BRADLEY ARANT BOULT CUMMINGS LLP

Henry Walker
Direct: 615.252.2363
Fax: 615.252.6363
hwalker@babc.com

August 17, 2010

Jerry Kettles, Chief Economic Analysis & Policy Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket No. 10-00159; Joint Petition of Zayo Group, LLC for Approval of Change of Control of American Fiber Systems, Inc.

Dear Mr. Kettles:

The Joint Petitioners submit the following responses to Data Request No. 1:

1. Have the petitioners have filed a similar petition or notice in other states. If so, provide a listing of states and action taken.

RESPONSE: See Attachment A.

2. Have the petitioners filed a similar petition with the FCC. If so, provide or list any action taken by the FCC, and the associated file(s) or document number(s). If a schedule to complete the review of your application has been established by the FCC, provide such with your response.

RESPONSE: See Attachment A. No FCC schedule has been established.

3. Provide the number of customers that American Fiber Systems, Inc. ("AFS") currently serves in Tennessee.

RESPONSE: Seven

4. Provide a copy of the Agreement and Plan of Merger dated as of June 24, 2010, the Petitioners entered into defining the change of control of AFS described in the *Joint Petition.*

RESPONSE: See Attachment B (Confidential)

5. Provide a signed verification from the Zaoy Group, LLC, American Fiber Systems, Holding Corp., and AFS verifying that the information contained in the *Joint Petition* is true to their best knowledge, information, and belief.

RESPONSE: See Attachment C.

6. As a result of the transaction described in the Joint Petition, will there be a transfer of control of US Carrier Telecom, LLC?

RESPONSE: There will not be a transfer of control of US Carrier Telecom, LLC ("USC"). American Fiber Systems, Inc., ("AFS") owns membership units in US Carrier Telecom Holdings, LLC ("USCTH"). However, as a result of limitations in the Operating Agreement of USCTH, American Fiber Systems, Inc. does not have actual day-to-day/operational control of USCTH. USCTH is the parent company of USC. IF AFS does not have actual day-to-day/operational control of USCTH which owns 98% of USC, AFS cannot have actual day-to-day/operation control of USC. Further, AFS will exist after the closing of the proposed transaction and AFS will continue to own the USCTH membership units after closing. The Zayo Group merger subsidiary will be acquiring the ownership interest of American Fiber Systems Holding Corp (the parent company of AFS) – thus the AFS owner of US Carrier will remain unchanged. Referenced is made to footnote 1 of Exhibit A to the parties Joint Petition filed with the TRA and footnote 6 on page 17 of the parties' Joint Application filed with the FCC.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 
Henry Walker

HW/dnr

ATTACHMENT A

Regulatory Status for Project Woodstock

Privileged Confidential
Attorney Work Product

Jurisdiction	Filed Date	Docket No.
FCC Domestic 214	8/2/2010	10-155
FCC International 214	8/2/2010	ITC-T/C-20100802-00317
Arizona	7/26/2010	T-03980A-10-0313
Connecticut	7/26/2010	01-04-27
Florida	7/21/2010	N/A
Georgia	7/9/2010	26510 19008
Idaho	7/26/2010	N/A
Kansas	7/26/2010	N/A
Minnesota	7/8/2010	10-780
Missouri	7/26/2010	N/A
Nevada	7/22/2010	10-07018
New York	7/6/2010	10-01501
Ohio	7/8/2010	10-0956-TP-ACO
Tennessee	8/3/2010	1000159
Utah	7/12/2010	10-2353-01

Updated: 8/10/10

ATTACHMENT B
PUBLIC VERSION

CERTIFICATE

The undersigned, Bruce T. Frankiewich, hereby certifies that (1) I am the General Counsel and Vice President of Regulatory Affairs of American Fiber Systems Holding Corp., a Delaware corporation (the "Corporation"), (2) attached hereto is a true and correct copy of a redacted version of the Agreement and Plan of Merger dated June 24, 2010 ("Merger Agreement") among Zayo Group, LLC, Zayo AFS Acquisition Company, Inc., the Corporation and Robert E. Ingalls, as Equityholder Representative, and (3) the Merger Agreement has not been amended or modified.

IN WITNESS WHEREOF, I have hereunto set my hand this 6 day of August, 2010.

Bruce T. Frankiewich
General Counsel and Vice President
of Regulatory Affairs.

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

by and among

ZAYO GROUP, LLC,

ZAYO AFS ACQUISITION COMPANY, INC.,

AMERICAN FIBER SYSTEMS HOLDING CORP.

and

ROBERT E. INGALLS, JR., AS THE EQUITYHOLDER REPRESENTATIVE

Dated as of June 24, 2010

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of June 24, 2010, is by and among Zayo Group, LLC, a Delaware limited liability company ("Parent"), Zayo AFS Acquisition Company, Inc., a Delaware corporation ("Merger Sub"), American Fiber Systems Holding Corp., a Delaware corporation (the "Company"), and Robert E. Ingalls, Jr., an individual, in his capacity as the designated representative of Equityholders ("Equityholder Representative"). Each of Parent, Merger Sub, the Company and Equityholder Representative are referred to in this Agreement collectively as the "Parties," and individually as a "Party."

Recitals

A. The Board of Directors of the Company and the Board of Managers of Parent have each determined that a business combination between Parent and the Company is in the best interest of their respective companies and stockholders and members, as applicable, and accordingly have agreed to effect the merger of Merger Sub with and into the Company with the Company surviving (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Delaware General Corporation Law (the "DGCL"), whereby the separate corporate existence of Merger Sub shall cease and each issued and outstanding share of Company Capital Stock, other than dissenting shares and shares of Company Capital Stock held in the treasury of the Company, will be converted into the right to receive the Merger Consideration as provided in this Agreement.

B. The stockholders of the Company, each of which is set forth on Exhibit A ("Stockholders"), are the record and beneficial owners of an aggregate of 134,495,310 shares of Company Capital Stock.

C. The optionholders of the Company (the "Optionholders") are the record and beneficial owners of outstanding options to purchase an aggregate of 7,801,500 shares of Company Common Stock issued pursuant to the Company Option Plan (collectively, the "Company Stock Options").

D. The warrantholders of the Company, each of which is set forth on Exhibit B ("Warrantholders"), are the record and beneficial owners of warrants to purchase an aggregate of 1,372,938 shares of Company Common Stock (the "Common Stock Warrants") and 3,242,462 shares of Series E Stock (the "Series E Warrants", and together with the Common Stock Warrants, the "Company Warrants").

E. The Company owns all of the issued and outstanding Equity Securities in the Subsidiaries of the Company described on Schedule 1-A (the "Company Subsidiaries"). The Company and the Company Subsidiaries are referred to in this Agreement, individually, each as an "Acquired Company," and collectively, as the "Acquired Companies"; provided; however, that USCarrier Telecom Holdings, LLC, a Georgia limited liability company and an indirect subsidiary of the Company ("USC"), shall not be considered an Acquired Company.

F. Stockholders, Optionholders and Warrantholders are required to surrender their Company Capital Stock, the Company Stock Options and the Company Warrants, respectively, for the consideration set forth in this Agreement.

Agreement

In consideration of the representations, warranties, covenants and agreements contained in this Agreement, the Parties agree as follows:

ARTICLE I
DEFINITIONS; INTERPRETATION

1.1 **Definitions**. Capitalized terms and other terms used in this Agreement have the respective meanings set forth in Appendix A.

1.2 **Interpretation**. As used in this Agreement, except as otherwise indicated in this Agreement or as the context may otherwise require: (a) the words "include," "includes," and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of similar import; (b) the word "or" is not exclusive; (c) references to an "Article," "Section," "Preamble," "Recital," or any other subdivision, or to an "Appendix," "Exhibit," "Schedule," or "Disclosure Schedule" are to an article, section, preamble, recital, or subdivision of this Agreement, or to an appendix, exhibit, schedule, or disclosure schedule to this Agreement; (d) the words "this Agreement," "hereby," "hereof," "herein," "hereunder," and comparable words refer to all of this Agreement, including the Appendices, Exhibits, Schedules, and Disclosure Schedule to this Agreement, and not to any particular article, section, preamble, recital, or other subdivision of this Agreement or appendix, exhibit, schedule, or disclosure schedule to this Agreement; (e) any pronoun in masculine, feminine, or neutral form shall include any other gender; (f) any word in the singular form includes the plural and vice versa, (g) references to any agreement or other document are to such agreement or document as amended, modified, superseded, supplemented, and restated now or from time to time after the date of this Agreement; (h) references to any Law are to it as amended, modified, supplemented, and restated now or from time to time after the date of this Agreement, and to any corresponding provisions of successor Laws, and, unless the context requires otherwise, any reference to any statute shall be deemed also to refer to all rules and regulations promulgated thereunder; (i) references to any Person include such Person's respective successors and permitted assigns (and in the case of a natural person, such Person's heirs, estate, and personal representatives); and (j) references to a "day" or number of "days" (without the explicit qualification of "Business") refer to a calendar day or number of calendar days. If interest is to be computed under this Agreement, it shall be computed on the basis of a 360-day year of twelve 30-day months. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action or Notice may be taken or given on the next succeeding Business Day. Any financial or accounting term that is not otherwise defined in this Agreement shall have the meaning given such term under GAAP.

ARTICLE II
MERGER; CLOSING

2.1 **The Merger**. In accordance with the DGCL and subject to the terms and conditions of this Agreement, Merger Sub shall be merged with and into the Company at the Effective Time and the separate corporate existence of Merger Sub will thereupon cease. The Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation") and shall be a wholly owned subsidiary of Parent.

2.2 **Effective Time**. On the Closing Date, Parent, Merger Sub and the Company will (a) duly execute a certificate of merger (the "Certificate of Merger") in substantially the form of Exhibit C and (b) make all filings or recordings required under the DGCL. The Merger will become effective at such time as the Certificate of Merger has been accepted with the Secretary of State of the State of Delaware or at such subsequent date or time as specified in the Certificate of Merger. The date and time the Merger becomes effective is referred to in this Agreement as the "Effective Time."

2.3 **Effects of the Merger**. The Merger will have the effects set forth in this Agreement and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject

thereto, at the Effective Time, except as otherwise set forth herein, all the property, rights, privileges, powers and franchises of the Company and Merger Sub will be vested in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub will become the debts, liabilities and duties of the Surviving Corporation.

2.4 Certificate of Incorporation and Bylaws. The certificate of incorporation of the Surviving Corporation in effect at the Effective Time will be amended and restated as set forth in Exhibit A to the Certificate of Merger until amended in accordance with applicable Law. The bylaws of Merger Sub, as in effect immediately before the Effective Time, will be the bylaws of the Surviving Corporation, until thereafter changed or amended as provided therein, by the certificate of incorporation or by applicable Law.

2.5 Directors and Officers of the Surviving Corporation. The directors of Merger Sub immediately prior to the Effective Time will be the directors of the Surviving Corporation and the officers of Merger Sub immediately prior to the Effective Time will be the officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until such Person's successor is duly elected or appointed and qualified.

