administrative Agent or Collateral Agent, as applicable, selected from among the Lenders. Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent or as Collateral Agent by a successor Collateral Agent, such successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the applicable retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Agent's resignation hereunder as Administrative Agent or Collateral Agent, the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Administrative Agent or Collateral Agent, as applicable, under the Loan Documents. After such resignation, any retiring Agent shall continue to have the benefit of this *Article X* as to any actions taken or omitted to be taken by it while it was Administrative Agent or Collateral Agent, as applicable, under this Agreement and the other Loan Documents. If no Person has accepted the appointment as successor Collateral Agent, as provided above, the Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of, the applicable retiring Collateral Agent effective upon its resignation until a successor Collateral Agent has been appointed in accordance with the terms hereof. If no Person has accepted the appointment as successor Administrative Agent or the Administrative Agent has not succeeded a retiring Collateral Agent, in each case, as provided above, the Requisite Lenders shall succeed to, and become vested with, all the rights, powers, privileges and duties of, the applicable retiring Agent effective upon its resignation.

### ***Section 10.8 Concerning the Collateral and the Collateral Documents***

(a) Each Lender and each Issuer agrees that any action taken by the Administrative Agent, the Collateral Agent or the Requisite Lenders (or, where required by the express terms of this Agreement, a greater proportion of the Lenders) in accordance with the provisions of this Agreement, or of the other Loan Documents, and the exercise by the Administrative Agent, the Collateral Agent or the Requisite Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders, Issuers and other Secured Parties. Without limiting the generality of the foregoing and, in each case, subject to *Section 10.7 (Successor Agents)*, (i) the Administrative Agent shall have the sole and exclusive right and authority to act as the disbursing and collecting agent for the Lenders and the Issuers with respect to all payments and collections arising in connection herewith and with the Collateral Documents, (ii) the Collateral Agent shall have the sole and exclusive right and authority to (A) execute and deliver each Collateral Document and accept delivery of each such agreement delivered by the Borrower or any of its Subsidiaries, (B) act as collateral agent for the Lenders, the Issuers and the other Secured Parties for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein, *provided, however*, that the Collateral Agent hereby appoints, authorizes and directs each Lender and Issuer to act as collateral sub-agent for the Administrative Agent, the Lenders and the Issuers for

purposes of the perfection of all security interests and Liens with respect to the Collateral, including any Deposit Accounts maintained by a Loan Party with, and cash and Cash Equivalents held by, such Lender or such Issuer, (C) manage, supervise and otherwise deal with the Collateral and (D) take such action as is necessary or desirable to maintain the perfection and priority of the security interests and Liens created or purported to be created by the Collateral Documents and (iii) the Administrative Agent, and the Collateral Agent at the direction of the Administrative Agent, shall have the exclusive right and authority to (except as may be otherwise specifically restricted by the terms hereof or of any other Loan Document) exercise all remedies given to the Administrative Agent, the Lenders, the Issuers and the other Secured Parties with respect to the Collateral under the Loan Documents relating thereto, applicable law or otherwise.

(b) Each of the Lenders and the Issuers hereby consents to the release and hereby directs, in accordance with the terms hereof, the Administrative Agent and the Collateral Agent to release (or, in the case of *clause (ii)* below, release or subordinate) any Lien held by the Administrative Agent or the Collateral Agent for the benefit of the Lenders and the issuers against any of the following:

(i) all of the Collateral and all Loan Parties, upon termination of the Commitments and payment and satisfaction in full of all Loans, all Reimbursement Obligations and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (and, in respect of contingent Letter of Credit Obligations, with respect to which cash collateral has been deposited or a back-up letter of credit has been issued, in either case in the appropriate currency and on terms satisfactory to the Administrative Agent and the applicable Issuers);

(ii) any assets that are subject to a Lien permitted by *Section 8 2(d)* or *(e) (Liens, Etc )*; and

(iii) any part of the Collateral sold or disposed of by a Loan Party if such sale or disposition is permitted by this Agreement (or permitted pursuant to a waiver of or consent to a transaction otherwise prohibited by this Agreement).

Each of the Administrative Agent, Lenders and the Issuers hereby directs the Collateral Agent to execute and deliver or file such termination and partial release statements and do such other things as are necessary to release Liens to be released pursuant to this *Section 10 8* promptly upon the effectiveness of any such release.

#### ***Section 10.9 Actions by the Collateral Agent***

The Collateral Agent shall take, or refrain from taking, any action as directed in writing by the Administrative Agent. Notwithstanding anything to the contrary provided herein or in the Collateral Documents, the Collateral Agent shall not be obligated to take, or refrain from taking, any action (a) to the extent the Collateral Agent has received a written advice from its counsel that such action is in conflict with any applicable law, Collateral Document or order of any Governmental Authority or (b) with respect to which the Collateral Agent, in its reasonable judgment, has not received adequate security or indemnity hereunder or under the Collateral Documents. Nothing in this *Section 10 9* shall impair the right of the Collateral Agent in its discretion to take or omit to take any action which is deemed proper by the Collateral Agent under the Collateral Documents and which it believes in good faith is not inconsistent with any direction of the Administrative Agent delivered pursuant to this *Section 10 9, provided, however,*

the Collateral Agent shall not be under any obligation to take any discretionary action under the provisions of this Agreement or any other Collateral Document unless so directed by the Administrative Agent. The Collateral Agent shall be obliged to perform only such duties as are specifically set forth in this Agreement or any Collateral Document, and no implied covenants or obligations shall be read into this Agreement or any Collateral Document against the Collateral Agent. The Collateral Agent shall, upon receipt of any written direction pursuant to this *Section 10.9*, exercise the rights and powers vested in it by any Collateral Document with respect to such direction, and the Collateral Agent shall not be liable with respect to any action taken or omitted in accordance with such direction. If the Collateral Agent shall seek directions from the Administrative Agent or the Requisite Lenders with respect to any action under any Collateral Document or the Intercreditor Agreement, the Collateral Agent shall not be required to take, or refrain from taking, such action until it shall have received such direction. The Collateral Agent shall not agree to amend or modify the Intercreditor Agreement without the consent of the Requisite Lenders. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as with similar property for its own account. The powers conferred on the Collateral Agent hereunder and under the Collateral Documents are solely to protect the Collateral Agent's interest in the Collateral (for itself and for the benefit of the Secured Parties) and, except as expressly set forth herein, shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers at the direction of the Administrative Agent, and neither the Collateral Agent nor any of its officers, directors, employees or agents shall be responsible to any Secured Party or any Loan Party for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

#### ***Section 10.10 Collateral Matters Relating to Related Obligations***

The benefit of the Loan Documents and of the provisions of this Agreement relating to the Collateral shall extend to and be available in respect of any Secured Obligation arising under any Hedging Contract that is a Loan Document or that is otherwise owed to Persons other than the Administrative Agent, the Collateral Agent, the Lenders and the Issuers (collectively, "*Related Obligations*") solely on the condition and understanding, as among the Administrative Agent, the Collateral Agent and all Secured Parties, that (a) the Related Obligations shall be entitled to the benefit of the Loan Documents and the Collateral to the extent expressly set forth in this Agreement and the other Loan Documents and to such extent the Collateral Agent shall hold, and have the right and power to act with respect to, the Guaranty and the Collateral on behalf of and as agent for the holders of the Related Obligations, but the Collateral Agent is otherwise acting solely as agent for the Lenders and the Issuers and shall have no fiduciary duty, duty of loyalty, duty of care, duty of disclosure or other obligation whatsoever to any holder of Related Obligations, (b) all matters, acts and omissions relating in any manner to the Guaranty, the Collateral, or the omission, creation, perfection, priority, abandonment or release of any Lien, shall be governed solely by the provisions of this Agreement and the other Loan Documents and no separate Lien, right, power or remedy shall arise or exist in favor of any Secured Party under any separate instrument or agreement or in respect of any Related Obligation, (c) each Secured Party shall be bound by all actions taken or omitted, in accordance with the provisions of this Agreement and the other Loan Documents, by the Administrative Agent, the Collateral Agent and the Requisite Lenders, each of whom shall be entitled to act at its sole discretion and exclusively in its own interest given its own Commitments and its own interest in the Loans, Letter of Credit Obligations and other Obligations to it arising under this

Agreement or the other Loan Documents, without any duty or liability to any other Secured Party or as to any Related Obligation and without regard to whether any Related Obligation remains outstanding or is deprived of the benefit of the Collateral or becomes unsecured or is otherwise affected or put in jeopardy thereby, (d) no holder of Related Obligations and no other Secured Party (except the Administrative Agent, the Collateral Agent, the Lenders and the Issuers, to the extent set forth in this Agreement) shall have any right to be notified of, or to direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under this Agreement or the Loan Documents and (e) no holder of any Related Obligation shall exercise any right of setoff, banker's lien or similar right except to the extent provided in *Section 11 6 (Right of Set-off)* and then only to the extent such right is exercised in compliance with *Section 11 7 (Sharing of Payments, Etc.)*.

## ARTICLE XI

### MISCELLANEOUS

#### *Section 11.1 Amendments, Waivers, Etc.*

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be in writing and (x) in the case of an amendment to cure any ambiguity, omission, defect or inconsistency, signed by the Administrative Agent and the Borrower, (y) in the case of any such waiver or consent, signed by the Requisite Lenders (or by the Administrative Agent with the consent of the Requisite Lenders) and (z) in the case of any other amendment, by the Requisite Lenders (or by the Administrative Agent with the consent of the Requisite Lenders) and the Borrower, and then any such 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 each Lender directly affected thereby, in addition to the Requisite Lenders (or the Administrative Agent with the consent thereof), do any of the following.

(i) waive any condition specified in *Section 3.1 (Conditions Precedent to Initial Loans and Letters of Credit)* or *3 2(b) (Conditions Precedent to Each Loan and Letter of Credit)*, except with respect to a condition based upon another provision hereof, the waiver of which requires only the concurrence of the Requisite Lenders and, in the case of the conditions specified in *Section 3 1 (Conditions Precedent to Initial Loans and Letters of Credit)*, subject to the provisions of *Section 3 3 (Determinations of Initial Borrowing Conditions)*;

(ii) increase the Commitment of such Lender or subject such Lender to any additional obligation; *provided, however*, that any such increase with respect to (A) the Term Loan Commitment shall require the consent of the Requisite Term Loan Lenders or (B) the Revolving Credit Commitment shall require the consent of the Requisite Revolving Credit Lenders;

(iii) extend the scheduled final maturity of any Loan owing to such Lender, or waive, reduce or postpone any scheduled date fixed for the payment or reduction of principal or interest of any such Loan or fees owing to such Lender (it being understood that *Section 2 9 (Mandatory Prepayments)* does not provide for scheduled dates fixed for payment) or for the reduction of such Lender's Commitment,



(iv) reduce, or release the Borrower from its obligations to repay, the principal amount of any Loan or Reimbursement Obligation owing to such Lender (other than by the payment or prepayment thereof);

(v) reduce the rate of interest on any Loan or Reimbursement Obligation outstanding and owing to such Lender or any fee payable hereunder to such Lender,

(vi) expressly subordinate any of the Secured Obligations or any Liens securing the Secured Obligations;

(vii) postpone any scheduled date fixed for payment of interest or fees owing to such Lender or waive any such payment;

(viii) change the aggregate Ratable Portions of Lenders required for any or all Lenders to take any action hereunder;

(ix) release all or substantially all of the Collateral except as provided in *Section 10.8(b) (Concerning the Collateral and the Collateral Documents)* or release the Borrower from its payment obligation to such Lender under this Agreement or the Notes owing to such Lender (if any) or release any Guarantor from its obligations under the Guaranty except in connection with the sale or other disposition of a Guarantor (or all or substantially all of the assets thereof) permitted by this Agreement (or permitted pursuant to a waiver or consent of a transaction otherwise prohibited by this Agreement); and provided that any proceeds from such sale or disposition are applied as required hereby;

(x) amend *Section 10.8(b) (Concerning the Collateral and the Collateral Documents)*, *Section 11.7 (Sharing of Payments, Etc.)*, this *Section 11.1* or either definition of the terms "Requisite Lenders" or "Ratable Portion"; and provided, further, that (w) any modification of the application of payments to the Term Loans pursuant to *Section 2.9 (Mandatory Prepayments)* shall require the consent of the Requisite Term Loan Lenders and any such modification of the application of payments to the Revolving Loans pursuant to *Section 2.9 (Mandatory Prepayments)* shall require the consent of the Requisite Revolving Credit Lenders, (x) no amendment, waiver or consent shall, unless in writing and signed by any Special Purpose Vehicle that has been granted an option pursuant to *Section 11.2(e) (Assignments and Participations)*, affect the grant or nature of such option or the right or duties of such Special Purpose Vehicle hereunder, (y) 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 Agreement or the other Loan Documents and (z) no amendment, waiver or consent shall, unless in writing and signed by the Swing Loan Lender in addition to the Lenders required above to take such action, affect the rights or duties of the Swing Loan Lender under this Agreement or the other Loan Documents, and provided, further, that the Administrative Agent may, with the consent of the Borrower, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or any Issuer.

(b) The Administrative Agent may, but shall have no obligation to, with the written concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(c) If, in connection with any proposed amendment, modification, waiver or termination requiring the consent of any Lender whose consent is required is not obtained when due (each such Lender, a "*Non-Consenting Lender*"), then, as long as the Lender acting as the Administrative Agent is not a Non-Consenting Lender, at the Borrower's request (and sole cost and expense), an Eligible Assignee acceptable to the Administrative Agent shall have the right with the Administrative Agent's consent and in the Administrative Agent's sole discretion (but shall have no obligation) to purchase from such Non-Consenting Lender, and such Non-Consenting Lender agrees that it shall, upon the Administrative Agent's request, sell and assign to the Lender acting as the Administrative Agent or such Eligible Assignee, all or any portion of the Revolving Credit Commitments and Revolving Credit Outstandings of such Non-Consenting Lender if such Non-Consenting Lender is a Revolving Credit Lender and all or any portion of the Term Loans of such Non-Consenting Lender if such Non-Consenting Lender is a Term Loan Lender, in each case, for an amount equal to the principal balance of all such Revolving Loans or Term Loans, as applicable, held by the Non-Consenting Lender, all accrued and unpaid interest and fees with respect thereto through the date of sale *plus* an amount equal to the Applicable Prepayment Premium calculated with respect to the principal amount of Revolving Credit Commitments and Revolving Credit Outstandings and/or Term Loans so purchased as of the date of such purchase; *provided, however*, that such purchase and sale shall be recorded in the Register maintained by the Administrative Agent and not be effective until (x) the Administrative Agent shall have received from such Eligible Assignee an agreement in form and substance satisfactory to the Administrative Agent and the Borrower whereby such Eligible Assignee shall agree to be bound by the terms hereof and (y) such Non-Consenting Lender shall have received payments of all Revolving Loans or Term Loans, as applicable, held by it and all accrued and unpaid interest, fees, unreimbursed costs and expenses and indemnities with respect thereto through the date of the sale. Each Lender agrees that, if it becomes a Non-Consenting Lender, it shall execute and deliver to the Administrative Agent an Assignment and Acceptance to evidence such sale and purchase and shall deliver to the Administrative Agent any Note (if the assigning Lender's Loans are evidenced by Notes) subject to such Assignment and Acceptance, *provided, however*, that the failure of any Non-Consenting Lender to execute an Assignment and Acceptance shall not render such sale and purchase (and the corresponding assignment) invalid and, such assignment shall be recorded in the Register and such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance for all purposes of this Agreement and the other Loan Documents.

### ***Section 11.2 Assignments and Participations***

(a) Each Lender may sell, transfer, negotiate or assign to one or more Eligible Assignees all or a portion of its rights and obligations hereunder (including all of its rights and obligations with respect to the Term Loans, the Revolving Loans, the Swing Loans and the Letters of Credit), *provided, however*, that (i) if any such assignment shall be of the assigning Lender's Revolving Credit Outstandings and Revolving Credit Commitments, such assignment shall cover the same percentage of such Lender's Revolving Credit Outstandings and Revolving

Credit Commitment, (ii) the aggregate amount being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event (if less than the assigning Lender's entire interest) be less than \$1,000,000 or an integral multiple of \$100,000 in excess thereof (treating multiple, simultaneous assignments by or to two or more Approved Funds which are Affiliates or share the same (or affiliated) manager or advisor as a single assignment for purposes of this *clause (a)*), except, in either case, (A) with the consent of the Borrower and the Administrative Agent or (B) if such assignment is being made to a Lender or an Affiliate or Approved Fund of such Lender, (iii) if such Eligible Assignee is not, prior to the date of such assignment, a Lender or an Affiliate or Approved Fund of a Lender, such assignment shall be subject to the prior consent of the Administrative Agent and, in the case of an assignment with respect to the Revolving Credit Facility, of the Issuer (which consents shall not be unreasonably withheld or delayed); *provided, however*, that if such assignment causes any Person (other than CSFB or an Affiliate of CSFB), together with any Affiliates of such Person, to hold in excess of 50% of the principal amount of the Obligations, or such assignment is to a Person holding in excess of 50% of the principal amount of the Obligations, such assignment shall be subject to the prior consent of the Borrower (which consent shall not be unreasonably withheld, delayed or conditioned). Any such assignment need not be ratable as among the Term Loan Facility and the Revolving Credit Facility and if any such assignment shall be by a Revolving Credit Lender, Issuer or Swing Loan Lender, such assignment shall require the prior consent of the Administrative Agent.

