

# NOWALSKY, BRONSTON & GOTHARD

A Professional Limited Liability Company  
Attorneys at Law

Leon L. Nowalsky  
Benjamin W. Bronston  
Edward P. Gothard

3500 North Causeway Boulevard  
Suite 1442  
Metairie, Louisiana 70002  
Telephone: (504) 832-1984  
Facsimile: (504) 831-0892

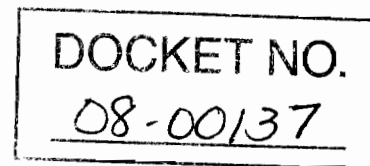
Philip R. Adams, Jr.

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July 23, 2008

## VIA OVERNIGHT DELIVERY

Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243



Re: Joint Application by Telecom Management, Inc.  
d/b/a Pioneer Telephone  
and Broadwing Communications, LLC  
For Approval of an Asset Purchase Agreement and  
Transfer of Customers

Dear Sir or Madam

On behalf of Telecom Management, Inc., d/b/a Pioneer Telephone and Broadwing Communications, LLC enclosed please find an original and thirteen (13) copies of the referenced Joint Application. Also enclosed is the requisite \$50.00 filing fee.

Please date stamp and return the enclosed extra copy of this letter in the envelope provided.

Please call me should you have any questions concerning this filing. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leon Nowalsky".

Leon L. Nowalsky

LLN/rph

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

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**APPLICATION BY  
TELECOM MANAGEMENT, INC.  
D/B/A PIONEER TELEPHONE  
AND BROADWING COMMUNICATIONS, LLC  
FOR APPROVAL OF AN ASSET  
PURCHASE AGREEMENT**

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**CASE NO.** \_\_\_\_\_

**JOINT APPLICATION**

Telecom Management, Inc. d/b/a Pioneer Telephone ("Pioneer") and Broadwing Communications, LLC ("Broadwing") (together "Applicants"), pursuant to the applicable Statutes of this State and the Commission's Rules and Regulations currently in effect and/or subsequently enacted, hereby file this Joint Application and request Commission approval of a transaction whereby, pursuant to the Asset Purchase Agreements (the "Agreements")<sup>1</sup>, Pioneer will acquire Broadwing's residential and small medium enterprise ("SME") long distance customer accounts in this State (the "Acquisition").

Applicants respectfully submit that the expeditious completion of the Acquisition is necessary to ensure uninterrupted service to Broadwing's customers. Broadwing will continue to provide service to its SME customers until such time as the Commission approves this Application. However, pursuant to a Management Agreement with Broadwing, Pioneer shall manage the operations of the residential base pending approval of the Application.

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<sup>1</sup> A copy of the Agreements are attached hereto as Exhibit "A". The Applicants elected to execute separate agreements for each base of customers that are to be acquired, and are requesting that both transactions be approved herein.

Applicants emphasize that the Acquisition will not change the rates, terms and conditions under which Broadwing's customers presently receive service. The Acquisition benefits Broadwing's customers by providing them assurances that they will continue to receive the same high quality services previously rendered to them. In compliance with applicable law, Broadwing's customers will be informed of the Acquisition<sup>2</sup>. Accordingly, approval of the Acquisition will not in any way be detrimental to the public interest of this State.

In support of this Application, Applicants submit the following:

### **I. THE PARTIES**

1. Pioneer is a Maine corporation with principal offices located at 583 Warren Avenue, Portland, ME 04103. Pioneer is a certified long distance telecommunications provider in this State.<sup>3</sup>
2. Broadwing is a Delaware limited liability company and a wholly-owned subsidiary of Level 3 Communications, LLC, with principal offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021. Broadwing is a certified long distance telecommunications provider in this State.<sup>4</sup>

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2 The proposed form of the customer notice is provided in Exhibit "B" attached hereto.

3 Pioneer provides resold long distance telecommunications services in this State pursuant to authority granted in Docket 04-00316, dated December 1, 2004.

4 Broadwing provides long distance telecommunications services in this State pursuant to authority granted in Docket No. 03-00240, dated July 3, 2003, as amended in name change Docket No. 03-0559 dated February 19, 2004.

## **II. DESIGNATED CONTACTS**

3. The designated contacts for questions concerning this Application are:

Leon Nowalsky, Esq.  
Nowalsky, Bronston & Gothard  
A Professional Limited Liability Company  
3500 North Causeway Boulevard, Suite 1442  
Metairie, Louisiana 70002  
Telephone: (504) 832-1984  
Fax: (504) 831-0892  
lnowalsky@nbglaw.com

Rogelio Peña  
Corporate Counsel  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Telephone: (720) 888-7043  
Fax: (720) 888-7043  
rogelio.pena@level3.com

## **III. REQUEST FOR APPROVAL OF THE ACQUISITION**

4. The Acquisition contemplates the following:
- a. Pioneer will receive ownership, right, title and interest in and to Broadwing's residential and SME customer accounts, as defined in the Agreements.
  - b. Broadwing will receive the purchase price set forth in the Agreements.
5. Pioneer is qualified to consummate the transactions that are the subject of this Application.<sup>5</sup> Broadwing's technical, managerial and financial personnel will assist Pioneer with the transition and integration of the acquired Assets after consummation of the transaction. Information on Pioneer's management team is attached hereto as Exhibit "D".

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<sup>5</sup> Current financial information for Pioneer is attached hereto as Exhibit "C".

6. Broadwing will continue to provide long distance telecommunications service in this State following consummation of the transaction.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

7. Crucial to the Acquisition is the need to ensure the continuation of high quality, uninterrupted service to all customers currently served by Broadwing. The Acquisition will serve the public interest in that it will ensure that current Broadwing customers maintain uninterrupted service.

8. The Acquisition will not have any impact on Broadwing's customers in terms of the services that they receive. In particular, the Acquisition will not cause any rate increases, or changes to the terms and conditions of service that Broadwing's customers receive. If necessary, Pioneer will incorporate such rates, terms and conditions into its tariffs by separate filing.

9. The Acquisition will also provide Pioneer with a heightened level of operating efficiency, which will serve to enhance its' overall capacity to compete in the marketplace and to provide telecommunications services for a greater number of consumers in this State at competitive rates.

#### **V. EXPEDITED REVIEW**

10. Applicants request expedited review and disposition of the Application in order to ensure that the transaction is transparent to the affected customers with no interruption in service.

#### **VI. NO TRANSFER OF CERTIFICATES**

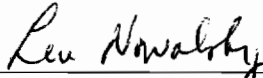

11. Applicants do not request transfer of Broadwing's Certificates of Public Convenience and Necessity, or other operating authority, to Pioneer.

## VII. CONCLUSION

12. WHEREFORE, for the reasons stated herein, Applicants respectfully request Commission approval the Application and request that the Commission also grant all other relief specifically requested herein.

DATED this 23<sup>rd</sup> day of July, 2008.

Respectfully submitted,

  
\_\_\_\_\_  
Leon Nowalsky, Esquire   
Nowalsky, Bronston & Gothard  
A Professional Limited Liability Company.  
3500 North Causeway Boulevard  
Suite 1442  
Metairie, Louisiana 70002  
Telephone: (504) 832-1984  
Fax: (504) 831-0892  
Counsel for Telecom Management, Inc.  
d/b/a Pioneer Telephone

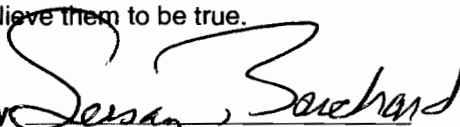
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Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Telephone: (720) 888-7043  
Fax: (720) 888-7043  
rogelio.pena@level3.com  
Counsel for Broadwing Communications,  
LLC

**STATE OF MAINE**

**COUNTY OF CUMBERLAND**

**VERIFICATION**

I, Susan E. Bouchard, am the President of Telecom Management, Inc. d/b/a Pioneer Telephone, and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By   
Name: Susan E. Bouchard  
Title: President

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 16<sup>th</sup> day of July, 2008.

  
Notary Public

My commission expires: 10/03/2009

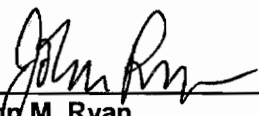
KEVIN PHOTIADES  
Notary Public, Maine  
My Commission Expires October 3, 2009

STATE OF COLORADO

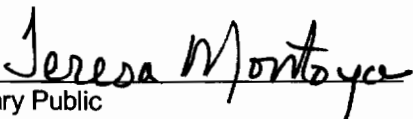
COUNTY OF BROOMFIELD

VERIFICATION

I, John M. Ryan, am the Senior Vice President of Broadwing Communications, LLC, and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By:   
Name: John M. Ryan  
Title: Senior Vice President

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 15th day of July, 2008.

  
Notary Public

My commission expires: 10-11-2010





**EXHIBIT "A"**  
**ASSET PURCHASE AGREEMENT**

*Redacted*

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**ASSET PURCHASE AGREEMENT**

**by and between**

**BROADWING COMMUNICATIONS, LLC**

**as Seller**

**and**

**TELECOM MANAGEMENT, INC.  
d/b/a/ Pioneer Telephone**

**as Buyer**

**Dated as of July 9, 2008**

*B*

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#### **List of Schedules and Exhibits**

##### **Schedules**

Schedule 1.1 (A) - Active Long Distance Customers

Schedule 1.1 (P) - Purchased Customers

Schedule 2.3 - Assumed Liabilities

Schedule 2.4 - Excluded Liabilities

Schedule 4.3 - FCC/USF Violations Against Seller

Schedule 5.3 - FCC/USF Violations Against Buyer

Schedule 5.5 - Litigation

Schedule 5.6 - Consents

##### **Exhibits**

Exhibit 3.1(c) - Form of Purchase Price Worksheet

Exhibit 10.2(b) - Form of general assignment

Exhibit 10.2(c) - Form of Master Letter of Agency

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is entered into as of July 9, 2008 (the "Effective Date"), by and between Telecom Management, Inc. d/b/a Pioneer Telephone, a Maine corporation ("Buyer"), and Broadwing Communications, LLC, a Delaware limited liability company (the, "Seller").

### RECITALS:

A. Seller operates a business that, among other things, provides long distance telephone services to select business customers in various states in the United States.

B. Buyer desires to acquire, and Seller is willing to sell the customer base served by Seller in connection with Seller's business of providing long distance services to those select business customers, on the terms and conditions hereinafter set forth.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, intending to be legally bound hereby, the parties hereto agree as follows:

### 1. DEFINITIONS

Defined Terms. As used herein, the following capitalized terms (or derivations thereof) have the respective meanings specified or referred to in this Article I:

"Accounts Receivable" shall mean (i) all amounts payable to the Seller by Purchased Customers for any Service provided by the Business on or before the Closing Date; (ii) all Advance Billings; and (iii) any unbilled revenue as of the Closing Date which shall be classified as current accounts receivable.

"Active Business Long Distance Customer" means any person or business that is receiving and utilizing LD Telecommunications Services from the Seller as of the Effective Date as set forth on Schedule 1.1 (A).

"Advance Billings" shall mean uncollected amounts billed in the ordinary course of business consistent with past practice by the Seller to the Purchased Customers as of the Closing Date for the provision of Services after the Closing Date.

"Adjusted Base Purchase Price" shall have the meaning set forth in Section 3.2(a)

"Affiliate" of a Person shall mean any Person which directly or indirectly, through one or more intermediaries, owns, controls, or is controlled by, or is under common control with, the first Person. The term "control" (including, with correlative meaning, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, 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.

"Applicable Laws" shall mean all federal, state and local statutes, ordinances, rules, and regulations, order, judgment, writ or decree of any Governmental Authority that govern, regulate or otherwise apply to the Purchased Customers or the Business.

"AR Purchase Price" shall have the meaning set forth in Section 3.1(b).

"AR Purchase Price Adjustment" shall have the meaning set forth in Section 3.2(b).

"Assumed Liabilities" shall have the meaning set forth in Section 2.3.

"Authorizations" shall mean all of the approvals, consents, authorizations, permits and licenses issued to the Seller or their Affiliates by any Governmental Authority primarily relating to the operation of the Business, other than Regulatory Approvals.

"Average Monthly Churn" shall mean for any month of determination, (i) the difference between the MRR billed for such calendar month minus the MRR billed in the previous calendar month, divided by (ii) the MRR billed in the previous calendar month, (iii) multiplied by 100 and rounded to one decimal point, provided however, that for the determination of the Average Monthly Churn for the first month following the Effective Date, the "previous calendar month" referred to in the formula above shall be the calendar month preceding the calendar month which includes the Effective Date. For example: if MRR for the current month is \$250,000 and MRR for the previous month was \$255,000, the Average Monthly Churn is  $(\$250,000 - \$255,000)/(\$255,000) \times 100$  rounded to one decimal place which equals -1.9%.

"Average Churn" shall mean, for any period of determination, the sum of the Average Monthly Churn rate for each month in the period divided by the number of months in the period, rounded to one decimal place. For example: if the Average Monthly Churn rates for a five months period are 1.9%, 2.5%, 4.6%, 0.2% and 6.2%, the Average Churn is  $(1.9+2.5+4.6+0.2+6.2)/5$  rounded to one decimal, which equals 3.1%.

"Base Purchase Price" shall have the meaning set forth in Section 3.1(a).

"Base Purchase Price Adjustment" shall have the meaning set forth in Section 3.2(a).

"Business Day" means any day other than a Saturday, Sunday, or federal holiday.

"Business" means the business of providing LD Telecommunications Services by Seller to Purchased Customers.

"Closing Date" has the meaning set forth in Section 10.1.

"Closing" has the meaning set forth in Section 10.1

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Confidential Information" shall have the meaning set forth in Section 11.1.

"Confidentiality Agreement" shall mean the Non-Disclosure Agreement, dated February 13, 2008, between Telecom Management, Inc. d/b/a/ Pioneer Telephone Corporation and Level 3 Communications, LLC.

"Cumulative Long Distance Customer Purchase Price" shall mean the total amount received by Seller pursuant to this Asset Purchase Agreement and the Residential LD Customer Asset Purchase Agreement.

"Effective Date" has the meaning set forth in the Preamble.

"Estimated AR Purchase Price" shall have the meaning set forth in Section 3.2(b).

"Excluded Assets" shall mean all assets of Seller or any of the Seller's Affiliates other than the Purchased Assets, including, without limitation, the receivables, work-in-progress, claims and other rights to payment from Purchased Customers for services other than the LD Telecommunications Services.

"Excluded Liabilities" shall have the meaning set forth in Section 2.4.

"Final AR Purchase Price" shall have the meaning set forth in Section 3.2(b).

"FCC" shall mean the Federal Communications Commission.

"Governmental Authority" shall mean any court or any federal, state, county, local or foreign governmental or quasi-governmental, legislative or regulatory body, agency, department, authority, instrumentality or other subdivision thereof, including, without limitation, the FCC and the Public Utility Commissions.

"LD Telecommunications Services" means long-distance telephone services, but does not include local dial tone services, data services, or other Internet access services.

"MRR" shall mean the billed monthly recurring revenue for the calendar month immediately preceding the date of determination. All taxes, assessments, surcharges, regulatory fees, interest on late payments and past due balances are specifically excluded from the calculation.

"Permitted Churn Rate" shall mean a three and one half (3.5%) percent reduction in billed monthly recurring revenue per month.

"Permitted Churn Amount" shall mean the MRR on the Effective Date reduced by the Permitted Churn Rate for each month from the Effective Date until Base Adjustment Date.