2.6 Closing. The Contemplated Transactions shall be consummated at a closing (the "Closing") to be held at the offices of Holme Roberts & Owen LLP, 1700 Lincoln Street, Suite 4100, Denver, Colorado, at 10:00 a.m. Denver, Colorado, time, subject to, and as soon as practicable after the satisfaction or waiver of, the conditions set forth in Sections 8.1, 8.2, 8.3, 8.4 and 8.5, or on such other date or at such other location as the Company and Parent mutually agree. The date and time that the Closing actually occurs is referred to herein as the "Closing Date." All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken executed and delivered.

ARTICLE III
MERGER CONSIDERATION; SHARE EXCHANGE

ARTICLE IV
[INTENTIONALLY DELETED]

ARTICLE V
REPRESENTATIONS AND WARRANTIES RELATING TO THE ACQUIRED COMPANIES

The Company represents and warrants to Parent and the Merger Sub that, except as set forth in the Disclosure Schedule:

5.1 Organization and Standing.

(a) Organization and Good Standing. The Company is a corporation that was duly incorporated, and is validly existing and in good standing under the Laws of the State of Delaware. Each Company Subsidiary is an Entity that was duly incorporated, formed, or organized, and is validly existing and in good standing (if the concept of good standing applies) under the Laws of the state of its incorporation, formation or organization identified in Schedule 1-A.

(b) Power and Authority; Foreign Qualification. Each Acquired Company has full Entity power and Entity authority to own, lease or otherwise hold its assets and properties and to carry on its business as presently conducted. Each Acquired Company is, and at all times since its inception has been, duly qualified, authorized and in good standing (if the concept of good standing applies) to do business as a foreign Entity in each jurisdiction where the conduct or nature of its business or the ownership, leasing or holding of its assets and properties makes such qualification or authorization necessary, except for any jurisdiction(s) in which the failure to so qualify would not have a Material Adverse Effect. Each jurisdiction where each Acquired Company is qualified or authorized as a foreign Entity is listed in Section 5.1(b) of the Disclosure Schedule.

(c) Organizational Documents. The Company has provided to Parent prior to the date of this Agreement accurate and complete copies of (i) the Organizational Documents of each Acquired Company, including as have been in effect from time to time since the inception of the respective Acquired Company and (ii) the equity ownership records of each Acquired Company.

(d) Resolutions. The Company has made available to Parent accurate and complete copies of all resolutions adopted by the Board of Directors and Stockholders of each of the Acquired Companies and there are no other minutes, resolutions, written consents or similar corporate records of any of the Acquired Companies.

(e) Assumed Names. Section 5.1(e) of the Disclosure Schedule contains an accurate and complete list of each assumed name, trade name, and fictitious name now or ever used by any Acquired Company in connection with the operation of its business. Each assumed name, trade name or fictitious name contained on Section 5.1(e) of the Disclosure Schedule has been duly registered with the appropriate Governmental Entity in each jurisdiction in which such assumed name, trade name or fictitious name has ever been used by any such Acquired Company.

5.2 Equity Securities; Capitalization.

(a) Capitalization. Section 5.2(a) of the Disclosure Schedule accurately and completely sets forth as of the date of this Agreement and immediately (subject to 39,785 shares of Series E Stock to be issued pursuant to that certain Plain English Warrant Agreement, dated April 13, 2004, as amended March 2005, between the Company and Triplepoint Capital L.L.C. and any shares of Company Common Stock to be issued pursuant to options to acquire shares of Company Common Stock under the Company Option Plan) prior to the Closing for each Acquired Company: (i) each class and series of capital stock and other Equity Securities (other than Company Stock Options); (ii) the aggregate number of shares of capital stock and other Equity Securities (other than Company Stock Options) of each class and series that are authorized for issuance; (iii) the aggregate number of issued and outstanding shares of capital stock and other Equity Securities (other than Company Stock Options) of each such class and series and (iv) a list of the names of each record owner of such shares of capital stock and other Equity Securities (other than Company Stock Options), and opposite the name of each such owner, the number, class and series of shares of capital stock and other Equity Securities (other than Company Stock Options) owned by each such owner. In an email dated June 23, 2010 at 4:08 p.m. (Mountain Time) from Gita Ramachandran (Representative of the Company) to Ken desGarennes (Representative of Parent), the Company provided Parent with an accurate and complete list as of the date of this Agreement and immediately (subject to any shares of Company Common Stock to be issued pursuant to options to acquire shares of Company Common Stock under the Company Option Plan) prior to Closing the names of the Optionholders, the respective number of shares of Company Common Stock underlying such Optionholder's Company Stock Options, the grant date, the option agreement number, the expiration date and the applicable exercise price.

(b) Voting Debt. There are no authorized or outstanding bonds, debentures, notes or other Indebtedness of any Acquired Company, excluding Indebtedness to banks as set forth on the Interim Balance Sheet, having the right to vote on or approve (or containing any provision granting any holder thereof or other Person the right to vote on or approve), or that are convertible into, or exchangeable for, securities having the right to vote on or

approve, any matter on which any holder of Company Capital Stock or other Equity Securities of the Acquired Companies may vote on or approve ("Voting Debt").

(c) Subsidiaries. Except for the capital stock and other Equity Securities in the Company Subsidiaries listed as being owned by the Company in Section 5.2(a) of the Disclosure Schedule, the Company has no Subsidiaries and does not own, directly or indirectly, (i) any Equity Security in any other Person or (ii) any interest in a partnership, unincorporated joint venture or other arrangement with any other Person involving the sharing of profits or losses, or in the nature of a partnership, joint venture or other business enterprise. The Company has good and valid title to and beneficial ownership of the Equity Securities in the Company Subsidiaries listed as being owned by the Company in Section 5.2(a) of the Disclosure Schedule, free and clear of all Encumbrances, except as set forth in Section 5.2(c) of the Disclosure Schedule. The Company has provided to Parent a true and correct copy of (w) the articles of organization, as amended, of USC, (x) membership interest certificate (or similar document or instrument), if any, representing the membership interests of USC owned, directly or indirectly, by the Company, and (y) any agreement or document to which the Company or any of its Subsidiaries is a party relating to the management or operation of USC or the rights, duties, and obligations of the equityholders of USC, including any operating agreements, voting agreements, voting trusts, joint venture agreements, registration rights agreements, or similar agreement. To the actual knowledge of David G. Rusin and David N. Danchak without any investigation: (aa) the operating agreement of USC provided to Parent accurately and completely sets forth the issued and outstanding equity interests of USC and the holders thereof, and (bb) except as otherwise set forth in the Amended & Restated Operating Agreement of USCarrier Telecom Holdings, LLC, dated as of October 2007 (the "USC Operating Agreement"), there are no agreements or rights to issue additional securities or equity interests (or rights to acquire securities or equity interests) of USC.

(d) Options. Section 5.2(d) of the Disclosure Schedule sets forth for each Acquired Company: (i) the number of shares of capital stock and other Equity Securities reserved for issuance under the Company's 2000 Stock Option and Grant Plan (the "Company Option Plan") and all other option or other Equity Security incentive plans; (ii) the number of issued and outstanding options as of the date of this Agreement under the Company Option Plan and all such option or other Equity Security incentive plans and the exercise prices and (iii) all other options, issued and outstanding or authorized for issuance, whether or not presently convertible, exercisable or exchangeable, and other commitments or undertakings (other than this Agreement): (A) under which any Acquired Company or any Affiliate or owner of the Equity Securities of any Acquired Company is or may become obligated to issue, deliver, transfer or sell or cause to be issued, delivered, transferred or sold, any of its Equity Securities or any security exercisable for, or convertible or exchangeable into, any Equity Securities of any Acquired Company or any Voting Debt; (B) under which any Acquired Company or any Affiliate or owner of the Equity Securities of any Acquired Company is or may become obligated to issue, grant, extend or enter into any such option or other commitment or undertaking or (C) providing for the delivery of any amount or property in connection with the Closing other than the Merger Consideration.

(e) No Other Securities. Except for the shares of capital stock and other Equity Securities in such numbers set forth on Section 5.2(a) of the Disclosure Schedule, there are no shares of capital stock, other Equity Securities or debt securities of any Acquired Company of any class or series that are issued or issuable, reserved for issuance or outstanding.

(f) Validity. The Company Capital Stock and all other capital stock of each Acquired Company are duly authorized, were validly issued and, except as set forth in Section 5.2(f) of the Disclosure Schedule, are fully paid and non-assessable. The Company Capital Stock and all other capital stock and other Equity Securities of each Acquired Company are not subject to, and were not issued and are not held in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under the Organizational Documents or any Contract of the applicable Acquired Company or the owners of its Equity Securities, or any provision of applicable Law, including the DGCL.

(g) Redemption. There are no outstanding obligations of any Acquired Company to repurchase, redeem or otherwise acquire any capital stock or other Equity Securities, and, except as set forth in Section 5.2(g) of the Disclosure Schedule, since the formation of such Acquired Company, no Acquired Company has repurchased, redeemed or otherwise acquired any capital stock or other Equity Securities, other than from repurchases from former employees in the Ordinary Course of Business.

(h) Allocation Schedule. The Allocation Schedule, when delivered by the Company to Parent pursuant to Section 7.9(a), shall accurately reflect the allocation of the Closing Merger Consideration in accordance with the Company Charter.

5.3 **Authority; Execution and Delivery; Enforceability.**

(a) Power and Authority. Each Acquired Company has full Entity power and Entity authority to execute and deliver the Transaction Documents to which Acquired Company is or becomes a party, to perform its obligations under such Transaction Documents, and to consummate the Contemplated Transactions applicable to such Acquired Company.

(b) Due Authorization. The execution and delivery by each Acquired Company of the Transaction Documents to which such Acquired Company is or will become a party, the performance by such Acquired Company of its obligations under such Transaction Documents, and the consummation by such Acquired Company of the Contemplated Transactions applicable to such Acquired Company, have been duly authorized by all necessary Entity action of such Acquired Company, including any required board of director, stockholder, member, manager, partner and other authorizations or approvals under the Entity Law applicable to, or the Organizational Documents of, such Acquired Company, except Stockholder Approval (which is anticipated to occur promptly following execution and delivery of this Agreement).

(c) Execution and Delivery; Enforceability. Each Transaction Document to which any Acquired Company is a party has been duly executed and delivered by such Acquired Company and constitutes the legal, valid and binding obligation of such Acquired Company, enforceable against such Acquired Company in accordance with its terms, subject to the Remedies Exception. Each Transaction Document to which any Acquired Company will become a party, when executed and delivered by such Acquired Company, will have been duly executed and delivered by such Acquired Company, and will constitute the legal, valid and binding obligation of such Acquired Company, enforceable against such Acquired Company in accordance with its terms, subject to the Remedies Exception.