(b) The parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, together with any Note (if the assigning Lender's Loans are evidenced by a Note) subject to such assignment (such new Note or Notes shall be dated the Closing Date and shall otherwise be in the form of the Note or Notes replaced thereby) and any administrative questionnaire, tax forms or other documents required by the Administrative Agent. Upon its receipt of an Assignment and Acceptance executed by the assigning Lender and the Eligible Assignee the Lender or Eligible Assignee shall pay to the Administrative Agent a registration and processing fee of \$3,500 for each assignment (except that no such registration and processing fee shall be payable in the case of (i) an Assignment and Acceptance which is electronically executed and delivered to the Administrative Agent via an electronic settlement system (which system shall initially be ClearPar LLC) or (ii) an Eligible Assignee which is already a Lender or is an Affiliate of such Lender in respect of any assignment made pursuant to *Section 2.17 (Substitution of Lenders)* and *Section 11.1(c) (Amendments, Waivers, Etc.)*). Commencing on the effective date specified in such Assignment and Acceptance, (i) the Eligible Assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender, and if such Lender were an Issuer, of such Issuer hereunder and thereunder, (ii) the Notes (if any) corresponding to the Loans assigned thereby shall be transferred to such assignee by notation in the Register and (iii) the assigning Lender thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except for those surviving the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto)

(c) The Administrative Agent shall maintain at its address referred to in *Section 11 8 (Notices, Etc )* a copy of each Assignment and Acceptance delivered to and accepted by it and shall record in the Register the names and addresses of the Lenders and Issuers and the principal amount of the Loans and Reimbursement Obligations owing to each Lender from time to time and the Commitments of each Lender. Any assignment pursuant to this *Section 11 2* shall not be effective until such assignment is recorded in the Register. For so long as the Term Loans are outstanding, the Administrative Agent shall promptly deliver to the Borrower a report following the end of each calendar month summarizing all assignments made and recorded in the Register during such month pursuant to this *Section 11 2*

(d) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an Eligible Assignee, the Administrative Agent shall, if such Assignment and Acceptance has been completed, (i) accept such Assignment and Acceptance and (ii) record or cause to be recorded the information contained therein in the Register. Within five Business Days after its receipt of such notice, the Borrower, at its own expense, shall, if requested by such assignee, execute and deliver to the Administrative Agent new Notes to the order of such assignee in an amount equal to the Commitments and Loans assumed by it pursuant to such Assignment and Acceptance and, if the assigning Lender has surrendered any Note for exchange in connection with the assignment and has retained Commitments or Loans hereunder, new Notes to the order of the assigning Lender in an amount equal to the Commitments and Loans retained by it hereunder. Such new Notes shall be dated the same date as the surrendered Notes and be in substantially the form of *Exhibit B-1 (Form of Revolving Credit Note)* or *Exhibit B-2 (Form of Term Note)*, as applicable.

(e) In addition to the other assignment rights provided in this *Section 11 2*, each Revolving Credit Lender may do each of the following:

(i) grant to a Special Purpose Vehicle the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder and the exercise of such option by any such Special Purpose Vehicle and the making of Loans pursuant thereto shall satisfy (once and to the extent that such Loans are made) the obligation of such Lender to make such Loans thereunder; *provided, however*, that (x) nothing herein shall constitute a commitment or an offer to commit by such a Special Purpose Vehicle to make Loans hereunder and no such Special Purpose Vehicle shall be liable for any indemnity or other Obligation (other than the making of Loans for which such Special Purpose Vehicle shall have exercised an option, and then only in accordance with the relevant option agreement) and (y) such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain responsible to the other parties for the performance of its obligations under the terms of this Agreement and shall remain the holder of the Obligations for all purposes hereunder; and

(ii) assign, as collateral or otherwise, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) without notice to or consent of the Administrative Agent or the Borrower, any Federal Reserve Bank (pursuant to Regulation A of the Federal Reserve Board) and (B) without consent of the Administrative Agent or the Borrower, (1) any holder of, or trustee for the benefit of, the holders of such Revolving Credit Lender's Securities and (2) any Special Purpose Vehicle to which such Revolving Credit Lender has granted an option pursuant to *clause (i)* above,

*provided, however*, that no such assignment or grant shall release such Revolving Credit Lender from any of its obligations hereunder except as expressly provided in *clause (i)* above and except, in the case of a subsequent foreclosure pursuant to an assignment as collateral, if such foreclosure is made in compliance with the other provisions of this *Section 11.2* other than this *clause (e)* or *clause (f)* below. Each party hereto acknowledges and agrees that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any such Special Purpose Vehicle, such party shall not institute against, or join any other Person in instituting against, any Special Purpose Vehicle that has been granted an option pursuant to this *clause (e)* any bankruptcy, reorganization, insolvency or liquidation proceeding (such agreement shall survive the payment in full of the Obligations). The terms of the designation of, or assignment to, such Special Purpose Vehicle shall not restrict such Lender's ability to, or grant such Special Purpose Vehicle the right to, consent to any amendment or waiver to this Agreement or any other Loan Document or to the departure by the Borrower from any provision of this Agreement or any other Loan Document without the consent of such Special Purpose Vehicle except, as long as the Administrative Agent and the Lenders, Issuers and other Secured Parties shall continue to, and shall be entitled to continue to, deal solely and directly with such Lender in connection with such Lender's obligations under this Agreement, to the extent any such consent would reduce the principal amount of, or the rate of interest on, any Obligations, amend this *clause (e)* or postpone any scheduled date of payment of such principal or interest. Each Special Purpose Vehicle shall be entitled to the benefits of *Sections 2.15 (Capital Adequacy)* and *2.16 (Taxes)* and of *2.14(d) (Illegality)* as if it were such Lender; *provided, however*, that anything herein to the contrary notwithstanding, no Borrower shall, at any time, be obligated to make under *Section 2.15 (Capital Adequacy)*, *2.16 (Taxes)* or *2.14(d) (Illegality)* to any such Special Purpose Vehicle and any such Lender any payment in excess of the amount the Borrower would have been obligated to pay to such Lender in respect of such interest if such Special Purpose Vehicle had not been assigned the rights of such Lender hereunder; and *provided, further*, that such Special Purpose Vehicle shall have no direct right to enforce any of the terms of this Agreement against the Borrower, the Administrative Agent or the other Lenders.

(f) Each Lender may sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Term Loans, Revolving Loans and Letters of Credit). The terms of such participation shall not, in any event, require the participant's consent to any amendments, waivers or other modifications of any provision of any Loan Documents, the consent to any departure by any Loan Party therefrom, or to the exercising or refraining from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce the obligations of the Loan Parties), except if any such amendment, waiver or other modification or consent would (i) reduce the amount, or postpone any date fixed for, any amount (whether of principal, interest or fees) payable to such participant under the Loan Documents, to which such participant would otherwise be entitled under such participation or (ii) result in the release of all or substantially all of the Collateral other than in accordance with *Section 10.8(b) (Concerning the Collateral and the Collateral Documents)*. In the event of the sale of any participation by any Lender, (w) such Lender's obligations under the Loan Documents shall remain unchanged, (x) such Lender shall remain solely responsible to the other parties for the performance of such obligations, (y) such Lender shall remain the holder of such Obligations for all purposes of this Agreement and (z) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Each participant shall be entitled to the benefits of *Sections 2.15 (Capital Adequacy)* and *2.16 (Taxes)* and of *2.14(d) (Illegality)* as if it

were a Lender, *provided, however*, that anything herein to the contrary notwithstanding, the Borrower shall not, at any time, be obligated to make under *Section 2.15 (Capital Adequacy)*, *2.16 (Taxes)* or *2.14(d) (Illegality)* to the participants in the rights and obligations of any Lender (together with such Lender) any payment in excess of the amount the Borrower would have been obligated to pay to such Lender in respect of such interest had such participation not been sold, *provided, further*, that such participant in the rights and obligations of such Lender shall have no direct right to enforce any of the terms of this Agreement against the Borrower, the Administrative Agent or the other Lenders.

(g) Any Issuer may at any time assign its rights and obligations hereunder to any other Lender by an instrument in form and substance satisfactory to the Borrower, the Administrative Agent, such Issuer and such Lender, subject to the provisions of *Section 2.7(b) (Evidence of Debt)* relating to notations of transfer in the Register. If any Issuer ceases to be a Lender hereunder by virtue of any assignment made pursuant to this *Section 11.2*, then, as of the effective date of such cessation, such Issuer's obligations to Issue Letters of Credit pursuant to *Section 2.4 (Letters of Credit)* shall terminate and such Issuer shall be an Issuer hereunder only with respect to outstanding Letters of Credit issued prior to such date.

(h) The parties to this Agreement acknowledge that the provisions of this *Section 11.2* concerning assignments relate only to absolute assignments and that such provisions do not prohibit pledges or assignments creating security interests in the Loans or Notes, including any such pledge or assignment by any Lender to any Federal Reserve Bank in accordance with applicable law.

### ***Section 11.3 Costs and Expenses***

(a) The Borrower agrees upon demand to pay, or reimburse the Administrative Agent and the Collateral Agent for, all of its respective reasonable internal and external audit, legal, appraisal, valuation, filing, document duplication and reproduction and investigation expenses and for all other reasonable out-of-pocket costs and expenses of every type and nature (including the reasonable fees, expenses and disbursements of the Administrative Agent's and Collateral Agent's counsel, Weil, Gotshal & Manges LLP, local legal counsel, auditors, accountants, appraisers, printers, insurance and environmental advisors, and other consultants and agents) incurred by the Administrative Agent or the Collateral Agent in connection with any of the following: (i) such Agent's audit and investigation of the Borrower and its Subsidiaries in connection with the preparation, negotiation or execution of any Loan Document or Administrative Agent's periodic audits of the Borrower or any of its Subsidiaries, as the case may be, (ii) the preparation, negotiation, execution or interpretation of this Agreement (including the satisfaction or attempted satisfaction of any condition set forth in *Article III (Conditions To Loans And Letters Of Credit)*), any Loan Document or any proposal letter or commitment letter issued in connection therewith, or the making of the Loans hereunder, (iii) the creation, perfection or protection of the Liens under any Loan Document (including any reasonable fees, disbursements and expenses for local counsel in various jurisdictions), (iv) the ongoing administration of this Agreement and the Loans, including consultation with attorneys in connection therewith and with respect to such Agent's rights and responsibilities hereunder and under the other Loan Documents, (v) the protection, collection or enforcement of any Obligation or the enforcement of any Loan Document, (vi) the commencement, defense or intervention in any court proceeding relating in any way to the Obligations, any Loan Party, any of the Borrower's Subsidiaries, the Second Lien Loan Documents, this Agreement or any other Loan Document, (vii) the response to, and preparation for, any subpoena or request for document

production with which either such Agent is served or deposition or other proceeding in which such Agent is called to testify, in each case, relating in any way to the Obligations, any Loan Party, any of the Borrower's Subsidiaries, the Second Lien Loan Documents, this Agreement or any other Loan Document or (viii) any amendment, consent, waiver, assignment, restatement, or supplement to any Loan Document or the preparation, negotiation and execution of the same.

(b) The Borrower further agrees to pay or reimburse each Agent and each of the Lenders and Issuers upon demand for all out-of-pocket costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel and costs of settlement), incurred by the such Agent, such Lenders or such Issuers in connection with any of the following: (i) in enforcing any Loan Document or Obligation or any security therefor or exercising or enforcing any other right or remedy available by reason of an Event of Default, (ii) refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or in any insolvency or bankruptcy proceeding, (iii) in commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to the Obligations, any Loan Party, any of the Borrower's Subsidiaries and related to or arising out of the transactions contemplated hereby or by any other Loan Document or Second Lien Loan Document or (iv) in taking any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) described in *clause (i), (ii) or (iii)* above.

#### **Section 11.4 Indemnities**

(a) The Borrower agrees to indemnify and hold harmless the Administrative Agent, the Collateral Agent, the Arranger, each Lender and each Issuer (including each Person obligated on a Hedging Contract that is a Loan Document if such Person was a Lender, Issuer, Agent or an Affiliate of an Agent at the time it entered into such Hedging Contract) and each of their respective Affiliates, and each of the directors, officers, employees, agents, trustees, shareholders, controlling persons, members, representatives, attorneys, consultants and advisors of or to any of the foregoing (including those retained in connection with the satisfaction or attempted satisfaction of any condition set forth in *Article III (Conditions To Loans And Letters Of Credit)* (each such Person being an "Indemnitee") from and against any and all claims, damages, liabilities, obligations, losses, penalties, actions, judgments, suits, costs, disbursements and expenses, joint or several, of any kind or nature (including reasonable fees, disbursements and expenses of financial and legal advisors to any such Indemnitee) that may be imposed on, incurred by or asserted against any such Indemnitee in connection with or arising out of any investigation, litigation or proceeding, whether or not such investigation, litigation or proceeding is brought by the Borrower, an Affiliate of the Borrower, any such Indemnitee or any of its directors, security holders or creditors or any such Indemnitee, director, security holder or creditor is a party thereto, whether direct, indirect, or consequential and whether based on any federal, state or local law or other statutory regulation, securities or commercial law or regulation, or under common law or in equity, or on contract, tort or otherwise, in any manner relating to or arising out of this Agreement, any other Loan Document, any Obligation, any Letter of Credit, any Disclosure Document, any Second Lien Loan Document, or any act, event or transaction related or attendant to any thereof, or the use or intended use of the proceeds of the Loans or Letters of Credit or in connection with any investigation of any potential matter covered hereby (collectively, the "*Indemnified Matters*"), *provided, however*, that the Borrower shall not have any liability under this *Section 11.4* to an Indemnitee with respect to any Indemnified Matter that has resulted primarily from the gross negligence or willful misconduct of that Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

Without limiting the foregoing, "*Indemnified Matters*" include (i) all Environmental Liabilities and Costs arising from or connected with the past, present or future operations of the Borrower or any of its Subsidiaries involving any property subject to a Collateral Document, or damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Contaminants on, upon or into such property or any contiguous real estate, (ii) any costs or liabilities incurred in connection with any Remedial Action concerning the Borrower or any of its Subsidiaries, (iii) any costs or liabilities incurred in connection with any Environmental Lien and (iv) any costs or liabilities incurred in connection with any other matter under any Environmental Law, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (49 U.S.C. § 9601 *et seq.*) and applicable state property transfer laws, whether, with respect to any such matter, such Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor in interest to the Borrower or any of its Subsidiaries, or the owner, lessee or operator of any property of the Borrower or any of its Subsidiaries by virtue of foreclosure, except, with respect to those matters referred to in *clauses (i), (ii), (iii) and (iv)* above, to the extent (x) incurred following foreclosure by the Administrative Agent, the Collateral Agent, any Lender or any Issuer, or the Administrative Agent, any Lender or any Issuer having become the successor in interest to the Borrower or any of its Subsidiaries and (y) attributable solely to acts of the Administrative Agent, the Collateral Agent, such Lender or such Issuer or any agent on behalf of such Agent, such Lender or such Issuer.

(b) The Borrower shall indemnify the Administrative Agent, the Collateral Agent, the Lenders and each Issuer for, and hold the Administrative Agent, the Collateral Agent, the Lenders and each issuer harmless from and against, any and all claims for brokerage commissions, fees and other compensation made against the Administrative Agent, the Collateral Agent, the Lenders and the Issuers for any broker, finder or consultant with respect to any agreement, arrangement or understanding made by or on behalf of any Loan Party or any of its Subsidiaries in connection with the transactions contemplated by this Agreement.

(c) The Borrower, at the request of any Indemnitee, shall have the obligation to defend against any investigation, litigation or proceeding or requested Remedial Action, in each case contemplated in *clause (a)* above, and the Borrower, in any event, may participate in the defense thereof with legal counsel of the Borrower's choice. In the event that such indemnitee requests the Borrower to defend against such investigation, litigation or proceeding or requested Remedial Action, the Borrower shall promptly do so and such Indemnitee shall have the right to have legal counsel of its choice participate in such defense. No action taken by legal counsel chosen by such Indemnitee in defending against any such investigation, litigation or proceeding or requested Remedial Action, shall vitiate or in any way impair the Borrower's obligation and duty hereunder to indemnify and hold harmless such Indemnitee.

(d) The Borrower agrees that any indemnification or other protection provided to any Indemnitee pursuant to this Agreement (including pursuant to this *Section 11.4*) or any other Loan Document shall (i) survive payment in full of the Obligations and (ii) inure to the benefit of any Person that was at any time an Indemnitee under this Agreement or any other Loan Document

### ***Section 11.5 Limitation of Liability***

(a) The Borrower agrees that no Indemnitee shall have any liability (whether in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated



hereby and in the other Loan Documents and Second Lien Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnatee's gross negligence or willful misconduct. In no event, however, shall any Indemnatee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). The Borrower hereby waives, releases and agrees (each for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(b) IN NO EVENT SHALL ANY AGENT AFFILIATE HAVE ANY LIABILITY TO ANY LOAN PARTY, LENDER, ISSUER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT OR CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY OR ANY AGENT AFFILIATE'S TRANSMISSION OF APPROVED ELECTRONIC COMMUNICATIONS THROUGH THE INTERNET OR ANY USE OF THE APPROVED ELECTRONIC PLATFORM, EXCEPT TO THE EXTENT SUCH LIABILITY OF ANY AGENT AFFILIATE IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT AFFILIATE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

#### ***Section 11.6 Right of Set-off***

Upon the occurrence and during the continuance of any Event of Default each Lender and each Affiliate of a Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender or its Affiliates to or for the credit or the account of the Borrower against any and all of the Obligations now or hereafter existing whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and even though such Obligations may be unmatured. Each Lender agrees promptly to notify the Borrower after any such set-off and application made by such Lender or its Affiliates; *provided, however*, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this *Section 11.6* are in addition to the other rights and remedies (including other rights of set-off) that such Lender may have.

#### ***Section 11.7 Sharing of Payments, Etc.***

(a) If any Lender (directly or through an Affiliate thereof) obtains any payment (whether voluntary, involuntary, through the exercise of any right of set-off (including pursuant to *Section 11.6 (Right of Set-off)* or otherwise) of the Loans owing to it, any interest thereon, fees in respect thereof or amounts due pursuant to *Section 11.3 (Costs and Expenses)* or *11.4 (Indemnities)* (other than payments pursuant to *Section 2.14 (Special Provisions Governing Eurodollar Rate Loans)*, *2.15 (Capital Adequacy)* or *2.16 (Taxes)* or otherwise receives any Collateral or any "Proceeds" (as defined in the Pledge and Security Agreement) of Collateral (other than payments pursuant to *Section 2.14 (Special Provisions Governing Eurodollar Rate Loans)*, *2.15 (Capital Adequacy)* or *2.16 (Taxes)* (in each case, whether voluntary, involuntary, through the exercise of any right of set-off or otherwise (including pursuant to *Section 11.6 (Right of Set-off)*)) in excess of its Ratable Portion of all payments of such Obligations obtained by all

the Lenders, such Lender (a "*Purchasing Lender*") shall forthwith purchase from the other Lenders (each, a "*Selling Lender*") such participations in their Loans or other Obligations as shall be necessary to cause such Purchasing Lender to share the excess payment ratably with each of them

(b) If all or any portion of any payment received by a Purchasing Lender is thereafter recovered from such Purchasing Lender, such purchase from each Selling Lender shall be rescinded and such Selling Lender shall repay to the Purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Selling Lender's ratable share (according to the proportion of (i) the amount of such Selling Lender's required repayment in relation to (ii) the total amount so recovered from the Purchasing Lender) of any interest or other amount paid or payable by the Purchasing Lender in respect of the total amount so recovered.