**"Person"** shall mean any natural person, corporation, partnership, limited liability company, proprietorship, or other business organization, association, joint stock company, trust, union, unincorporated organization, or Governmental Authority.

**"Public Utility Commissions"** shall mean the Governmental Authorities in the states in which the Purchased Customers are located who regulate the Purchased Customers or the Business.

**"Purchase Price"** shall have the meaning set forth in Section 3.1.

**"Purchased Accounts Receivable"** shall mean outstanding Accounts Receivable as of the Closing Date, including unbilled revenue.

**"Purchased Assets"** shall have the meaning set forth in Section 2.1

**"Purchased Customers"** shall mean the customer base comprised of the Active Business Long Distance Customers as of the Closing Date set forth on Schedule 1.1(P).

**"Representative"** shall mean any officer, director, manager, principal, attorney, agent, employee or other representative of any Person.

**"Regulatory Approvals"** shall mean the approval of the transfer of the Purchased Customers from Seller to Buyer or the consummation of any other transactions as contemplated under this Agreement by (i) the necessary federal Governmental Authorities, including, without limitation, the FCC, and (ii) the necessary Governmental Authorities of each state in which Purchased Customers are located in which such approval must be issued prior to the transfer of accounts of Purchased Customer located in such state.

**"Residential LD Customer Asset Purchase Agreement"** shall mean that certain Asset Purchase Agreement signed between the Parties on July 9, 2008, in which Seller sold certain residential long distance customer assets as described further therein.

**"Subsidiary"** shall mean any corporation or other organization, whether incorporated or unincorporated, of which such party directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, or any organization of which such party is a general partner.

**"Tax" or "Taxes"** means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, telecommunications, telecommunications-related, excise, federal universal service fund, state universal service fund, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax or assessment of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not, imposed by any Governmental Authority or other taxing authority.



"Transaction Documents" shall mean this Agreement and all other schedules, exhibits, agreements, instruments and documents executed and delivered in connection with this Agreement.

1.2 Other Definitional and Interpretive Matters. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(b) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(c) Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(d) Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(e) Reasonable Commercial Efforts. The obligation of a party to use reasonable commercial efforts to accomplish an objective means that the obligated party is required to make a diligent, reasonable and good faith effort to accomplish the applicable objective. Such obligation, however, does not require any unreasonable expenditure of funds or incurrence of any unreasonable liability on the part of the obligated party (in each case, in the context of the expenditure to be made or liability to be incurred); provided, however, that the foregoing shall not require that the obligated party act in a manner that would be contrary to normal commercial practices in order to accomplish the objective. The fact that the objective is or is not actually accomplished is no indication that the obligated party did or did not in fact utilize its reasonable commercial efforts in attempting to accomplish the objective.

## 2. PURCHASE AND SALE OF ASSETS

2.1 Purchased Assets. On the Closing Date, Seller shall sell, transfer, convey and assign to Buyer, and Buyer shall purchase and accept from Seller, all of Seller's right, title, and interest in and to the Purchased Customers and the Purchased Accounts Receivable ("Purchased Assets").

2.2 Excluded Assets. Notwithstanding the foregoing, the Excluded Assets will be retained by Seller and will not be included in the Purchased Assets.

**2.3 Assumption of Liabilities by Buyer.** Simultaneously with the transfer of the Purchased Assets on the Closing Date, Buyer shall assume and agree to pay, perform and discharge when due all liabilities and obligations relating in any way to the Purchased Assets after the Closing Date, including without limitation (i) all liabilities and obligations of Seller with respect to the Purchased Assets to the extent such liabilities and obligations arise after the Closing Date and relate to the Purchased Customers after the Closing Date (ii) all liabilities and obligations payable to any Governmental Authority or other third parties that result from the sale of services to the Purchased Customers after the Closing Date and (iii) those liabilities, if any, listed on Schedule 2.3. The foregoing liabilities shall be collectively referred to herein as the "Assumed Liabilities".

**2.4 Excluded Liabilities.** Except for the Assumed Liabilities, Buyer shall not assume or be responsible for any liabilities or obligations of Seller or any predecessor of Seller, regardless of nature, whether accrued, unaccrued, absolute, contingent, known or unknown ("Excluded Liabilities"), including but not limited to those listed on Schedule 2.4. Excluded liabilities shall specifically include all CIC codes associated with the Purchased Assets along with any liabilities for access charges related to such codes which arose prior to the Closing Date.

### 3. CALCULATION AND PAYMENT OF PURCHASE PRICE

**3.1 Purchase Price.** The aggregate purchase price for the Purchased Assets (the "Purchase Price") shall be equal to the sum of:

(a) [REDACTED] as the "Base Purchase Price"), subject to the adjustment set forth in Section 3.2 hereof, plus,

(b) provided that the inclusion of the foregoing does not result in the Cumulative Long Distance Customer Purchase Price received by Seller to be greater than [REDACTED] the sum of:

- (i) 95% of Purchased Accounts Receivable outstanding 0 to 30 days as of the Closing Date including all unbilled revenue as of the Closing Date; plus
- (ii) 80% of Purchased Accounts Receivable outstanding 31 to 60 days as of the Closing Date; plus
- (iii) 50% of Purchased Accounts Receivable outstanding 61 to 90 days as of the Closing Date; plus

- (iv) 25% of Purchased Accounts Receivable outstanding 91 to 120 days as of the Closing Date; plus
- (v) 0% of Purchased Accounts Receivable outstanding 121 days or more as of the Closing Date, (the "AR Purchase Price").

(c) The Buyer shall deliver a Letter of Credit in the amount of the Base Purchase Price to the Seller on the Effective Date which, if the Purchase Price is not paid at Closing, shall be able to be drawn upon by Seller at Closing. Not later than two Business Days prior to the Closing Date, Seller shall deliver to Buyer a worksheet, substantially in the form of Exhibit 3.1(c) (the "Purchase Price Worksheet") setting forth in reasonable detail Seller's good faith estimates of (i) the amount of the Adjusted Base Purchase Price as determined under Section 3.2(a), and (ii) the Estimated AR Purchase Price, if applicable, as determined under Section 3.2(b). On the Closing Date, Buyer shall, subject to the terms and conditions of this Agreement, pay the Base Purchase Price, as adjusted by the Base Purchase Price Adjustment pursuant to Section 3.2(a), plus the Estimated AR Purchase Price, if applicable, in cash or by wire transfer of immediately available funds to one or more accounts designated by Seller.

### 3.2 Purchase Price Adjustment.

(a) Base Purchase Price Adjustment. The amount of the Base Purchase Price shall be adjusted (the "Adjusted Base Purchase Price") by the Base Purchase Price Adjustment which shall be calculated by Seller and delivered to Buyer two Business Days prior to the Closing Date (the "Base Adjustment Date"), as follows (the "Base Purchase Price Adjustment"):

- (i) if the Average Churn calculated for the period from the Effective Date until the Base Adjustment Date exceeds the Permitted \* Churn Rate, then the Base Purchase Price shall be reduced by three dollars for every one dollar by which the MRR on the Base Adjustment Date exceeds the Permitted Churn Amount on the Base Adjustment Date;
- (ii) if the MRR on the Base Adjustment Date exceeds the MRR on the Effective Date by more than three and one half (3.5%) percent, then the Base Purchase Price shall be increased by three dollars for every one dollar by which the MRR on the Base Adjustment Date exceeds the MRR on the Effective Date;
- (iii) if the Average Churn calculated for the period from the Effective Date until the Base Adjustment Date is equal to or less than the Permitted Churn Rate or the MRR on the Base Adjustment Date exceeds the MRR on the Effective Date by less than three and one half (3.5%), then the Base Purchase Price Adjustment shall be zero.

(b) AR Purchase Price Adjustment. Provided Seller has determined that the total Purchase Price will be less than \_\_\_\_\_ and that Accounts Receivable

will be included in the Purchase Price as stated in Section 3.1, Two Business Days prior to the Closing Date the Seller shall deliver to the Buyer the Estimated AR Purchase Price on the Purchase Price Worksheet which sets forth an estimate of Accounts Receivable on the Closing Date based upon the most recently available aging of the outstanding Purchased Accounts Receivable, and a calculation of the AR Purchase Price as set forth in Section 3.1 (b) (the "Estimated AR Purchase Price"). Within ten (10) Business Days after the Closing Date the Seller shall deliver to the Buyer a revised Purchase Price Worksheet (the "Revised Purchase Price Worksheet") which sets forth the aging of the outstanding Purchased Accounts Receivable as of the Closing Date, and a calculation of the AR Purchase Price as set forth in Section 3.1(b) (the "Final AR Purchase Price"). The difference between the Estimated AR Purchase Price and the Final AR Purchase Price (the "AR Purchase Price Adjustment") shall be paid by the applicable party in cash or by wire transfer of immediately available funds to one or more accounts designated by other party within two Business Days after the later of delivery of the Revised Purchase Price Worksheet or acceptance of the Revised Purchase Price Worksheet by Buyer as follows:

- (i) To the extent that the Final AR Purchase Price is less than the Estimated AR Purchase Price, Seller will pay to Buyer in immediately available funds the difference between the Final AR Purchase Price and the Estimated AR Purchase Price, and Seller, after payment to Buyer, shall have no further obligation or liability with respect to the AR Purchase Price Adjustment;
- (ii) To the extent that the Final AR Purchase Price is equal to the Estimated AR Purchase Price, no further obligation shall be due or payable by Buyer or Seller with respect to the Purchase Price Adjustment and neither Seller nor Buyer have any further obligation or liability with respect to the AR Purchase Price Adjustment; or
- (iii) To the extent that the Final AR Purchase Price is greater than the Estimated AR Purchase Price, Buyer will pay to Seller in immediately available funds the difference between the Final AR Purchase Price and the Estimated AR Purchase Price paid by the Buyer on the Closing Date, and Buyer, after payment to Seller, shall have no further obligation or liability with respect to the AR Purchase Price Adjustment.

3.3 Acceptance of Revised Purchase Price Worksheet. The Buyer shall have ten (10) Business Days after receipt of the Revised Purchase Price Worksheet to notify Seller of a dispute with regard to the calculation of either the Adjusted Purchase Price or the Final AR Purchase Price. If a notification of dispute is not received within this time period, the calculation of both shall be deemed correct.

3.4 Dispute Resolution. In the event the Parties are unable to agree upon the Adjusted Base Purchase Price, the Final AR Purchase Price (if applicable), or any calculation made pursuant to same within the timeframes stated in Section 3.1 and 3.2 above, and if the Buyer and the Seller are, within ten (10) Business Days after receipt by either Party of an objection by the other, unable in good faith to resolve the dispute, such matter shall be referred to

a firm of independent certified public accountants (the "Independent Accounting Firm") mutually acceptable to the Buyer and the Seller. The Independent Accounting Firm shall, within thirty (30) days following its selection, deliver to the Buyer and the Seller a written report determining such dispute and its determinations will be conclusive and binding upon the parties thereto for the purposes hereunder. The fees and disbursements of the Independent Accounting Firm acting under this Section shall be apportioned equally between the Seller and the Buyer. For the avoidance of doubt, the delivery and timing of receipt of any document sent by the parties pursuant to this Section 3 shall be governed by the provisions set forth in Section 15.1 – "Notices."

3.5 Expenses of Sale. Except as otherwise provided herein including without limitation Sections 6.2 and 7.4, whether or not the transactions contemplated hereby are consummated, Seller and Buyer shall each bear its respective direct and indirect costs, charges, expenses, and fees incurred in connection with the negotiation, preparation, and closing of this Agreement and the other Transaction Documents, and the consummation and performance of the transactions contemplated hereby and without any liability on the part of the other party or its Representatives. The provisions of this Section 3.5 shall survive the Closing.

3.6 USF/Tax Obligations. Buyer shall be responsible for and timely pay all undisputed universal service fund contribution or other state USF and sales/use tax obligations ("USF/Tax Obligations") relating to telecommunications services provided by Buyer to the Purchased Customers on and after Closing Date, including, without limitation, any and all USF/Tax Obligations resulting from the true-up of telecommunications reporting worksheets ("Worksheets") delivered to Seller by Buyer within 30 days after the Closing Date relating to such telecommunications services provided after Closing Date. Similarly, Seller shall be responsible for any and timely pay all undisputed USF/Tax Obligations relating to telecommunications services provided by Seller on and prior to the Closing Date, including, without limitation, any and all USF/Tax Obligations resulting from the true-up of Worksheets delivered to Seller by the Buyer relating to such telecommunications services provided on and prior to the Closing Date. Both Seller and Buyer shall timely comply with all reporting obligations required by the FCC, State and applicable federal regulations relating to telecommunications services provided by Buyer on or after the Closing Date. To the extent such reporting obligations require data relating to telecommunications services provided by Seller on and prior to the Closing Date to be included, Seller shall provide such data in the appropriate format to Buyer upon receipt of ten (10) business days advance written notice.

#### 4. REPRESENTATIONS AND WARRANTIES OF SELLER

Except as disclosed in schedules referring to the representations and warranties in this Agreement and delivered by the Seller contemporaneously with the execution of this Agreement, Seller represents and warrants to Buyer that the following statements are true, accurate and complete as of the Effective Date (except that representations and warranties that are made as of a specific date need to be true only as of such date).

4.1 Organization; Existence, and Standing. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power to carry on the Business as now conducted. Seller is duly qualified to do business as a foreign corporation in all jurisdictions where its failure to be so qualified would result in any material liability to Buyer after the Effective Date or have a material adverse effect upon the Business or the Purchased Assets.

4.2 Power and Authorization. Seller has full power, authority, and legal right to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations under this Agreement and such other Transaction Documents. Upon execution and delivery by Seller, this Agreement and the other Transaction Documents will constitute valid and binding obligations of Seller enforceable against it in accordance with their respective terms.

4.3 Permits and Licenses; Compliance with Laws. Seller is fully qualified under the Communications Act of 1934, as amended, to be an FCC licensee. Neither the ownership of the Purchased Assets by Seller nor the operation of the Business as presently conducted violates in a material way any Applicable Law. To the best of Seller's knowledge, no investigation is pending or threatened regarding the existence of any such violation. There are no existing applications, petitions to deny or complaints or proceedings (other than proceedings affecting the long distance industry generally) pending before the FCC or any other Governmental Authority having jurisdiction over the Business or any Purchased Customers relating to Seller or the Business. Except as set forth on Schedule 4.3, there are no known pending material FCC violations against Seller, including without limitation, any material violations with respect to USF obligations of the Seller.

4.4 Omitted.

4.5 No Finders. No finder or broker has acted or is acting on behalf of Seller in connection with the transactions contemplated by this Agreement. Seller has not incurred any liability for brokerage fees, finder's fees, agent's commissions or other forms of compensation in connection with this Agreement and the transferring contemplated hereby for which Buyers will be responsible.

4.6 No Legal Violations. Neither the execution and delivery of this Agreement by Seller, nor the performance by Seller of its obligations under this Agreement or other transaction documents will (a) result in a violation of any applicable laws applicable to Seller; (b) conflict with Seller's Certificate of Formation or Operating Agreement (or similar charter documents); or (c) result in a material breach of, or constitute a default under, any agreement or instrument to which Seller is a party, or by which it is bound.

4.7 Litigation. There are no material actions, suits or proceedings pending or, to the knowledge of Seller, threatened against Seller which if decided adversely to Seller would prevent Seller from consummating or materially effecting the transaction of contemplated hereby.

4.8 Bank Authorization. Seller is not required to obtain consent from its lender for the transaction contemplated by this Agreement, or to release a security interest in the

Purchased Assets such that Buyer can purchase the Purchased Assets free and clear of any liens that may exist upon Seller.