5.4 Consents and Authorizations; No Conflicts.

(a) Governmental Authorizations. Except as set forth on Section 5.4(a) of the Disclosure Schedule, there is no material Governmental Authorization that any Acquired Company is required to make with, give to or obtain from, any Governmental Entity in connection with the execution, delivery and performance of the Transaction Documents and the consummation of the Contemplated Transactions.

(b) Consents and Approvals. Except as set forth in Section 5.4(b) of the Disclosure Schedule, there is no material Consent or Approval that any Acquired Company is required to obtain in connection with the execution, delivery and performance of the Transaction Document and the consummation of the Contemplated Transactions.

(c) No Conflicts. Assuming that the Governmental Authorizations set forth in Section 5.4(a) of the Disclosure Schedule and the Consents and Approvals set forth on Section 5.4(b) of the Disclosure Schedule are made, given or obtained, as applicable, the execution, delivery and performance of the Transaction Documents, and the consummation of the Contemplated Transactions does not and will not, in any material respect:

(i) contravene, conflict with, result in a violation or breach of, or give any Governmental Entity the right to challenge any of the Contemplated Transactions or to exercise any material remedy or obtain any material relief under, any material Law or material Judgment that is binding on or applicable to any Acquired Company or any of its assets and properties;

(ii) contravene, conflict with, result in a violation of, require any of the terms, provisions or requirements of or give any Governmental Entity the right to revoke, withdraw, suspend, cancel, terminate or modify, any material Permit issued to or held by any Acquired Company;

(iii) except as set forth in Section 5.4(c)(iii) of the Disclosure Schedule, constitute a material default or a material event of default under, or result in or give to any Person any right of termination, cancellation, acceleration or modification under, or any right to exercise any remedy or obtain any relief under, any of the terms or provisions of any Material Contract to which any Acquired Company is a party;

(iv) contravene, conflict with or result in a violation of any material provision of the Organizational Documents of any Acquired Company; or

(v) result in the imposition or creation of, or give any Person any right to create or impose, any material lien or encumbrance, except for a Permitted Encumbrance, on or with respect to any of the assets and properties of any Acquired Company.

5.5 Financial Matters.

(a) Financial Statements. Attached to Section 5.5(a) of the Disclosure Schedule are complete copies of the following financial statements and reports (collectively, the "Financial Statements"): (i) the audited comparative consolidated balance sheet of the Company for the fiscal years ended December 31, 2007, December 31, 2008 and December 31, 2009 (the "Balance Sheet"), the related audited comparative consolidated statement of operations, statement of stockholders' equity (deficit) and statement of cash

flows of the Company for the fiscal years then ended and the notes thereto and (ii) the unaudited consolidated balance sheet of the Company as of May 31, 2010 (the "Interim Balance Sheet", and the date thereof, the "Interim Balance Sheet Date"), and the related unaudited consolidated statement of operations, and statement of cash flows for the four month fiscal period then ended.

(b) Presentation of Financial Statements. The Financial Statements (i) fairly present, in all material respects, the financial position and results of operations and cash flows as of and for the fiscal years or fiscal periods covered in such Financial Statements, (ii) have been prepared in accordance with (A) the books and records of the Acquired Companies and (B) GAAP (except in the case of the Interim Balance Sheet and related statements of operations, stockholders' equity (deficit) and cash flows for the absence of notes and that such statements are subject to normal, year-end adjustments that are neither individually nor in the aggregate material in amount) and (iii) except for the proper application of changes in accounting principles required under GAAP, reflect the consistent application of GAAP throughout the periods covered in such Financial Statements.

(c) Financial Books and Records. Each Acquired Company maintains in all material respects accurate and complete books (including books of account) and records reflecting its assets and Liabilities and maintains in all material respects proper and adequate internal accounting controls that provide assurance that: (i) transactions are executed with the authorization of such Acquired Company's management; (ii) transactions are recorded as necessary to permit preparation of the financial statements of such Acquired Company in accordance with GAAP consistently applied, Law and otherwise in a manner that fairly presents in all material respects the financial condition and results of operations of such Acquired Company as of the respective dates and periods thereof and to maintain accountability for the assets of such Acquired Company; (iii) access to the assets of such Acquired Company is permitted only in accordance with the authorization of such Acquired Company's management; (iv) the reporting of the assets of such Acquired Company is compared with existing assets at regular intervals and (v) accounts, notes and other receivables are recorded accurately and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

(d) Solvency. Each Acquired Company has the ability to pay its Liabilities as they come due in the Ordinary Course of Business and in accordance with the terms and provisions of all Contracts to which any such Acquired Company is a party. The Contemplated Transactions will not render any Acquired Company insolvent (meaning that the sum of such Acquired Company's debts and other probable Liabilities will not exceed the fair value (as defined under GAAP) of such Acquired Company's assets).

5.6 Accounts Payable. All accounts payable of each Acquired Company have been incurred for goods or services received by or provided to such Acquired in the Ordinary Course of Business, and no Acquired Company has delayed or postponed the payment of accounts payable outside the Ordinary Course of Business. Section 5.6 of the Disclosure Schedule sets forth an aging of all accounts payable of each Acquired Company as of the Interim Balance Sheet Date.

5.7 Indebtedness. Section 5.7 of the Disclosure Schedule sets forth, with respect to each Acquired Company, an accurate and complete itemized list of all Indebtedness of each Acquired Company and the amounts outstanding with respect to such Indebtedness as of the Interim Balance Sheet Date, including any accrued and unpaid interest, fees, points, premiums, commissions and other Liabilities arising under the Contracts with respect to such Indebtedness.

5.8 Guaranties, Bonds and Surety. Except as set forth in Section 5.8 of the Disclosure Schedule, no Acquired Company is a party to or bound by, or has any Liability under, any Contract that constitutes a guaranty or that has the economic effect of guaranteeing any Indebtedness of any other Person. Except as set forth in Section 5.8 of the Disclosure Schedule, there are no outstanding payment or performance bonds, letters of credit, other surety or security arrangements, or similar Contracts issued or entered into in connection with the business or any of the assets and properties of any Acquired Company for Remediation or otherwise.

5.9 Derivative Instruments. No Acquired Company is a party to or bound by, or has any Liability under, any Derivative Instrument.

5.10 No Undisclosed Liabilities. No Acquired Company has any Liability except for the following: (a) Liabilities reflected on the Interim Balance Sheet, (b) Liabilities incurred by such Acquired Company since the date of the Interim Balance Sheet in the Ordinary Course of Business, (c) the Company Transaction Expenses and (d) the Liabilities set forth in Section 5.10(d) of the Disclosure Schedule. As of the date of this Agreement, no Acquired Company is a party to any "off-balance sheet arrangement" as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated by the Securities and Exchange Commission.

5.11 Absence of Changes or Events. Since the Interim Balance Sheet Date through the date of this Agreement, each Acquired Company has conducted its business only in the Ordinary Course of Business and, to the Knowledge of the Company, there has occurred no change, event, development or effect that has had a Material Adverse Effect, or that could reasonably be expected to have or result in a Material Adverse Effect. Without limiting the generality of the foregoing, except in the Ordinary Course of Business or as set forth on Section 5.11 of the Disclosure Schedule, since the Interim Balance Sheet Date through the date of this Agreement:

(a) no Acquired Company has sold, transferred, assigned, leased, subleased, licensed or otherwise disposed of any of its assets, tangible or intangible, owned, leased or licensed, with a value in excess of $50,000 individually or $200,000 in the aggregate, other than in the Ordinary Course of Business;

(b) no Acquired Company has entered into any Contract (or series of related Contracts) (i) involving more than $200,000, or (ii) with a term greater than 60 months;

(c) no Person (including any Acquired Company) has amended, restated, modified, terminated, canceled or accelerated any obligation under, any Material Contract;

(d) no Acquired Company has created, incurred or permitted to arise any Encumbrance on any of its assets, tangible or intangible, other than Permitted Encumbrances;

(e) no Acquired Company has made any capital expenditure (or series of related capital expenditures) involving more than $200,000 individually or $1,500,000 in the aggregate;

(f) no Acquired Company has made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loans, and acquisitions) involving more than $50,000 individually or $200,000 in the aggregate;

(g) no Acquired Company has (i) issued, created, incurred, assumed or guaranteed any Indebtedness involving more than $100,000 individually or $500,000 in the aggregate or (ii) made any voluntary purchase, cancellation, prepayment or complete or partial discharge in advance of a scheduled payment date with respect to any Indebtedness;

(h) no Acquired Company has materially delayed or postponed the payment of any accounts payable or other Liabilities;

(i) no Acquired Company has canceled, compromised, waived or released any right or claim (or series of related rights and claims) involving more than $200,000 individually or $500,000 in the aggregate;

(j) no Acquired Company has transferred, assigned, or granted any license or sublicense of any rights under or with respect to any Intellectual Property;

(k) no Acquired Company has declared, set aside or paid any dividend or made any distribution with respect to its capital stock or other Equity Securities (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its capital stock or other Equity Securities;

(l) no Acquired Company has experienced any material casualty, damage, destruction or loss (whether or not covered by insurance) to any of its assets and properties in excess of $250,000;

(m) no Acquired Company has made any loan to, or entered into any other transaction or undertaking with any Affiliated Person, outside the Ordinary Course of Business;

(n) no Acquired Company has (i) adopted, entered into, become bound by, or amended, modified or terminated, any bonus, profit-sharing, incentive, severance or other Benefit Plan, any employment-related Contract or compensation arrangement, or any collective bargaining agreement or (ii) established or modified any (A) targets, goals, pools or similar provisions under any Benefit Plan, employment-related Contract or other employee compensation arrangement or (B) salary ranges, compensation increase guidelines or similar provision with respect to any Benefit Plan, employment-related Contract or other employee compensation arrangement;

(o) no Acquired Company has made any change in its (i) fiscal year or other fiscal reporting periods, (ii) accounting methods or principles, except for changes in accounting principles required by GAAP, (iii) pricing, investment, financing reporting, inventory, credit, allowance or Tax practices or policies, or (iv) method of calculating bad debt or other reserves;

(p) no Acquired Company has made any Tax election or taken any reporting position with respect to Taxes, other than in accordance with past practice;

(q) no Acquired Company has entered into any Contract (i) pursuant to which a customer pre pays for network services or capacity or any indefeasible rights of use or capacity or infrastructure or (ii) with respect to network infrastructure or indefeasible rights of use of capacity or infrastructure (any such contract, an "IRU"); and

(r) no Acquired Company has entered into or agreed to enter into any Contract to do any of the foregoing.

5.12 Receivables. All notes and accounts receivable of each Acquired Company reflected on the Interim Balance Sheet or that have arisen since the Interim Balance Sheet Date, except such notes and accounts receivable as have been collected after such date, are valid claims and to the Knowledge of the Company are not subject to any defense, offset or counterclaim, subject in each case to the reserve for bad debts reflected in the Interim Balance Sheet as adjusted for the passage of time through the Closing Date in the Ordinary Course of Business of each such Acquired Company. All such accounts receivable of each Acquired Company arose in the Ordinary Course of Business from the sale of goods by such Acquired Company or the provision of services by such Acquired Company. Section 5.12 of the Disclosure Schedule sets forth an aging of all accounts receivable of each Acquired Company as of the Interim Balance Sheet Date.