(c) The Borrower agrees that any Purchasing Lender so purchasing a participation from a Selling Lender pursuant to this *Section 11.7* may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

***Section 11.8 Notices, Etc.***

(a) *Addresses for Notices* All notices, demands, requests, consents and other communications provided for in this Agreement shall be given in writing, or by any telecommunication device capable of creating a written record, and addressed to the party to be notified as follows

(i) if to the Borrower:

Knology, Inc.  
1241 O.G. Skinner Drive  
West Point, GA 31833  
Attention: Robert K. Mills  
Telecopy no  
E-Mail Address:

with a copy to:

Alston & Bird LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309  
Attention: Richard Grice  
Telecopy no: 404 881 4777  
E-Mail Address: [rgrice@alston.com](mailto:rgrice@alston.com)

(ii) if to any Lender, at its Domestic Lending Office specified opposite its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)* or on the signature page of any applicable Assignment and Acceptance;

(iii) if to any Issuer, at the address set forth under its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)*; and

(iv) if to the Administrative Agent, Collateral Agent or the Swing Loan Lender:

Credit Suisse First Boston  
Eleven Madison Avenue  
New York, New York 10010  
Attention: Agency Loan Administration  
Telecopy no 212 325 8304

with a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue,  
New York, New York 10153-0119  
Attention: Morgan Bale  
Telecopy no. (212) 310-8007  
E-Mail Address: [morgan.bale@weil.com](mailto:morgan.bale@weil.com)

or at such other address as shall be notified in writing (x) in the case of the Borrower, the Administrative Agent, the Collateral Agent and the Swing Loan Lender, to the other parties and (y) in the case of all other parties, to the Borrower, the Administrative Agent and the Collateral Agent

(b) *Effectiveness of Notices.* All notices, demands, requests, consents and other communications described in *clause (a)* above shall be effective (i) if delivered by hand, including any overnight courier service, upon personal delivery, (ii) if delivered by posting to an Approved Electronic Platform (to the extent permitted by *Section 10.3 (Posting of Approved Electronic Communications)* to be delivered thereunder), an Internet website or a similar telecommunication device requiring a user prior access to such Approved Electronic Platform, website or other device (to the extent permitted by *Section 10.3 (Posting of Approved Electronic Communications)* to be delivered thereunder), when such notice, demand, request, consent and other communication shall have been made generally available on such Approved Electronic Platform, Internet website or similar device to the class of Person being notified (regardless of whether any such Person must accomplish, and whether or not any such Person shall have

accomplished, any action prior to obtaining access to such items, including registration, disclosure of contact information, compliance with a standard user agreement or undertaking a duty of confidentiality) and such Person has been notified that such communication has been posted to the Approved Electronic Platform, (iii) if approved in advance by the Administrative Agent, if delivered by electronic mail, when transmitted to an electronic mail address (or by another means of electronic delivery) as provided in *clause (a)* above; and (iv) if delivered by telecopy, when transmitted as provided in *clause (a)* above; *provided, however*, that notices and communications to the Administrative Agent pursuant to *Article II (The Facilities)* or *Article X (The Administrative Agent)* (A) shall not be effective until received by the Administrative Agent and (B) if given by telephone, shall not be effective unless confirmed in writing (including by telecopy) on the next Business Day.

(c) **Use of Electronic Platform.** Notwithstanding clause (a) and (b) above (unless the Administrative Agent requests that the provisions of clause (a) and (b) above be followed) and any other provision in this Agreement or any other Loan Document providing for the delivery of, any Approved Electronic Communication by any other means, the Loan Parties shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications (in a format acceptable to the Administrative Agent) to such electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify the Borrower. Nothing in this clause (c) shall prejudice the right of the Administrative Agent or any Lender or Issuer to deliver any Approved Electronic Communication to any Loan Party in any manner authorized in this Agreement or to request that the Borrower effect delivery in such manner.

#### ***Section 11.9 No Waiver; Remedies***

No failure on the part of any Lender, Issuer or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

#### ***Section 11.10 Binding Effect***

This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have been notified by each Lender and Issuer that such Lender or Issuer has executed it and, thereafter, shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and Issuer and, in each case, their respective successors and assigns, *provided, however*, that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

#### ***Section 11.11 Governing Law***

This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

***Section 11.12 Submission to Jurisdiction; Service of Process***

(a) Any legal action or proceeding with respect to this Agreement or any other Loan Document may be brought in the courts of the State of New York located in the City of New York or of the United States of America for the Southern District of New York, and, by execution and delivery of this Agreement, the Borrower hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.

(b) Nothing contained in this *Section 11.12* shall affect the right of the Administrative Agent or any Lender to serve process in any other manner permitted by law or commence legal proceedings or otherwise proceed against the Borrower or any other Loan Party in any other jurisdiction.

(c) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase Dollars with such other currency at the spot rate of exchange quoted by the Administrative Agent at 11:00 a.m. (New York time) on the Business Day preceding that on which final judgment is given, for the purchase of Dollars, for delivery two Business Days thereafter.

***Section 11.13 Waiver of Jury Trial***

EACH OF THE ADMINISTRATIVE AGENT, THE LENDERS, THE ISSUERS AND THE BORROWER IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT.

***Section 11.14 Marshaling; Payments Set Aside***

None of the Administrative Agent, any Lender or any Issuer shall be under any obligation to marshal any assets in favor of the Borrower or any other party or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment or payments to the Administrative Agent, the Lenders or the Issuers or any such Person receives payment from the proceeds of the Collateral or exercise its right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, right and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

***Section 11.15 Section Titles***

The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto, except when used to reference a section. Any reference to the number of a clause, sub-clause or subsection hereof immediately followed by a reference in

parenthesis to the title of the Section containing such clause, sub-clause or subsection is a reference to such clause, sub-clause or subsection and not to the entire Section; *provided, however*, that, in case of direct conflict between the reference to the title and the reference to the number of such Section, the reference to the title shall govern absent manifest error. If any reference to the number of a Section (but not to any clause, sub-clause or subsection thereof) is followed immediately by a reference in parenthesis to the title of a Section, the title reference shall govern in case of direct conflict absent manifest error.

#### ***Section 11.16 Execution in Counterparts***

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature page of this Agreement by facsimile transmission, electronic mail or by posting on the Approved Electronic Platform shall be as effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all parties shall be lodged with the Borrower and the Administrative Agent.

#### ***Section 11.17 Entire Agreement***

This Agreement, together with all of the other Loan Documents and all certificates and documents delivered hereunder or thereunder, embodies the entire agreement of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. In the event of any conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall govern.

#### ***Section 11.18 Confidentiality***

Each Lender and the Administrative Agent agree to use all reasonable efforts to keep information obtained by it pursuant hereto and the other Loan Documents confidential in accordance with such Lender's or the Administrative Agent's, as the case may be, customary practices and agrees that it shall only use such information in connection with the transactions contemplated by this Agreement and not disclose any such information other than (a) to such Lender's or the Administrative Agent's, as the case may be, employees, representatives, advisors, attorneys, and agents that are or are expected to be involved in the evaluation of such information in connection with the transactions contemplated by this Agreement and are advised of the confidential nature of such information, (b) to the extent such information presently is or hereafter becomes available to such Lender or the Administrative Agent, as the case may be, on a non-confidential basis from a source other than the Borrower or any other Loan Party, (c) to the extent disclosure is required by law, regulation or judicial order or requested or required by bank regulators or auditors or (d) to current or prospective pledgees, assignees, participants and Special Purpose Vehicle grantees of any option described in *Section 11.2(f) (Assignments and Participations)*, contractual counterparties in any Hedging Contract permitted hereunder and to their respective legal or financial advisors, in each case and to the extent such pledgees, assignees, participants, grantees or counterparties agree to be bound by, and to cause their advisors to comply with, the provisions of this *Section 11.18*. Notwithstanding any other provision in this Agreement, the Administrative Agent hereby agrees that the Borrower (and each of its officers, directors, employees, accountants, attorneys and other advisors) may disclose to

any and all persons of any kind, the U.S. tax treatment and U.S. tax structure of the Facilities and the transactions contemplated hereby and all materials of any kind (including opinions and other tax analyses) that are provided to it relating to such U.S. tax treatment and U.S. tax structure.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

KNOLOGY, INC.,

*as Borrower*

By: 

Name: Robert K. Mills

Title: Chief Financial Officer

CREDIT SUISSE, CAYMAN ISLANDS  
BRANCH,

*as Administrative Agent, Collateral Agent,  
Swing Loan Lender and a Lender*

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

KNOLOGY, INC.,  
*as Borrower*

By: \_\_\_\_\_  
Name: Robert K. Mills  
Title: Chief Financial Officer

CREDIT SUISSE, CAYMAN ISLANDS  
BRANCH,  
*as Administrative Agent, Collateral Agent,  
Swing Loan Lender and a Lender*

By: \_\_\_\_\_  
Name: DAVID DODD  
Title: VICE PRESIDENT

By: \_\_\_\_\_  
Name: VANESSA GOMEZ  
Title: VICE PRESIDENT

CREDIT SUISSE, CAYMAN ISLANDS  
BRANCH,  
*as Issuer*

By:   
Name: **DAVID DODD**  
Title: **VICE PRESIDENT**

By:   
Name: **VANESSA GOMEZ**  
Title: **VICE PRESIDENT**

*Other Lenders:*

GOLDMAN SACHS SPECIALTY LENDING  
HOLDINGS, INC.

By: Todd B. Foust  
Name: Todd B. Foust  
Title: Vice President

SIGNATURE PAGE TO 1ST LIEN CREDIT AGREEMENT

**\$98,958,333**

**SECOND LIEN CREDIT AGREEMENT**

**Dated as of June 29, 2005**

among

**KNOLOGY, INC.**  
as Borrower

and

**THE LENDERS PARTY HERETO**

and

**CREDIT SUISSE, CAYMAN ISLANDS BRANCH**  
as Administrative Agent and Collateral Agent

and

**CREDIT SUISSE, CAYMAN ISLANDS BRANCH**  
as Sole Bookrunner and Sole Lead Arranger

WEIL, GOTSHAL & MANGES LLP  
767 FIFTH AVENUE  
NEW YORK, NEW YORK 10153-0119

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### **Exhibits**

Exhibit A	–	Form of Assignment and Acceptance
Exhibit B	–	Form of Term Note
Exhibit C	–	Form of Notice of Borrowing
Exhibit D	–	Form of Notice of Conversion or Continuation
Exhibit E	–	Form of Guaranty
Exhibit F	–	Form of Pledge and Security Agreement
Exhibit G	–	Form of Intercreditor Agreement

CREDIT AGREEMENT, dated as of June 29, 2005, among KNOLOGY, INC., a Delaware corporation (the "*Borrower*"), the Lenders (as defined below) and CREDIT SUISSE, acting through one or more of its branches, as agent for the Lenders (in such capacity, the "*Administrative Agent*") and as agent for the Secured Parties (as defined below) under the Collateral Documents (as defined below) (in such capacity, the "*Collateral Agent*").

#### WITNESSETH

WHEREAS, the Borrower has requested that the Lenders make available for the purposes specified in this Agreement a term loan;

WHEREAS, the Lenders are willing to make available to the Borrower such term loan upon the terms and subject to the conditions set forth herein; and

WHEREAS, contemporaneously herewith, the Borrower will obtain a first lien term loan in an aggregate principal amount of \$185,000,000 and a first lien revolving loan and letter of credit facility in an aggregate principal amount of \$25,000,000 pursuant to the First Lien Credit Agreement (as defined below);

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows:

#### ARTICLE I

##### DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

###### *Section 1.1 Defined Terms*

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

"*Account*" has the meaning given to such term in the UCC.

"*Account Debtor*" has the meaning given to such term in the UCC.

"*Adjusted Treasury Rate*" means, with respect to any calculation date, (a) (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated "*H 15(519)*" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States treasury securities adjusted to constant maturity under the caption "*Treasury Constant Maturities*," for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after June 28, 2008, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such calculation date, in each

case calculated on the third Business Day immediately preceding the calculation date *plus* (b) 0.50%

"*Administrative Agent*" has the meaning specified in the preamble to this Agreement.

"*Affected Lender*" has the meaning specified in *Section 2.14 (Substitution of Lenders)*.

"*Affiliate*" means, with respect to any Person, any other Person directly or indirectly controlling or that is controlled by or is under common control with such Person, each officer, director, general partner or joint-venturer of such Person, and each Person that is the beneficial owner of 5% or more of any class of Voting Stock of such Person. For the purposes of this definition, "*control*" means the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Agent Affiliate*" has the meaning specified in *Section 10.3 (Posting of Approved Electronic Communications)*.

"*Agents*" means each of the Administrative Agent and the Collateral Agent.

"*Agreement*" means this Credit Agreement.

"*Annualized*" means for purposes of calculating EBITDA in connection with determining the Leverage Ratio, (a) with respect to any amount of EBITDA attributable to one Fiscal Quarter, such amount multiplied by four, (b) with respect to any amount of EBITDA attributable to two Fiscal Quarters, such amount multiplied by two, and (c) with respect to any amount of EBITDA attributable to three Fiscal Quarters, such amount divided by 0.75.

"*Applicable Lending Office*" means, with respect to each Lender, its Domestic Lending Office in the case of a Base Rate Term Loan, and its Eurodollar Lending Office in the case of a Eurodollar Rate Term Loan.

"*Applicable Margin*" means, with respect to Term Loans maintained (a) as Base Rate Loans, a rate equal to 9.0% *per annum* and (b) as Eurodollar Rate Loans, a rate equal to 10.0% *per annum*. Notwithstanding the foregoing, the Applicable Margin shall be successively increased on each date set forth below by the corresponding amount set forth below under "Margin Increase" if, on such date, the Borrower shall have failed to cause each Subsidiary listed on *Schedule 8.10(b) (Restricted Subsidiaries)* to (i) obtain the PUC Authorizations required by *Section 8.10(b) (Limitations on Restrictions on Subsidiary Distributions, No New Negative Pledge, Restricted Subsidiaries)* and (ii) satisfy Subsidiary Guaranty Requirements.

DATE	MARGIN INCREASE
September 1, 2005	25 basis points
November 1, 2005	25 basis points
April 1, 2006	25 basis points

On the date on which all of the foregoing requirements have been satisfied, the Applicable Margin shall, from and after such date, revert to the rates set forth in *clauses (a) and (b)* above

“*Applicable Prepayment Premium*” means, with respect to any optional prepayment of the Term Loans pursuant to *Section 2 5(a) (Optional Prepayments)* or any purchase of Term Loans of a Non-Consenting Lender pursuant to *Section 11 1(c) (Amendments, Waivers, Etc )*, an amount determined by multiplying (as applicable) the principal amount of the Term Loans being prepaid or purchased, as the case may be, (i) the Applicable Treasury Premium for any such prepayment, termination or purchase made on or before June 29, 2008 or (ii) on any date thereafter, the applicable percentage set forth below under the caption “*Prepayment Percentage*” opposite the then applicable period set forth below:

PERIOD	APPLICABLE PREPAYMENT PERCENTAGE
After June 29, 2008 but on or before June 29, 2009	3 0%
After June 29, 2009 but on or before June 29, 2010	2 0%
After June 29, 2010	1 0%

“*Applicable Treasury Premium*” means, with respect to any optional prepayment of the Term Loans pursuant to *Section 2 5(a) (Optional Prepayments)* or any purchase or Term Loans of a Non-Consenting Lender pursuant to *Section 11 1(c) (Amendments, Waivers, Etc )*, the greater of (a) 3% of the principal amount of such prepayment or purchase and (b) the excess of (i) the present value at such time of (A) the principal amount of such prepayment or purchase multiplied by the applicable “*Prepayment Percentage*” (as set forth in the definition of “*Applicable Prepayment Premium*”) of such Loan on June 29, 2008 (exclusive of any accrued interest) plus (B) all required remaining scheduled interest payments due on the Term Loans subject to prepayment or purchases, as the case may be, through June 29, 2008 (assuming, for such calculation, that the interest rate in effect shall be fixed at the weighted average of all interest rates applicable to the corresponding Loans outstanding on the date of such calculation) (but excluding accrued and unpaid interest to the calculation date), computed using a discount rate equal to the Adjusted Treasury Rate, over (ii) the principal amount of such Term Loans on such calculation date.

“*Approved Deposit Account*” means a Deposit Account that is the subject of an effective Deposit Account Control Agreement and that is maintained by any Loan Party with a Deposit Account Bank. “*Approved Deposit Account*” includes all monies on deposit in a Deposit Account and all certificates and instruments, if any, representing or evidencing such Deposit Account.

“*Approved Electronic Communications*” means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, including (a) any supplement to the Guaranty, any joinder to the Pledge and Security Agreement and any other written Contractual Obligation delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and (b) any Financial Statement, financial and other report, notice, request, certificate and other information material, *provided, however*, that, “*Approved Electronic Communication*” shall

exclude (i) any Notice of Borrowing, Notice of Conversion or Continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice pursuant to *Section 2 5 (Optional Prepayments)* and *Section 2 6 (Mandatory Prepayments)* and any other notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement

*"Approved Electronic Platform"* has the meaning specified in *Section 10 3 (Posting of Approved Electronic Communications)*.

*"Approved Fund"* means any Fund that is advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or Affiliate of an entity that advises, administers or manages a Lender or another Fund

*"Approved Securities Intermediary"* means a *"securities intermediary"* or *"commodity intermediary"* (as such terms are defined in the UCC) selected or approved by the Administrative Agent.

*"Arranger"* means CSFB.

*"Asset Sale"* has the meaning specified in *Section 8 4 (Sale of Assets)*.

*"Assignment and Acceptance"* means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of *Exhibit A (Form of Assignment and Acceptance)*.