## 5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the following statements are true, accurate and complete as of the Effective Date (except that representations and warranties that are made as of a specific date need to be true only as of such date):

5.1 Organization, Existence, and Standing of Buyer. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Maine.

5.2 Power and Authorization of Buyer. Buyer has full corporate power, authority, and legal right to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations under this Agreement and the Transaction Documents. Upon execution and delivery by Buyer, this Agreement will constitute a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

5.3 No Legal Violations. Neither the execution and delivery of this Agreement by Buyer, nor the performance by Buyer of its obligations under this Agreement or the other Transaction Documents, will (a) result in a violation of any material Applicable Laws applicable to Buyer; (b) conflict with Buyer's Certificate of Formation or Operating Agreement (or similar charter documents); or (c) result in the material breach of, or constitute a material default under, any agreement or instrument to which Buyer is a party, or by which it is bound. Except as set forth on Schedule 5.3, there are no known pending FCC violations against the Buyer, including, without limitation, any violations with respect to USF Obligations of the Buyer.

5.4 No Finders or Broker. No finder or broker is acting or has acted on behalf of Buyer in connection with the transactions contemplated by this Agreement. Buyer has not incurred any liability for brokerage fees, finder's fees, agent's commissions or other similar forms of compensation in connection with this Agreement and the transactions contemplated hereby for which Seller would be responsible.

5.5 Litigation. Except as set forth on Schedule 5.5, there are no actions, suits or proceedings pending or, to the knowledge of Buyer, threatened against Buyer which if decided adversely to Buyer would restrain or prevent Buyer from consummating the transactions contemplated hereby.

5.6 Consents and Approvals. As soon as practicable after execution of this Agreement, except as otherwise consented to by Seller in writing, Buyer will use commercially reasonable efforts to obtain the Regulatory Approvals and any other consent, approval, authorization or other action by any Governmental Authority or other Person required to be obtained to consummate the transactions contemplated by this Agreement. Buyer further agrees to render reasonable assistance to Seller with respect to any actions required by Governmental Authorities in connection with or pursuant to the Regulatory Approvals, including without

limitation providing Purchased Customers with appropriate notice of their transfer to Buyer as contemplated herein. The cost of these filings shall be borne by the Buyer. In addition, as of the Closing Date, Buyer is duly licensed and registered as a provider of regulated telecommunications services and is in good standing to so provide such regulated telecommunications services in each of the jurisdictions in which Purchased Customers are located except as set forth in Schedule 5.6.

5.7 Financing. Buyer will have at Closing access to sufficient funds or credit arrangements available to pay (a) the Adjusted Base Purchase Price in accordance with Section 3.1(c) the Final AR Purchase Price (if applicable) in accordance with Section 3.1(c); and (b) all expenses incurred by Buyer in connection with the transaction contemplated hereby.

5.8 No Conflicting Transaction. The Buyer has not entered into any agreement which may have a material impact on closing the transaction contemplated by this Agreement, including, without limitation, an agreement or letter of intent to sell, transfer, or otherwise dispose of all or substantially all of the assets or capital stock of the Seller or its Affiliates.

## 6. COVENANTS OF SELLER

Seller covenants and agrees with Buyer as follows:

6.1 Customers Records. Prior to the Closing Date, Seller will provide Buyer with copies of the name, address, phone number and pertinent billing data for all active Purchased Customers in its database for the period commencing from six (6) months prior through and including the Closing Date.

6.2 Regulatory Approvals. As soon as practicable after execution of this Agreement, except as otherwise consented to by Buyer in writing, Seller will use commercially reasonable efforts to assist Buyer to obtain the Regulatory Approvals and any other consent, approval, authorization or other action by any Governmental Authority or other Person required to be obtained to consummate the transactions contemplated by this Agreement. Seller further agrees to render reasonable assistance to Buyer with respect to any actions required by Governmental Authorities in connection with or pursuant to the Regulatory Approvals, including without limitation providing Purchased Customers with appropriate notice of their transfer to Buyer as contemplated herein. The cost of these filings shall be borne by the Buyer. Seller agrees to execute all documents necessary to effectuate the transfer.

## 7. COVENANTS OF BUYER

Buyer covenants and agrees with Seller as follows:

7.1 Conduct Prior to the Effective Date. Buyer has used its best efforts to cause the conditions set forth in Section 9 to be satisfied on or prior to the Effective Date.



7.2 Access for Seller. After the Effective Date, Buyer will give, or cause to be given, to Seller and its representatives, such reasonable access to the personnel, properties, titles, contracts, books, records, files, documents and affairs of Buyer and copies thereof as is reasonably necessary to allow Seller to obtain information in connection with the preparation, and any audit, of Seller's tax returns and any tax related claims, demands, other audits, suits, actions or proceedings by or against Seller as the owner and/or operator of the Business. Buyer agrees to provide Seller with such reasonable cooperation as is necessary to allow Seller to obtain the full benefit of the transactions contemplated by this Agreement provided such cooperation does not negatively impact the benefits derived by Buyer as a result of this transaction. Seller shall promptly reimburse Buyer for the reasonable actual costs incurred in carrying out its obligations under this Section 7.2.

7.3 Employees. On or before the Closing Date, Buyer shall not offer employment to any of Seller's employees and for two (2) years following the Closing Date or termination of this Agreement, Buyer shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any employee of the Seller to leave the Seller for any reason whatsoever, or hire any employee of the Seller without the prior written consent of the Seller.

7.4 Regulatory Approvals. As soon as practicable after execution of this Agreement, except as otherwise consented to by Seller in writing, Buyer will use commercially reasonable efforts to obtain the Regulatory Approvals and any other consent, approval, authorization or other action by any Governmental Authority or other Person required to be obtained by Buyer to enable Seller to consummate the transactions contemplated by this Agreement. Buyer further agrees to render reasonable assistance to Seller with respect to any actions required by Governmental Authorities in connection with or pursuant to the Regulatory Approvals, including without limitation providing Purchased Customers with appropriate notice of their transfer to Buyer as contemplated herein. The cost of these filings shall be borne by the Buyer. Buyer agrees to execute all documents necessary to effectuate the transfer.

7.5 Purchased Customer Notification. Notwithstanding Seller's covenant to assist Buyer in complying with the requirements of Governmental Authorities under Section 6.2 and the responsibilities for expenses under Section 3.4, Buyer shall bear all expenses and reimburse Seller for any costs incurred in notifying Purchased Customers that they are to be transferred from Seller to Buyer. The content and form of such notice shall be mutually agreed upon by the parties and shall comply with all rules and regulations of any applicable Governmental Authority concerning such notice.

7.6 Use of Seller Trademarks. Unless a second customer notice is required by regulators, within one billing cycle after the Closing Date, Buyer shall cease to use any of Seller's trademarks or other intellectual property, including without limitation, Seller's name or logo, in any manner, including, without limitation, on customer bills, billing inserts, other customer correspondence.

7.7 Assumed Liabilities. After Closing, Buyer shall pay, perform and discharge, or cause to be paid, performed and discharged, promptly when due, all of the Assumed Liabilities. The provisions of this Section 7.7 shall survive the Closing.

7.8 Negotiations. From and after the Effective Date and until the earlier to occur of the Closing Date or the termination of this Agreement pursuant to Section 14 hereof, the Buyer shall not, and shall not permit or cause any of its Affiliates, the officers and directors of the Buyer, Affiliates or any Persons acting on behalf of the Buyer or any its Affiliates to, directly or indirectly, encourage, solicit, engage in discussions or negotiations with, or provide any information to, any Person or group (other than Seller or its representatives) concerning any merger, sale of substantial assets, purchase or sale of shares of capital stock, membership interests or partnership interests or similar transaction involving the Buyer or its Affiliates or any other transaction inconsistent with the transactions contemplated hereby. The Buyer shall promptly communicate to Seller any inquiries or communications concerning any such transaction which the Buyer or its Affiliates may receive or of which the Buyer or its Affiliates may become aware.

## 8. CONDITIONS TO OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions, any one or more of which may be waived in writing by the Buyer.

8.1 Representations and Warranties True on the Closing Date. Seller's representations and warranties made in this Agreement shall be true in all material respects as of the Closing Date as though such representations and warranties were made as of the Closing Date, except for those representations and warranties made as of a particular date, which shall be true in all material respects as of such date.

8.2 Compliance with Agreement. Seller shall have performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date, and Seller shall not otherwise be in default in any material respect under any of the provisions of this Agreement.

8.3 Certificate of Fulfillment of Conditions. Seller shall have delivered to Buyer a certificate, dated as of the Closing Date and signed by its Authorized Representative, stating that the conditions set forth in Sections 8.1 and 8.2 have been fulfilled.

8.4 No Litigation. No litigation, proceeding, investigation or inquiry shall be pending or threatened which, if sustained, would enjoin or prevent the consummation of the transactions contemplated by this Agreement or materially and adversely affect Buyer's right to carry on the Business as currently conducted.

## 9. CONDITIONS TO OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions, any one or more of which may be waived in writing by the Seller:

9.1 Representations and Warranties True on the Closing Date. Buyer's representations and warranties made in this Agreement shall be true in all material respects as of the Closing Date as though such representations and warranties were made as of the Closing Date, except for those representations and warranties made as of a particular date, which shall be true in all material respects as of such date.

9.2 Compliance with Agreement. Buyer shall have performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date, and Buyer shall not otherwise be in default in any material respect under any of the provisions of this Agreement.

9.3 Certificate of Fulfillment of Conditions. Buyer shall have delivered to Seller a certificate, dated as of the Closing Date and signed by its Manager stating that the conditions set forth in Sections 9.1 and 9.2 have been fulfilled.

9.4 No Litigation. No litigation, proceeding, investigation or inquiry shall be pending or threatened which, if sustained, would enjoin or prevent the consummation of the transactions contemplated by this Agreement.

9.5 Consents and Approvals. Buyer shall have obtained all consents and approvals including Regulatory Approvals or otherwise required to permit consummation of the transactions contemplated by this Agreement and to allow for the assignment of the Purchased Customers by the Closing Date.

9.6 Purchase Price and Transaction Documents. Buyer shall deliver a Letter of Credit or other such instrument from a financial institution acceptable to Seller, in Seller's sole discretion, in the amount of the Base Purchase Price on the Effective Date and deliver the Transaction Documents.

## 10. CLOSING

10.1 Date and Time. Subject to the satisfaction of the conditions stated in Sections 8 and 9 and obtaining the Regulatory Approvals pursuant to Section 4.14, the consummation of the purchase, transfer and sale of the Purchased Assets and consummation of the other transactions contemplated by this Agreement (the "Closing") shall be effected no later than - fifteen (15) Business Days following receipt of all Regulatory Approvals (such date is referred to as the "Closing Date"), or at such other date, time and place upon which Buyer and Seller shall mutually agree, provided all conditions to the Closing described in Sections 8 and 9 have been met or such other time and date as the parties may agree in writing. The Closing shall take place concurrently at the offices of Buyer's counsel and Seller's counsel, with closing deliveries to be made by facsimile or electronic mail, where appropriate, with originals to follow via overnight

courier. The Closing shall be effective as of 12:01 a.m. on the date immediately following the Closing Date.

10.2 Items to be Delivered by Seller. Seller will execute and deliver to Buyer herewith, against delivery of the Estimated Purchase Price and assumption by the Buyer of the Assumed Liabilities, the following:

- (a) executed Transaction Documents;
- (b) a general assignment of the Purchased Customers in the form attached hereto as Exhibit 10.2(b);
- (c) a master letter of agency ("Master Letter of Agency") in the form attached hereto as Exhibits 10.2(c);
- (d) a bill of sale or other appropriate instruments of transfer of any of the Purchased Assets and Assumed Liabilities not appropriately transferred by the general assignment or the Master Letter of Agency;
- (e) all certificates and documents referred to herein, and such other documents and instruments as Buyer may reasonably request to effectuate the intents and purposes of this Agreement; and
- (f) all end-user documents (if available), passcodes, identifying data, designated contact persons that have been required to be obtained by Seller from its end-user customers in response to CPNI requirements.

10.3 Items to be Delivered by Buyer. At the Closing, Buyer shall execute and deliver to Seller herewith, against delivery of the Estimated Purchase Price and assumption by the Buyer of the Assumed Liabilities, the following:

- (a) executed Transaction Documents;
- (b) all certificates and documents referred to herein, and such other documents and instruments as Seller may reasonably request to effectuate the intents and purposes of this Agreement; and
- (c) the Final Base Purchase Price, as adjusted for the Base Purchase Price Adjustment as set forth in Section 3.2 (a), payable by Buyer in immediately available funds as set forth in Section 3.1.
- (d) the Estimated AR Purchase Price (if applicable) payable by Buyer in immediately available funds as set forth in Section 3.2 (b).

10.4 Customer Base Information. Information with respect to of all of the Purchased Customers will be delivered to Buyer on or before the Closing Date.

## 11. CONFIDENTIAL INFORMATION

11.1 Buyer and Seller each acknowledge that the transactions described herein are of a confidential nature and are subject to the terms and conditions of the Confidentiality Agreement.

## 12. LIMITATIONS; DUE DILIGENCE

12.1 Limitation of Representations and Warranties. Buyer hereby acknowledges that it is purchasing only the customer base identified herein as the Purchased Customer on an "as is, where is" basis without any representation or warranty of any kind from Seller, except as specifically set forth in Section 4 hereof. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4 HEREOF, SELLER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PURCHASED ASSETS, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY REGARDING THE VALUE OF THE PURCHASED CUSTOMERS AND RECEIVABLES TRANSFERRED TO BUYER HEREUNDER, THE ACCURACY AND COMPLETENESS OF ANY PURCHASED CUSTOMER INFORMATION DATABASE, OR ANY OTHER MATTER RELATING TO THE PURCHASED ASSETS OR BUSINESS.

12.2 Due Diligence. Buyer hereby acknowledges that it and its Representatives have been given a sufficient opportunity to perform such due diligence investigation of the customer base included in the Purchased Assets and the Assumed Liabilities as Buyer has required. Notwithstanding any such due diligence or any other provision of this Agreement, Buyer acknowledges that it has not received and is not relying upon any representation or warranty, expressed or implied, by operation of law or otherwise, as to the accuracy or completeness of any information regarding Seller, the Purchased Assets, the Purchased Customers, the Business or the Assumed Liabilities so furnished or made available to Buyer or its Representatives. Buyer acknowledges that it is a sophisticated buyer with respect to the Purchased Assets, and the Assumed Liabilities and has independently and without reliance upon Seller or any of their Representatives and based on such information as such Buyer has deemed appropriate in its independent judgment made its own analysis and decision to enter into this Agreement.

### 13. INDEMNIFICATION

**13.1 Survival of Representations and Warranties.** With the exception of Section 4.8, the representations and warranties of Seller contained in Section 4 shall terminate and be of no further force and effect as of the Closing. Buyer's sole remedy for breach of such representations and warranty with the exception of 4.8 shall be to refuse to close this Agreement. The representations and warranties of Buyer contained in Section 5 shall terminate and be of no further force and effect as of one year after the Closing.