5.13 Network Facilities and Operations.

(a) Section 5.13(a) of the Disclosure Schedule sets forth, for each Acquired Company's current operations, a complete list of network outages and customer service credits paid for the period from May 1, 2009 to May 1, 2010.

(b) Section 5.13(b) of the Disclosure Schedule sets forth with respect to each Acquired Company's network a map of such network, including the approximate sheath route miles, approximate fiber route miles, approximate aerial route miles, approximate underground route miles, and approximate fiber utilization percentage.

(c) As of the date of this Agreement, the Acquired Companies' network and collocation facilities taken as a whole, is, in all material respects, working, functional, fit for the purpose intended, has been maintained, subject to ordinary wear and tear, in working condition and is without any known material defects.

5.14 Deposits. Section 5.14 of the Disclosure Schedule describes, as of the Interim Balance Sheet Date, all assets of any Acquired Company that constitute an unreturned deposit, surety bond, rights under a letter of credit, collateral pledged to secure an obligation or Liability, prepayment, prepaid expense, claim for refund or right to set off (each, a "Deposit"), including any such Deposits in the possession or control of any lender or third party financing source of the Company.

5.15 Tangible Personal Property.

(a) Owned Tangible Personal Property. Section 5.15(a) of the Disclosure Schedule lists all fixed assets, including equipment, machinery, furniture, fixtures and improvements, tools, supplies, spare parts, computer hardware, rolling stock, vehicles, and other tangible assets of any kind or character (in each case, excluding Inventory), except those assets referred to in Section 5.13 ("Tangible Personal Property") that is owned by each Acquired Company as of May 31, 2010 (each, an "Owned Tangible Personal Property") with a current net book value in excess of $150,000, and accurately sets forth the date of acquisition, original cost and book value of each such item of Tangible Personal Property and, to the Knowledge of the Company, Section 5.15(a) of the Disclosure Schedule will accurately represent in all material respects the Tangible Personal Property owned by each Acquired Company as of the Closing Date except for changes in the Ordinary Course of Business between the date of this Agreement and the Closing Date.

(b) Leased Tangible Personal Property.

(i) Section 5.15(b) of the Disclosure Schedule lists all Tangible Personal Property leased by each Acquired Company as of May 31, 2010 on which such Acquired Company pays aggregate annual rent of $50,000 or more (each a "Leased Tangible Personal Property"), under any lease or other Contract (each, a "Tangible Personal Property Lease"), identifying the asset, the lessor under the Tangible Personal Property Lease, the annual payments required under the Tangible Personal Property Lease, the expiration date of the Tangible Personal Property Lease, and whether such Tangible Personal Property Lease is accounted for as a capital lease or operating lease or otherwise under GAAP.

(ii) Except for the Tangible Personal Property Leases indicated as being accounted for as a capital lease on Section 5.15(b) of the Disclosure Schedule as of May 31, 2010, no Acquired Company is lessee under any Contract that under GAAP is required to be accounted for as a capital lease and, to the Knowledge of the Company, Section 5.15(b) of the Disclosure Schedule will accurately represent in all material respects the capital leases to which any Acquired Company is a party as of the Closing Date.

(c) Condition and Use. Each item of Owned Tangible Personal Property and each item of Leased Tangible Personal Property set forth on Sections 5.15(a) or 5.15(b) of the Disclosure Schedule, (i) is in the possession of the applicable Acquired Company, (ii) is free of known material defects and is in working condition and repair (ordinary wear and tear excepted); (iii) complies in all material respects with, and is being operated and otherwise used in material compliance with, all Laws, (iv) is adequate and appropriate for the purposes for which it is being used, and (v) is suitable for use in the Ordinary Course of Business.

(d) Title. Each Acquired Company has good and valid title to all Owned Tangible Personal Property, and a valid and enforceable leasehold or licensee interest in all Leased Tangible Personal Property, set forth or required to be set forth with respect to such Acquired Company on Sections 5.15(a) or 5.15(b) of the Disclosure Schedule, as applicable, in each case free and clear of all Encumbrances, other than Permitted Encumbrances.

5.16 Real Property.

(a) Owned Real Property. Except as set forth in Section 5.16(a) of the Disclosure Schedule, no Acquired Company currently holds, and has never held, fee title to any real property.

(b) Leased Real Property. For each Acquired Company, Section 5.16(b) of the Disclosure Schedule lists each leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures, or other interests in real property not owned in fee on which such Acquired Company pays annual rent of $75,000 or more ("Leased Real Property") under any lease, sublease, license, concession, or other Contract (each, a "Real Property Lease"), and for each parcel of Leased Real Property, sets forth the (i) street address, (ii) square footage, if applicable, (iii) term of the Real Property Lease, (iv) name of the lessor or sublessor and (v) the monthly or annual lease payment, as applicable. Each Acquired Company has good and valid title to its respective leasehold estates in all Leased Real Property, in each case free and clear of all Encumbrances, other than Permitted Encumbrances.

(c) Real Property Documents. The Company has delivered to Parent accurate and complete copies of each Real Property Lease or other Contract relating to or affecting any Leased Real Property in the possession or control of or otherwise available to any Acquired Company.

(d) Material Real Property. The Leased Real Property constitute all material real property used or held for use by any Acquired Company in the operation of its business and operations.

(e) No Commissions. No Acquired Company has any Liability for any brokerage, sales, leasing, listing or similar commission or fee with respect to any Leased Real Property, and no Acquired Company is a party to any Contract of any kind or nature under which it may have any Liability in the future for any such brokerage, sales, leasing, listing or similar commission.

5.17 Intellectual Property.

(a) Applications and Registrations. All Company IP Assets that are subject to an application or registration for protection under Law, or that are material to the business of any Acquired Company as currently conducted (whether or not subject to an application or registration for protection under Law) are set forth on Section 5.17(a) of the Disclosure Schedule, specifying as to all such Company IP Assets: (A) the nature of the Company IP Asset; (B) the owner of the Company IP Asset (and, in the case that any Acquired Company is not the owner, the nature of the rights held by any Acquired Company); and (C) the jurisdictions by or in which such Company IP Asset has been issued or registered or in which an application for such issuance or registration has been filed, including the respective registration or application numbers and dates of issuance, registration or filing.

(b) License-In Contracts. Parent has been provided with accurate and complete copies of all License-In Contracts, all of which are set forth on Section 5.17(b) of the Disclosure Schedule.

(c) License-Out Contracts. Parent has been provided with accurate and complete copies of all License-Out Contracts, all of which are set forth on Section 5.17(c) of the Disclosure Schedule.

(d) Title and Sufficiency. Except for the Licensed-In IP and generally commercially available off-the-shelf software, (i) the Company and its Subsidiaries are the sole and exclusive owner of all right, title and interest in and to the Company IP Assets free and clear of all Encumbrances other than Permitted Encumbrances, other than the License-Out Contracts identified in Section 5.17(c) of the Disclosure Schedule; (ii) all such Company IP Assets are, and, to the Knowledge of the Company, will remain after the Closing, valid, fully enforceable and in full force and effect and there have been no threats or other indications received or known by any Acquired Company alleging that any Company IP Asset is invalid or unenforceable and (iii) the Acquired Companies will be the sole and exclusive owner, free and clear of all Encumbrances other than Permitted Encumbrances, of all right, title, and interest in and to all of the Company IP Assets on the Closing, without seeking the Consent of any Person and without payments to any Person other than as set forth in this Agreement.

(e) Infringement.

(i) To the Knowledge of the Company, the Company IP Assets are not currently infringing on or misappropriating any IP Asset of any Person and are not subject to any pending or threatened litigation or other adverse claim of infringement or misappropriation by any Person.

(ii) To the Knowledge of the Company, no Person has infringed or otherwise misappropriated or is now infringing or misappropriating any Company IP Asset.

(iii) To the Knowledge of the Company, no Person other than the Acquired Companies has any claim, right (whether or not currently exercisable) or interest to or in any Company IP Asset, except licensors and licensees with respect to License-In and License-Out Contracts. To the Knowledge of the Company, there has been no misappropriation of the Company's Trade Secrets or Confidential Information.

(f) Protection. Each Acquired Company has taken reasonable measures to protect and preserve the security, confidentiality and value of the Company IP Assets, and has taken reasonable steps to preserve and maintain records relating to the Company IP Assets, all of which have been made available to Parent.

5.18 Material Contracts.

(a) Material Contracts. Section 5.18(a) of the Disclosure Schedule sets forth as of the date of this Agreement a list (in each case, with specific reference to each applicable subsection below that relates to such Contract) of each of the following Contracts (other than any Permits and any Transaction Documents to which Parent is a party), to which any Acquired Company is a party or by which any Acquired Company or any of its assets and properties are bound (collectively, together with all Tangible Personal Property Leases, Real Property Leases, License In Contracts, License-Out Contracts and Insurance Policies, the "Material Contracts"):

(i) any Contract (or series of Contracts) for the sale of goods or the provision of services (A) the performance or term of which extends or will extend over a period of more than 24 months, or (B) resulted in revenue or the receipt of consideration by the Acquired Companies in the aggregate in excess of $500,000 during the fiscal year most recently ended on or prior to the date of this Agreement;

(ii) [INTENTIONALLY DELETED]

(iii) any Contract relating to a sales agency or similar arrangement;

(iv) any Contract generating more than $200,000 in annual revenue containing any (A) exclusivity provision, stand-still provision, area of interest provision or covenant prohibiting or limiting competition or the conduct of any business or operations; (B) "most favored nation" provision or preferential pricing term or (C) right of first refusal, right of first offer or other preferential right to purchase any services, assets and properties of any Acquired Company;

(v) any Organizational Document or Contract relating to any strategic alliance, joint venture, partnership, or similar arrangement;

(vi) any Contract between or among any Acquired Company, on the one hand, and any Affiliated Person, on the other hand;

(vii) the Real Property Leases set forth in Section 5.16(b) of the Disclosure Schedule;

(viii) any Contract that constitutes a bond, debenture, promissory note, credit agreement, indenture, or that otherwise relates to Indebtedness (other than any Tangible Personal Property Lease or any Real Property Lease);

(ix) any Contract that constitutes a guaranty or that has the economic effect of guaranteeing any Indebtedness or other payment or performance obligation or Liability of any other Person, in each case in an amount of $200,000 or more;

(x) any Contract constituting an Investment Asset or under which any Acquired Company has made any advance, loan, extension of credit, or capital contribution to, or other investment in, another Person (other than extensions of trade credit in the Ordinary Course of Business);

(xi) any Contract (or series of Contracts) under which any Acquired Company has any indemnification, defense, hold harmless, reimbursement or contribution obligation or liability outside the Ordinary Course of Business;

(xii) any Contract providing for (A) the assignment, sale, transfer, exchange, or other disposition of any assets and properties owned, leased, used, or held for use by any Acquired Company with a book value of $200,000 individually outside the Ordinary Course of Business or (B) any merger, consolidation, or other business combination;