*"Bankruptcy Code"* means title 11, United States Code

*"Base Rate"* means, for any period, a rate *per annum* (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day *plus* ½ of 1%. For purposes hereof *"Prime Rate"* shall mean the rate of interest determined from time to time by the Administrative Agent as being its reference rate then in effect for determining interest rates on Dollar denominated commercial loans made by it in the U S. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually available. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, or the Federal Funds Effective Rate, respectively.

*"Base Rate Loan"* means any Term Loan during any period in which it bears interest based on the Base Rate

*"Borrower"* has the meaning specified in the preamble to this Agreement.

*"Borrower's Accountants"* means Deloitte & Touche LLP or other independent nationally-recognized public accountants acceptable to the Administrative Agent

*"Borrowing"* means a Term Loan Borrowing.

*"Broadband Account"* means the treasury liquidity account #3404914806 maintained by Knology Broadband, Inc. at Capital City Bank

*"Broadband Services"* means all broadband communication services, including Broadband Carrier Services, cable television, telephone, other telecommunications and high-speed internet access service, provided by any Person to residential, business or other customers

*"Broadband Carrier Services"* means, collectively, the provision of certain wholesale telecommunication transport services over the broadband hybrid-fiber coax network (*"Broadband Network"*), primarily to Interexchange Carriers (*"IXC"*), Internet Service Providers (*"ISP"*) and large multi-location commercial enterprises desiring high capacity connectivity within a Metropolitan Service Area (*"MSA"*) These services are termed (a) Internal Local Transport (*"ILT"*) by which ISP's are connected from their point-of-presence (*"POP"*) to end-users at wholesale transport revenue rates per customer (as distinguished from the provision of high-speed Internet access at retail revenue rates using the Olobahn brand name), (b) Local Exchange Transport (*"LET"*) by which IXCs are connected to end-users, Local Exchange Carriers (*"LEC"*) or other IXCs via the Broadband Network and/or twisted pair cabling, (c) Private Line Services by which carriers or commercial businesses operating in multiple locations within the MSA are interconnected via point-to-point facilities owned or leased by any Person and (d) Special Access Services by which corporate locations or central offices are directly connected to an IXS point-of-presence

*"Business Day"* means a day of the year on which banks are not required or authorized to close in New York City and, if the applicable Business Day relates to notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, a day on which dealings in Dollar deposits are also carried on in the London interbank market

*"Cable Act"* means the Cable Television Communications Policy Act of 1984, as amended by the Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as further amended or supplemented from time to time.

*"Capital Expenditures"* means, with respect to the Borrower and its Subsidiaries, for any period, the aggregate of amounts that would be reflected as additions to property, plant or equipment on a Consolidated balance sheet of such Person and its Subsidiaries (in accordance with GAAP) but excluding (a) interest capitalized during construction, (b) expenditures on such property, plant or equipment funded with Net Cash Proceeds from any Asset Sale, Equity Issuance or Property Loss Event or funded from Excess Cash Flow and (c) expenditures in connection with Permitted MDU Transactions and Permitted CIU Transactions, in each case, to the extent treated as Capital Lease Obligations in accordance with GAAP (except, in the case of expenditures under this *clause (c)*, expenditures funded from available cash of the Borrower or its Subsidiaries)

*"Capital Lease"* means, with respect to any Person, any lease of, or other arrangement conveying the right to use, property by such Person as lessee that would be accounted for as a capital lease on a balance sheet of such Person prepared in conformity with GAAP

“*Capital Lease Obligations*” means, with respect to any Person, the capitalized amount of all Consolidated obligations of such Person or any of its Subsidiaries under Capital Leases

“*Cash Collateral Account*” means any Deposit Account or Securities Account that is established (a) by the Administrative Agent or Collateral Agent from time to time in its sole discretion to receive cash and Cash Equivalents (or purchase cash or Cash Equivalents with funds received) from the Loan Parties or Persons acting on their behalf pursuant to the Loan Documents, (b) with such depositaries and securities intermediaries as the Administrative Agent may determine in its sole discretion, (c) in the name of the Administrative Agent or Collateral Agent (although such account may also have words referring to the Borrower and the account’s purpose), (d) under the control of the Administrative Agent or Collateral Agent and (e) as a Securities Account, with respect to which the Administrative Agent or Collateral Agent shall be the Entitlement Holder and the only Person authorized to give Entitlement Orders with respect thereto.

“*Cash Equivalents*” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States of America or issued by any agency thereof and backed by the full faith and credit of the United States of America or any agency, state or territory thereof, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits or overnight bank deposits having maturities of 364 days or less from the date of acquisition issued by any Lender or by any commercial bank or trust company organized under the laws of the United States of America or any state thereof and having combined capital and surplus of not less than \$500,000,000, (c) commercial paper, bonds, notes or debentures of an issuer rated at least “A-2” by S&P or “P-2” by Moody’s or carrying an equivalent rating by a nationally recognized rating agency, if all of the three named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within 364 days from the date of acquisition, (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of *clause (b)* of this definition, having a term of not more than 30 days with respect to securities issued or fully guaranteed or insured by the United States of America, (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least “A” by S&P, or “A” by Moody’s; (f) securities with maturities of 364 days or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of *clause (b)* of this definition, and (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of any of *clauses (a)* through *(f)* of this definition

“*Cash Interest Expense*” means, with respect to the Borrower for any period, the sum of the Interest Expense of the Borrower for such period *less* the Non-Cash Interest Expense of the Borrower for such period and (b) the amount of dividends paid in cash during such period in respect of the New Preferred Stock and any other Stock of the Borrower with terms substantially similar to the New Preferred Stock

“*CATV Franchise*” means (a) any franchise, license, permit, wire agreement or easement granted by any local Governmental Authority, including any local franchising authority, pursuant to which any Person has the right or license to provide Broadband Services or to operate

any cable distribution system for the purpose of receiving and distributing audio, video, digital, other broadcast signals or information or telecommunications by cable, optical, antenna, microwave or satellite transmission and (b) any law, regulation, ordinance, agreement or other instrument or document expressly setting forth all or any part of the terms of any franchise, license, permit, wire agreement or easement described in *clause (a)* of this definition (excluding any law, regulation, ordinance, agreement, instrument or document which relates to but does not expressly set forth any terms of any such franchise, license, permit, wire agreement or easement).

*"Cerritos Sale"* the sale of substantially all of the assets of Knology Broadband of California, Inc., a Delaware corporation, pursuant to the Asset Purchase Agreement, dated March 24th, 2005, between Knology Broadband of California, Inc. and WaveDivision Holdings LLC, a Delaware limited liability company or any replacement agreement with any Person (other than an Affiliate of the Borrower) containing substantially the same economic terms and otherwise reasonably satisfactory to the Administrative Agent.

*"Change of Control"* means the occurrence of any of the following

(a) any person or group of persons (within the meaning of the Exchange Act) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Exchange Act) of 50% or more of the issued and outstanding Voting Stock of Borrower;

(b) during any period of twelve consecutive calendar months, individuals who, at the beginning of such period, constituted the board of directors of Borrower (together with any new directors whose election by the board of directors of Borrower or whose nomination for election by the stockholders of Borrower was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office; or

(c) any *"Change of Control"* or equivalent term as defined in any Constituent Document relating to the New Preferred Stock of the Borrower or any additional preferred stock of the Borrower

*"Closing Date"* means the first date on which any Term Loan is made

*"Code"* means the U.S. Internal Revenue Code of 1986, as currently amended.

*"Collateral"* means all property and interests in property and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted under any Collateral Document.

*"Collateral Agent"* has the meaning specified in the preamble to the Agreement

*"Collateral Documents"* means the Pledge and Security Agreement, the Mortgages, the Deposit Account Control Agreements, the Securities Account Control Agreements and any other document executed and delivered by a Loan Party granting a Lien on any of its property to secure payment of the Secured Obligations



“*Commitment*” means, with respect to each Term Loan Lender, the commitment of such Lender to make Term Loans to the Borrower in the aggregate principal amount outstanding not to exceed the amount set forth opposite such Lender’s name on *Schedule I (Commitments)* under the caption “*Term Loan Commitment*” as amended to reflect each Assignment and Acceptance executed by such Lender and as such amount may be reduced pursuant to this Agreement and “*Commitments*” means the aggregate Commitments of all Lenders.

“*Commodity Account*” has the meaning given to such term in the UCC.

“*Communications License*” means any local telecommunications, long distance telecommunications, or other license, permit, consent, certificate of compliance, franchise, approval, waiver or authorization granted or issued by the FCC or other applicable federal Governmental Authority pertaining to the provision of Broadband Services, including any of the foregoing authorizing or permitting the acquisition, construction or operation of any Interactive Broadband Network.

“*Comparable Treasury Issue*” means, with respect to any prepayment date, the United States treasury security selected by the Administrative Agent as having a maturity comparable to the remaining term of the applicable Term Loans from such prepayment date to June 29, 2008, that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a maturity most nearly equal to June 29, 2008.

“*Comparable Treasury Price*” means, with respect to any prepayment date, if *clause (ii)* of the Adjusted Treasury Rate is applicable, the average of three, or such lesser number as is obtained by the Administrative Agent, Reference Treasury Dealer Quotations for such prepayment date.

“*Compliance Certificate*” has the meaning specified in *Section 6 1(d) (Financial Statements)*

“*Confidential Information Memorandum*” means the Confidential Information Memorandum, dated as of May 2005, prepared by the Borrower in connection with the syndication of the Term Loan Facility

“*Consolidated*” means, with respect to any Person, the consolidation of accounts of such Person and its Subsidiaries in accordance with GAAP

“*Consolidated Current Assets*” means, with respect to any Person at any date, the total Consolidated current assets (other than cash and Cash Equivalents) of such Person and its Subsidiaries at such date.

“*Consolidated Current Liabilities*” means, with respect to any Person at any date, all liabilities of such Person and its Subsidiaries at such date that should be classified as current liabilities on a Consolidated balance sheet of such Person and its Subsidiaries, but excluding, in the case of the Borrower the sum of (a) the principal amount of any current portion of long-term Financial Covenant Debt and (b) (without duplication of *clause (a)* above) the then outstanding principal amount of the Term Loans.

*"Consolidated Net Income"* means, for any Person, for any period, the Consolidated net income (or loss) of such Person and its Subsidiaries for such period, *provided, however,* that (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third party (which interest does not cause the net income of such other Person to be Consolidated into the net income of such Person) shall be included only to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is subject to any restriction or limitation on the payment of dividends or the making of other distributions shall be excluded to the extent of such restriction or limitation, (c) extraordinary and non-recurring gains and losses and any one-time increase or decrease to net income that is required to be recorded because of the adoption of new accounting policies, practices or standards required by GAAP shall be excluded and (d) net income from or attributable to discontinued operations of such Person and its Subsidiaries shall be excluded.

*"Constituent Documents"* means, with respect to any Person, (a) the articles of incorporation, certificate of incorporation, constitution or certificate of formation (or the equivalent organizational documents) of such Person, (b) the by-laws, operating agreement (or the equivalent governing documents) of such Person and (c) any document setting forth the manner of election or duties of the directors or managing members of such Person (if any) and the designation, amount or relative rights, limitations and preferences of any class or series of such Person's Stock.

*"Contaminant"* means any material, substance or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including any petroleum or petroleum-derived substance or waste, asbestos and polychlorinated biphenyls.

*"Contractual Obligation"* of any Person means any obligation, agreement, undertaking or similar provision of any Security issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

*"Control Account"* means a Securities Account or Commodity Account that is the subject of an effective Securities Account Control Agreement and that is maintained by any Loan Party with an Approved Securities Intermediary. *"Control Account"* includes all Financial Assets held in a Securities Account or a Commodity Account and all certificates and instruments, if any, representing or evidencing the Financial Assets contained therein.

*"Corporate Chart"* means a corporate organizational chart, list or other similar document in each case in form reasonably acceptable to the Administrative Agent and setting forth, for each Person that is a Loan Party, that is subject to *Section 7.11 (Additional Collateral and Guaranties)* or that is a Subsidiary of any of them, (a) the full legal name of such Person (and any trade name, fictitious name or other name such Person may have had or operated under), (b) the jurisdiction of organization, the organizational number (if any) and the tax identification number (if any) of such Person, (c) the location of such Person's chief executive office (or sole place of business) and (d) the number of shares of each class of such Person's Stock authorized (if applicable), the number outstanding as of the date of delivery and the number and percentage of such outstanding shares for each such class owned (directly or indirectly) by any Loan Party or any Subsidiary of any of them.

"CSFB" means Credit Suisse, acting through one or more of its branches and any Affiliate thereof.

"Customary Permitted Liens" means, with respect to any Person, any of the following Liens.

(a) Liens with respect to the payment of taxes, assessments or governmental charges in each case that are not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

(b) Liens of landlords arising by statute and liens of suppliers, mechanics, carriers, materialmen, warehousemen or workmen and other similar Liens, in each case (i) imposed by law or arising in the ordinary course of business, (ii) for amounts not yet due or that are being contested in good faith by appropriate proceedings and (iii) with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP,

(c) deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits or to secure the performance of bids, tenders, sales, contracts (other than for the repayment of borrowed money) and surety, appeal, customs or performance bonds entered into in the ordinary course of business;

(d) encumbrances arising by reason of zoning restrictions, easements, licenses, reservations, covenants, rights-of-way, utility easements, building restrictions and other similar encumbrances on the use of real property not materially detracting from the value of such real property or not materially interfering with the ordinary conduct of the business conducted and proposed to be conducted at such real property;

(e) encumbrances arising under leases or subleases of real property that do not, in the aggregate, materially detract from the value of such real property or interfere with the ordinary conduct of the business conducted and proposed to be conducted at such real property,

(f) financing statements with respect to a lessor's rights in and to personal property leased to such Person in the ordinary course of such Person's business other than through a Capital Lease;

(g) Liens created in the ordinary course of business on assets subject to rights-of-way, pole attachment, use of conduit, use of trenches or similar agreements securing any Loan Party's obligations under such agreements, *provided, however*, that such Liens apply only to the assets subject to any of the foregoing agreements,

(h) judgment Liens in existence for less than 45 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance

maintained with nationally recognized insurance companies and which do not otherwise result in a Default or Event of Default, and

(i) Liens consisting of rights of set-off of a customary nature or bankers' liens on an amount of deposit, whether arising by contract or operation of law, incurred in the ordinary course of business so long as such deposits are not intended as collateral for any obligation.

"*Debt Issuance*" means the incurrence of Indebtedness of the type specified in clause (a) or (b) of the definition of "*Indebtedness*" by the Borrower or any of its Subsidiaries.

"*Declining Lender*" has the meaning specified in Section 2 6(e) (*Mandatory Prepayments*)

"*Declining Second Lien Term Lender*" has the meaning specified in Section 2 6(d) (*Mandatory Prepayments*).

"*Default*" means any event that, with the passing of time or the giving of notice or both, would become an Event of Default

"*Deposit Account*" has the meaning given to such term in the UCC

"*Deposit Account Bank*" means a financial institution selected or approved by the Administrative Agent

"*Deposit Account Control Agreement*" has the meaning specified in the Pledge and Security Agreement

"*Disclosure Documents*" means, collectively, the Form 10-K, Form 10-Q and Form 8-K filed by the Borrower with the Securities and Exchange Commission, as amended from time to time

"*Dollar Equivalent*" of any amount means, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in a currency other than Dollars, the equivalent of such amount in Dollars determined by using the rate of exchange quoted by CSFB in New York, New York at 10 00 a.m. (New York time) on the date of determination (or, if such date is not a Business Day, the last Business Day prior thereto) to prime banks in New York for the spot purchase in the New York foreign exchange market of such amount of Dollars with such other currency and (c) if such amount is denominated in any currency not quoted by CSFB in New York, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate.

"*Dollars*" and the sign "\$" each mean the lawful money of the United States of America

"*Domestic Lending Office*" means, with respect to any Lender, the office of such Lender specified as its "*Domestic Lending Office*" opposite its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)* or on the Assignment and Acceptance by which it became a Lender or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

"*Domestic Person*" means any "*United States person*" under and as defined in Section 7701(a)(30) of the Code.

"*Domestic Subsidiary*" means any Subsidiary of the Borrower organized under the laws of any state of the United States of America or the District of Columbia.

"*EBITDA*" means, with respect to any Person for any period, (a) Consolidated Net Income of such Person for such period *plus* (b) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication, (i) any provision for income taxes, (ii) Interest Expense, (iii) loss from extraordinary items, litigation expenses not exceeding \$1,000,000 in the aggregate over the term of this Agreement, cash charges resulting from hurricanes, floods, tornadoes, earthquakes or other natural disasters, (iv) depreciation, depletion and amortization expenses, (v) all other non-cash charges and non-cash losses for such period, including the amount of any compensation deduction as the result of any grant of Stock or Stock Equivalents to employees, officers, directors or consultants; *provided*, that to the extent any amount of non-cash charges for any period are subsequently paid in cash, EBITDA shall be reduced by such cash payment for that period, (vi) with respect to the first Fiscal Quarter of 2005, a one-time severance benefit charge of \$198,027, (vii) all cash expenses incurred in connection with (A) the Term Loan Facility, the First Lien Facilities, the issuance of New Preferred Stock and the refinancing of the Existing Indebtedness (B) any capital markets transaction (including any merger or acquisition transaction) for the issuance of any debt, equity or convertible security, whether or not such transaction is completed and (C) any Asset Sale, whether or not such Asset Sale is completed; *provided, that*, with respect to transactions specified in *clauses (B) and (C)* above that are not completed, the aggregate amount of such cash expenses shall not exceed \$500,000 during any Fiscal Year, (viii) fees and costs associated with the early extinguishment of Indebtedness and (ix) non-cash losses from Asset Sales *minus* (c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication, (i) any credit for income taxes, (ii) interest income, (iii) gains from extraordinary items for such period, (iv) any aggregate net gain from the sale, exchange or other disposition of capital assets by such Person and (v) any other non-cash gains or other items which have been added in determining Consolidated Net Income, including any reversal of a change referred to in *clause (b)(v)* above by reason of a decrease in the value of any Stock or Stock Equivalent

"*Eligible Assignee*" means (a) a Lender or an Affiliate or Approved Fund of any Lender, (b) a commercial bank having total assets whose Dollar Equivalent exceeds \$5,000,000,000, (c) a finance company, insurance company or any other financial institution or Fund, in each case reasonably acceptable to the Administrative Agent and regularly engaged in making, purchasing or investing in loans and (d) a savings and loan association or savings bank organized under the laws of the United States or any state thereof having a net worth, determined in accordance with GAAP, whose Dollar Equivalent exceeds \$250,000,000.