**13.2 Indemnification by Seller.** Seller agrees to hold harmless, indemnify and defend Buyer and its legal representatives, successors and assigns from and against any losses, costs, liabilities, or expenses (including without limitation, costs and expenses of litigation and, to the extent permitted by law, reasonable attorney's fees) incurred by Buyer by reason of (a) breach of any of the representations or warranties set forth in Article 4 hereof, (b) the breach of any of the covenants or agreements of Seller contained in this Agreement or in any other Transaction Document (including the Schedules) executed or delivered by Seller in connection with this Agreement or given on or before the Closing Date; (c) the assertion against Buyer of any liability or obligation of Seller not expressly assumed by Buyer hereunder, including but not limited to product liability or warranty claims, any liabilities or obligations arising under Federal, state or local environmental laws, and tax laws and any liabilities or obligations resulting from or relating to employees or former employees or representatives of Seller; (d) a claim made or asserted against Buyer under any bulk transfer or bulk sales law, or other principle of successor or transferee liability, by any person having a claim against Seller which relates to the operation of the Business prior to the Closing Date, whether such claim is liquidated or unliquidated, contingent or disputed, or (e) the conduct of the Business prior to the Closing Date.

**13.3 Indemnification by Buyer.** Buyer agrees to hold harmless, indemnify and defend Seller and its legal representatives, successors and assigns from and against any losses, damages, costs, liabilities, or expenses (including without limitation, costs and expenses of litigation and, to the extent permitted by law, reasonable attorney's fees) incurred by Seller by reason of (a) breach of any of the representations or warranties set forth in Article 5 hereof, (b) the breach of any of the covenants or agreements of Buyer contained in this Agreement or in any other instrument, agreement or document executed or delivered by Buyer in connection with this Agreement or given on or before the Closing Date (c) the assertion against Seller of any liability or obligation of Seller expressly assumed by Buyer hereunder; (d) Buyer's breach, from and after the Closing Date, of any liability or obligation assumed by Buyer, including, without limitation, the payment of USF/Tax Obligations arising after the Closing Date or (e) the conduct of the Business after the Closing Date.

#### **13.4 Assertion and Arbitration of Claims**

(a) The parties shall be free to bring all differences of interpretation and disputes arising in connection with this Agreement to the attention of the other at any time without prejudicing their harmonious relationship and operations hereunder, and the good offices and facilities of either party shall be available at all times for the prompt and effective adjustment of any and all such differences, either by mail, telephone or personal meeting under friendly and courteous circumstances.

(b) If a party claims ("Claiming Party") that it is entitled to indemnification under this Article, notice of such claim (the "Claim") shall be given to the party from whom the Claiming Party seeks indemnification. The parties shall negotiate in good faith to determine the validity and the value of the Claim. If the parties cannot reach an agreement as to the value or validity of the Claim, then the Claim may be submitted by either party for arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and the decision of the arbitrators shall be final and binding upon the parties. Unless otherwise agreed by the parties, arbitration will take place in Broomfield, Colorado before a panel of three (3) arbitrators. Judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party in any action brought before an arbitration panel or any court shall be entitled to recover all costs, including fees and expenses of counsel.

13.5 Limitations. The Indemnification obligations of Buyer and Seller are subject to each of the following limitations and qualifications:

(a) After the expiration of representations and warranties, no claim for indemnification based on Article 4 representations or warranties may be asserted, except that claims first asserted in writing with reasonable detail before the expiration date may be pursued until they are finally resolved.

(b) To be considered timely, indemnification for claims set forth in Article 13.2 and 13.3 (with the exception of Article 4 claims but excluding claims brought under Article 4.8) shall be brought by Buyer or Seller (as the case may be) within nine (9) months of the Closing Date. Notwithstanding the foregoing, with respect to claims under 4.8 the time period for bringing claim(s) shall be one (1) year.

(c) No claim for indemnification can be made until the amount of damages incurred by the party seeking indemnification, in the aggregate, for all claims asserted, exceeds Fifteen Thousand (\$15,000) Dollars.

(d) The amount recoverable from Seller for all indemnification claims asserted pursuant to Section 13.2, shall not exceed, in the aggregate, an amount equal to fifteen (15%) percent of the Base Purchase Price as adjusted by Section 3.2(a).

(e) The amount recoverable from Buyer for all indemnification claims asserted pursuant to Section 13.3, shall not exceed, in the aggregate, an amount equal to the Base Purchase Price as adjusted by Section 3.2 (a).

## 14. TERMINATION

14.1 Termination. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) By Buyer, upon delivery of at least ten (10) days' prior written notice to Seller, if any of the conditions set forth in Section 8 hereof have not been fulfilled by the date set for Closing in Section 10.1 or have become incapable of fulfillment on or before such date and shall not have been expressly waived in writing by Buyer.

(b) By Seller, upon delivery of at least ten (10) days' prior written notice to Buyer, if any of the conditions set forth in Section 9 hereof have not been fulfilled by the date set for Closing in Section 10.1 or have become incapable of fulfillment on or before such date and shall not have been expressly waived in writing by Seller.

14.2 In the event this Agreement is validly terminated pursuant to Section 14.1, this Agreement will become void and of no further force and effect and no party hereto will have any liability to any other party hereunder financial or otherwise, except with respect to the confidentiality obligations in Section 11 and any other liabilities and obligations that expressly survive the termination of this Agreement.

14.3 If validly terminated, the terminating party shall be responsible for notifying the regulatory agencies of the termination of this transaction.

## 15. MISCELLANEOUS

15.1. Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, by commercial courier services, or sent by certified, registered or express mail, postage prepaid, facsimile or by email, with confirmation of receipt; and shall be deemed given when so delivered personally, by facsimile or by email, one Business Day after they are deposited with an overnight courier; and three Business Days after they are deposited in the official mails, postage prepaid, and, in each case, addressed:

(a) In the case of Buyer to:

Telecom Management, Inc.  
d/b/a Pioneer Telephone  
Attn: Sue Bouchard  
583 Warren Ave.  
Portland, Maine 33815 04103

with a copy (which shall not constitute notice) to:

Leon L. Nowalsky  
Nowalsky, Bronston & Gothard,  
A Professional Limited Liability Company  
3500 N. Causeway Blvd., Ste. 1442  
Metairie, LA 70002



Facsimile: (504) 831-0892  
Email: Inowalsky@nbgilaw.com

(b) In the case of Seller to:

Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Attn: General Counsel

with a copy (which shall not constitute notice) to:

Level 3 Communications, LLC  
121 Champion Way  
Canonsburg, PA 15317  
Attn: Legal Department

All notices delivered hereunder shall be marked "PERSONAL AND CONFIDENTIAL." Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

15.2. Public Announcements and Releases. No party to this Agreement will make or cause to be made any public announcement or release concerning this Agreement or the transactions contemplated hereby unless required by Applicable Laws, without the prior written consent of the other party.

15.3. Governing Law and Exclusive Venue. The validity, interpretation, and performance of this Agreement will be determined in accordance with the laws of the State of Colorado (without regard to principles of conflicts of laws). The parties agree that subject to any other limitations expressly set forth in this Agreement, the parties shall have the right to have the provisions of this Agreement specifically enforced and to obtain injunctive and other equitable relief to enforce such provisions. Each party submits to the exclusive venue and jurisdiction of the state and federal courts sitting in the State of Colorado, and each party waives any jurisdictional, venue, or inconvenient forum objections to such courts.

15.4. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15.5. Headings. The headings, subheadings, and captions in this Agreement and the other Transaction Documents, and in any exhibit hereto or thereto are for reference purposes only and are not intended to affect the meaning or interpretation of this Agreement or the other Transaction Documents.

15.6. Exhibits and Schedules; Reference to Legislation. The Exhibits and Schedules to this Agreement and the other Transaction Documents delivered pursuant hereto are hereby made a part of this Agreement as if set forth in full herein. Unless otherwise indicated herein, any reference in this Agreement to a Section, Article, Exhibit or Schedule shall mean the applicable section, article, exhibit or schedule of or to this Agreement. A reference herein to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefore and all regulations and statutory instruments issued thereunder or pursuant thereto.

15.7. Entire Agreement. This Agreement (including the Exhibits and Schedules hereto), and the other Transaction Documents contain the entire agreement between the parties hereto with respect to the purchase of the Purchased Customers and assumption of the Assumed Liabilities and related transactions and supersedes all negotiations, prior discussions, agreements, arrangements, and understandings, written or oral, relating to the subject matter of this Agreement.

15.8. Successors and Assigns. This Agreement will be binding upon Seller and Buyer and their respective successors and assigns. Notwithstanding the immediately preceding sentence, neither party may assign its rights and delegate its duties under this Agreement only upon the prior written consent of the other party, provided however that either party may assign its rights and delegate its duties under this Agreement to any of its Subsidiaries or Affiliates without the consent of the other party.


15.9. Severability. Each provision of this Agreement shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. If one or more provisions of this Agreement is held to be excessively broad, as to scope, activity or subject matter so as to be unenforceable, invalid, or void to any extent for any reason, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them so as to remain in force and effect to the maximum extent allowable, if any, and the enforceability and validity of the remaining provisions of this Agreement shall not be affected thereby.

15.10 Waivers and Amendments. This Agreement may be amended, modified, superseded or cancelled and the terms and conditions hereof may be waived, only by a written instrument signed by the parties or in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.


**SELLER:**

Broadwing Communications, LLC

  
By: \_\_\_\_\_  
Name: James Means  
Title: Vice President

**BUYER:**

Telecom Management, Inc.

  
By: \_\_\_\_\_  
Name: Susan Bouchard  
Title: President

**EXHIBIT 10.2(b)****GENERAL ASSIGNMENT**

BE IT KNOWN, for good and valuable consideration, the receipt of which is hereby recognized, the undersigned Broadwing Communications, LLC, a Delaware limited liability company (Assignor) whose address is c/o Level 3 Communications, LLC, 1025 Eldorado Blvd., Broomfield, Colorado 80021 hereby unconditionally and irrevocably assigns and transfers unto Telecom Management, Inc. d/b/a Pioneer Telephone, a Maine corporation (Assignee) whose address is 583 Warren Ave., Portland, Maine 04103, all rights, title, and interest in and to the customer base comprised of the active business long distance customers of Assignor as set forth on Schedule 1.1(P) to the Asset Purchase Agreement, dated \_\_\_\_\_, by and between the Parties.

The undersigned fully warrants that it has full rights and authority to enter into this assignment and that the rights and benefits assigned hereunder are free and clear of any lien, encumbrance, adverse claim or interest by any third party.

The assignment shall be binding upon and inure to the benefit of the parties, and their successors and assigns.

Signed this \_\_\_\_ day of July, 2008.

\*04103

**Assignor:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT 10.2(C)

## FORM OF MASTER LETTER OF AGENCY

Master Letter of Agency ("Master LOA") executed on \_\_\_\_\_, 2008 by and on behalf of Broadwing Communications, LLC, a Delaware Limited Liability Corporation ("Seller"), in favor of Telecom Management, Inc., a Maine corporation ("Purchaser").

Seller hereby names, appoints and authorizes Purchaser to act as the substitute agent in all matters related to providing long distance service for the customers whose customer accounts (the "Customer Accounts") are being transferred to Purchaser pursuant to that certain Asset Purchase Agreement dated of even date (the "Asset Purchase Agreement").

Seller further hereby authorizes Purchaser to obtain all information necessary to service the Customer Accounts, including but not limited to information relating to any account from any telephone company, any credit reporting service or information that is considered CPNI.

Seller further hereby names, appoints and authorizes Purchaser to act as the "RespOrg" on all Customer Accounts.

Seller:

Broadwing Communications, LLC

By: 

Name: James Means

Title: Vice President

Purchaser:

Telecom Management, Inc.

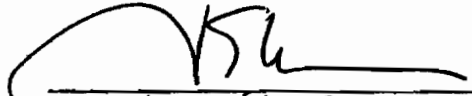
By: 

Name: Sue Bouchard

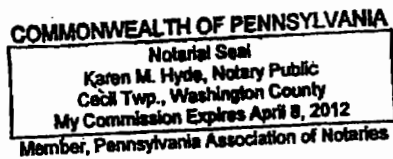
Title: President

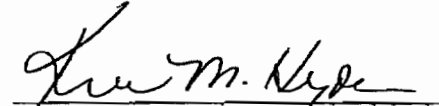
State of Pennsylvania  
County of Washington )

Before me, the undersigned authority in and for the aforesaid County and State, personally appeared James E Heams, who being by me first duly sworn, did depose and state that he is the Vice President of Broadwing Communications, LLC, and that he executed the foregoing Master Letter of Agency as a duly authorized officer and on behalf of Broadwing Communications, LLC.

  
Name: James E Heams  
Title: Vice President

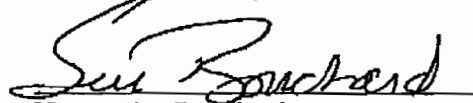
Subscribed and sworn to before me on July 9, 2008. Witness my hand and official seal.




  
Notary Public  
My commission expires: 4-8-12

State of Maine )  
County of Cumberland )

Before me, the undersigned authority in and for the aforesaid County and State, personally appeared Sue Bouchard, who being by me first duly sworn, did depose and state that she is the President of Telecom Management, Inc., and she executed the foregoing Master Letter of Agency as a duly authorized officer and on behalf of Telecom Management, Inc.

  
Name: Sue Bouchard  
Title: President

Subscribed and sworn to before me on July 9, 2008. Witness my hand and official seal.

  
Notary Public  
My commission expires: 10/03/2009

KEVIN PHOTIADES  
Notary Public, Maine  
My Commission Expires October 3, 2009

*Redacted*

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**ASSET PURCHASE AGREEMENT**

**by and between**

**BROADWING COMMUNICATIONS, LLC**

**as Seller**

**and**

**TELECOM MANAGEMENT, INC.  
d/b/a/ Pioneer Telephone**

**as Buyer**

**Dated as of July 9, 2008**

*R*

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14.	TERMINATION.....	21
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### **List of Schedules and Exhibits**

#### **Schedules**

Schedule 1.1 (A) - Active Residential Long Distance Customer

Schedule 1.1 (P) – Purchased Customers

Schedule 2.3 –Assumed Liabilities

Schedule 2.4 – Excluded Liabilities

Schedule 4.3 – FCC/USF Violations Against Seller

Schedule 5.3 – FCC/USF Violations Against Buyer

Schedule 5.5 - Litigation

Schedule 5.6 – Consents

#### **Exhibits**

Exhibit 1.1 (M) – Form of Management Agreement

Exhibit 3.1(c) – Form of Purchase Price Worksheet

Exhibit 10.2(b) – Form of general assignment

Exhibit 10.2(c) – Form of Master Letter of Agency



## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is entered into as of July 9, 2008 (the "Effective Date"), by and between Telecom Management, Inc. d/b/a Pioneer Telephone, a Maine corporation ("Buyer"), and Broadwing Communications, LLC, a Delaware limited liability company (the, "Seller").

### RECITALS:

A. Seller operates a business that, among other things, provides long distance telephone services to residential customers in various states in the United States.

B. Buyer desires to acquire, and Seller is willing to sell the customer base served by Seller in connection with Seller's business of providing residential long distance services, on the terms and conditions hereinafter set forth.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, intending to be legally bound hereby, the parties hereto agree as follows:

#### 1. DEFINITIONS

Defined Terms. As used herein, the following capitalized terms (or derivations thereof) have the respective meanings specified or referred to in this Article I:

"Accounts Receivable" shall mean (i) all amounts payable to the Seller by Purchased Customers for any Service provided by the Business on or before the Closing Date; (ii) all Advance Billings; and (iii) any unbilled revenue as of the Closing Date which shall be classified as current accounts receivable.

"Active Residential Long Distance Customer" means any person that is receiving and utilizing residential LD Telecommunications Services in a single household from the Seller as of the Effective Date as set forth on Schedule 1.1 (A).