(xiii) any Contract relating to the purchase, exchange, contribution, transfer or other disposition, directly or indirectly (including by merger), of the assets or business of any third party that involves (A) all or substantially all of the assets or business of such third party or (B) consideration payable by the Acquired Companies of $1,000,000 or more in the aggregate (assuming for such purpose that all contingent consideration is payable) outside the Ordinary Course of Business;

(xiv) any customer Contract to which any Governmental Entity (other than a school district) is a party to or is bound;

(xv) any union contract or collective-bargaining agreement;

(xvi) [INTENTIONALLY DELETED]

(xvii) any IRU entered into since January 1, 2008;

(xviii) any Contract relating to (A) any specified or unspecified duration or term of employment (excluding at-will employment); (B) any severance, change of control, parachute, or similar payments or compensation; (C) any payments or other consideration payable or owing in connection with the Contemplated Transactions or calculated based on all or any portion of the Merger Consideration or (D) any obligation or Liability to pay or provide any salary, bonus, deferred compensation, incentive compensation, fringe benefits or other consideration to any Entity Representative of any Acquired Company;

(xix) any Contract that (A) limits or restricts the ability of any Acquired Company to (1) declare or pay dividends on, to make distributions in respect of, or to issue, purchase, redeem, or otherwise acquire, any of its capital stock or other Equity Securities; (2) incur Indebtedness; (3) incur or suffer to exist any Encumbrance; (4) purchase or sell any assets and properties; (5) change the lines of business in which it participates or engages or (6) engage in any merger, consolidation, or other business combination or (B) requires any Acquired Company to maintain specified financial ratios or levels of net worth or other indicia of financial condition; and

(xx) any Judgment or settlement arrangement, not otherwise identified in the foregoing subsections of this Section 5.18(a), that involves or is reasonably anticipated to involve consideration in the aggregate in excess of $500,000.

(b) Copies. Except as set forth in Section 5.18(b) of the Disclosure Schedule, the Company has made available to Parent accurate and complete copies of each written Material Contract (including all amendments, modifications and supplements to such Material Contract). Each Material Contract is in writing only.

(c) Validity and Enforceability. All Material Contracts are valid, binding, in full force and effect and enforceable against the applicable Acquired Company, and, to the Knowledge of the Company, the other parties to such Material Contract, subject to the Remedies Exception.

(d) No Breach or Notice. Each Acquired Company has made all material payments and performed all material obligations required to be paid or performed by such Acquired Company under any Material Contract to which such Acquired Company is a party or bound. No Acquired Company, or, to the Knowledge of the Company, any other Person that is a party to any Material Contract, is in breach of or default under such Material Contract in any material respect and, to the Knowledge of the Company, no event has occurred that (with or without the lapse of time, the giving of notice, or both) would constitute such a breach or default, or permit the termination, cancellation, or modification of Material Contract. Except as set forth in Section 5.18(d) of the Disclosure Schedule, no Acquired Company has received any notice or other communication (in writing or, to the Knowledge of the Company, in any other manner) of any such breach or default, or the occurrence of such an event, or that any party (other than any Acquired Company) to a Material Contract intends to cancel, terminate or delay or suspend any performance under, any such Material Contract.

(e) No Other Material Contracts. To the Knowledge of the Company, there are no Contracts that are material to the business of the Company and its Subsidiaries, taken as a whole, other than those Material Contracts set forth in Section 5.18(a) of the Disclosure Schedule. None of the Acquired Companies is a party to any lease to purchase or similar Contract (any such Contract, a "LTOP").

5.19 Sufficiency of Assets. The accounts and notes receivable, Inventory, Investment Assets, Deposits, Leased Real Property, Leased Tangible Personal Property, Owned Tangible Personal Property, Company IP Assets, Material Contracts, and other assets and properties owned, leased or licensed by each Acquired Company, are sufficient for each such Acquired Company to operate its business, as operated on the date of this Agreement, in the Ordinary Course of Business.

5.20 Powers of Attorney. Except as set forth in Section 5.20 of the Disclosure Schedule, there are no outstanding powers of attorney executed by or on behalf of any Acquired Company.

5.21 Banking. Section 5.21 of the Disclosure Schedule sets forth an accurate and complete list of (a) the names and locations of all financial institutions at which any Acquired Company maintains a checking account, deposit account, securities account, safety deposit box, or other deposit or safekeeping arrangement, (b) the account numbers and other identifiers for all such accounts and (c) the names of all Persons that are authorized to draw against any funds in any such accounts and any special arrangements with respect to any such accounts.

5.22 Insurance.

(a) Insurance Policies. Section 5.22(a) of the Disclosure Schedule sets forth as of the date of this Agreement the following information with respect to each insurance policy, including policies providing property, directors' and officers', casualty, liability, and worker's compensation coverage, and bond and surety arrangements, but excluding health and welfare policies (collectively, "Insurance Policies"), to which any Acquired Company is a party; (i) the name of the insurer; (ii) the name, address, and telephone number of the agent; (iii) the amount of coverage (including a description of how deductibles and ceilings are calculated and operate); (iv) the type of insurance; (v) the policy number; (vi) the period of coverage; (vii) the annual premium; and (viii) any pending claims or Proceedings under such insurance policy.

(b) Status of Insurance. With respect to each Insurance Policy, all premiums due and payable under such Insurance Policy have been timely paid (other than retroactive or retrospective premium adjustments that are not yet due). No losses or risks that may be covered by insurance are self-insured, co-insured or insured by any Affiliate of any Acquired Company (except with respect to customary deductibles and retainages).

(c) Insurance Claims. Section 5.22(c) of the Disclosure Schedule is an accurate and complete list of each Insurance Policy maintained by or the benefit of any Acquired Company for which coverage is available for any pending or threatened Proceedings identified on Section 5.24(a) of the Disclosure Schedule, identifying for each such Proceeding: (i) whether any Acquired Company has provided the insurer with a notice of a claim under the applicable policy, (ii) if notice of a claim has been delivered under the applicable policy, whether the insurer is defending such claim or has denied coverage or liability and (iii) whether any Acquired Company have received a reservation of rights notice from the insurer relating to such claim. Except as provided on Section 5.22(c) of the Disclosure Schedule, no Acquired Company has received any notice that any insurer under any Insurance Policy is denying liability or defending a claim under a reservation of rights provision.

5.23 Taxes.

(a) Filing of Tax Returns; Payment of Taxes. Each Acquired Company has filed when due (taking into account properly obtained extensions) all Tax Returns required to be filed under Law. All such Tax Returns were accurate, correct and complete in all material respects, and were prepared in substantial compliance with all Laws. Except as set forth in Section 5.23(a) of the Disclosure Schedule, no adjustments relating to any Tax Return filed by any Acquired Company have been proposed formally or informally in writing by any Governmental Entity. All Taxes due and owing by any Acquired Company (whether or not

shown on any Tax Return) have been paid or accrued for on the Interim Balance Sheet. Except as set forth in Section 5.23(a) of the Disclosure Schedule, no Acquired Company is currently the beneficiary of any extension of time within which to file any Tax Return. Except as set forth in Section 5.23(a) of the Disclosure Schedule, no written claim has ever been made by a Governmental Entity in a jurisdiction where any Acquired Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances for Taxes (other than Taxes not yet due and payable) upon any of the assets and property of any Acquired Company.

(b) Employment Taxes. Each Acquired Company has (i) withheld or collected all amounts required to have been withheld or collected in connection with any amounts paid or owing to any employees, agents, contractors, creditors, or third parties; (ii) remitted such amounts to the proper authorities and (iii) paid all employer contributions and premiums required under applicable Law.

(c) Deficiencies; Audits and Reviews. Except as set forth in Section 5.23(a) of the Disclosure Schedule, no outstanding deficiency or adjustment in respect of Taxes has been proposed, asserted or assessed in writing by any Tax Authority against or with respect to the Acquired Companies. Except as set forth in Section 5.23(c) of the Disclosure Schedule, to the Knowledge of the Company, no Tax audits or administrative or judicial Tax proceedings in any jurisdiction are pending or being conducted with respect to any Acquired Company, and no Acquired Company has received from any Tax Authority in any jurisdiction (including jurisdictions where the Company has not filed Tax Returns) any pending written (i) notice indicating an intent to open an audit or other review; (ii) request for information related to Tax matters or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any Tax Authority against any Acquired Company.

(d) Tax Returns. Section 5.23(d) of the Disclosure Schedule lists (i) all federal, state, local and foreign income Tax Returns, and all other Tax Returns, filed with respect to any Acquired Company for periods beginning as January 1, 2007 and indicates those Tax Returns that have been audited and (ii) all refund claims filed with respect to Taxes or Tax Returns of the Company and its Subsidiaries. Parent has been provided accurate and complete copies of all federal income Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by any Acquired Company filed or received for periods beginning as of January 1, 2006.

(e) Statutes of Limitation. Except as set forth in Section 5.23(e) of the Disclosure Schedule, no Acquired Company has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Except as set forth in Section 5.23(e) of the Disclosure Schedule, there are no outstanding rulings of, or requests for rulings by, any Tax Authority that are addressed to any Acquired Company.

(f) [INTENTIONALLY DELETED]

(g) Reserves. To the Knowledge of the Company, the unpaid Taxes of the Acquired Companies (i) did not, as of the Interim Balance Sheet Date, exceed the reserve for Tax Liability (not including any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Interim Balance Sheet (rather than in any notes thereto) and (ii) do not exceed that reserve as adjusted for the

pass age of time through the Closing Date in accordance with the past custom and practice of the Company and its Subsidiaries in filing their Tax Returns and in accordance with Law. Since the date of the Interim Balance Sheet, no Acquired Company has incurred any Liability for Taxes arising from extraordinary gains or losses, as that term is used in GAAP, outside the Ordinary Course of Business.

(h) Liability for Taxes of Others. No Acquired Company is a party to or bound by any Tax allocation Contract, Tax sharing Contract or any other Contract under which any Acquired Company is responsible for any Taxes of any other Person. No Acquired Company (i) has been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (ii) has any Liability for the Taxes of any Person (other than the Acquired Companies) under Treasury Regulations § 1.1502-6 (or any similar provision of state, local, or foreign Law), as a transferee or successor, by Contract or otherwise.

(i) Additional Tax Matters.

(i) No Acquired Company will be required to include any item of income in, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any: (A) change in method of accounting for a Taxable period ending on or before the Closing Date; (B) "closing agreement" as described in Code § 7121 (or any corresponding or similar provision of foreign, state, or local income Tax Law) executed on or before the Closing Date; (C) intercompany transactions or any excess loss account described in the Treasury Regulations under Code § 1502 (or any corresponding or similar provision of state, local, or foreign income Tax Law); (D) installment sale or open transaction disposition made on or before the Closing Date; (E) prepaid amount received or otherwise reported as income for financial purposes on or before the Closing Date or (F) a transaction between or among any Acquired Company and any Affiliate thereof.