"*Entitlement Holder*" has the meaning given to such term in the UCC.

"*Entitlement Order*" has the meaning given to such term in the UCC

"*Environmental Laws*" means all applicable Requirements of Law now or hereafter in effect and as amended or supplemented from time to time, relating to pollution or the regulation and protection of human or animal health, safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*); the Hazardous Material Transportation Act, as amended

(49 U.S.C. § 5101 *et seq.*); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*); the Toxic Substance Control Act, as amended (15 U.S.C. § 2601 *et seq.*); the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*); the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*); and each of their state and local counterparts or equivalents and any transfer of ownership notification or approval statute, including the Industrial Site Recovery Act (N.J. Stat. Ann. § 13:1K-6 *et seq.*)

*“Environmental Liabilities and Costs”* means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute and whether arising under any Environmental Law, Permit, order or agreement with any Governmental Authority or other Person, in each case relating to any environmental, health or safety condition or to any Release or threatened Release and resulting from the past, present or future operations of, or ownership of property by, such Person or any of its Subsidiaries.

*“Environmental Lien”* means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

*“Equipment”* has the meaning given to such term in the UCC

*“Equity Issuance”* means the issue or sale of any Stock of the Borrower or any Subsidiary of the Borrower by the Borrower or any Subsidiary of the Borrower to any Person other than the Borrower or any Subsidiary of the Borrower

*“ERISA”* means the United States Employee Retirement Income Security Act of 1974.

*“ERISA Affiliate”* means any trade or business (whether or not incorporated) under common control or treated as a single employer with the Borrower or any of its Subsidiaries within the meaning of Section 414(b), (c), (m) or (o) of the Code.

*“ERISA Event”* means (a) a reportable event described in Section 4043(b) or 4043(c)(1), (2), (3), (5), (6), (8) or (9) of ERISA with respect to a Title IV Plan or a Multiemployer Plan, (b) the withdrawal of the Borrower, any of its Subsidiaries or any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (c) the complete or partial withdrawal of the Borrower, any of its Subsidiaries or any ERISA Affiliate from any Multiemployer Plan, (d) notice of reorganization or insolvency of a Multiemployer Plan, (e) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to a Title IV Plan or Multiemployer Plan, (h) the imposition of a lien under Section 412 of the Code or Section 302 of ERISA on the Borrower or any of its Subsidiaries or any ERISA Affiliate or (i) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any

Title IV Plan or Multiemployer Plan or the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA.

“*Escrow Agreement*” means the escrow agreement, dated as of the date hereof, by and among the Borrower, the Administrative Agent, and CSFB, as escrow agent

“*Eurocurrency Reserve Requirements*” means, for any period, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves) under any regulations of the Federal Reserve Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “*Eurocurrency Liabilities*” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System

“*Eurodollar Base Rate*” means, with respect to each day during each Interest Period, the rate *per annum* determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period by reference to the British Bankers’ Association Interest Settlement Rates for deposits in Dollars (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent which has been nominated by the British Bankers’ Association as an authorized information vendor for the purpose of displaying such rates) as of 11:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate is not ascertainable pursuant to the foregoing provisions of this definition, the “*Eurodollar Base Rate*” for purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying Eurodollar rates as may be selected by the Administrative Agent

“*Eurodollar Lending Office*” means, with respect to any Lender, the office of such Lender specified as its “*Eurodollar Lending Office*” opposite its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)* or on the Assignment and Acceptance by which it became a Lender (or, if no such office is specified, its Domestic Lending Office) or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent

“*Eurodollar Rate*” means, with respect to any Interest Period for any Eurodollar Rate Loan, an interest rate *per annum* determined for such day in accordance with the following formula

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}$$

“*Eurodollar Rate Loan*” means any Term Loan that, for an Interest Period, bears interest based on the Eurodollar Rate

“*Event of Default*” has the meaning specified in *Section 9.1 (Events of Default)*

“*Excess Cash Flow*” means, for the Borrower for any period, (a) EBITDA of the Borrower for such period *plus* (b) the excess, if any, of the Working Capital of the Borrower at the beginning of such period over the Working Capital of the Borrower at the end of such period

*minus* (c) the sum of (without duplication) (i) Cash Interest Expense (including fees and costs associated with the early extinguishment of Indebtedness and amounts under Capital Lease Obligations allocable as an interest component), (ii) scheduled cash principal payments in respect of the First Lien Facilities and on the Term Loans during such period and optional cash principal payments in respect of the First Lien Facilities and on the Term Loans during such period (but only, in the case of any payment in respect of the First Lien Revolving Facility, to the extent that the "Revolving Credit Commitments" (as such term is defined in the Credit Agreement) are permanently reduced by the amount of such payments), (iii) scheduled cash principal payments made by the Borrower or any of its Subsidiaries during such period on other Indebtedness to the extent such other Indebtedness and payments are permitted by this Agreement, (iv) scheduled payments made by the Borrower or any of its Subsidiaries on Capital Lease Obligations to the extent such Capital Lease Obligations and payments are permitted by this Agreement, (v) Capital Expenditures made by the Borrower or any of its Subsidiaries during such period to the extent permitted by this Agreement, (vi) the excess, if any, of the Working Capital of the Borrower at the end of such period over the Working Capital of the Borrower at the beginning of such period, (vii) cash income taxes paid during such period and (viii) cash payments (other than from proceeds of Equity Issuances) with respect to Investments made during such period and permitted under Section 8.3 (*Investments*) (other than investments pursuant to *clause (b)* thereof).

*"Exchange Act"* means the Securities Exchange Act of 1934, as amended

*"Excluded Foreign Subsidiary"* means any Subsidiary that is not a Domestic Subsidiary in respect of which either (a) the pledge of all of the Stock of such Subsidiary as Collateral to secure payment of the Obligations of the Borrower, (b) the grant of a Lien on any of its property as Collateral to secure payment of the Obligations of the Borrower or (c) the guaranteeing by such Subsidiary of the Obligations of the Borrower, would, in the good faith judgment of the Borrower based on an analysis reasonably satisfactory to the Administrative Agent, result in materially adverse tax consequences to the Loan Parties and their Subsidiaries, taken as a whole.

*"Existing CoBank Credit Agreement"* means the Master Loan Agreement, dated as of June 6, 2002, as amended and supplemented, among Interstate Telephone Company, Inc and Valley Telephone Company LLC, as borrowers, and CoBank, ACB, as lender

*"Existing Credit Agreements"* means, collectively, the Existing CoBank Credit Agreement and Existing Wachovia Credit Agreement

*"Existing Indebtedness"* means all amounts outstanding or owed, including principal, accrued and unpaid interest, fees and expenses, under or in connection with the Existing Notes and the Existing Credit Agreements.

*"Existing Indenture"* means the Indenture, dated November 6, 2002, as amended and supplemented, between the Borrower, as issuer, and Wilmington Trust Company, as trustee

*"Existing Notes"* means the 12% senior notes due 2009 issued pursuant to the Existing Indenture

*"Existing Wachovia Credit Agreement"* means the Amended and Restated Credit Agreement, dated as of October 22, 2002, as amended, among Knology Broadband, as guarantor,



certain subsidiaries of Knology Broadband named therein, as borrowers, the institutions party thereto as lenders and issuing banks and the administrative agent named therein.

*"Fair Market Value"* means (a) with respect to any asset or group of assets (other than a marketable Security) at any date, the value of the consideration obtainable in a sale of such asset at such date assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the board of directors of the Borrower or, if such asset shall have been the subject of a relatively contemporaneous appraisal by an independent third party appraiser, the basic assumptions underlying which have not materially changed since its date, the value set forth in such appraisal and (b) with respect to any marketable Security at any date, the closing sale price of such Security on the Business Day next preceding such date, as appearing in any published list of any national securities exchange or the NASDAQ Stock Market or, if there is no such closing sale price of such Security, the final price for the purchase of such Security at face value quoted on such Business Day by a financial institution of recognized standing regularly dealing in Securities of such type and selected by the Administrative Agent

*"FCC"* means the Federal Communications Commission or any successor Governmental Authority.

*"Federal Funds Rate"* means, for any period, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

*"Federal Reserve Board"* means the Board of Governors of the United States Federal Reserve System, or any successor thereto

*"Fee Letter"* shall mean the letter, dated as of May 4, 2005, addressed to the Borrower from the Arranger and accepted by the Borrower on May 4, 2005, with respect to certain fees to be paid from time to time to CSFB.

*"Financial Asset"* has the meaning given to such term in the UCC.

*"Financial Covenant Debt"* means, as of any date of determination, the aggregate amount of the Indebtedness of the Borrower and its Subsidiaries of the type specified, without duplication, in (i) clauses (a), (b), (d), (e), (f), (g) and (h) of the definition of *"Indebtedness"*, (ii) non-contingent obligations of the type specified in clause (c) of such definition and (iii) obligations of the type specified in clauses (i) and (j) of such definition to the extent such obligations constitute balance sheet indebtedness under GAAP (but excluding (x) Indebtedness under any notes permitted pursuant to clause (j) of the Section 8.1 (Indebtedness) and (y) Indebtedness in respect of the Existing Notes to the extent an amount equal to such Indebtedness is deposited by the Borrower with CSFB pursuant to the Escrow Agreement)

*"Financial Statements"* means the financial statements of the Borrower and its Subsidiaries delivered in accordance with Section 4.4 (Financial Statements) and Section 6.1 (Financial Statements)

*"First Lien Covenant Debt"* means, as of any date of determination, the aggregate amount of Consolidated Financial Covenant Debt outstanding on such date *minus* the aggregate amount of Indebtedness outstanding under this Agreement on such date

*"First Lien Credit Agreement"* means the \$210,000,000 First Lien Credit Agreement, dated the date hereof, among the Borrower, the lenders from time to time party thereto, Credit Suisse First Boston, acting through one or more of its branches, as Administrative Agent and Collateral Agent, and Credit Suisse First Boston, acting through one or more of its branches, as Sole Bookrunner and Sole Lead Arranger, as it may be, subject to the terms of the Intercreditor Agreement, amended, restated, supplemented or otherwise modified from time to time.

*"First Lien Facilities"* means, collectively, the First Lien Revolving Facility together with the First Lien Term Facility

*"First Lien Loan Documents"* means the First Lien Credit Agreement, the "Guaranty" and the "Pledge and Security Agreement", each as defined in the First Lien Credit Agreement, and any other agreements, mortgages or other documents executed by the Borrower or any of its Subsidiaries in connection with the First Lien Credit Agreement.

*"First Lien Revolving Facility"* means the first priority senior secured revolving loan and letter of credit facility made to the Borrower pursuant to the First Lien Credit Agreement in an aggregate principal amount not exceeding \$25,000,000.

*"First Lien Term Facility"* means the first priority senior secured term loan facility made to the Borrower pursuant to the First Lien Credit Agreement in an aggregate principal amount not exceeding \$185,000,000.

*"First Lien Term Lender"* means each lender under the First Lien Term Facility.

*"Fiscal Quarter"* means each of the three-month fiscal periods of the Borrower ending on March 31, June 30, September 30 and December 31.

*"Fiscal Year"* means the twelve-month fiscal period of the Borrower ending on December 31

*"Fund"* means any Person (other than a natural Person) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its operations

*"GAAP"* means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, that are applicable to the circumstances as of the date of determination

*"General Intangible"* has the meaning given to such term in the UCC.

“*Governmental Authority*” means any nation, sovereign or government, any state or other political subdivision thereof and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any central bank or stock exchange and including the FCC and each PUC.

“*Guarantor*” means each Subsidiary of the Borrower party to or that becomes party to the Guaranty.

“*Guaranty*” means the guaranty, in substantially the form of *Exhibit E (Form of Guaranty)*, executed by the Guarantors.

“*Guaranty Obligation*” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose or intent of such Person in incurring the Guaranty Obligation is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if in the case of any agreement described under *clause (b)(i), (ii), (iii), (iv) or (v)* above the primary purpose or intent thereof is to provide assurance that Indebtedness of another Person will be paid or discharged, that any agreement relating thereto will be complied with or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported

“*Hedging Contracts*” means all Interest Rate Contracts, foreign exchange contracts, currency swap or option agreements, forward contracts, commodity swap, purchase or option agreements, other commodity price hedging arrangements and all other similar agreements or arrangements designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices

“*Indebtedness*” of any Person means without duplication (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments or that bear interest, (c) all reimbursement and all obligations with respect to letters of credit, bankers’ acceptances, surety bonds and performance bonds, whether or not matured, (d) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business that are not more than 60 days overdue, (e) all indebtedness of such Person created or arising under any conditional

sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (f) all Capital Lease Obligations of such Person and the present value of future rental payments under all synthetic leases, (g) all Guaranty Obligations of such Person, (h) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any Stock or Stock Equivalents of such Person, valued, in the case of redeemable preferred stock, at the greater of its voluntary liquidation preference and its involuntary liquidation preference *plus* accrued and unpaid dividends, in each case, if such obligation is (or may be) required to be paid on or prior to the Maturity Date (except for the New Preferred Stock or preferred stock of the Borrower having substantially the same redemption terms as such New Preferred Stock), (i) all payments that such Person would have to make in the event of an early termination on the date Indebtedness of such Person is being determined in respect of Hedging Contracts of such Person and (j) all Indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including Accounts and General Intangibles) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

*"Indemnified Matter"* has the meaning specified in *Section 11.4 (Indemnities)*.

*"Indemnitee"* has the meaning specified in *Section 11.4 (Indemnities)*.

*"Interactive Broadband Network"* means any two-way, interactive, high-capacity hybrid fiber-coaxial networks (including networks being constructed or to be converted or upgraded to meet such criteria) owned or leased or operated by any Person which provides Broadband Services

*"Intercreditor Agreement"* means the Intercreditor Agreement in substantially the form of *Exhibit G (Form of Intercreditor Agreement)*, to be executed and delivered by the Borrower, the Administrative Agent, the Collateral Agent and the administrative agent and collateral agent under the First Lien Credit Agreement.

*"Interest Coverage Ratio"* means, with respect to the Borrower and its Subsidiaries on a Consolidated basis, for any period of determination, the ratio of (a) EBITDA to (b) Cash Interest Expense for such period (excluding Interest Expense in respect of Indebtedness outstanding under the Existing Notes to the extent that such Indebtedness is fully deposited by the Borrower with CSFB pursuant to the Escrow Agreement)

*"Interest Expense"* means, for any Person for any period, (a) Consolidated total interest expense of such Person and its Subsidiaries for such period and including, in any event, interest capitalized during such period and net costs under Interest Rate Contracts for such period (excluding fees and costs associated with the early extinguishment of Indebtedness) *minus* (b) Consolidated net gains of such Person and its Subsidiaries under Interest Rate Contracts for such period and *minus* (c) any Consolidated interest income of such Person and its Subsidiaries for such period

*"Interest Payable In Cash"* means, with respect to Term Loans maintained (a) as Base Rate Loans, a rate equal to the Base Rate plus 7.5% *per annum* and (b) as Eurodollar Rate Loans, a rate equal to the Eurodollar Rate plus 8 5% *per annum*

*"Interest Period"* means, in the case of any Eurodollar Rate Loan, (a) initially, the period commencing on the date such Eurodollar Rate Loan is made, on the date of conversion of a Base Rate Loan to such Eurodollar Rate Loan, or on the date of the continuation of a Eurodollar Rate Loan as a Eurodollar Rate Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion or Continuation given to the Administrative Agent pursuant to *Section 2.2 (Borrowing Procedures)* or *Section 2.8 (Conversion/Continuation Option)*, *provided, however*, that (notwithstanding the foregoing) prior to the Syndication Completion Date, no such period shall exceed one month unless the Administrative Agent otherwise consents and *provided, further* that all of the foregoing provisions relating to Interest Periods in respect of Eurodollar Rate Loans are subject to the following

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless the result of such extension would be to extend such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day,

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month;

(iii) the Borrower may not select any Interest Period that ends after the date of a scheduled principal payment on the Term Loans as set forth in *Article II (The Facilities)* unless, after giving effect to such selection, the aggregate unpaid principal amount of the Term Loans for which Interest Periods end after such scheduled principal payment shall be equal to or less than the principal amount to which the Term Loans are required to be reduced after such scheduled principal payment is made;

(iv) the Borrower may not select any Interest Period in respect of Term Loans having an aggregate principal amount of less than \$1,000,000; and

(v) there shall be outstanding at any one time no more than six Interest Periods in the aggregate

*"Interest Rate Contracts"* means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance

*"Interstate Account"* means the money market account #3404717501 maintained by Interstate Telephone Co at Capital City Bank

*"Inventory"* has the meaning given to such term in the UCC

*"Investment"* means, with respect to any Person, (a) any purchase or other acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or a significant part of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any other Person, (c) any loan, advance (other than deposits with financial

institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business as presently conducted) or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business, and (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person

"IRS" means the Internal Revenue Service of the United States or any successor thereto.

"Knology Broadband" means Knology Broadband, Inc., a Delaware corporation.

"Knology Georgia" means Knology of Georgia Inc, a Delaware corporation.

"Land" of any Person means all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased or purported to be owned, leased or hereafter acquired or leased (including, in respect of the Loan Parties, as reflected in the most recent Financial Statements) by such Person.

"Leases" means, with respect to any Person, all of those leasehold estates in real property of such Person, as lessee, as such may be amended, supplemented or otherwise modified from time to time.

"Lender" means each financial institution or other entity that (a) is listed on the signature pages hereof as a "Lender" or (b) from time to time becomes a party hereto by execution of an Assignment and Acceptance.