"Advance Billings" shall mean uncollected amounts billed in the ordinary course of business consistent with past practice by the Seller to the Purchased Customers as of the Closing Date for the provision of Services after the Closing Date.

"Adjusted Base Purchase Price" shall have the meaning set forth in Section 3.2(a)

**"Affiliate"** of a Person shall mean any Person which directly or indirectly, through one or more intermediaries, owns, controls, or is controlled by, or is under common control with, the first Person. The term "control" (including, with correlative meaning, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, 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.

**"Applicable Laws"** shall mean all federal, state and local statutes, ordinances, rules, and regulations, order, judgment, writ or decree of any Governmental Authority that govern, regulate or otherwise apply to the Purchased Customers or the Business.

**"AR Purchase Price"** shall have the meaning set forth in Section 3.1(b).

**"AR Purchase Price Adjustment"** shall have the meaning set forth in Section 3.2(b).

**"Assumed Liabilities"** shall have the meaning set forth in Section 2.3.

**"Authorizations"** shall mean all of the approvals, consents, authorizations, permits and licenses issued to the Seller or their Affiliates by any Governmental Authority primarily relating to the operation of the Business, other than Regulatory Approvals.

**"Average Monthly Churn"** shall mean for any month of determination, (i) the difference between the MRR billed for such bill cycle month minus the MRR billed in the previous bill cycle month, divided by (ii) the MRR billed in the previous bill cycle month, (iii) multiplied by 100 and rounded to one decimal point, provided however, that for the determination of the Average Monthly Churn for the first month following the Effective Date, the "previous bill cycle month" referred to in the formula above shall be the first full billing cycle month in which Buyer billed the Purchased Customers. For example: if MRR for the current month is \$250,000 and MRR for the previous month was \$255,000, the Average Monthly Churn is  $(\$250,000 - \$255,000)/(\$255,000) \times 100$  rounded to one decimal place which equals -1.9%.

**"Average Churn"** shall mean, for any period of determination, the sum of the Average Monthly Churn rate for each month in the period divided by the number of months in the period, rounded to one decimal place. For example: if the Average Monthly Churn rates for a five months period are 1.9%, 2.5%, 4.6%, 0.2% and 6.2%, the Average Churn is  $(1.9+2.5+4.6+0.2+6.2)/5$  rounded to one decimal, which equals 3.1%.

**"Base Purchase Price"** shall have the meaning set forth in Section 3.1(a).

**"Base Purchase Price Adjustment"** shall have the meaning set forth in Section 3.2(a).

**"Business Day"** means any day other than a Saturday, Sunday, or federal holiday.

**"Business"** means the business of providing residential LD Telecommunications Services by Seller to Purchased Customers.

**"Closing Date"** has the meaning set forth in Section 10.1.

"Closing" has the meaning set forth in Section 10.1

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Confidential Information" shall have the meaning set forth in Section 11.1.

"Confidentiality Agreement" shall mean the Non-Disclosure Agreement, dated February 13, 2008, between Telecom Management, Inc. d/b/a/ Pioneer Telephone Corporation and Level 3 Communications, LLC.

"Effective Date" has the meaning set forth in the Preamble.

"Estimated AR Purchase Price" shall have the meaning set forth in Section 3.2(b).

"Excluded Assets" shall mean all assets of Seller or any of the Seller's Affiliates other than the Purchased Assets, including, without limitation, the receivables, work-in-progress, claims and other rights to payment from Purchased Customers for services other than the LD Telecommunications Services.

"Excluded Liabilities" shall have the meaning set forth in Section 2.4.

"Final AR Purchase Price" shall have the meaning set forth in Section 3.2(b).

"FCC" shall mean the Federal Communications Commission.

"Governmental Authority" shall mean any court or any federal, state, county, local or foreign governmental or quasi-governmental, legislative or regulatory body, agency, department, authority, instrumentality or other subdivision thereof, including, without limitation, the FCC and the Public Utility Commissions.

"LD Telecommunications Services" means long-distance telephone services, but does not include local dial tone services, data services, or other Internet access services.

"Management Agreement" shall mean a management agreement of even date herewith between Buyer and Seller, substantially in the form attached hereto as Exhibit B.

"MRR" shall mean the billed monthly recurring revenue for the billing cycle month immediately preceding the date of determination. All taxes, assessments, surcharges, regulatory fees, interest on late payments and past due balances are specifically excluded from the calculation.

"Permitted Churn Rate" shall mean a three and one half (3.5%) percent reduction in billed monthly recurring revenue per month.

"Permitted Churn Amount" shall mean the MRR on the Effective Date reduced by the Permitted Churn Rate for each month from the Effective Date until Base Adjustment Date.

**"Person"** shall mean any natural person, corporation, partnership, limited liability company, proprietorship, or other business organization, association, joint stock company, trust, union, unincorporated organization, or Governmental Authority.

**"Public Utility Commissions"** shall mean the Governmental Authorities in the states in which the Purchased Customers are located who regulate the Purchased Customers or the Business.

**"Purchase Price"** shall have the meaning set forth in Section 3.1.

**"Purchased Accounts Receivable"** shall mean outstanding Accounts Receivable as of the Closing Date, including unbilled revenue.

**"Purchased Assets"** shall have the meaning set forth in Section 2.1

**"Purchased Customers"** shall mean the customer base comprised of the Active Residential Long Distance Customers as of the Closing Date set forth on Schedule 1.1(P).

**"Representative"** shall mean any officer, director, manager, principal, attorney, agent, employee or other representative of any Person.

**"Regulatory Approvals"** shall mean the approval of the transfer of the Purchased Customers from Seller to Buyer or the consummation of any other transactions as contemplated under this Agreement by (i) the necessary federal Governmental Authorities, including, without limitation, the FCC, and (ii) the necessary Governmental Authorities of each state in which Purchased Customers are located in which such approval must be issued prior to the transfer of accounts of Purchased Customer located in such state.

**"Subsidiary"** shall mean any corporation or other organization, whether incorporated or unincorporated, of which such party directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, or any organization of which such party is a general partner.

**"Tax" or "Taxes"** means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, telecommunications, telecommunications-related, excise, federal universal service fund, state universal service fund, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax or assessment of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not, imposed by any Governmental Authority or other taxing authority.

**"Transaction Documents"** shall mean this Agreement, the Management Agreement, and all other schedules, exhibits, agreements, instruments and documents executed and delivered in connection with this Agreement.

1.2 **Other Definitional and Interpretive Matters.** Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) **Calculation of Time Period.** When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(b) **Gender and Number.** Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(c) **Herein.** The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(d) **Including.** The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(e) **Reasonable Commercial Efforts.** The obligation of a party to use reasonable commercial efforts to accomplish an objective means that the obligated party is required to make a diligent, reasonable and good faith effort to accomplish the applicable objective. Such obligation, however, does not require any unreasonable expenditure of funds or incurrence of any unreasonable liability on the part of the obligated party (in each case, in the context of the expenditure to be made or liability to be incurred); provided, however, that the foregoing shall not require that the obligated party act in a manner that would be contrary to normal commercial practices in order to accomplish the objective. The fact that the objective is or is not actually accomplished is no indication that the obligated party did or did not in fact utilize its reasonable commercial efforts in attempting to accomplish the objective.

## 2. PURCHASE AND SALE OF ASSETS

2.1 **Purchased Assets.** On the Closing Date, Seller shall sell, transfer, convey and assign to Buyer, and Buyer shall purchase and accept from Seller, all of Seller's right, title, and interest in and to the Purchased Customers and the Purchased Accounts Receivable ("**Purchased Assets**").

2.2 **Excluded Assets.** Notwithstanding the foregoing, the Excluded Assets will be retained by Seller and will not be included in the Purchased Assets.

2.3 **Assumption of Liabilities by Buyer.** Simultaneously with the transfer of the Purchased Assets on the Closing Date, Buyer shall assume and agree to pay, perform and discharge when due all liabilities and obligations relating in any way to the Purchased Assets

after the Closing Date, including without limitation (i) all liabilities and obligations of Seller with respect to the Purchased Assets to the extent such liabilities and obligations arise after the Closing Date and relate to the Purchased Customers after the Closing Date (ii) all liabilities and obligations payable to any Governmental Authority or other third parties that result from the sale of services to the Purchased Customers after the Closing Date and (iii) those liabilities, if any, listed on Schedule 2.3. The foregoing liabilities shall be collectively referred to herein as the "Assumed Liabilities".

**2.4 Excluded Liabilities.** Except for the Assumed Liabilities, Buyer shall not assume or be responsible for any liabilities or obligations of Seller or any predecessor of Seller, regardless of nature, whether accrued, unaccrued, absolute, contingent, known or unknown ("Excluded Liabilities"), including but not limited to those listed on Schedule 2.4. Excluded liabilities shall specifically include all CIC codes associated with the Purchased Assets along with any liabilities for access charges related to such codes which arose prior to the Closing Date.

### 3. CALCULATION AND PAYMENT OF PURCHASE PRICE

**3.1 Purchase Price.** The aggregate purchase price for the Purchased Assets (the "Purchase Price") shall be equal to the sum of:

(a) [REDACTED] Dollars (the "Base Purchase Price"), subject to the adjustment set forth in Section 3.2 hereof, plus,

(b) the sum of:

- (i) 95% of Purchased Accounts Receivable outstanding 0 to 30 days as of the Closing Date including all unbilled revenue as of the Closing Date; plus
- (ii) 80% of Purchased Accounts Receivable outstanding 31 to 60 days as of the Closing Date; plus
- (iii) 50% of Purchased Accounts Receivable outstanding 61 to 90 days as of the Closing Date; plus
- (iv) 25% of Purchased Accounts Receivable outstanding 91 to 120 days as of the Closing Date; plus
- (v) 0% of Purchased Accounts Receivable outstanding 121 days or more as of the Closing Date, (the "AR Purchase Price").

(c) The Buyer shall deliver a Letter of Credit in the amount of the Base Purchase Price to the Seller on the Effective Date which, if the Purchase Price is not paid at Closing, shall be able to be drawn upon by Seller at Closing. Not later than two Business Days prior to the Closing Date, Buyer shall deliver to Seller a worksheet, substantially in the form of Exhibit 3.1(c) (the "Purchase Price Worksheet") setting forth in reasonable detail Buyer's good faith estimates of (i) the amount of the Adjusted Base Purchase Price as determined under Section 3.2(a), and (ii) the Estimated AR Purchase Price, as determined under Section 3.2(b). On the Closing Date, Buyer shall, subject to the terms and conditions of this Agreement, pay the

Base Purchase Price, as adjusted by the Base Purchase Price Adjustment pursuant to Section 3.2(a), plus the Estimated AR Purchase Price, in cash or by wire transfer of immediately available funds to one or more accounts designated by Seller.

### 3.2 Purchase Price Adjustment.

(a) Base Purchase Price Adjustment. The amount of the Base Purchase Price shall be adjusted (the "Adjusted Base Purchase Price") by the Base Purchase Price Adjustment which shall be calculated by Buyer and delivered to Seller two Business Days prior to the Closing Date (the "Base Adjustment Date"), as follows (the "Base Purchase Price Adjustment"):

- (i) if the Average Churn calculated for the period from the Effective Date until the Base Adjustment Date exceeds the Permitted Churn Rate, then the Base Purchase Price shall be reduced by two dollars for every one dollar by which the MRR on the Base Adjustment Date exceeds the Permitted Churn Amount on the Base Adjustment Date;
- (ii) if the MRR on the Base Adjustment Date exceeds the MRR on the Effective Date by more than three and one half (3.5%) percent, then the Base Purchase Price shall be increased by two dollars for every one dollar by which the MRR on the Base Adjustment Date exceeds the MRR on the Effective Date;
- (iii) if the Average Churn calculated for the period from the Effective Date until the Base Adjustment Date is equal to or less than the Permitted Churn Rate or the MRR on the Base Adjustment Date exceeds the MRR on the Effective Date by less than three and one half (3.5%), then the Base Purchase Price Adjustment shall be zero.

(b) AR Purchase Price Adjustment. Two Business Days prior to the Closing Date the Buyer shall deliver to the Seller the Estimated AR Purchase Price on the Purchase Price Worksheet which sets forth an estimate of Accounts Receivable on the Closing Date based upon the most recently available aging of the outstanding Purchased Accounts Receivable, and a calculation of the AR Purchase Price as set forth in Section 3.1 (b) (the "Estimated AR Purchase Price"). Within ten (10) Business Days after the Closing Date the Buyer shall deliver to the Seller a revised Purchase Price Worksheet (the "Revised Purchase Price Worksheet") which sets forth the aging of the outstanding Purchased Accounts Receivable as of the Closing Date, and a calculation of the AR Purchase Price as set forth in Section 3.1(b) (the "Final AR Purchase Price"). The difference between the Estimated AR Purchase Price and the Final AR Purchase Price (the "AR Purchase Price Adjustment") shall be paid by the applicable party in cash or by wire transfer of immediately available funds to one or more accounts designated by other party within two Business Days after the later of delivery of the Revised Purchase Price Worksheet or acceptance of the Revised Purchase Price Worksheet by Seller as follows:

- (i) To the extent that the Final AR Purchase Price is less than the Estimated AR Purchase Price, Seller will pay to Buyer in immediately available funds the difference between the Final AR Purchase Price and the Estimated AR Purchase Price, and Seller, after payment to Buyer, shall have no further obligation or liability with respect to the AR Purchase Price Adjustment;
- (ii) To the extent that the Final AR Purchase Price is equal to the Estimated AR Purchase Price, no further obligation shall be due or payable by Buyer or Seller with respect to the Purchase Price Adjustment and neither Seller nor Buyer have any further obligation or liability with respect to the AR Purchase Price Adjustment; or
- (iii) To the extent that the Final AR Purchase Price is greater than the Estimated AR Purchase Price, Buyer will pay to Seller in immediately available funds the difference between the Final AR Purchase Price and the Estimated AR Purchase Price paid by the Buyer on the Closing Date, and Buyer, after payment to Seller, shall have no further obligation or liability with respect to the AR Purchase Price Adjustment.

3.3 Acceptance of Revised Purchase Price Worksheet. The Seller shall have ten (10) Business Days after receipt of the Revised Purchase Price Worksheet to notify Buyer of a dispute with regard to the calculation of either the Adjusted Purchase Price or the Final AR Purchase Price. If a notification of dispute is not received within this time period, the calculation of both shall be deemed correct.

3.4 Dispute Resolution. In the event the Parties are unable to agree upon the Adjusted Base Purchase Price, the Final AR Purchase Price, or any calculation made pursuant to same within the timeframes stated in Section 3.1 and 3.2 above, and if the Buyer and the Seller are, within ten (10) Business Days after receipt by either Party of an objection by the other, unable in good faith to resolve the dispute, such matter shall be referred to a firm of independent certified public accountants (the "Independent Accounting Firm") mutually acceptable to the Buyer and the Seller. The Independent Accounting Firm shall, within thirty (30) days following its selection, deliver to the Buyer and the Seller a written report determining such dispute and its determinations will be conclusive and binding upon the parties thereto for the purposes hereunder. The fees and disbursements of the Independent Accounting Firm acting under this Section shall be apportioned equally between the Seller and the Buyer. For the avoidance of doubt, the delivery and timing of receipt of any document sent by the parties pursuant to this Section 3 shall be governed by the provisions set forth in Section 15.1 - "Notices."