(ii) No Acquired Company is or has been a United States real property holding corporation within the meaning of Code § 897(c)(2) during the applicable period specified in Code § 897(c)(1)(A)(ii).

(iii) Each Acquired Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code § 6662.

(iv) No Acquired Company is a party to or a participant in any transaction that is reportable under Treasury Regulations § 1.6011-4

(v) No Acquired Company has distributed stock of another Person, nor has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code §§ 355 or 361.

5.24 **Proceedings; Judgments.**

(a) Section 5.24(a) of the Disclosure Schedule sets forth, as of the date of this Agreement an accurate and complete summary of each Proceeding pending or, to the Knowledge of the Company threatened, against any Acquired Company or any Entity Representative of any Acquired Company in such capacity as an Entity Representative.

Except as set forth in Section 5.24(a) of the Disclosure Schedule, there is no Proceeding currently pending that was initiated by any Acquired Company against any other Person, as of the date of this Agreement. There is no Proceeding pending or, to the Knowledge of the Company, threatened, or outstanding Judgments against or affecting, any Acquired Company that may give rise to any legal restraint on or prohibition against the Contemplated Transactions. The Company has made available to Parent accurate and complete copies of all pleadings, correspondence and other documents relating to each Proceeding listed, or required to be listed, in Section 5.24(a) of the Disclosure Schedule.

(b) Except as set forth in Section 5.24(b) of the Disclosure Schedule, there is no outstanding Judgment: (i) to which any Acquired Company is a party or subject and that adversely affects any Acquired Company, or their respective assets and properties or business, (ii) to which any Entity Representative of any Acquired Company is a party or subject and that adversely affects any Acquired Company or (iii) that prohibits or impairs the consummation of the Contemplated Transactions.

5.25 Benefit Plans.

(a) Company Benefit Plans. Section 5.25(a) of the Disclosure Schedule sets forth an accurate and complete list of each Company Benefit Plan.

(b) Materials Provided to Parent. The Company made available to Parent, with respect to each Company Benefit Plan: (i) an accurate and complete copy of such Company Benefit Plan (including all amendments or modifications, including any amendments or modifications scheduled to take effect in the future), or, if such Company Benefit Plan is not in writing, a written synopsis thereof; (ii) an accurate and complete copy of each Contract (including any trust agreement, funding agreement, service provider agreement, insurance agreement, investment management agreement, or recordkeeping agreement) relating to such Company Benefit Plan; (iii) an accurate and complete copy of any description, summary, notification, prospectus, report, or other document that has been furnished to any employee of any Acquired Company with respect to such Company Benefit Plan; (iv) an accurate and complete copy of any form, report, registration statement, or other document that has been filed with or submitted to any Governmental Entity with respect to such Company Benefit Plan, including Form 5500 with all attachments for the last three plan years with respect to each such Company Benefit Plan; and (v) an accurate and complete copy of any determination letter, compliance statement, notice, or other document that has been submitted to any Governmental Entity, or issued by or received from any Governmental Entity, with respect to such Company Benefit Plan, together with all materials submitted in support of any pending determination letter or compliance statement.

(c) Tax Qualification Status. Each Company Benefit Plan intended to qualify under Code § 401(a) is either (i) the subject of a favorable unrevoked determination letter issued by the Internal Revenue Service that covers all of the provisions for which an "on-cycle" determination letter with respect to the Company Benefit Plan is available, which determination letter may still be relied upon as to the qualified status of the Company Benefit Plan, or (ii) documented on a prototype or volume submitter plan document that has received a favorable opinion or notification letter that can be relied upon as to the Company Benefit Plan's qualification, and in either case all amendments required after the date of such determination, opinion, or notification letter (as applicable) have been properly and timely adopted and no circumstances have occurred that could adversely affect the tax-qualified status of any such Company Benefit Plan.

(d) Welfare Benefit Plans. Except as set forth in Section 5.25(d) of the Disclosure Schedule, no Acquired Company maintains, contributes to, or has an obligation to contribute to, or has any Liability with respect to, any Company Benefit Plans that are "welfare benefit plans" as defined in ERISA § 3(1) or other arrangement providing health or life insurance or other welfare-type benefits for current or future retired or terminated directors, officers, managers, or employees (or any beneficiary of the foregoing) of any Acquired Company, other than in accordance with the requirements of Part 6 of Subtitle B of Title I of ERISA and Code § 4980B and similar state Laws (collectively, "COBRA").

(e) Multiemployer Plans. No Acquired Company or ERISA Affiliate contributes or has ever contributed to, has or has ever had any obligation to contribute to, or has or has ever had any Liability (including withdrawal liability as defined in ERISA § 4201) under or with respect to, any "multiemployer plan," within the meaning of ERISA § 3(37).

(f) Pension Plans. No Acquired Company or any ERISA Affiliate contributes or has ever contributed to, has or has ever had any obligation to contribute to, or has or has ever had any Liability under or with respect to, any plan that is or has ever been subject to the minimum funding standards of Code § 412 or ERISA § 302.

(g) Compliance. Each Company Benefit Plan (and each related trust, insurance Contract, or fund) is and has at all times been maintained, funded, operated, and administered in all material respects in accordance with its terms and the terms of any collectively bargaining agreement, and complies in form and in operation in all respects with all Laws, including the Code and ERISA. All required forms, reports, returns, statements and descriptions, including Form 5500 annual reports, summary annual reports, and summary plan descriptions, have been timely filed or distributed in accordance with the applicable requirements of ERISA and the Code with respect each such Company Benefit Plan. The requirements of COBRA have been met with respect to each such Company Benefit Plan.

(h) Contributions and Premiums. Each contribution, premium, or other payment (including all employer contributions and employee salary reduction contributions) required to be made with respect to any Company Benefit Plan has been timely and fully made in accordance with the terms of such Company Benefit Plan, the terms of any collective-bargaining agreement, and all Laws. The assets of each Company Benefit Plan that is funded are reported at their fair value (as defined under GAAP) on the books and records of such Company Benefit Plan.

(i) Governmental Liability. No Acquired Company has ever incurred any Liability to the Internal Revenue Service or any other Governmental Entity with respect to any Company Benefit Plan, and to the Knowledge of the Company, no event has occurred, and no condition or circumstance exists, that may (with or without the lapse of time, the giving of notice, or both) give rise, directly or indirectly, to any such Liability that would reasonably be expected to have a Material Adverse Effect.

(j) Prohibited Transactions and Fiduciaries. No "prohibited transaction," within the meaning of Code § 4975 or ERISA §§ 406 and 407 (and not otherwise exempt under ERISA § 408), has occurred with respect to any Company Benefit Plan. To the Knowledge of the Company, no Acquired Company or any Person that is or was an administrator or fiduciary of any Company Benefit Plan (or that acts or has acted as an agent of any Acquired Company or any such administrator or fiduciary) has engaged in any transaction or has otherwise acted or failed to act in a manner that has subjected or may subject any Acquired

Company to any Liability (directly or indirectly, via indemnification or otherwise) for breach of any fiduciary duty with respect to a Company Benefit Plan, or that may, directly or indirectly, give rise to or serve as a basis for the assertion (by any employee or by any other Person) of any claim under, on behalf of, or with respect to, any Company Benefit Plan (other than routine claims for benefits), that would reasonably be expected to have a Material Adverse Effect. There are no Proceedings pending or, to the Knowledge of the Company, threatened, with respect to any Company Benefit Plan or the assets of any Company Benefit Plan or any related trust (other than routine claims for benefits).

(k) Misrepresentations. To the Knowledge of the Company, no materially inaccurate or misleading representation, statement, or other communication, or omission, has been made or directed to any current or former employee of any Acquired Company (i) with respect to such employee's participation, eligibility for benefits, vesting, benefit accrual, or coverage under any Company Benefit Plan or with respect to any other matter relating to any Company Benefit Plan or (ii) with respect to any proposal or intention on the part of any Acquired Company to establish or sponsor or continue to sponsor any Company Benefit Plan or to provide or make available or continue to make available any fringe benefit or other benefit of any nature.

(l) Classification; Foreign Services. Each individual who has received compensation for the performance of services on behalf of any Acquired Company has been properly classified as an employee or independent contractor in accordance with Law. No current or former employee of any Acquired Company has performed services for any Acquired Company outside of the United States.

(m) Contemplated Transactions. Except as set forth in Section 5.25(m) of the Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of any of the Contemplated Transactions results in, or will result in, either alone or in conjunction with any other event: (i) any payment or benefit (including any bonus, change of control, severance or similar payment) becoming due or payable to any current or former Entity Representative of any Acquired Company; (ii) any increase in the amount or value of any benefit or compensation otherwise payable to any current or former Entity Representative of any Acquired Company; (iii) the acceleration of the time of payment, vesting, or funding of any such benefit or compensation; or (iv) any amount to fail to be deductible by reason of Code § 280G.

(n) Changes. Each Company Benefit Plan can be amended, terminated or otherwise discontinued on or after the Closing at any time (subject to applicable notice provisions) for any reason in accordance with its terms, without Liability to Parent or the Company (other than ordinary administration expenses or routine claims for benefits).

(o) Excess and Deferred Compensation. Except as set forth in Section 5.25(o) of the Disclosure Schedule, no Acquired Company is a party to a contract or other arrangement that has resulted or would result, separately or in the aggregate, in the payment of (i) any "excess parachute payment" within the meaning of Code § 280G (and any corresponding or similar provision of state, local or foreign Tax Law) or (ii) any amount that will not be fully deductible as a result of Code § 162(m) (and any corresponding or similar provision of state, local or foreign Tax Law).

(p) 409A. Except as set forth in Section 5.25(p) of the Disclosure Schedule, no Company Benefit Plan or other Contract or arrangement is or has ever been a "nonqualified

defe rred compensation plan" subject to Code § 409A. Each such Company Benefit Plan or other Contract or arrangement that is or has ever been subject to Code § 409A has at all time complied in form and in operation with the requirements of Code § 409A. No Option or other right to acquire Equity Securities of any Acquired Company: (i) has or had an exercise or purchase price that has been or may be less than the fair value of the underlying equity as of the date such Option or other right was granted; (ii) has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such Option or rights; or (iii) has been granted after December 31, 2004, with respect to any class of stock that is not "service recipient stock" (within the meaning of applicable regulations under Code § 409A).

5.26 **Employees and Labor Matters**.

(a) Employees. In an email dated June 23, 2010 at 4:08 p.m. (Mountain Time) from Gita Ramachandran (Representative of the Company) to Ken desGarennes (Representative of Parent), the Company provided Parent with a schedule setting forth, with respect to each employee of any Acquired Company (including any employee who is on Leave): (i) the name, title or classification of each employee; (ii) the annual base salary of each such employee as of May 31, 2010; (iii) all bonuses and commissions paid to each such employee during the 2009 fiscal year of the Company; (iv) the aggregate dollar amount of vacation time that such employee has accrued as of May 31, 2010; and (v) the start date of such employee.