"Leverage Ratio" means, with respect to the Borrower and its Subsidiaries on a Consolidated basis, as of any date of determination, the ratio of (a) Consolidated Financial Covenant Debt outstanding as of such date to (b) EBITDA for the last full four Fiscal Quarter period ending on or before such date, *provided, however*, that (i) if on such date the number of Fiscal Quarters which have ended subsequent to the Closing Date is less than four, EBITDA used for determining such ratio shall be Annualized based on the number of Fiscal Quarters which have then ended subsequent to the Closing Date and (ii) on any date of calculation, the amount of Financial Covenant Debt consisting of principal under the Term Loans shall be deemed to equal (A) (x) the original face amount of Term Loans (i.e. \$98,958,333) *minus* any principal repayments of the Term Loans from the Closing Date to the date of calculation *multiplied* by (y) a percentage equal to (1) 96% plus (2) 0.1667% for each successive Fiscal Quarter following the Closing Date elapsed as of the date of such calculation *plus* (B) any interest on the Term Loans which has been paid-in-kind (to the extent outstanding)

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever intended to assure payment of any Indebtedness or the performance of any other obligation, including any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease and any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable law of any jurisdiction naming the owner of the asset to which such Lien relates as debtor.

*"Loan Documents"* means, collectively, this Agreement, the Notes (if any), the Guaranty, the Fee Letter, the Intercreditor Agreement, each Hedging Contract between any Loan Party and any Person that is a Lender, an Agent or an Affiliate of an Agent at the time it enters into such Hedging Contract, the Collateral Documents, the Escrow Agreement and each certificate, agreement or document executed by a Loan Party and delivered to any Agent or any Lender in connection with or pursuant to any of the foregoing

*"Loan Party"* means each of the Borrower, each Guarantor and each other Subsidiary of the Borrower that executes and delivers a Loan Document

*"Material Adverse Change"* means a material adverse change in any of (a) the business, assets, liabilities, operations, condition (financial or otherwise), operations, results or Projections of the Borrower or the Borrower and its Subsidiaries taken as a whole, (b) the legality, validity or enforceability of any Loan Document or any First Lien Loan Document, (c) the perfection or priority of the Liens granted pursuant to the Collateral Documents, (d) the ability of the Borrower to repay the Obligations or of the other Loan Parties to perform their respective obligations under the Loan Documents or (e) the rights and remedies of the Agents, or the Lenders under the Loan Documents.

*"Material Adverse Effect"* means an effect that results in or causes, or could reasonably be expected to result in or cause, a Material Adverse Change.

*"Maturity Date"* means June 29, 2011.

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

*"Mortgage Supporting Documents"* means, with respect to each Mortgage for a parcel of Real Property: (a) a mortgagee's title insurance policy or marked-up and signed unconditional binder for such insurance which shall (i) be in an amount satisfactory to the Administrative Agent, (ii) insure that the Mortgage insured thereby creates a valid lien on such Real Property free and clear of all defects and encumbrances except as disclosed therein, which defects and encumbrances shall be reasonably acceptable to the Administrative Agent, (iii) name the Administrative Agent for the benefit of the Secured Parties as the insured thereunder, (iv) be in the form of ALTA Loan Policy - 1992 (or equivalent policies); (v) contain such endorsements and affirmative coverage as the Administrative Agent may reasonably request; and (vi) be issued by a title company satisfactory to the Administrative Agent, (b) copies of all recorded document referred to, or listed as exceptions to title in, the title policy referred to in clause (a) above and a copy of all other material documents affecting the Real Property, (c) a current ALTA survey of the Real Property (in form that is sufficiently acceptable to the title insurer issuing title insurance to the Administrative Agent for such title insurer to deliver endorsements to such title insurance as reasonably requested by the Administrative Agent), together with a surveyor's certificate reasonably acceptable to the Administrative Agent; (d) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent in connection with such Mortgage in form and substance reasonably satisfactory to the Administrative Agent; (e) legal opinions delivered to the Administrative Agent relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent, and (f) evidence satisfactory to the Administrative Agent that all premiums in respect of the title policy, all charges for mortgage recording tax, and all related expenses, if any, have been paid

“*Mortgages*” means the mortgages, deeds of trust or other real estate security documents made or required herein to be made by the Borrower or any other Loan Party, each in form and substance satisfactory to the Administrative Agent

“*Multiemployer Plan*” means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Borrower, any of its Subsidiaries or any ERISA Affiliate has any obligation or liability, contingent or otherwise

“*Net Cash Proceeds*” means proceeds received by the Borrower or any of its Subsidiaries after the Closing Date in cash or Cash Equivalents from any (a) Asset Sale made pursuant to *Section 8 4 (Sale of Assets)* (other than *clauses (a) through (e)* thereof) net of (i) the reasonable cash costs of sale, assignment or other disposition, (ii) taxes paid or reasonably estimated to be payable as a result thereof, (iii) any amount required to be paid or prepaid on Indebtedness (other than the Obligations) secured by the assets subject to such Asset Sale and (iv) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustments associated with any disposition or any liabilities retained by the Borrower or any of its Subsidiaries associated with assets sold in such disposition (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); *provided, however*, that evidence of each of *clauses (i), (ii) and (iii)* above is provided to the Administrative Agent in form and substance reasonably satisfactory to it, (b) Property Loss Event or (c)(i) Equity Issuance (other than any such issuance of common Stock of Borrower occurring in the ordinary course of business to any director, member of the management or employee of the Borrower or its Subsidiaries) or (ii) any Debt Issuance other than Debt Issuances permitted under *Section 8 1(i) (Indebtedness)*, in each case, net of brokers’ and advisors’ fees and other costs incurred in connection with such transaction; *provided, however*, that in the case of this *clause (c)*, evidence of such costs is provided to the Administrative Agent in form and substance satisfactory to it

“*Network Agreement*” means any document or agreement entered into by any Loan Party or any Subsidiary of a Loan Party regarding the use, operation or maintenance of, or otherwise concerning, any Interactive Broadband Network.

“*New Preferred Stock*” means the preferred stock of the Borrower, to be issued before the Closing Date, in an aggregate amount of at least \$9,200,000

“*New Preferred Rights Offering*” means any Rights Offering or Rights Offerings by the Borrower after the Closing Date resulting in the first \$10,800,000 in proceeds to the Borrower from Rights Offerings

“*Non-Cash Interest Expense*” means, with respect to any Person for any period, the sum of the following amounts to the extent included in the definition of Interest Expense (a) the amount of debt discount and debt issuance costs amortized, (b) charges relating to write-ups or write-downs in the book or carrying value of existing Financial Covenant Debt, (c) interest payable in evidences of Indebtedness or by addition to the principal of the related Indebtedness and (d) other non-cash interest

“*Non-Consenting Lender*” has the meaning specified in *Section 11 1(c) (Amendments, Waivers, Etc.)*.



*"Non-Funding Lender"* has the meaning specified in *Section 2 2(d) (Borrowing Procedures)*

*"Non-US Lender"* means each Lender (or the Administrative Agent) that is a Non-U.S. Person.

*"Non-US Person"* means any Person that is not a Domestic Person

*"Note"* means any Term Loan Note.

*"Notice of Borrowing"* has the meaning specified in *Section 2 2(a) Borrowing Procedures*).

*"Notice of Conversion or Continuation"* has the meaning specified in *Section 2 8 (Conversion/Continuation Option)*.

*"Obligations"* means the Term Loans and all other amounts, obligations, covenants and duties owing by the Borrower to the Administrative Agent, any Lender, any Affiliate of any of them or any Indemnitee, of every type and description (whether by reason of an extension of credit, issuance or amendment of a letter of credit or payment of any draft drawn or other payment thereunder, loan, guaranty, indemnification, foreign exchange or currency swap transaction, interest rate hedging transaction or otherwise), present or future, arising under this Agreement, any other Loan Document (including Hedging Contracts that are Loan Documents), whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and whether or not evidenced by any note, guaranty or other instrument or for the payment of money, including all cash management and other fees, interest, charges, expenses, attorneys' fees and disbursements and other sums chargeable to the Borrower under this Agreement or any other Loan Document (including Hedging Contracts that are Loan Documents).

*"PBGC"* means the Pension Benefit Guaranty Corporation or any successor thereto

*"Permit"* means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under an applicable Requirement of Law.

*"Permitted Acquisition"* means any Proposed Acquisition subject to the satisfaction of each of the following conditions:

(a) the Administrative Agent shall receive at least 30 days' prior written notice of such Proposed Acquisition, which notice shall include a reasonably detailed description of such Proposed Acquisition;

(b) such Proposed Acquisition shall only involve assets located in the United States and comprising a business, or those assets of a business, of the type engaged in by the Borrower and its Subsidiaries as of the Closing Date (or any business reasonably related or ancillary thereto, as determined in good faith by the board of directors),

(c) such Proposed Acquisition shall be consensual and shall have been approved by the Proposed Acquisition Target's board of directors;

(d) no additional Indebtedness or other liabilities shall be incurred, assumed or otherwise be reflected on a Consolidated balance sheet of the Borrower and Proposed Acquisition Target after giving effect to such Proposed Acquisition, except (i) Term Loans made hereunder, (ii) ordinary course trade payables and accrued expenses and (iii) Indebtedness of the Proposed Acquisition Target; *provided*, that, after giving effect to such Permitted Acquisition, (A) such Indebtedness (together with all other Indebtedness of the Borrower and its Subsidiaries) is permitted under *Section 8 1 (Indebtedness)* and (B) the Leverage Ratio is, on a pro forma basis, no greater than prior to such Proposed Acquisition.

(e) the Dollar Equivalent of the sum of all amounts payable in connection with such Proposed Acquisition and all other Permitted Acquisitions consummated on or prior to the date of the consummation of such Proposed Acquisition (including all transaction costs and all Indebtedness, liabilities and Guaranty Obligations incurred or assumed in connection therewith or otherwise reflected in a Consolidated balance sheet of the Borrower and Target) shall not in aggregate exceed \$4,000,000 in any Fiscal Year and \$10,000,000 during the term of this Agreement, *provided, however*, that neither of the foregoing limits shall apply to the extent the purchase consideration for such Proposed Acquisition (i) is in the form of an Equity Issuance or is funded with the Net Cash Proceeds of any Equity Issuance not used to prepay Term Loans under *Section 2.6 (Mandatory Prepayments)* or (ii) is funded with the Net Cash Proceeds of an Asset Sale permitted by *Section 8 4 (Sale of Assets)* and subject to a Reinvestment Event, *provided*, that such Proposed Acquisition is consummated by the corresponding Reinvestment Prepayment Date;

(f) within 30 days of the closing of such Proposed Acquisition, the Borrower (or the Subsidiary making such Proposed Acquisition) and the Proposed Acquisition Target shall have executed such documents and taken such actions as may be required under *Section 7 11 (Additional Collateral and Guaranties)* and *Section 7 14 (Real Property)*,

(g) the Borrower shall have delivered to the Administrative Agent, in form and substance satisfactory to the Administrative Agent and sufficiently in advance and in any case no later than 21 days prior to such Proposed Acquisition, such other financial information, financial analysis, documentation or other information relating to such Proposed Acquisition and the pro forma certifications required by *clause (h)* below, in each case, as the Administrative Agent or any Lender shall reasonably request,

(h) (i) such Proposed Acquisition Target's EBITDA for the most recent four fiscal quarter period is greater than zero, and (ii) on or prior to the date of such Proposed Acquisition, the Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent, a certificate of the chief financial officer of the Borrower demonstrating pro forma (A) that at the time of such Proposed Acquisition and after giving effect thereto,

(1) compliance with the financial covenants set forth in *Article V (Financial Covenants)*, (2) compliance with the other terms of the Loan Documents, and (3) the aggregate amount of the Borrower's cash and Cash Equivalents (which in each case are subject to a perfected Lien (other than the liens created to secure the obligations under the First Lien Facilities and are otherwise permitted under the Intercreditor Agreement) of the Collateral Agent) and the Available Credit shall equal at least \$10,000,000, (B) copies of the acquisition agreement, related Contractual Obligations and instruments and (C) all opinions, certificates, lien search results and other documents reasonably requested by the Administrative Agent;

(i) at the time of such Proposed Acquisition and after giving effect thereto, (A) no Default or Event of Default shall have occurred and be continuing and (B) all representations and warranties contained in *Article IV (Representations and Warranties)* and in the other Loan Documents shall be true and correct in all material respects.

*"Permitted CIU Transactions"* means any agreement for a fixed term entered into by the Borrower or any of its Subsidiaries with a Person with respect to the construction, operation and maintenance of communications networks to provide telecommunications, cable, broadband or other communications services in commercial buildings or developments which transaction or agreement is not entered into for the purpose of raising financing.

*"Permitted MDU Transaction"* means any agreement for a fixed term entered into by the Borrower or any of its Subsidiaries with a Person with respect to the construction, operation and maintenance of communications networks to provide telecommunications, cable, broadband or other communications services in residential buildings or developments, or other sites containing multiple dwelling units, which transaction or agreement is not entered into for the purpose of raising financing

*"Person"* means an individual, partnership, corporation (including a business trust), joint stock company, estate, trust, limited liability company, unincorporated association, joint venture or other entity or a Governmental Authority.

*"PIK Amounts"* means the remaining interest payable with respect to the Term Loans in excess of the Interest Payable In Cash, which shall be payable -in-kind

*"Pledge and Security Agreement"* means an agreement, in substantially the form of *Exhibit F (Form of Pledge and Security Agreement)*, executed by the Borrower and each Guarantor.

*"Pledged Stock"* has the meaning specified in the Pledge and Security Agreement

*"Pole Agreement"* means any pole attachment agreement or underground conduit use agreement entered into in connection with the operation of any Interactive Broadband Network

*"Proceeds"* has the meaning given to such term in the UCC.

*"Prohibited Person"* shall mean any Person.

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism;

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, such Executive Order;

(c) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list, or

(d) who is an Affiliate of, or affiliated with, a Person listed above

*"Projections"* means the detailed business plan or projections of the Borrower and its Subsidiaries, dated May, 2005, for the Fiscal Years 2005 through 2009 and for the Fiscal Quarters beginning with the second Fiscal Quarter of 2005 and through the fourth Fiscal Quarter of 2006

*"Property Loss Event"* means (a) any loss of or damage to property of the Borrower or any of its Subsidiaries that results in the receipt by such Person of proceeds of insurance which exceed \$500,000 (individually or in the aggregate) or (b) any taking of property of the Borrower or any of its Subsidiaries that results in the receipt by such Person of proceeds in respect thereof which exceed \$500,000 (individually or in the aggregate)

*"Proposed Acquisition"* means the proposed acquisition by the Borrower or any of its Subsidiaries of all or substantially all of the assets or Stock of any Proposed Acquisition Target, or the merger of any Proposed Acquisition Target with or into the Borrower or any Subsidiary of the Borrower (and, in the case of a merger with the Borrower, with the Borrower being the surviving corporation).

*"Proposed Acquisition Target"* means any Person or any operating division thereof subject to a Proposed Acquisition

*"PUC"* means any state, provincial or other regulatory agency or body that exercises jurisdiction over (a) the rates, services or provision of Broadband Services or (b) the ownership, construction or operation of any Interactive Broadband Network or long distance telecommunications system or (c) Persons who own, construct or operate any Interactive Broadband Network or long distance telecommunications systems, in each case, by reason of the nature or type of the business subject to regulation and not pursuant to laws and regulations of general applicability to Persons conducting business in any such jurisdiction

*"PUC Authorization"* means any registration with, and any written validation, exemption, franchise, waiver, approval, order or authorization, consent, license, certificate and permit, regarding the provision of Broadband Services, issued to any Person from any PUC

*"Purchasing Lender"* has the meaning specified in *Section 11.7 (Sharing of Payments, Etc.)*

*"Ratable Portion"* or (other than in the expression *"equally and ratably"*) *"ratably"* means, with respect to any Lender, the percentage obtained by dividing (a) the Commitment of such Lender by (b) the aggregate Commitments of all Lenders (or, at any time after the Closing Date, the percentage obtained by dividing the principal amount of such Lender's Term Loans by the aggregate Term Loans of all Lenders)

*"Real Property"* of any Person means the Land of such Person, together with the right, title and interest of such Person, if any, in and to the streets, the Land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, the air space and development rights pertaining to the Land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land, including all alley, vault, drainage, mineral, water, oil and gas rights, together with all of the buildings and other improvements now or hereafter erected on the Land and any fixtures appurtenant thereto.

*"Reference Treasury Dealer"* CSFB and its respective successors and assigns and one other nationally recognized investment banking firm selected by the Administrative Agent that is a primary U.S. government securities dealer.

*"Reference Treasury Dealer Quotations"* means, with respect to any Reference Treasury Dealer and any prepayment date, the average, as determined by the Administrative Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Administrative Agent by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day immediately preceding such prepayment date

*"Register"* has the meaning specified in *Section 2.4(b) (Evidence of Debt)*

*"Reinvestment Deferred Amount"* means, with respect to any Net Cash Proceeds of any Reinvestment Event, the portion of such Net Cash Proceeds subject to a Reinvestment Notice

*"Reinvestment Event"* means the receipt of Net Cash Proceeds with respect to any Asset Sale or Property Loss Event in respect of which the Borrower has delivered a Reinvestment Notice.

*"Reinvestment Notice"* means a written notice executed by a Responsible Officer of the Borrower stating that no Default or Event of Default has occurred and is continuing and that the Borrower (directly or indirectly through one of its Subsidiaries) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Property Loss Event to acquire assets (including a Permitted Acquisition of 100% of the equity interests of another Person) useful in its or one of its Subsidiaries' businesses or, in the case of a Property Loss Event, to effect repairs

*"Reinvestment Prepayment Date"* means, with respect to any Net Cash Proceeds of any Reinvestment Event, the earlier of (a) the date occurring 360 days after such Reinvestment

Event and (b) the date that is five Business Days after the date on which the Borrower shall have notified the Administrative Agent of the Borrower's determination not to acquire assets useful in the Borrower's or a Subsidiary's business (or, in the case of a Property Loss Event, not to effect repairs) with all or any portion of the relevant Reinvestment Deferred Amount for such Net Cash Proceeds

*"Release"* means, with respect to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration, in each case, of any Contaminant into the indoor or outdoor environment or into or out of any property owned, leased or operated by such Person, including the movement of Contaminants through or in the air, soil, surface water, ground water or property.