3.5 Expenses of Sale. Except as otherwise provided herein including without limitation Sections 6.2 and 7.4, whether or not the transactions contemplated hereby are consummated, Seller and Buyer shall each bear its respective direct and indirect costs, charges, expenses, and fees incurred in connection with the negotiation, preparation, and closing of this Agreement and the other Transaction Documents, and the consummation and performance of the transactions contemplated hereby and without any liability on the part of the other party or its



Representatives. The provisions of this Section 3.5 shall survive the Closing.

**3.6 USF/Tax Obligations.** Buyer shall be responsible for and timely pay all undisputed universal service fund contribution or other state USF and sales/use tax obligations ("USF/Tax Obligations") relating to telecommunications services provided by Buyer to the Purchased Customers on and after Closing Date, including, without limitation, any and all USF/Tax Obligations resulting from the true-up of telecommunications reporting worksheets ("Worksheets") delivered to Seller by Buyer within 30 days after the Closing Date relating to such telecommunications services provided after Closing Date. Similarly, Seller shall be responsible for any and timely pay all undisputed USF/Tax Obligations relating to telecommunications services provided by Seller on and prior to the Closing Date, including, without limitation, any and all USF/Tax Obligations resulting from the true-up of Worksheets delivered to Seller by the Buyer relating to such telecommunications services provided on and prior to the Closing Date. Both Seller and Buyer shall timely comply with all reporting obligations required by the FCC, State and applicable federal regulations relating to telecommunications services provided by Buyer on or after the Closing Date. To the extent such reporting obligations require data relating to telecommunications services provided by Seller on and prior to the Closing Date to be included, Seller shall provide such data in the appropriate format to Buyer upon receipt of ten (10) business days advance written notice.

#### **4. REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as disclosed in schedules referring to the representations and warranties in this Agreement and delivered by the Seller contemporaneously with the execution of this Agreement, Seller represents and warrants to Buyer that the following statements are true, accurate and complete as of the Effective Date (except that representations and warranties that are made as of a specific date need to be true only as of such date).

**4.1 Organization; Existence, and Standing.** Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power to carry on the Business as now conducted. Seller is duly qualified to do business as a foreign corporation in all jurisdictions where its failure to be so qualified would result in any material liability to Buyer after the Effective Date or have a material adverse effect upon the Business or the Purchased Assets.

**4.2 Power and Authorization.** Seller has full power, authority, and legal right to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations under this Agreement and such other Transaction Documents. Upon execution and delivery by Seller, this Agreement and the other Transaction Documents will constitute valid and binding obligations of Seller enforceable against it in accordance with their respective terms.

**4.3 Permits and Licenses; Compliance with Laws.** Seller is fully qualified under the Communications Act of 1934, as amended, to be an FCC licensee. Neither the ownership of the Purchased Assets by Seller nor the operation of the Business as presently conducted violates in a material way any Applicable Law. To the best of Seller's knowledge, no investigation is

pending or threatened regarding the existence of any such violation. There are no existing applications, petitions to deny or complaints or proceedings (other than proceedings affecting the long distance industry generally) pending before the FCC or any other Governmental Authority having jurisdiction over the Business or any Purchased Customers relating to Seller or the Business. Except as set forth on Schedule 4.3, there are no known pending material FCC violations against Seller, including without limitation, any material violations with respect to USF obligations of the Seller.

4.4 Management of Purchased Customers. From the Effective Date through and including the Closing Date, the Purchased Customers shall be managed by Buyer pursuant the Management Agreement.

4.5 No Finders. No finder or broker has acted or is acting on behalf of Seller in connection with the transactions contemplated by this Agreement. Seller has not incurred any liability for brokerage fees, finder's fees, agent's commissions or other forms of compensation in connection with this Agreement and the transferring contemplated hereby for which Buyers will be responsible.

4.6 No Legal Violations. Neither the execution and delivery of this Agreement by Seller, nor the performance by Seller of its obligations under this Agreement or other transaction documents will (a) result in a violation of any applicable laws applicable to Seller; (b) conflict with Seller's Certificate of Formation or Operating Agreement (or similar charter documents); or (c) result in a material breach of, or constitute a default under, any agreement or instrument to which Seller is a party, or by which it is bound.

4.7 Litigation. There are no material actions, suits or proceedings pending or, to the knowledge of Seller, threatened against Seller which if decided adversely to Seller would prevent Seller from consummating or materially effecting the transaction of contemplated hereby.

4.8 Bank Authorization. Seller is not required to obtain consent from its lender for the transaction contemplated by this Agreement, or to release a security interest in the Purchased Assets such that Buyer can purchase the Purchased Assets free and clear of any liens that may exist upon Seller.

## 5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the following statements are true, accurate and complete as of the Effective Date (except that representations and warranties that are made as of a specific date need to be true only as of such date):

5.1 Organization, Existence, and Standing of Buyer. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Maine.

5.2 Power and Authorization of Buyer. Buyer has full corporate power, authority,

and legal right to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations under this Agreement and the Transaction Documents. Upon execution and delivery by Buyer, this Agreement will constitute a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

**5.3 No Legal Violations.** Neither the execution and delivery of this Agreement by Buyer, nor the performance by Buyer of its obligations under this Agreement or the other Transaction Documents, will (a) result in a violation of any material Applicable Laws applicable to Buyer; (b) conflict with Buyer's Certificate of Formation or Operating Agreement (or similar charter documents); or (c) result in the material breach of, or constitute a material default under, any agreement or instrument to which Buyer is a party, or by which it is bound. Except as set forth on Schedule 5.3, there are no known pending FCC violations against the Buyer, including, without limitation, any violations with respect to USF Obligations of the Buyer.

**5.4 No Finders or Broker.** No finder or broker is acting or has acted on behalf of Buyer in connection with the transactions contemplated by this Agreement. Buyer has not incurred any liability for brokerage fees, finder's fees, agent's commissions or other similar forms of compensation in connection with this Agreement and the transactions contemplated hereby for which Seller would be responsible.

**5.5 Litigation.** Except as set forth on Schedule 5.5, there are no actions, suits or proceedings pending or, to the knowledge of Buyer, threatened against Buyer which if decided adversely to Buyer would restrain or prevent Buyer from consummating the transactions contemplated hereby.

**5.6 Consents and Approvals.** As soon as practicable after execution of this Agreement, except as otherwise consented to by Seller in writing, Buyer will use commercially reasonable efforts to obtain the Regulatory Approvals and any other consent, approval, authorization or other action by any Governmental Authority or other Person required to be obtained to consummate the transactions contemplated by this Agreement. Buyer further agrees to render reasonable assistance to Seller with respect to any actions required by Governmental Authorities in connection with or pursuant to the Regulatory Approvals, including without limitation providing Purchased Customers with appropriate notice of their transfer to Buyer as contemplated herein. The cost of these filings shall be borne by the Buyer. After the Effective Date, Buyer shall manage the Purchased Assets in accordance with the terms of the Management Agreement, until such Regulatory Approval or other necessary consent, approval, authorization by any Governmental Authority is received. In addition, as of the Closing Date, Buyer is duly licensed and registered as a provider of regulated telecommunications services and is in good standing to so provide such regulated telecommunications services in each of the jurisdictions in which Purchased Customers are located except as set forth in Schedule 5.6.

**5.7 Financing.** Buyer will have at Closing access to sufficient funds or credit arrangements available to pay (a) the Adjusted Base Purchase Price in accordance with Section 3.1(c) the Final AR Purchase Price in accordance with Section 3.1(c); and (c) all expenses incurred by Buyer in connection with the transaction contemplated hereby.

5.8 No Conflicting Transaction. The Buyer has not entered into any agreement which may have a material impact on closing the transaction contemplated by this Agreement, including, without limitation, an agreement or letter of intent to sell, transfer, or otherwise dispose of all or substantially all of the assets or capital stock of the Seller or its Affiliates.

5.9 Management of Purchased Customers. From the Effective Date through and including the Closing Date, the Purchased Customers shall be managed by Buyer pursuant to the Management Agreement. In the event that the Regulatory Approvals are not received prior to the deadline stated in Section 10.1, or this Agreement is terminated pursuant to Section 14 hereof, the Buyer shall nonetheless continue to manage the Purchased Customers pursuant to the terms of the Management Agreement.

## 6. COVENANTS OF SELLER

Seller covenants and agrees with Buyer as follows:

6.1 Customers Records. On the Effective Date, Seller will provide Buyer with copies of the name, address, phone number and pertinent billing data for all active Purchased Customers in its database for the period commencing from six (6) months prior through and including the Effective Date.

6.2 Regulatory Approvals. As soon as practicable after execution of this Agreement, except as otherwise consented to by Buyer in writing, Seller will use commercially reasonable efforts to assist Buyer to obtain the Regulatory Approvals and any other consent, approval, authorization or other action by any Governmental Authority or other Person required to be obtained to consummate the transactions contemplated by this Agreement. Seller further agrees to render reasonable assistance to Buyer with respect to any actions required by Governmental Authorities in connection with or pursuant to the Regulatory Approvals, including without limitation providing Purchased Customers with appropriate notice of their transfer to Buyer as contemplated herein. The cost of these filings shall be borne by the Buyer. Seller agrees to execute all documents necessary to effectuate the transfer.

## 7. COVENANTS OF BUYER

Buyer covenants and agrees with Seller as follows:

7.1 Conduct Prior to the Effective Date. Buyer has used its best efforts to cause the conditions set forth in Section 9 to be satisfied on or prior to the Effective Date.

7.2 Access for Seller. After the Effective Date, Buyer will give, or cause to be given, to Seller and its representatives, such reasonable access to the personnel, properties, titles, contracts, books, records, files, documents and affairs of Buyer and copies thereof as is reasonably necessary to allow Seller to obtain information in connection with the preparation, and any audit, of Seller's tax returns and any tax related claims, demands, other audits, suits, actions or proceedings by or against Seller as the owner and/or operator of the Business. Buyer

agrees to provide Seller with such reasonable cooperation as is necessary to allow Seller to obtain the full benefit of the transactions contemplated by this Agreement provided such cooperation does not negatively impact the benefits derived by Buyer as a result of this transaction. Seller shall promptly reimburse Buyer for the reasonable actual costs incurred in carrying out its obligations under this Section 7.2.

**7.3 Employees.** On or before the Closing Date, Buyer shall not offer employment to any of Seller's employees and for two (2) years following the Closing Date or termination of this Agreement, Buyer shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any employee of the Seller to leave the Seller for any reason whatsoever, or hire any employee of the Seller without the prior written consent of the Seller.

**7.4 Regulatory Approvals.** As soon as practicable after execution of this Agreement, except as otherwise consented to by Seller in writing, Buyer will use commercially reasonable efforts to obtain the Regulatory Approvals and any other consent, approval, authorization or other action by any Governmental Authority or other Person required to be obtained by Buyer to enable Seller to consummate the transactions contemplated by this Agreement. Buyer further agrees to render reasonable assistance to Seller with respect to any actions required by Governmental Authorities in connection with or pursuant to the Regulatory Approvals, including without limitation providing Purchased Customers with appropriate notice of their transfer to Buyer as contemplated herein. The cost of these filings shall be borne by the Buyer. Buyer agrees to execute all documents necessary to effectuate the transfer.

**7.5 Purchased Customer Notification.** Notwithstanding Seller's covenant to assist Buyer in complying with the requirements of Governmental Authorities under Section 6.2 and the responsibilities for expenses under Section 3.4, Buyer shall bear all expenses and reimburse Seller for any costs incurred in notifying Purchased Customers that they are to be transferred from Seller to Buyer. The content and form of such notice shall be mutually agreed upon by the parties and shall comply with all rules and regulations of any applicable Governmental Authority concerning such notice.

**7.6 Use of Seller Trademarks.** Unless a second customer notice is required by regulators, within one billing cycle after the Closing Date, Buyer shall cease to use any of Seller's trademarks or other intellectual property, including without limitation, Seller's name or logo, in any manner, including, without limitation, on customer bills, billing inserts, other customer correspondence.

**7.7 Assumed Liabilities.** After Closing, Buyer shall pay, perform and discharge, or cause to be paid, performed and discharged, promptly when due, all of the Assumed Liabilities. The provisions of this Section 7.7 shall survive the Closing.

**7.8 Negotiations.** From and after the Effective Date and until the earlier to occur of the Closing Date or the termination of this Agreement pursuant to Section 14 hereof, the Buyer shall not, and shall not permit or cause any of its Affiliates, the officers and directors of the Buyer, Affiliates or any Persons acting on behalf of the Buyer or any its Affiliates to, directly or indirectly, encourage, solicit, engage in discussions or negotiations with, or provide any

information to, any Person or group (other than Seller or its representatives) concerning any merger, sale of substantial assets, purchase or sale of shares of capital stock, membership interests or partnership interests or similar transaction involving the Buyer or its Affiliates or any other transaction inconsistent with the transactions contemplated hereby. The Buyer shall promptly communicate to Seller any inquiries or communications concerning any such transaction which the Buyer or its Affiliates may receive or of which the Buyer or its Affiliates may become aware.

**7.9 Management of Purchased Customers.** From the Effective Date through and including the Closing Date, the Purchased Customers shall be managed by Buyer pursuant the Management Agreement. In the event that the Regulatory Approvals are not received by the deadline stated in Section 10.1, or this Agreement is terminated pursuant to Section 14 hereof, the Buyer shall nonetheless continue to manage the Purchased Customers pursuant to the terms of the Management Agreement.

## **8. CONDITIONS TO OBLIGATIONS OF BUYER**

The obligations of Buyer under this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions, any one or more of which may be waived in writing by the Buyer.

**8.1 Representations and Warranties True on the Closing Date.** Seller's representations and warranties made in this Agreement shall be true in all material respects as of the Closing Date as though such representations and warranties were made as of the Closing Date, except for those representations and warranties made as of a particular date, which shall be true in all material respects as of such date.

**8.2 Compliance with Agreement.** Seller shall have performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date, and Seller shall not otherwise be in default in any material respect under any of the provisions of this Agreement.

**8.3 Certificate of Fulfillment of Conditions.** Seller shall have delivered to Buyer a certificate, dated as of the Closing Date and signed by its Authorized Representative, stating that the conditions set forth in Sections 8.1 and 8.2 have been fulfilled.

**8.4 No Litigation.** No litigation, proceeding, investigation or inquiry shall be pending or threatened which, if sustained, would enjoin or prevent the consummation of the transactions contemplated by this Agreement or materially and adversely affect Buyer's right to carry on the Business as currently conducted.

## **9. CONDITIONS TO OBLIGATIONS OF SELLER**

The obligations of Seller under this Agreement are subject to the satisfaction on or prior to the

Closing Date of the following conditions, any one or more of which may be waived in writing by the Seller:

9.1 Representations and Warranties True on the Closing Date. Buyer's representations and warranties made in this Agreement shall be true in all material respects as of the Closing Date as though such representations and warranties were made as of the Closing Date, except for those representations and warranties made as of a particular date, which shall be true in all material respects as of such date.

9.2 Compliance with Agreement. Buyer shall have performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date, and Buyer shall not otherwise be in default in any material respect under any of the provisions of this Agreement.

9.3 Certificate of Fulfillment of Conditions. Buyer shall have delivered to Seller a certificate, dated as of the Closing Date and signed by its Manager stating that the conditions set forth in Sections 9.1 and 9.2 have been fulfilled.

9.4 No Litigation. No litigation, proceeding, investigation or inquiry shall be pending or threatened which, if sustained, would enjoin or prevent the consummation of the transactions contemplated by this Agreement.