(b) Former Employees. In an email dated June 23, 2010 at 4:08 p.m. (Mountain Time) from Gita Ramachandran (Representative of the Company) to Ken desGarennes (Representative of Parent), the Company provided Parent with an accurate and complete schedule which identifies, as of the date of this Agreement, each former employee of any Acquired Company who is receiving or is scheduled to receive (or whose spouse or other dependent is receiving or is scheduled to receive) any benefits from any Acquired Company relating to such former employee's employment with any Acquired Company and a description of such benefits.

(c) Employees, Consultants and Independent Contractors. Except as identified in Section 5.26(c) of the Disclosure Schedule, the employment of each employee of any Acquired Company is terminable at will by such Acquired Company, and no Acquired Company has entered into or has any Liability or obligation under any Contract (including any oral promise, commitment or undertaking) relating to employment or the retention of any employee, consultant, or independent contractor, and no employee is or will be entitled to severance pay or other benefits after termination or resignation, except as otherwise provided by Law and as otherwise set forth in Section 5.26(c) of the Disclosure Schedule. Parent has been provided accurate and complete copies of all Contracts with any employees, consultants and independent contractors of any Acquired Company, and all current employee manuals and handbooks and policy statements relating to the employment of all current employees of any Acquired Company.

(d) Employee Status. To the Knowledge of the Company, as of the date of this Agreement, (i) no employee of any Acquired Company intends to terminate his or her employment; (ii) no employee of any Acquired Company has received an offer to join a business that may be competitive with the business of any Acquired Company; and (iii) no employee of any Acquired Company is a party to or is bound by any confidentiality agreement, noncompetition agreement or other Contract with any Person (other than the

Company) that may have an adverse effect on (A) the performance by such employee of any of his or her duties or responsibilities as an employee of any Acquired Company or (B) the business of any Acquired Company.

(e) Labor and Employment Practices.

(i) Each Acquired Company has complied in all material respects with all material Laws governing labor and employment, including material Laws involving discrimination, harassment, wages, hours, occupational safety and health, collective bargaining, union-management relations, employee disability, leave of absence, or immigration ("Labor and Employment Laws").

(ii) There is no charge involving any Acquired Company pending as to which an Acquired Company has received notice or other communication (in writing or, to the Knowledge of the Company, in any other manner) or, to the Knowledge of the Company, threatened, before the Equal Employment Opportunity Commission, the National Labor Relations Board (the "NLRB"), or any other Governmental Entity responsible for the enforcement of Labor and Employment Laws.

(iii) There is no Proceeding pending or, to the Knowledge of the Company, threatened, in any forum by or on behalf of any present or former employee of any Acquired Company, any present or former applicant for employment with any Acquired Company, or any class or classes of the foregoing, alleging violation of any Labor and Employment Law, breach of any express or implied contract of employment, or any tortious conduct or equitable claim arising out of or relating to the employment relationship.

(iv) Since January 1, 2007, except as set forth in Section 5.26(e)(iv) of the Disclosure Schedule, no Acquired Company has received any notice or other communication (in writing or, to the Knowledge of the Company, in any other manner) of (A) the intent of any Governmental Entity responsible for the enforcement of Labor and Employment Laws to conduct an investigation or other inquiry involving or affecting any Acquired Company (and, to the Knowledge of the Company, no such investigation or other inquiry is pending) or (B) any assertion or allegation of any violation of any Labor and Employment Law by any present or former employee of any Acquired Company, any present or former applicant for employment of any Acquired Company, or any class or classes of the foregoing.

(v) Each Acquired Company is in material compliance with all federal, state and local laws regarding immigration, including but not limited to the requirements regarding the collection and maintenance of I-9 forms for all employees.

(f) Unions; Collective Bargaining. No Acquired Company has entered into or is bound by any union contract, collective-bargaining agreement, or similar Contract, or any written work rules or practices or unwritten work rules or practices agreed to with any labor organization or other collective bargaining representative or any employee or personnel association. Since January 1, 2007 (and, to the Company's Knowledge at any time prior to January 1, 2007), there has not occurred any strike, lockout, slowdown, work stoppage, picketing, labor dispute, union organizing activity or any similar activity or dispute, and to the Knowledge of the Company no such activity or dispute has been threatened against any Acquired Company or any employee of any Acquired Company. None of the employees of

any Acquired Company are represented by any labor organization and, to the Knowledge of the Company, there has been no attempt to organize any group or all of the employees of any Acquired Company. No Acquired Company has received any notice or other communication (in writing or, to the Knowledge of the Company, in any other manner) of any union organizing petition to the NLRB affecting any Acquired Company, or of any NLRB proceeding concerning representation of any employees of any Acquired Company, and no union claims to represent any employees of any Acquired Company. There is no unfair labor practice charge or complaint against any Acquired Company pending or, to the Knowledge of the Company, threatened, before the NLRB or any state or local Governmental Entity, involving any Acquired Company. There is no grievance arising out of any collective-bargaining agreement or other grievance procedure involving or affecting any Acquired Company.

(g) Terminations. In an email dated June 23, 2010 at 4:08 p.m. (Mountain Time) from Gita Ramachandran (Representative of the Company) to Ken desGarennes (Representative of Parent), the Company provided Parent with an accurate and complete schedule which identifies, as of the date of this Agreement, each of the following with respect to each present and former employee of any Acquired Company whose employment has terminated since January 1, 2007 (including in connection with a lay off) or whose hours of work have been reduced by more than 50%, since January 1, 2007: (i) the name of such employee; (ii) the date of such termination or reduction in hours; (iii) the reason for such termination or reduction in hours (including, in the case of a termination, whether such termination was voluntary or involuntary); and (iv) the location to which such employee was assigned. No Acquired Company has any present intention to terminate the employment of any employee of any such Acquired Company, except in the Ordinary Course of Business.

(h) WARN. No Acquired Company has, within the past five years, effectuated: (i) a "plant closing" (as defined in the WARN Act), affecting any site of employment or one or more facilities or operating units within any site of employment or facility of such Acquired Company or (ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of such Acquired Company. During the period beginning six months prior to the date of this Agreement and ending on the Closing, there has not occurred any lay off or other "employment loss" (as defined in the WARN Act) at any Acquired Company.

5.27 **Compliance with Laws**. Except as set forth in Section 5.27 of the Disclosure Schedule, each Acquired Company, the conduct of its business and the ownership and use of its assets and properties are, and have at all times been during the three-year period prior to the date of this Agreement, in material compliance with all material Laws, except for non-compliance that results from a change in Laws between the date of this Agreement and the Closing date that are applicable to the Acquired Companies and that would not result in a Material Adverse Effect. Except as set forth in Section 5.27 of the Disclosure Schedule, to the Knowledge of the Company, no event has occurred, and no condition or circumstance exists that would (with or without the lapse of time, the giving of notice, or both) constitute or result in a material violation by any Acquired Company, or a failure on the part of any Acquired Company to comply with, any material Law. Except as set forth in Section 5.27 of the Disclosure Schedule, no Acquired Company has received (a) any written notice from any Person regarding any actual, alleged, possible, or potential violation of, or the failure to comply with, any Law during such three-year period, or (b) to the Knowledge of the Company, notice in any manner other than written of any actual, alleged, possible, or potential violation of, or the failure to comply with, any material Law during such three-year period.

5.28 Privacy Provisions.

(a) Company Privacy Policies. The Company has delivered to Parent accurate and complete copies of all written policies and procedures maintained by any Acquired Company since January 1, 2008 that relate to privacy and personal data protection, including any such policies that relate to personal data from or about any Representatives, customers, suppliers, service providers, or any other Persons ("Company Privacy Policies").

(b) Company Privacy Obligations. To the Knowledge of the Company, each Acquired Company has complied in all material respects with, is not in violation of, and, except as set forth in Section 5.28(b) of the Disclosure Schedule, has not received any written notice of any violation with respect to, any Laws, Contracts, Company Privacy Policies or any other commitments, obligations, or representations concerning privacy and personal data protection ("Company Privacy Obligations").

5.29 Permits.

(a) Permits Held. Section 5.29(a) of the Disclosure Schedule is an accurate and complete list of each material Permit held by any Acquired Company as of the date of this Agreement, accurate and complete copies of which have been delivered to Parent. Except as set forth in Section 5.29(a) of the Disclosure Schedule, the Permits identified on Section 5.29(a) of the Disclosure Schedule collectively constitute all material Permits necessary to enable each Acquired Company to (i) conduct its business in the manner in which such Acquired Company presently conducts its respective business and (ii) acquire, own, lease, license, operate, use, sell and otherwise dispose of its assets and properties in the manner in which such assets and properties are presently acquired, owned, leased, licensed, operated, used, sold and otherwise disposed of. Except as set forth in Section 5.29(b) of the Disclosure Schedule, the Permits identified on Section 5.29(a) of the Disclosure Schedule are, in all material respects, valid and in full force and effect.

(b) Compliance with Permits. Except as set forth in Section 5.29(b) of the Disclosure Schedule, each Acquired Company is in material compliance with the terms and requirements of the material Permits identified, or required to be identified, on Section 5.29(a) of the Disclosure Schedule. To the Knowledge of the Company, except as set forth in Section 5.29(b) of the Disclosure Schedule, no event has occurred, and no condition or circumstance exists, that constitutes or will result in (with or without the lapse of time, the giving of notice, or both) constitute or result in: (i) a violation of, or a failure to comply with, any material term or requirement of any such Permit or (ii) the revocation, withdrawal, suspension, cancellation, termination or modification of any such Permit. Except as set forth in Section 5.29(b) of the Disclosure Schedule, no Acquired Company has received any notice (in writing or, to the Knowledge of the Company, in any other manner) from any Governmental Entity regarding any actual or possible violation of, or failure to comply with, any term or requirement of any Permit, or any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Permit. Except as set forth in Section 5.29(b) of the Disclosure Schedule, no Governmental Entity has at any time challenged by written notice to any Acquired Company the right of any Acquired Company to design, license, service, implement, offer or sell any of its products or services, or to otherwise conduct its business.

(c) Renewals and Extensions. Except as set forth on Section 5.29(c) of the Disclosure Schedule, all applications required to have been filed for the renewal or extension

of all material Permits identified on Section 5.29(a) of the Disclosure Schedule have been timely filed with the appropriate Governmental Entity.

(d) Communications Licenses. Each Acquired Company is an authorized legal holder or otherwise has rights to all material Permits required by the Federal Communications Commission (the "FCC"), any State PUC or any other Governmental Entity that regulates telecommunications services or similar services in each jurisdiction in which such Acquired Company is operating (collectively, "Communications Licenses"), and the Communications Licenses constitute all of the material licenses from the FCC, the State PUCs or any other Governmental Entity that regulates telecommunications services or similar services in each such jurisdiction that are necessary or required for or used in the operation of the business as presently conducted by the Acquired Companies, the absence of which would not result in any fines, penalties, or other losses in excess of $20,000 individually or $200,000 in the aggregate and which are obtained in the Ordinary Course of Business. Each of the Communications Licenses listed in Section 5.29(a) of the Disclosure Schedule is valid and in full force and effect, and not subject to any material condition, except those conditions that may be contained within the terms of such Communications Licenses or related Laws. No action by or before the FCC, any State PUC or any other Governmental Entity that regulates telecommunications in each applicable jurisdiction is pending or, to the Knowledge of the Company, threatened, in which the requested remedy is (i) the revocation, suspension, cancellation, rescission or modification or refusal to renew any Communications Licenses, or (ii) material fines and/or forfeitures.