*"Remedial Action"* means all actions required to (a) clean up, remove, treat or in any other way address any Contaminant in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release so that a Contaminant does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

*"Requirement of Law"* means, with respect to any Person, the common law and all federal, state, local and foreign laws, treaties, rules and regulations, orders, judgments, decrees and other determinations of, concessions, grants, franchises, licenses and other Contractual Obligations with, any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

*"Requisite Lenders"* means, collectively, Lenders having (a) on and prior to the Closing Date, more than fifty percent (50%) of the aggregate outstanding amount of the Commitments, and (b) after the Closing Date more than fifty percent (50%) of the principal amount of all Term Loans then outstanding (including PIK Amounts). A Non-Funding Lender shall not be included in the calculation of *"Requisite Lenders"*

*"Responsible Officer"* means, with respect to any Person, any of the principal executive officers, managing members or general partners of such Person but, in any event, with respect to financial matters, the chief financial officer, treasurer or controller of such Person

*"Restricted Payment"* means (a) any dividend, distribution or any other payment whether direct or indirect, on account of any Stock or Stock Equivalent of the Borrower or any of its Subsidiaries now or hereafter outstanding and (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalent of the Borrower or any of its Subsidiaries now or hereafter outstanding.

*"Rights Offering"* means any offer to the Borrower's existing equity holders, by or on behalf of the Borrower of any rights to purchase Stock or Stock Equivalents in the Borrower, including any such Stock or Stock Equivalents purchased or assumed by a financial intermediary in connection with a standby commitment or similar arrangement

*"S&P"* means Standard & Poor's Rating Services

*"Sarbanes-Oxley Act"* means the United States Sarbanes-Oxley Act of 2002.

"*Secured Obligations*" means, in the case of the Borrower, the Obligations, and, in the case of any other Loan Party, the obligations of such Loan Party under the Guaranty and the other Loan Documents to which it is a party

"*Secured Parties*" means the Lenders, the Administrative Agent and any other holder of any Secured Obligation

"*Securities Account*" has the meaning given to such term in the UCC.

"*Securities Account Control Agreement*" has the meaning specified in the Pledge and Security Agreement.

"*Security*" means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"*Selling Lender*" has the meaning specified in *Section 117 (Sharing of Payments, Etc)*

"*Solvent*" means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets of such Person (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to pay all liabilities of such Person as such liabilities mature and (c) such Person does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability

"*Special Purpose Vehicle*" means any special purpose funding vehicle identified as such in writing by any Lender to the Administrative Agent.

"*Stock*" means shares of capital stock (whether denominated as common stock or preferred stock), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting.

"*Stock Equivalents*" means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable

"*Subsidiary*" means, with respect to any Person, any corporation, partnership, limited liability company or other business entity of which an aggregate of 50% or more of the outstanding Voting Stock is, at the time, directly or indirectly, owned or controlled by such Person or one or more Subsidiaries of such Person

"*Subsidiary Guaranty Requirements*" means, the entering by a Subsidiary of the Borrower into a "*Guaranty Supplement*" (as such term is defined in the Guaranty), a joinder agreement to the Pledge and Security Agreement and all other Collateral Documents required by

Sections 7.11 (*Additional Collateral and Guaranties*) and 7.14 (*Real Property*) and the delivery to the Administrative Agent of such legal opinions in connection therewith which are, in each case, in form and substance and from counsel reasonably satisfactory to the Administrative Agent

"*Substitute Institution*" has the meaning specified in Section 2.14 (*Substitution of Lenders*).

"*Substitution Notice*" has the meaning specified in Section 2.14 (*Substitution of Lenders*).

"*Syndication Completion Date*" means the earlier to occur of (a) the 60<sup>th</sup> day following the Closing Date and (b) the date upon which the Arranger determines in its sole discretion that the primary syndication of the Term Loans has been completed.

"*Tax Affiliate*" means, with respect to any Person, (a) any Subsidiary of such Person and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated, combined or unitary tax returns.

"*Tax Return*" has the meaning specified in Section 4.8(a) (*Taxes*).

"*Taxes*" has the meaning specified in Section 2.13(a) (*Taxes*).

"*Term Loan*" has the meaning specified in Section 2.1 (*The Commitments*).

"*Term Loan Borrowing*" means a borrowing consisting of Term Loans made on the same day by the Lenders ratably according to their respective Commitments.

"*Term Loan Facility*" means the Commitments and the provisions herein related to the Term Loans

"*Term Loan Note*" means a promissory note of the Borrower payable to the order of any Lender in a principal amount equal to the amount of the Term Loan owing to such Lender

"*Title IV Plan*" means a pension plan, other than a Multiemployer Plan, covered by Title IV of ERISA and to which the Borrower, any of its Subsidiaries or any ERISA Affiliate has any obligation or liability, contingent or otherwise

"*UCC*" has the meaning specified in the Pledge and Security Agreement.

"*Unfunded Pension Liability*" means, with respect to the Borrower or any of its Subsidiaries at any time, the sum of (a) the amount, if any, by which the present value of all accrued benefits under each Title IV Plan (other than any Title IV Plan subject to Section 4063 of ERISA) exceeds the fair market value of all assets of such Title IV Plan allocable to such benefits in accordance with Title IV of ERISA, as determined as of the most recent valuation date for such Title IV Plan using the actuarial assumptions in effect under such Title IV Plan, (b) the aggregate amount of withdrawal liability that could be assessed under Section 4063 with respect to each Title IV Plan subject to such section, separately calculated for each such Title IV Plan as of its most recent valuation date and (c) for a period of five years following a transaction reasonably likely to be covered by Section 4069 of ERISA, the liabilities (whether or not accrued) that could



be avoided by the Borrower, any of its Subsidiaries or any ERISA Affiliate as a result of such transaction.

*"US Lender"* means each Lender (or the Administrative Agent) that is a Domestic Person.

*"Voting Stock"* means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency).

*"Wholly-Owned Subsidiary"* of any Person means any Subsidiary of such Person, all of the Stock of which (other than director's qualifying shares, as may be required by law) is owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries of such Person.

*"Withdrawal Liability"* means, with respect to the Borrower or any of its Subsidiaries at any time, the aggregate liability incurred (whether or not assessed) with respect to all Multiemployer Plans pursuant to Section 4201 of ERISA or for increases in contributions required to be made pursuant to Section 4243 of ERISA.

*"Working Capital"* means, for any Person at any date, the amount, if any, by which the Consolidated Current Assets of such Person at such date exceeds the Consolidated Current Liabilities of such Person at such date.

### ***Section 1.2 Computation of Time Periods***

In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word *"from"* means *"from and including"* and the words *"to"* and *"until"* each mean *"to but excluding"* and the word *"through"* means *"to and including"*

### ***Section 1.3 Accounting Terms and Principles***

(a) Except as set forth below, all accounting terms not specifically defined herein shall be construed in conformity with GAAP and all accounting determinations required to be made pursuant hereto (including for purpose of measuring compliance with *Article V (Financial Covenants)*) shall, unless expressly otherwise provided herein, be made in conformity with GAAP

(b) If any change in the accounting principles used in the preparation of the most recent Financial Statements referred to in *Section 6.1 (Financial Statements)* is hereafter required or permitted by the rules, regulations, pronouncements and opinions of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successors thereto) and such change is adopted by the Borrower with the agreement of the Borrower's Accountants and results in a change in any of the calculations required by *Article V (Financial Covenants)* or *VIII (Negative Covenants)* that would not have resulted had such accounting change not occurred, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such change such that the criteria for evaluating compliance with such covenants by the Borrower shall be the same after such change as if such change had not been made, provided, however, that no change in GAAP that would affect a

calculation that measures compliance with any covenant contained in *Article V (Financial Covenants)* or *VIII (Negative Covenants)* shall be given effect until such provisions are amended to reflect such changes in GAAP.

(c) For purposes of making all financial calculations to determine compliance with *Article V (Financial Covenants)*, all components of such calculations shall be adjusted to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any business or assets that have been acquired by the Borrower or any of its Subsidiaries (including through Permitted Acquisitions) after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by the Borrower on a pro forma basis

#### ***Section 1.4 Conversion of Foreign Currencies***

(a) *Financial Covenant Debt* Financial Covenant Debt denominated in any currency other than Dollars shall be calculated using the Dollar Equivalent thereof as of the date of the Financial Statements on which such Financial Covenant Debt is reflected

(b) *Dollar Equivalents.* The Administrative Agent shall determine the Dollar Equivalent of any amount as required hereby, and a determination thereof by the Administrative Agent shall be conclusive absent manifest error. The Administrative Agent may, but shall not be obligated to, rely on any determination made by any Loan Party in any document delivered to the Administrative Agent. The Administrative Agent may determine or redetermine the Dollar Equivalent of any amount on any date either in its own discretion or upon the request of any Lender

(c) *Rounding-Off.* The Administrative Agent may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

#### ***Section 1.5 Certain Terms***

(a) The terms "*herein*," "*hereof*," "*hereto*" and "*hereunder*" and similar terms refer to this Agreement as a whole and not to any particular Article, Section, subsection or clause in, this Agreement.

(b) Unless otherwise expressly indicated herein, (i) references in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement and (ii) the words "*above*" and "*below*", when following a reference to a clause or a sub-clause of any Loan Document, refer to a clause or sub-clause within, respectively, the same Section or clause

(c) Each agreement defined in this *Article I* shall include all appendices, exhibits and schedules thereto Unless the prior written consent of the Requisite Lenders is required hereunder for an amendment, restatement, supplement or other modification to any such agreement and such consent is not obtained, references in this Agreement to such agreement shall be to such agreement as so amended, restated, supplemented or modified

(d) References in this Agreement to any statute shall be to such statute as amended or modified from time to time and to any successor legislation thereto, in each case as in effect at the time any such reference is operative.

(e) The term "including" when used in any Loan Document means "including without limitation" except when used in the computation of time periods.

(f) The terms "Lender" and "Administrative Agent" include their respective successors

(g) Upon the appointment of any successor Administrative Agent pursuant to *Section 10.7 (Successor Agent)*, references to CSFB in *Section 10.4 (The Agents Individually)* in the definitions of Base Rate, Dollar Equivalent, and Eurodollar Rate shall be deemed to refer to the financial institution then acting as the Administrative Agent or one of its Affiliates if it so designates.

## ARTICLE II

### THE FACILITIES

#### *Section 2.1 The Commitments*

On the terms and subject to the conditions contained in this Agreement, each Lender severally agrees to make a loan (each a "Term Loan") in Dollars to the Borrower on the Closing Date, in an amount not to exceed such Lender's Commitment. Amounts of Term Loans repaid or prepaid may not be reborrowed.

#### *Section 2.2 Borrowing Procedures*

(a) Each Borrowing shall be made on notice given by the Borrower to the Administrative Agent not later than 11:00 a.m. (New York time) (i) one Business Day, in the case of a Borrowing of Base Rate Loans and (ii) three Business Days, in the case of a Borrowing of Eurodollar Rate Loans, prior to the date of the proposed Borrowing. Each such notice shall be in substantially the form of *Exhibit C (Form of Notice of Borrowing)* (a "Notice of Borrowing"), specifying, (A) the date of such proposed Borrowing (which shall be the Closing Date), (B) the aggregate amount of such proposed Borrowing, (C) whether any portion of the proposed Borrowing will be of Base Rate Loans or Eurodollar Rate Loans, (D) for each Eurodollar Rate Loan, the initial Interest Period or Periods thereof. Loans shall be made as Base Rate Loans unless, subject to *Section 2.14 (Special Provisions Governing Eurodollar Rate Loans)*, the Notice of Borrowing specifies that all or a portion thereof shall be Eurodollar Rate Loans and (E) remittance instructions

(b) The Administrative Agent shall give to each Lender prompt notice of the Administrative Agent's receipt of a Notice of Borrowing and, if Eurodollar Rate Loans are properly requested in such Notice of Borrowing, the applicable interest rate determined pursuant to *Section 2.11(a) (Determination of Interest Rate)*. Each Lender shall, before 1:00 p.m. (New York time) on the date of the proposed Borrowing, make available to the Administrative Agent at its address referred to in *Section 11.8 (Notices, Etc.)*, in immediately available funds, such Lender's Ratable Portion of such proposed Borrowing. Upon fulfillment (or due waiver in accordance with *Section 11.1 (Amendments, Waivers, Etc.)*) on the Closing Date of the applicable

conditions set forth in *Section 3.1 (Conditions Precedent to Initial Loans)* and after the Administrative Agent's receipt of such funds, the Administrative Agent shall make such funds available to the Borrower

(c) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any proposed Borrowing that such Lender will not make available to the Administrative Agent such Lender's Ratable Portion of such Borrowing (or any portion thereof), the Administrative Agent may assume that such Lender has made such Ratable Portion available to the Administrative Agent on the date of such Borrowing in accordance with this *Section 2.2* and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such Ratable Portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to the Term Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate for the first Business Day and thereafter at the interest rate applicable at the time to the Term Loans comprising such Borrowing. If such Lender shall repay to the Administrative Agent such corresponding amount, such corresponding amount so repaid shall constitute such Lender's Term Loan as part of such Borrowing for purposes of this Agreement. If the Borrower shall repay to the Administrative Agent such corresponding amount, such payment shall not relieve such Lender of any obligation it may have hereunder to the Borrower

(d) The failure of any Lender to make on the date specified any Term Loan or any payment required by it (such Lender being a "*Non-Funding Lender*"), shall not relieve any other Lender of its obligations to make such Term Loan or payment on such date but no such other Lender shall be responsible for the failure of any Non-Funding Lender to make a Term Loan or payment required under this Agreement

### ***Section 2.3 Repayment of Loans***

The Borrower promises to repay the entire unpaid principal amount of the Term Loans (to the extent not previously repaid) on the Maturity Date.

### ***Section 2.4 Evidence of Debt***

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Term Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement

(b) (i) The Administrative Agent, acting as agent of the Borrower solely for this purpose and for tax purposes, shall establish and maintain at its address referred to in *Section 11.8 (Notices, Etc.)* a record of ownership (the "*Register*") in which the Administrative Agent agrees to register by book entry the Administrative Agent's and each Lender's interest in each Term Loan, and in the right to receive any payments hereunder and any assignment of any such interest or rights. In addition, the Administrative Agent, acting as agent of the Borrower solely for this purpose and for tax purposes, shall establish and maintain accounts in the Register in accordance with its

usual practice in which it shall record (A) the names and addresses of the Lenders, (B) the Commitments of each Lender from time to time, (C) the amount of each Term Loan made and, if a Eurodollar Rate Loan, the Interest Period applicable thereto, (D) the amount of any principal or interest (including PIK Amounts) due and payable, and paid, by the Borrower to, or for the account of, each Lender hereunder, and (E) the amount of any sum received by the Administrative Agent hereunder from the Borrower, whether such sum constitutes principal or interest (and the type of Term Loan to which it applies), fees, expenses or other amounts due under the Loan Documents and each Lender's share thereof, if applicable.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Term Loans (including the Notes evidencing such Term Loans) are registered obligations and the right, title, and interest of the Lenders and their assignees in and to such Term Loans shall be transferable only upon notation of such transfer in the Register. A Note shall only evidence the Lender's or a registered assignee's right, title and interest in and to the related Term Loan. This *Section 2.4(b)* and *Section 11.2 (Assignments and Participations)* shall be construed so that the Term Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (or any successor provisions of the Code or such regulations)

(c) The entries made in the Register and in the accounts therein maintained pursuant to *clauses (a) and (b)* above shall, to the extent permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Term Loans in accordance with their terms. In addition, the Loan Parties, the Administrative Agent, and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for inspection by the Borrower, the Administrative Agent or such Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Notwithstanding any other provision of the Agreement, in the event that any Lender requests that the Borrower execute and deliver a promissory note or notes payable to such Lender in order to evidence the Indebtedness owing to such Lender by the Borrower hereunder, the Borrower shall promptly execute and deliver a Note or Notes to such Lender evidencing any Term Loans of such Lender, substantially in the form of *Exhibit B (Form of Term Note)*

### **Section 2.5      Optional Prepayments**

(a) The Borrower may prepay the outstanding principal amount of the Term Loans (including PIK Amounts, if any), in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid, *provided, however*, the Borrower shall provide the Administrative Agent with notice stating the proposed date and aggregate principal amount of such prepayment not later than 11:00 a.m. (New York time) (a) one Business Day, in the case of a Borrowing of Base Rate Loans and (b) three Business Days, in the case of a Borrowing of Eurodollar Rate Loans, prior to the date of the proposed prepayment; *provided, further*, (i) if any prepayment of any Eurodollar Rate Loan is made by the Borrower other than on the last day of an Interest Period for such Term Loan, the Borrower shall also pay any amounts

owing pursuant to *Section 2 11(e) (Breakage Costs)*, (ii) each partial prepayment shall be in an aggregate amount not less than \$5,000,000 or integral multiples of \$1,000,000 in excess thereof, and (iii) no such prepayment shall be permitted unless paid together with any Applicable Prepayment Premium which is payable pursuant to *Section 2 9(a) (Prepayment Premium)*. Upon the giving of such notice of prepayment, the principal amount of the Term Loans specified to be prepaid shall become due and payable on the date specified for such prepayment.

(b) The Borrower shall have no right to prepay the principal amount of any Term Loan other than as provided in this *Section 2.5*.

#### ***Section 2.6 Mandatory Prepayments***

(a) To the extent not otherwise subject to application of the mandatory prepayment provisions contained in the First Lien Credit Agreement, upon receipt by the Borrower or any of its Subsidiaries of Net Cash Proceeds arising (i) from an Asset Sale (excluding, unless a Default or Event of Default has occurred which is continuing on the date of receipt, the Net Cash Proceeds received pursuant to the Cerritos Sale; *provided*, that such Net Cash Proceeds are used for working capital requirements and general corporate purposes of the Borrower and its Subsidiaries), Property Loss Event, New Preferred Rights Offering or Debt Issuance, the Borrower shall immediately prepay the Term Loans in an amount equal to 100% of such Net Cash Proceeds (except Net Cash Proceeds subject to a Reinvestment Event as provided below) and (ii) from an Equity Issuance (other than a New Preferred Rights Offering or an Equity Issuance to the extent applied to the purchase consideration for a Permitted Acquisition within 180 days of such Equity Issuance), the Borrower shall immediately prepay the Term Loans in an amount equal to 50% of such Net Cash Proceeds, *provided, however*, that if the Leverage Ratio as of the last day of the most recently ended Fiscal Quarter is (A) less than 5.5 to 1.0, then the foregoing percentage with respect to Equity Issuances shall be reduced to 25% or (B) less than 4.5 to 1.0, then such percentage shall be reduced to 0%. Any such mandatory prepayment shall be applied as provided in *clause (c)* below; *provided, however*, that, in the case of any Net Cash Proceeds subject to a Reinvestment Event, the Borrower shall, pending application of such Net Cash Proceeds, immediately upon receipt of such Net Cash Proceeds deposit an amount equal to 100% of such Net Cash Proceeds in a Cash Collateral Account. To the extent not otherwise subject to application of the mandatory prepayment provisions contained in the First Lien Credit Agreement, on any Reinvestment Prepayment Date, the Borrower shall prepay the Term Loans in an amount equal to the remaining Reinvestment Deferred Amount which has not been reinvested as of such date in accordance with the applicable Reinvestment Notice, which prepayment shall be applied as provided in *clause (c)* below. Notwithstanding the foregoing, for any Fiscal Year, the amount of Net Cash Proceeds from Asset Sales subject to a Reinvestment Event shall not exceed \$1,000,000.