9.5 Consents and Approvals. Buyer shall have obtained all consents and approvals including Regulatory Approvals or otherwise required to permit consummation of the transactions contemplated by this Agreement and to allow for the assignment of the Purchased Customers by the Closing Date.

9.6 Purchase Price and Transaction Documents. Buyer shall deliver a Letter of Credit or other such instrument from a financial institution acceptable to Seller, in Seller's sole discretion, in the amount of the Base Purchase Price on the Effective Date and deliver the Transaction Documents.

## 10. CLOSING

10.1 Date and Time. Subject to the satisfaction of the conditions stated in Sections 8 and 9 and obtaining the Regulatory Approvals pursuant to Section 4.14, the consummation of the purchase, transfer and sale of the Purchased Assets and consummation of the other transactions contemplated by this Agreement (the "Closing") shall be effected no later than five (5) Business Days following receipt of all Regulatory Approvals (such date is referred to as the "Closing Date"), or at such other date, time and place upon which Buyer and Seller shall mutually agree, provided all conditions to the Closing described in Sections 8 and 9 have been met or such other time and date as the parties may agree in writing. The Closing shall take place concurrently at the offices of Buyer's counsel and Seller's counsel, with closing deliveries to be made by facsimile or electronic mail, where appropriate, with originals to follow via overnight courier. The Closing shall be effective as of 12:01 a.m. on the date immediately following the Closing Date. Notwithstanding the foregoing, the Closing must occur on or before February 1, 2009. In the event all of the state regulatory approvals necessary to close have not been obtained



by this date, the Parties shall proceed to closing on those assets located in the states in which approvals have been granted. With respect to the states where approvals have not been granted, Seller shall notify customers located in those states that service shall be discontinued. Following notification, the Parties shall adjust both the Purchase Price and the AR Purchase in accordance with Section 3.2 to account for the decrease in MRR as a result of expiration of the time period under which regulatory approvals must be obtained.

**10.2 Items to be Delivered by Seller.** Seller will execute and deliver to Buyer herewith, against delivery of the Estimated Purchase Price and assumption by the Buyer of the Assumed Liabilities, the following:

- (a) executed Transaction Documents;
- (b) a general assignment of the Purchased Customers in the form attached hereto as Exhibit 10.2(b);
- (c) a master letter of agency ("Master Letter of Agency") in the form attached hereto as Exhibits 10.2(c);
- (d) a bill of sale or other appropriate instruments of transfer of any of the Purchased Assets and Assumed Liabilities not appropriately transferred by the general assignment or the Master Letter of Agency;
- (e) all certificates and documents referred to herein, and such other documents and instruments as Buyer may reasonably request to effectuate the intents and purposes of this Agreement; and
- (f) all end-user documents (if available), passcodes, identifying data, designated contact persons that have been required to be obtained by Seller from its end-user customers in response to CPNI requirements.

**10.3 Items to be Delivered by Buyer.** At the Closing, Buyer shall execute and deliver to Seller herewith, against delivery of the Estimated Purchase Price and assumption by the Buyer of the Assumed Liabilities, the following:

- (a) executed Transaction Documents;
- (b) all certificates and documents referred to herein, and such other documents and instruments as Seller may reasonably request to effectuate the intents and purposes of this Agreement; and
- (c) the Final Base Purchase Price, as adjusted for the Base Purchase Price Adjustment as set forth in Section 3.2 (a), payable by Buyer in immediately available funds as set forth in Section 3.1.



(d) the Estimated AR Purchase Price payable by Buyer in immediately available funds as set forth in Section 3.2 (b).

**10.4 Customer Base Information.** Pursuant to the terms and conditions of the Management Agreement, information with respect to of all of the Purchased Customers will be delivered to Buyer on the Effective Date.

## **11. CONFIDENTIAL INFORMATION**

**11.1** Buyer and Seller each acknowledge that the transactions described herein are of a confidential nature and are subject to the terms and conditions of the Confidentiality Agreement.

## **12. LIMITATIONS; DUE DILIGENCE**

**12.1 Limitation of Representations and Warranties.** Buyer hereby acknowledges that it is purchasing only the customer base identified herein as the Purchased Customer on an "as is, where is" basis without any representation or warranty of any kind from Seller, except as specifically set forth in Section 4 hereof. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4 HEREOF, SELLER DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT OT THE PURCHASED ASSETS, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY REGARDING THE VALUE OF THE PURCHASED CUSTOMERS AND RECEIVABLES TRANSFERRED TO BUYER HEREUNDER, THE ACCURACY AND COMPLETENESS OF ANY PURCHASED CUSTOMER INFORMATION DATABASE, OR ANY OTHER MATTER RELATING TO THE PURCHASED ASSETS OR BUSINESS.

**12.2 Due Diligence.** Buyer hereby acknowledges that it and its Representatives have been given a sufficient opportunity to perform such due diligence investigation of the customer base included in the Purchased Assets and the Assumed Liabilities as Buyer has required. Notwithstanding any such due diligence or any other provision of this Agreement, Buyer acknowledges that it has not received and is not relying upon any representation or warranty, expressed or implied, by operation of law or otherwise, as to the accuracy or completeness of any information regarding Seller, the Purchased Assets, the Purchased Customers, the Business or the Assumed Liabilities so furnished or made available to Buyer or its Representatives. Buyer acknowledges that it is a sophisticated buyer with respect to the Purchased Assets, and the Assumed Liabilities and has independently and without reliance upon Seller or any of their Representatives and based on such information as such Buyer has deemed appropriate in its independent judgment made its own analysis and decision to enter into this Agreement.

### 13. INDEMNIFICATION

**13.1 Survival of Representations and Warranties.** With the exception of Section 4.8, the representations and warranties of Seller contained in Section 4 shall terminate and be of no further force and effect as of the Closing. Buyer's sole remedy for breach of such representations and warranty with the exception of 4.8 shall be to refuse to close this Agreement. The representations and warranties of Buyer contained in Section 5 shall terminate and be of no further force and effect as of one year after the Closing.

**13.2 Indemnification by Seller.** Seller agrees to hold harmless, indemnify and defend Buyer and its legal representatives, successors and assigns from and against any losses, costs, liabilities, or expenses (including without limitation, costs and expenses of litigation and, to the extent permitted by law, reasonable attorney's fees) incurred by Buyer by reason of (a) breach of any of the representations or warranties set forth in Article 4 hereof, (b) the breach of any of the covenants or agreements of Seller contained in this Agreement or in any other Transaction Document (including the Schedules) executed or delivered by Seller in connection with this Agreement or given on or before the Effective Date; (c) the assertion against Buyer of any liability or obligation of Seller not expressly assumed by Buyer hereunder, including but not limited to product liability or warranty claims, any liabilities or obligations arising under Federal, state or local environmental laws, and tax laws and any liabilities or obligations resulting from or relating to employees or former employees or representatives of Seller; (d) a claim made or asserted against Buyer under any bulk transfer or bulk sales law, or other principle of successor or transferee liability, by any person having a claim against Seller which relates to the operation of the Business prior to the Effective Date, whether such claim is liquidated or unliquidated, contingent or disputed, or (e) the conduct of the Business prior to the Effective Date.

**13.3 Indemnification by Buyer.** Buyer agrees to hold harmless, indemnify and defend Seller and its legal representatives, successors and assigns from and against any losses, damages, costs, liabilities, or expenses (including without limitation, costs and expenses of litigation and, to the extent permitted by law, reasonable attorney's fees) incurred by Seller by reason of (a) breach of any of the representations or warranties set forth in Article 5 hereof, (b) the breach of any of the covenants or agreements of Buyer contained in this Agreement or in any other instrument, agreement or document executed or delivered by Buyer in connection with this Agreement or given on or before the Effective Date (c) the assertion against Seller of any liability or obligation of Seller expressly assumed by Buyer hereunder; (d) Buyer's breach, from and after the Effective Date, of any liability or obligation assumed by Buyer, including, without limitation, the payment of USF/Tax Obligations arising after the Closing Date or (e) the conduct of the Business after the Closing Date.

#### **13.4 Assertion and Arbitration of Claims**

(a) The parties shall be free to bring all differences of interpretation and disputes arising in connection with this Agreement to the attention of the other at any time without prejudicing their harmonious relationship and operations hereunder, and the good offices and facilities of either party shall be available at all times for the prompt and effective adjustment of any and all such differences, either by mail, telephone or personal meeting under friendly and courteous circumstances.

(b) If a party claims ("Claiming Party") that it is entitled to indemnification under this Article, notice of such claim (the "Claim") shall be given to the party from whom the Claiming Party seeks indemnification. The parties shall negotiate in good faith to determine the validity and the value of the Claim. If the parties cannot reach an agreement as to the value or validity of the Claim, then the Claim may be submitted by either party for arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and the decision of the arbitrators shall be final and binding upon the parties. Unless otherwise agreed by the parties, arbitration will take place in Broomfield, Colorado before a panel of three (3) arbitrators. Judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The prevailing party in any action brought before an arbitration panel or any court shall be entitled to recover all costs, including fees and expenses of counsel.

**13.5 Limitations.** The Indemnification obligations of Buyer and Seller are subject to each of the following limitations and qualifications:

(a) After the expiration of representations and warranties, no claim for indemnification based on Article 4 representations or warranties may be asserted, except that claims first asserted in writing with reasonable detail before the expiration date may be pursued until they are finally resolved.

(b) To be considered timely, indemnification for claims set forth in Article 13.2 and 13.3 (with the exception of Article 4 claims but excluding claims brought under Article 4.8) shall be brought by Buyer or Seller (as the case may be) within nine (9) months of the Closing Date. Notwithstanding the foregoing, with respect to claims under 4.8, the time period for bringing claim(s) shall be one (1) year.

(c) No claim for indemnification can be made until the amount of damages incurred by the party seeking indemnification, in the aggregate, for all claims asserted, exceeds Fifteen Thousand (\$15,000) Dollars.

(d) The amount recoverable from Seller for all indemnification claims asserted pursuant to Section 13.2, shall not exceed, in the aggregate, an amount equal to fifteen (15%) percent of the Base Purchase Price as adjusted by Section 3.2(a).

(e) The amount recoverable from Buyer for all indemnification claims asserted pursuant to Section 13.3, shall not exceed, in the aggregate, an amount equal to the Base Purchase Price as adjusted by Section 3.2 (a).

## 14. TERMINATION

**14.1 Termination.** Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) By Buyer, upon delivery of at least ten (10) days' prior written notice to Seller, if any of the conditions set forth in Section 8 hereof have not been fulfilled by the date set for Closing in Section 10.1 or have become incapable of fulfillment on or before such date and shall not have been expressly waived in writing by Buyer.

(b) By Seller, upon delivery of at least ten (10) days' prior written notice to Buyer, if any of the conditions set forth in Section 9 hereof have not been fulfilled by the date set for Closing in Section 10.1 or have become incapable of fulfillment on or before such date and shall not have been expressly waived in writing by Seller.

14.2 In the event this Agreement is validly terminated pursuant to Section 14.1, this Agreement will become void and of no further force and effect and no party hereto will have any liability to any other party hereunder financial or otherwise, except with respect to the confidentiality obligations in Section 11 and any other liabilities and obligations that expressly survive the termination of this Agreement.

14.3 If validly terminated, the terminating party shall be responsible for notifying the regulatory agencies of the termination of this transaction.

## 15. MISCELLANEOUS

15.1. Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, by commercial courier services, or sent by certified, registered or express mail, postage prepaid, facsimile or by email, with confirmation of receipt; and shall be deemed given when so delivered personally, by facsimile or by email, one Business Day after they are deposited with an overnight courier; and three Business Days after they are deposited in the official mails, postage prepaid, and, in each case, addressed:

(a) In the case of Buyer to:

Telecom Management, Inc.  
d/b/a Pioneer Telephone  
Attn: Sue Bouchard  
583 Warren Ave.  
Portland, Maine 33815 64103

with a copy (which shall not constitute notice) to:

Leon L. Nowalsky  
Nowalsky, Bronston & Gothard,  
A Professional Limited Liability Company  
3500 N. Causeway Blvd., Ste. 1442  
Metairie, LA 70002  
Facsimile: (504) 831-0892

Email: [lnowalsky@nbglaw.com](mailto:lnowalsky@nbglaw.com)

(b) In the case of Seller to:

Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Attn: General Counsel

with a copy (which shall not constitute notice) to:

Level 3 Communications, LLC  
121 Champion Way  
Canonsburg, PA 15317  
Attn: Legal Department

All notices delivered hereunder shall be marked "PERSONAL AND CONFIDENTIAL." Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

15.2. Public Announcements and Releases. No party to this Agreement will make or cause to be made any public announcement or release concerning this Agreement or the transactions contemplated hereby unless required by Applicable Laws, without the prior written consent of the other party.

15.3. Governing Law and Exclusive Venue. The validity, interpretation, and performance of this Agreement will be determined in accordance with the laws of the State of Colorado (without regard to principles of conflicts of laws). The parties agree that subject to any other limitations expressly set forth in this Agreement, the parties shall have the right to have the provisions of this Agreement specifically enforced and to obtain injunctive and other equitable relief to enforce such provisions. Each party submits to the exclusive venue and jurisdiction of the state and federal courts sitting in the State of Colorado, and each party waives any jurisdictional, venue, or inconvenient forum objections to such courts.

15.4. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15.5. Headings. The headings, subheadings, and captions in this Agreement and the other Transaction Documents, and in any exhibit hereto or thereto are for reference purposes only and are not intended to affect the meaning or interpretation of this Agreement or the other Transaction Documents.

15.6. Exhibits and Schedules; Reference to Legislation. The Exhibits and Schedules to this Agreement and the other Transaction Documents delivered pursuant hereto are hereby made a part of this Agreement as if set forth in full herein. Unless otherwise indicated herein, any reference in this Agreement to a Section, Article, Exhibit or Schedule shall mean the applicable section, article, exhibit or schedule of or to this Agreement. A reference herein to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefore and all regulations and statutory instruments issued thereunder or pursuant thereto.

15.7. Entire Agreement. This Agreement (including the Exhibits and Schedules hereto), and the other Transaction Documents contain the entire agreement between the parties hereto with respect to the purchase of the Purchased Customers and assumption of the Assumed Liabilities and related transactions and supersedes all negotiations, prior discussions, agreements, arrangements, and understandings, written or oral, relating to the subject matter of this Agreement.

15.8. Successors and Assigns. This Agreement will be binding upon Seller and Buyer and their respective successors and assigns. Notwithstanding the immediately preceding sentence, neither party may assign its rights and delegate its duties under this Agreement only upon the prior written consent of the other party, provided however that either party may assign its rights and delegate its duties under this Agreement to any of its Subsidiaries or Affiliates without the consent of the other party.

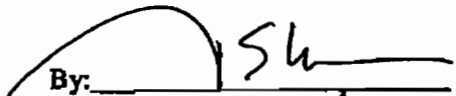
15.9. Severability. Each provision of this Agreement shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. If one or more provisions of this Agreement is held to be excessively broad, as to scope, activity or subject matter so as to be unenforceable, invalid, or void to any extent for any reason, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them so as to remain in force and effect to the maximum extent allowable, if any, and the enforceability and validity of the remaining provisions of this Agreement shall not be affected thereby.

15.10 Waivers and Amendments. This Agreement may be amended, modified, superseded or cancelled and the terms and conditions hereof may be waived, only by a written instrument signed by the parties or in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

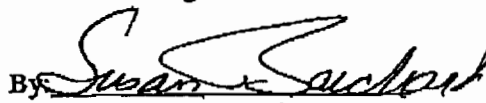
**SELLER:**

Broadwing Communications, LLC

By:   
Name: James E. Means  
Title: Vice President

**BUYER:**

Telecom Management, Inc.