(b) To the extent not otherwise subject to application of the mandatory prepayment provisions contained in the First Lien Credit Agreement, the Borrower shall prepay the Term Loans within 95 days after the last day of each Fiscal Year, in an amount equal to 75% of Excess Cash Flow for such Fiscal Year; *provided, however*, that if the Leverage Ratio as of the last day of such Fiscal Year is less than 5.5 to 1.0, then such percentage shall be reduced to 50% for such Fiscal Year, *provided, further* that no such prepayment shall be required prior to calendar year 2006. Any such mandatory prepayment shall be applied in accordance with *clause (c)* below.

(c) Subject to the provisions of *Section 2 10(g) (Payments and Computations)*, any mandatory prepayments made by the Borrower required to be applied in accordance with this *clause (c)* shall be applied (subject, with respect to mandatory prepayments pursuant to *clause (a)* above, to *clauses (d) and (e)* below) as follows. first, to the prepayment of the First Lien Term Facility to repay the outstanding principal balance of the term loans made pursuant thereto, until such term loans shall have been prepaid in full, second, to repay the outstanding principal balance of the "Swing Loans" (as such term is defined in the First Lien Credit Agreement) until such Swing Loans shall have been repaid in full; and third, to repay the outstanding principal balance of the First Lien Revolving Facility in accordance with the provisions of the First Lien Credit Agreement.

(d) In connection with any mandatory prepayment pursuant to *clause (a)* above which is to be made in accordance with *clause (c)* above at any time the First Lien Term Loans are outstanding, the Borrower shall give the Administrative Agent 10 Business Days prior notice of any such mandatory prepayment. In case any amounts are available to prepay the Term Loans pursuant to *clause (a)* above, on the eighth Business Day preceding the date of the applicable mandatory prepayment, the Administrative Agent shall notify each Lender of an offer of a mandatory prepayment of the Term Loan in the aggregate amount of the mandatory prepayments that exceed the amount required to be applied to the First Lien Facilities or are declined by First Lien Term Lenders electing not to accept such an offer for prepayment pursuant to *Section 2 9(e) (Mandatory Prepayments)* of the First Lien Credit Agreement (any such offer, a "Second Lien Prepayment Offer"). Any Lender may, at its option, elect not to accept such prepayment of its Loan (any Lender making such election being a "Declining Second Lien Lender"), provided that each Declining Second Lien Lender shall give written notice thereof to the Administrative Agent not later than 11:00 a.m. New York City time on the Business Day immediately preceding the date of the applicable mandatory prepayment. On the date of the applicable mandatory prepayment, proceeds in excess of the portion of the proceeds required to be applied to the First Lien Facilities by the First Lien Credit Agreement, if any, shall be paid to each Term Lender that is not a Declining Second Lien Lender in an amount equal to such Lender's Ratable Portion of such mandatory prepayment and, if any Net Cash Proceeds are remaining following such application, such amounts shall be made available to the Borrower for application for any purpose permitted by this Agreement and the First Lien Credit Agreement including the prepayment of PIK Amounts. In the event that the Administrative Agent has not, with respect to any prepayment, received a notice from a Lender in accordance with this *clause (d)*, such Lender shall be deemed to have waived its rights under this *clause (d)* to decline receipt thereof. The provisions of this *clause (d)* shall not apply to mandatory prepayments pursuant to *clause (b)* above and no Lender shall not have the right to decline such mandatory prepayments.

(e) In connection with any mandatory prepayment pursuant to *clause (a)* above which is to be made in accordance with *clause (c)* above after the termination of the First Lien Term Loans, the Borrower shall give the Administrative Agent 5 Business Days prior notice of any such mandatory prepayment, whereupon the Administrative Agent shall promptly notify each Term Loan Lender thereof. Any Term Loan Lender may, at its option, elect not to accept such prepayment of its Term Loan (any Term Loan Lender making such election being a "Declining Lender") provided that each Declining Lender shall give written notice thereof to the Administrative Agent not later than 11:00 a.m. New York City time on the third Business Day preceding the date of the applicable mandatory prepayment. On such date of prepayment, an amount equal to that portion of the Term Loans then to be prepaid to the Term Loan Lenders (less the aggregate amount thereof that would otherwise be payable to Declining Lenders) shall be paid

to the Term Loan Lenders that are not Declining Lenders, in each case, in amount equal to such Term Loan Lender's Ratable Portion of such amount. That portion of the Term Loans that would otherwise be payable to Declining Lenders shall be retained by the Borrower and applied to any purpose permitted by this Agreement. In the event that the Administrative Agent has not, with respect to any prepayment, received a notice from a Term Loan Lender in accordance with this *clause (e)*, such Term Loan Lender shall be deemed to have waived its rights under this *clause (e)* to decline receipt thereof. The provisions of this *clause (d)* shall not apply to mandatory prepayments pursuant to *clause (b)* above and no Lender shall not have the right to decline such mandatory prepayments

### **Section 2.7 Interest**

(a) *Rate of Interest.* All Term Loans and the outstanding amount of all other Obligations (other than pursuant to Hedging Contracts that are Loan Documents, to the extent such Hedging Contracts provide for the accrual of interest on unpaid obligations) shall bear interest, in the case of Term Loans, on the unpaid principal amount thereof from the date such Term Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in *clause (d)* below, as follows:

(i) if a Base Rate Loan or such other Obligation, at a rate *per annum* equal to the sum of (A) the Base Rate as in effect from time to time and (B) the Applicable Margin, and

(ii) if a Eurodollar Rate Loan, at a rate *per annum* equal to the sum of (A) the Eurodollar Rate determined for the applicable Interest Period and (B) the Applicable Margin in effect from time to time during such Eurodollar Interest Period.

(b) *Interest Payments.* (i) Interest accrued on each Base Rate Loan shall be payable in arrears (A) in the case of Interest Payable In Cash, on the first Business Day of each Fiscal Quarter, commencing on the first such day following the making of such Base Rate Loan, (B) in the case of Base Rate Loans that are Term Loans, upon the payment or prepayment thereof in full or in part and (C) if not previously paid in full, at maturity (whether by acceleration or otherwise) of such Base Rate Loan, (ii) interest accrued on each Eurodollar Rate Loan shall be payable in arrears (A) in the case of Interest Payable In Cash, on the last day of each Interest Period applicable to such Term Loan and, if such Interest Period has a duration of more than three months, on each date during such Interest Period occurring every three months from the first day of such Interest Period, (B) upon the payment or prepayment thereof in full or in part and (C) if not previously paid in full, at maturity (whether by acceleration or otherwise) of such Eurodollar Rate Loan, (iii) interest accrued on the amount of all other Obligations shall be payable on demand from and after the time such Obligation becomes due and payable (whether by acceleration or otherwise) and (iv) interest accrued on each Base Rate Loan or Eurodollar Rate Loan, and not constituting Interest Payable In Cash, shall be paid-in-kind as provided in *clause (c)* below.

(c) *PIK Amounts.* All accrued interest on the Term Loans constituting PIK Amounts shall, on the last Business Day of each Fiscal Quarter, be consolidated with, and increase the principal amount of, the Term Loans for all purposes under this Agreement and the other Loan Documents



(d) *Default Interest.* Notwithstanding the rates of interest specified in *clause (a)* above or elsewhere herein, effective immediately upon the occurrence of an Event of Default and for as long thereafter as such Event of Default shall be continuing, the principal balance of all Term Loans and the amount of all other Obligations then due and payable shall bear interest at a rate that is two percent *per annum* in excess of the rate of interest applicable to such Term Loans or other Obligations from time to time. Such interest shall be payable on the date that would otherwise be applicable to such interest pursuant to *clause (b)* above or otherwise on demand.

### **Section 2.8      Conversion/Continuation Option**

(a) The Borrower may elect (i) at any time on any Business Day to convert Base Rate Loans or any portion thereof to Eurodollar Rate Loans and (ii) at the end of any applicable Interest Period, to convert Eurodollar Rate Loans or any portion thereof into Base Rate Loans or to continue such Eurodollar Rate Loans or any portion thereof for an additional Interest Period; *provided, however*, that the aggregate amount of the Eurodollar Loans for each Interest Period must be in the amount of at least \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof. Each conversion or continuation shall be allocated among the Term Loans of each Lender in accordance with such Lender's Ratable Portion. Each such election shall be in substantially the form of *Exhibit D (Form of Notice of Conversion or Continuation)* (a "Notice of Conversion or Continuation") and shall be made by giving the Administrative Agent at least (x) three Business Days' prior written notice in the case of a conversion to, or continuation of, Eurodollar Rate Loans or (y) one Business Day's prior written notice in the case of a conversion to Base Rate Loans, each such notice specifying, as applicable, (A) the amount and type of Term Loan being converted or continued, (B) in the case of a conversion to, or a continuation of, Eurodollar Rate Loans, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion.

(b) The Administrative Agent shall promptly notify each Lender of its receipt of a Notice of Conversion or Continuation and of the options selected therein. Notwithstanding the foregoing, no conversion in whole or in part of Base Rate Loans to Eurodollar Rate Loans and no continuation in whole or in part of Eurodollar Rate Loans upon the expiration of any applicable Interest Period shall be permitted at any time at which (i) a Default or an Event of Default shall have occurred and be continuing or (ii) the continuation of, or conversion into, a Eurodollar Rate Loan would violate any provision of *Section 2.11 (Special Provisions Governing Eurodollar Rate Loans)*. If, within the time period required under the terms of this *Section 2.8*, the Administrative Agent does not receive a Notice of Conversion or Continuation from the Borrower containing a permitted election to continue any Eurodollar Rate Loans for an additional Interest Period or to convert any such Term Loans, then, upon the expiration of the applicable Interest Period, such Term Loans shall be automatically converted to Base Rate Loans, *provided, further*, that if any Notice of Conversion or Continuation (i) fails to specify whether the applicable Term Loans shall be converted to or continued as Base Rate Loans or as Eurodollar Rate Loans, such Term Loans shall be converted to or continued as Base Rate Loans and (ii) in the case of a conversion to or a continuation of Eurodollar Rate Loans, fails to indicate the term of the applicable Interest Period, such Interest Period shall be deemed to be for a one-month period. Each Notice of Conversion or Continuation shall be irrevocable.

## **Section 2.9 Fees**

(a) *Prepayment Premium* In connection with, and as a condition to any prepayment of all or a portion of the Term Loans pursuant to *Section 2.5(b) (Optional Prepayments)*, the Borrower shall pay to the Lenders, in addition to any other amounts then due on the date of any such prepayment, the Applicable Prepayment Premium calculated with respect to the Term Loans so prepaid as of the date thereof

(b) *Additional Fees* The Borrower has agreed to pay to the Administrative Agent and the Arranger additional fees, the amount and dates of payment of which are embodied in the Fee Letter.

## **Section 2.10 Payments and Computations**

(a) The Borrower shall make each payment hereunder (including fees and expenses) not later than 1:00 p.m. (New York time) on the day when due, in Dollars to the Administrative Agent at its address referred to in *Section 11.8 (Notices, Etc.)* in immediately available funds without set-off or counterclaim. The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders ratably, in accordance with the application of payments set forth in *clause (f) or (g) below*, as applicable, for the account of their respective Applicable Lending Offices, *provided, however*, that amounts payable pursuant to *Section 2.12 (Capital Adequacy)*, *Section 2.13 (Taxes)* or *Section 2.11(c) or (d) (Special Provisions Governing Eurodollar Rate Loans)* shall be paid only to the affected Lender or Lenders. Payments received by the Administrative Agent after 1:00 p.m. (New York time) shall be deemed to be received on the next Business Day (in the Administrative Agent's sole discretion)

(b) All computations of interest and of fees shall be made by the Administrative Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest and fees are payable except for interest in connection with Base Rate Loans which shall be calculated on the basis of the actual number of calendar days in the applicable year. Each determination by the Administrative Agent of a rate of interest hereunder shall be conclusive and binding for all purposes, absent manifest error

(c) Each payment by the Borrower of any Term Loan (including interest or fees in respect thereof) and each reimbursement of various costs, expenses or other Obligation shall be made in the currency in which such Term Loan was made or such cost, expense or other Obligation was incurred; *provided, however*, that other than for payments in respect of a Term Loan, Loan Documents duly executed by the Administrative Agent or any Hedging Contract may specify other currencies of payment for Obligations created by or directly related to such Loan Document or Hedging Contract

(d) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be, *provided, however*, that if such extension would cause payment of interest on or principal of any Eurodollar Rate Loan to be made in the next calendar month, such payment shall be made on the immediately preceding

Business Day. All repayments of any Term Loans shall be applied pro rata to repay such Term Loans outstanding as Base Rate Loans and Eurodollar Rate Loans

(e) Unless the Administrative Agent shall have received notice from the Borrower to the Lenders prior to the date on which any payment is due hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made 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 that the Borrower shall not have 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 (at the Federal Funds Rate for the first Business Day and thereafter, at the rate applicable to Base Rate Loans) 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.

(f) Except for payments and other amounts received by the Administrative Agent and applied in accordance with the provisions of *clause (g)* below (or required to be applied, subject to the terms of the Intercreditor Agreement, in accordance with *Section 2.6(c) (Mandatory Prepayments)*), all payments and any other amounts received by the Administrative Agent from or for the benefit of the Borrower shall be applied as follows *first*, to pay principal of, and interest on, any portion of the Term Loans the Administrative Agent may have advanced pursuant to the express provisions of this Agreement on behalf of any Lender, for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower, *second*, to pay all other Obligations then due and payable and *third*, as the Borrower so designates. Payments in respect of the Term Loans received by the Administrative Agent shall be distributed to each Lender in accordance with such Lender's Ratable Portion of the Term Loans. All payments of fees and all other payments in respect of any other Obligation shall be allocated, among such of the Lenders as are entitled thereto and, for such payments allocated to the Lenders, in proportion to their respective Ratable Portions.

(g) The Borrower hereby irrevocably waives the right to direct the application of any and all payments in respect of the Obligations and any proceeds of Collateral after the occurrence and during the continuance of an Event of Default and agrees that, notwithstanding the provisions of *Section 2.6(c) (Mandatory Prepayments)* and *clause (f)* above, each Agent may, and, upon either (A) the written direction of the Requisite Lenders or (B) the acceleration of the Obligations pursuant to *Section 9.2 (Remedies)* shall, deliver a blockage notice to each Deposit Account Bank for each Approved Deposit Account and apply, subject to the terms of the Intercreditor Agreement, all payments in respect of any Obligations and all funds on deposit in any Cash Collateral Account (including all proceeds arising from a Reinvestment Event that are held in the Cash Collateral Account pending application of such proceeds as specified in a Reinvestment Notice) and all other proceeds of Collateral in the following order:

(i) first, to pay Secured Obligations in respect of any expense reimbursements or indemnities then due to the Agents;

(ii) second, to pay Secured Obligations in respect of any expense reimbursements or indemnities then due to the Lenders,

(iii) third, to pay Secured Obligations in respect of any fees then due to the Administrative Agent, the Collateral Agent and the Lenders;

(iv) fourth, to pay interest then due and payable in respect of the Term Loans;

(v) fifth, to pay or prepay principal amounts on the Term Loans and amounts owing with respect to Hedging Contracts which are Loan Documents, ratably to the aggregate principal amount of such Term Loans and Obligations owing with respect to Hedging Contracts, and

(vi) sixth, to the ratable payment of all other Secured Obligations;

*provided, however*, that if sufficient funds are not available to fund all payments to be made in respect of any Secured Obligation described in any of *clauses (i), (ii), (iii), (iv), (v) and (vi)* above, the available funds being applied with respect to any such Secured Obligation (unless otherwise specified in such clause) shall be allocated to the payment of such Secured Obligation ratably, based on the proportion of the Administrative Agent's and each Lender's interest in the aggregate outstanding Secured Obligations described in such clauses. The order of priority set forth in *clauses (i), (ii), (iii), (iv), (v) and (vi)* shall not be changed without the prior consent of the Administrative Agent, the Requisite Lenders and each Lender adversely affected thereby.

#### ***Section 2.11 Special Provisions Governing Eurodollar Rate Loans***

##### ***(a) Determination of Interest Rate***

The Eurodollar Rate for each Interest Period for Eurodollar Rate Loans shall be determined by the Administrative Agent pursuant to the procedures set forth in the definition of "Eurodollar Rate." The Administrative Agent's determination shall be presumed to be correct absent manifest error and shall be binding on the Borrower

##### ***(b) Interest Rate Unascertainable, Inadequate or Unfair***

In the event that (i) the Administrative Agent determines that adequate and fair means do not exist for ascertaining the applicable interest rates by reference to which the Eurodollar Rate then being determined is to be fixed or (ii) the Requisite Lenders notify the Administrative Agent that the Eurodollar Rate for any Interest Period will not adequately reflect the cost to the Lenders of making or maintaining such Term Loans for such Interest Period, the Administrative Agent shall forthwith so notify the Borrower and the Lenders, whereupon each Eurodollar Loan shall automatically, on the last day of the current Interest Period for such Term Loan, convert into a Base Rate Loan and the obligations of the Lenders to make Eurodollar Rate Loans or to convert Base Rate Loans into Eurodollar Rate Loans shall be suspended until the Administrative Agent shall notify the Borrower that the Requisite Lenders have determined that the circumstances causing such suspension no longer exist.

##### ***(c) Increased Costs***

If at any time any Lender determines that the introduction of, or any change in or in the interpretation of, any law, treaty or governmental rule, regulation or order (other than any change by way of imposition or increase of reserve requirements included in determining the