By:   
Name: Susan Bouchard  
Title: President

**EXHIBIT 1.1 (M)**  
**FORM OF MANAGEMENT AGREEMENT**



**EXHIBIT 10.2(b)****GENERAL ASSIGNMENT**

BE IT KNOWN, for good and valuable consideration, the receipt of which is hereby recognized, the undersigned Broadwing Communications, LLC, a Delaware limited liability company (Assignor) whose address is c/o Level 3 Communications, LLC, 1025 Eldorado Blvd., Broomfield, Colorado 80021 hereby unconditionally and irrevocably assigns and transfers unto Telecom Management, Inc. d/b/a Pioneer Telephone, a Maine corporation (Assignee) whose address is 583 Warren Ave., Portland, Maine, ~~33815~~, all rights, title, and interest in and to the customer base comprised of the active residential long distance customers of Assignor as set forth on Schedule 1.1(P) to the Asset Purchase Agreement, dated \_\_\_\_\_, by and between the Parties.

The undersigned fully warrants that it has full rights and authority to enter into this assignment and that the rights and benefits assigned hereunder are free and clear of any lien, encumbrance, adverse claim or interest by any third party.

The assignment shall be binding upon and inure to the benefit of the parties, and their successors and assigns.

Signed this \_\_\_ day of July, 2008.

\*04/03

**Assignor:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT 10.2(C)

## FORM OF MASTER LETTER OF AGENCY

Master Letter of Agency ("Master LOA") executed on July 9, 2008 by and on behalf of Broadwing Communications, LLC, a Delaware Limited Liability Corporation ("Seller"), in favor of Telecom Management, Inc., a Maine corporation ("Purchaser").

Seller hereby names, appoints and authorizes Purchaser to act as the substitute agent in all matters related to providing long distance service for the customers whose customer accounts (the "Customer Accounts") are being transferred to Purchaser pursuant to that certain Asset Purchase Agreement dated of even date (the "Asset Purchase Agreement").

Seller further hereby authorizes Purchaser to obtain all information necessary to service the Customer Accounts, including but not limited to information relating to any account from any telephone company, any credit reporting service or information that is considered CPNL.

Seller further hereby names, appoints and authorizes Purchaser to act as the "RespOrg" on all Customer Accounts.

Seller:

Broadwing Communications, LLC

By: 

Name: JAMES E. MEANS

Title: Vice President

Purchaser:

Telecom Management, Inc.

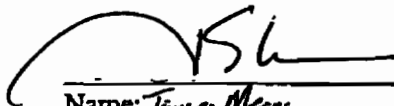
By: 

Name: Sue Bouchard

Title: President

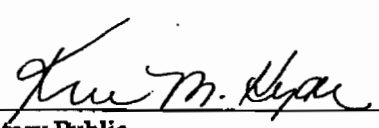
State of Pennsylvania  
County of Washington )

Before me, the undersigned authority in and for the aforesaid County and State, personally appeared James E Means, who being by me first duly sworn, did depose and state that he is the Vice President of Broadwing Communications, LLC, and that he executed the foregoing Master Letter of Agency as a duly authorized officer and on behalf of Broadwing Communications, LLC.

  
Name: James Means  
Title: Vice President

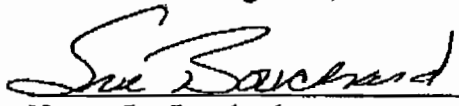
Subscribed and sworn to before me on July 9, 2008. Witness my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Karen M. Hyde, Notary Public  
Cecil Twp., Washington County  
My Commission Expires April 8, 2012  
Member, Pennsylvania Association of Notaries


  
Notary Public  
My commission expires: 4/8/12

State of MAINE )  
County of CUMBERLAND )

Before me, the undersigned authority in and for the aforesaid County and State, personally appeared Sue Bouchard, who being by me first duly sworn, did depose and state that she is the President of Telecom Management, Inc., and she executed the foregoing Master Letter of Agency as a duly authorized officer and on behalf of Telecom Management, Inc.

  
Name: Sue Bouchard  
Title: President

Subscribed and sworn to before me on July 9, 2008. Witness my hand and official seal.

  
Notary Public  
My commission expires: 10/03/2009

KEVIN PHOTOADES  
Notary Public, Maine  
My Commission Expires October 3, 2009

**EXHIBIT "B"**  
**SAMPLE CUSTOMER NOTICE**



Dear Customer:

Level 3 Communications, LLC and its affiliate Broadwing Corporation are selling their residential long distance customers to Telecom Management, Inc. d/b/a Pioneer Telephone. This transaction will require certain regulatory approvals. While awaiting those approvals, Pioneer will be managing your account on behalf of Level 3. The companies expect the transaction to be completed by <<EstimatedClosingDate>>.

The potential change in ownership of your account will not affect or disrupt your current service in any way. Your rates and the terms and conditions of your existing service will not be adversely affected as a result of this transaction. Pioneer will notify you of any changes to your rates, terms and conditions of service after the transaction is completed. However, there will be a billing cycle change for most customers. Bills will now be issued on or about the 15<sup>th</sup> of each month.

You should not incur any carrier-change charges from your local telephone company as a result of this transaction. If such a charge appears on the bill from your local telephone company, please call the customer service department toll-free at (888) 492-6878 and a representative will reimburse you or credit your account accordingly.

Any "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer to another long distance carrier will need to be reinstated by you after the transfer is complete. Your customer care representative can provide you with further details.

You have a choice of long distance providers and have the right to choose a different carrier for your services. If you decide to switch to a different carrier and you have **not** informed Level 3 by the date of the transfer, your services and account will be transferred to Pioneer. Pioneer will be responsible for any outstanding Level 3 inquiries or complaints after the date of the transfer. Please contact a Customer Service Representative at (888) 492-6878 if you have any questions.

Pioneer welcomes you and appreciates the opportunity to be your long distance service provider.

Sincerely,

Sue Bouchard, President  
Pioneer Telephone

Randy Dunbar, Senior Vice President  
Level 3 Communications

**EXHIBIT "C"**  
**FINANCIALS**

5:01 PM  
07/21/08  
Cash Basis

Telecom Management, Inc.  
**Balance Sheet**  
As of July 21, 2008

	<u>Jul 21, 08</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1000 - 401K Plan & Trust	3,378.51
1010 - Petty Cash Start UP	100.00
1020 - Customer Refund-Cash	-7,403.84
1030 - Smith Barney	785,705.32
1040 - Investment Acct Key Bank	257,885.97
1100 - TMI DBA Pioneer Telephone	427,154.66
<b>Total Checking/Savings</b>	<u>1,466,820.62</u>
<b>Other Current Assets</b>	
1310 - Other-A/R	239,840.76
1320 - Unbilled Revenue	1,036,308.43
1330 - Wholesale AR	2,376.22
1350 - Allowance for Bad Debt	-10,000.00
1365 - Prepaid Insurance	2,770.00
1410 - Due from Employee	2,500.00
<b>Total Other Current Assets</b>	<u>1,273,795.41</u>
<b>Total Current Assets</b>	2,740,616.03
<b>Fixed Assets</b>	
1810 - Leasehold Improvements	14,051.02
1820 - Furniture	68,151.56
1830 - Equipment	767,353.90
1850 - Software	52,065.95
1890 - Accum. Depr.	-462,131.76
<b>Total Fixed Assets</b>	<u>439,490.67</u>
<b>Other Assets</b>	
Toll Free #	1,925.84
1510 - Deposits on Equipment	5,109.28
1700 - Due From C P & S Assoc., LLC	509.44
1710 - Due From Casey & Paige, LLC	141,908.71
1910 - NMM-Customer list	10,000.00
1911 - Customer List - Adelphia	1,057,793.00
1915 - Accum Amort- Customer List	-1,019,439.57
1920 - Other Asset-Patents	2,450.00
1925 - Accum Amtz- Patents	-1,401.92
1940 - Pro-Life License	12,500.00
1945 - Accum Amtz- License	-3,541.65
1950 - Capitalized Lease costs	32,056.02
1955 - A/A Cap Leae costs	-1,103.52
<b>Total Other Assets</b>	<u>238,765.63</u>
<b>TOTAL ASSETS</b>	<u><u>3,418,872.33</u></u>

**LIABILITIES & EQUITY**  
Liabilities

5:01 PM  
07/21/08  
Cash Basis

Telecom Management, Inc.  
**Balance Sheet**  
As of July 21, 2008

	<u>Jul 21, 08</u>
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
2000 - Accounts Payable	-120.74
<b>Total Accounts Payable</b>	<u>-120.74</u>
<b>Other Current Liabilities</b>	
2022 - AMEX Payable	56,879.84
2100 - other A/P	327,858.88
2110 - Commissions Payable	51,556.36
2210 - Accrued Payroll	27,658.18
2230 - Sales Tax payable	64,661.42
2280 - Accrued Carrier Costs	10,200.00
2290 - Accrued Expenses	69,639.00
2291 - Accrued Taxes & Fees	1,142,332.00
2310 - Accrued Pension	13,483.65
2320 - DHS Garnishment	3,880.40
2420 - State Taxes Payable	-10,404.74
2550 - Deferred Revenue	290,565.59
<b>Total Other Current Liabilities</b>	<u>2,048,310.58</u>
<b>Total Current Liabilities</b>	2,048,189.84
<b>Long Term Liabilities</b>	
2730 - Notes Payable-Switch Lease	47,109.87
2740 - Notes Payable Lease on Switch	91,184.88
<b>Total Long Term Liabilities</b>	<u>138,294.75</u>
<b>Total Liabilities</b>	2,186,484.59
<b>Equity</b>	
3100 - Capital Stock	10,000.00
3300 - Retained Earnings	5,263,784.91
3400 - Shareholder Distributions	-5,415,633.81
Net Income	1,174,116.32
<b>Total Equity</b>	<u>1,032,267.42</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>3,218,752.01</u></u>



**EXHIBIT "D"**  
**MANAGEMENT PROFILES**

Susan E. Bouchard  
1050 Highland Ave.  
South Portland, Me. 04106  
207-799-8433  
1-866-329-7830  
sue@pioneertelephone.com  
www.pioneertelephone.com

## Objective

Expand the company.

## Experience

**Telecom Management, Inc. DBA/Pioneer Telephone 1996-Current**

*President/CFO*

- Day to day operations
- Human Resources
- Financial record keeping

**Fleet Bank of Maine 1986-1995**

*Branch  
Manager*

- Lending
- Managed staff of 6-10 people
- Responsible for overall profit of the branch.
- Sales of new accounts and products

## Education

**1986 University of Southern Maine**

*1986*

- Computer Science
- Business Courses

**Westbrook High School**

*1983-1986*

- Business
- College prep. courses

## Additional Skills

- QuickBooks
- Excel, Word, PowerPoint

## Awards/Affiliations

- Banking Certificate
- Top Sales Producer

## References

Available on Request

PAUL F. DRISCOLL

43 Richardson Street  
Portland, ME 04103  
(207)-774-1060

EDUCATION:

Juris Doctor, 1981, University of Maine School of Law, Portland, Maine. Comments Editor, *Maine Law Review*.

Bachelor of Arts, 1978, University of New Hampshire, Durham, New Hampshire. Majors: Political Science and Classics; Minor: Business Administration. Academic Awards: *Phi Beta Kappa* and *Pi Sigma Alpha*.

EMPLOYMENT:

Norman, Hanson & DeTroy, LLC, Portland, Maine from 1984 through the present. Member of the Firm since January 1, 1986. Practice Concentration: Corporate and Commercial Law. Selected on January 26, 2001 for inclusion in *Best Lawyers in America*.

Verrill & Dana, LLP, Portland, Maine from 1981 through 1984. Associate. Practice Concentration: Corporate and Commercial Law.

COMPUTER SKILLS:

Experienced with Microsoft Word and Dragon Natural Word Voice Activated Software.

INTERESTS:

Bird Hunting with English Setters, Boating and Flyfishing. Marathons Completed: Dublin, Ireland Marathon, Sugarloaf Marathon (twice), Casco Bay Marathon (twice) and Pine Tree Marathon. Irish History.

PERSONAL:

Married to Beth Dobson, Esq., Partner, Verrill & Dana, LLP; Father of Three Children, including a Son with Autism.

CIVIC AND CHARITABLE:

- Leaders Circle, United Way of Greater Portland.
- Former President and Chairman of the Board of Port Resources, a Maine non-profit providing residential and support services for developmentally-challenged adults and children, including persons with autism.
- Chairman, 1999 Capital Campaign for St. Joseph's Catholic Church, Portland, Maine.

# KEVIN PHOTIADES

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## **Professional Experience:**

### **Regulatory Manager – Telecom Management, Inc. d/b/a Pioneer Telephone Portland, Maine**

*June 2004 – Present*

Responsible for management of one employee and all legal, regulatory and compliance activities for telecommunications company. Draft and file licensing documents for authority to provide local and long distance telephone services. Appear before state utility commissions in hearings to obtain such licenses. Draft and complete corporate reports, earnings reports and other ongoing state and federal compliance documents. Draft and negotiate contracts for sales agents. Maintain relations with underlying long distance carriers. Research and respond to complaints filed with state and federal agencies. Review and maintain company policies and operating procedures for compliance. Update company tariffs when rate and policy changes occur.

### **Regulatory & Compliance Manager – United Systems Access, Inc. d/b/a USA Telephone Kennebunk, Maine**

*September 2002 – June 2004*

Managed all legal, regulatory and compliance activities for telecommunications company. Negotiated and managed contracts with vendors such as Verizon and Global Crossing. Established and maintained vendor relations. Drafted and filed company tariffs that identified rates, terms and conditions for telephone service. Monitored and participated in state public utility proceedings involving compliance issues and disputes. Researched and responded to customer complaints. Assisted in preparing RFPs for provision of telephone service. Researched and drafted company policies involving collections, billing, disconnection procedures and customer privacy issues.

### **Paralegal – Long, Burner, Parks & DeLargy, P.C. Austin, Texas**

*April 1997 – July 2002*

Provided legal support for three attorneys in Administrative Law section of firm in various aspects of corporate, regulatory and compliance practice. Incorporated and organized corporations, limited liability companies, and limited partnerships. Performed due diligence and drafted documents for mergers and acquisitions. Performed various compliance activities for clients. Drafted and filed state and federal trademark applications. Assisted at administrative hearings and district court appearances. Guided clients and accomplished multi-state licensing of individual insurance agents and corporate agencies, banks and other entities.

**Paralegal – Hall and Kleeman, P.L.L.C.**

**Austin, Texas**

*March 1996 – April 1997*

Assisted three attorneys with corporate/environmental/family law practice. Drafted client correspondence, litigation and discovery documents. Performed research at Texas Natural Resource Conservation Commission on environmental issues. Researched and drafted memos on various legal issues. Interviewed clients as needed for family law proceedings and account set-up. Assisted in bookkeeping for the firm by maintaining spreadsheets tracking client account activity.

**Education:**

Graduate:                      Paralegal Certificate, December 1996  
Texas State University, San Marcos, Texas

Undergraduate:            B.A., History, December 1991  
University of Texas, Austin, Texas

**Honors / Recognition:**

Primary Scholarship Winner, Alamo Area Paralegal Association, Fall 1996  
Panel Member, Texas Legal Educators Seminar, August 1998