(e) Rights-of-Way. Except as set forth in Section 5.29(e) of the Disclosure Schedule, each Acquired Company has rights to use all material Rights-of-Way required for the operation of its network as operated on the date of this Agreement and, to the Knowledge of the Company, all such Rights-of-Way are valid and enforceable subject to the Remedies Exception.

5.30 **Environmental Matters**

(a) Compliance with Environmental Laws. To the Knowledge of the Company, each Acquired Company has at all times complied with, and each Acquired Company is in compliance with, all Environmental Laws and all Permits that are or were required under any Environmental Laws for the conduct their respective businesses and the acquisition, ownership, lease, license, operation, use, sale, or other disposition of their respective assets and properties, except for non-compliance that would not reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Company, no facts, events, or conditions exist that will, or would reasonably be expected to, prevent, hinder, or limit the continued compliance by the Acquired Companies and its Affiliates with all such Environmental Laws and Permits.

(b) Liability. To the Knowledge of the Company, no event has occurred, or condition or circumstance exists, that has given rise to or resulted in, any Acquired Company having any Liabilities arising under or relating to any Environmental Laws, including any Liability or responsibility for the Remediation of any Hazardous Substances, that could reasonably be expected to have a Material Adverse Effect. Except as set forth in Section 5.30(b) of the Disclosure Schedule, no Acquired Company has expressly assumed, undertaken or provided an indemnity with respect to any such Liability of any other Person.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Each of Parent and Merger Sub represents and warrants to the Company that:

6.1 Organization and Standing. Parent is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a corporation duly formed, validly existing and in good standing under the Laws of the State of Delaware.

6.2 Authority; Execution and Delivery; Enforceability.

(a) Power and Authority. Each of Parent and Merger Sub has full Entity power and authority to execute and deliver the Transaction Documents to which Parent or Merger Sub is or becomes a party, to perform its obligations under such Transaction Documents, and to consummate the Contemplated Transactions.

(b) Due Authorization. The execution and delivery by each of Parent and Merger Sub of the Transaction Documents to which Parent or Merger Sub is or will become a

party, the performance by Parent and Merger Sub of its obligations under such Transaction Documents, and the consummation by Parent and Merger Sub of the Contemplated Transactions, have been duly authorized by all necessary Entity action of Parent and Merger Sub, including any required member, manager, shareholder, director and other authorizations or approvals under the Law applicable to, or the Organizational Documents of, Parent and Merger Sub.

(c) Execution and Delivery; Enforceability. Each Transaction Document to which Parent or Merger Sub is a party has been duly executed and delivered by Parent and Merger Sub and constitutes the legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, subject to the Remedies Exception. Each Transaction Document to which Parent and Merger Sub will become a party, when executed and delivered by Parent and Merger Sub, will have been duly executed and delivered by Parent and Merger Sub, and will constitute the legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, subject to the Remedies Exception.

6.3 **Consents and Authorizations; No Conflicts.**

(a) Consents and Authorizations. Schedule 6.3(a) accurately and completely lists and summarizes the relevant requirements with respect to each material filing, notice, waiver, Consent or Governmental Authorization that Parent and Merger Sub is or will be required to make with, give to or obtain from, any Governmental Entity in connection with the execution and delivery by Parent and Merger Sub of the Transaction Documents to which Parent is a party, the performance by Parent and Merger Sub of its obligations under such Transactions Documents, or the consummation by Parent and Merger Sub of the Contemplated Transactions.

(b) Consents and Approvals. Except as set forth in Schedule 6.3(a), there is no Consent or Approval that Parent or Merger Sub is required to obtain in connection with the execution, delivery and performance of the Transaction Documents and the consummation of the Contemplated Transactions, the failure to obtain would reasonably be expected to have a material adverse effect on the financial condition, results of operation, business, properties or assets of Parent and its Subsidiaries taken as a whole.

(c) No Conflicts. Assuming that the filings, notices, waivers, Consents and Approvals and Governmental Authorizations set forth in Schedule 6.3(a) are made, given or obtained, as applicable, the execution and delivery by Parent and Merger Sub of this Agreement and the other Transaction Documents to which Parent and Merger Sub is or will become a party, the performance by Parent and Merger Sub of its obligations under such Transaction Documents and the consummation by Parent and Merger Sub of the Contemplated Transactions does not and will not in any material respect:

(i) contravene, conflict with, result in a violation or breach of, require any filing, notice, waiver or Governmental Authorization under or give any Governmental Entity or other Person the right to challenge any of the Contemplated Transactions or to exercise any material remedy or obtain any material relief under, any Law or Judgment that is binding on or applicable to Parent or any of its assets and properties;

(ii) constitute a material default or material event of default under, require any material filing, notice, waiver or Consent under, or result in or give to any Person any

right of termination, cancellation, acceleration, or modification under, or any right to exercise any remedy or obtain any relief under, any term or provision of any material Contract to which Parent or Merger Sub is a party;

(iii) contravene, conflict with, or result in a violation of any material provision of the Organizational Documents of Parent and Merger Sub; or

(iv) result in the imposition or creation of, or give any Person any right to create or impose, any material lien or encumbrance, except for any Permitted Encumbrance, on or with respect to any of the assets and properties of Parent and Merger Sub.

6.4 Brokers. Neither Parent nor Merger Sub has retained any Person to act as a broker or finder, or agreed or become obligated to pay, or has taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with any of the Contemplated Transactions.

6.5 Non-Reliance. Each of Parent and Merger Sub acknowledges that none of the Acquired Companies, or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Acquired Companies, or the Business except as expressly set forth in Article V.

ARTICLE VII
COVENANTS

ARTICLE VIII
CONDITIONS TO CLOSING

ARTICLE IX
TERMINATION, AMENDMENT, AND WAIVER

ARTICLE X
SURVIVAL; INDEMNIFICATION

ARTICLE XI
EQUITYHOLDER REPRESENTATIVE

11.1 Authorization of Equityholder Representative. The Equityholder Representative hereby agrees to act on behalf of each Equityholder and accepts the appointment by each such Equityholder to act on its, his or her behalf, as provided herein. In connection with such appointment, Equityholder Representative shall be authorized and empowered to act, on behalf of each Equityholder, in connection with and to facilitate the consummation of the Contemplated Transactions, and in connection with the activities to be performed on behalf of Equityholders under the Paying Agent Agreement, for the purposes and with the powers and authority hereinafter set forth in this Section 11.1 and the Paying Agent Agreement, which shall include, the power and authority on behalf of Equityholders:

(a) to execute and deliver the Paying Agent Agreement and to agree to such amendments or modifications thereto as Equityholder Representative, in his sole and absolute discretion, may deem necessary or desirable, *provided, however*, that the relative interests of Equityholders are not materially and adversely altered;

(b) to execute and deliver such amendments, modifications, waivers and Consents in connection with this Agreement, the Paying Agent Agreement and the consummation of the Contemplated Transactions as Equityholder Representative, in his sole and absolute discretion, may deem necessary or desirable;

(c) to use Commercially Reasonable Efforts to enforce and protect the rights and interests of Equityholders and to enforce and protect the rights and interests of Equityholder Representative arising out of or under or in any manner relating to each Transaction Document and the transactions contemplated thereby and, in connection therewith to (i) assert

or institute any Proceeding; (ii) investigate, defend, contest, or litigate any Proceeding initiated by Parent or any other Person against Equityholder Representative, the Exchange Fund; (iii) settle or compromise any Proceeding relating to this Agreement and the Paying Agent Agreement; (iv) assume the defense of any Third-Party Claim that is the basis of any Proceeding relating to this Agreement and the Paying Agent Agreement; (v) to indemnify and hold harmless the Paying Agent under the Paying Agent Agreement; and (vi) file and prosecute appeals from any Judgment rendered in any of the foregoing Proceedings, it being understood that Equityholder Representative shall not have any obligation to take any such actions, and shall not have any Liability for any failure to take any such actions;

(d) to enforce payment and distribution of the Exchange Fund and any other amounts payable to the Paying Agent for distribution to Equityholders, in each case to the extent of each Equityholder's Fully Diluted Proportionate Share of the Merger Consideration;

(e) subject to the provisions of Section 11.7, to make, execute, acknowledge and deliver all such other agreements, and, in general, to do any and all things and to take any and all action that Equityholder Representative, in his sole and absolute discretion, may consider necessary, proper or convenient in connection with, or to carry out the activities described in, subsections (a) through (e) of this Section 11.1 and the Contemplated Transactions and all other agreements, documents or instruments referred to herein or therein or executed in connection herewith or therewith;

(f) to negotiate and settle disputes and controversies with Parent, in his sole and absolute discretion; and

(g) to cause to be withheld from any cash payment or distribution of the Merger Consideration to Equityholders on and after the date hereof, the amount of any fee payable to Equityholder Representative and any reasonable cost and expense incurred directly or indirectly by Equityholder Representative in connection with his obligations hereunder or relating to the Contemplated Transactions.

11.2 **Payment of Expenses**. In connection with the performance of his obligations hereunder and under the Paying Agent Agreement, Equityholder Representative shall have the right at any time and from time to time to select and engage attorneys, accountants, investment bankers, advisors and consultants, to obtain such other professional and expert assistance (in all cases as reasonably necessary), and maintain such records, as reasonably necessary or desirable, and to incur other reasonable out-of-pocket expenses. The fees and expenses of such advisors, and all other fees, costs and expenses incurred by Equityholder Representative hereunder, shall be paid by each Equityholder in accordance with its, his or her Fully Diluted Proportionate Share; *provided, however*, Equityholder Representative will first pay such amounts out of the Working Capital Reserve Amount and, thereafter, shall be entitled to seek payment for such fees and expenses directly from Equityholders.

11.3 **Proportionate Share; Disbursements.**

(a) All payments to Equityholders and all sums, proceeds and other property held by Equityholder Representative on behalf of Equityholders, if any, shall be allocated among Equityholders in accordance with their respective Fully Diluted Proportionate Share unless otherwise provided expressly herein.

(b) All monies or other proceeds received by Equityholder Representative shall be distributed by Equityholder Representative as promptly as practicable thereafter to

Equityholders in accordance with their respective Fully Diluted Proportionate Share unless otherwise provided expressly herein.

11.4 **Compensation; Exculpation.**

(a) In dealing with this Agreement, the Paying Agent Agreement and any other Transaction Documents instruments, agreements or documents relating thereto, and in exercising or failing to exercise any or all of the powers conferred upon Equityholder Representative hereunder, (i) Equityholder Representative assumes and shall incur no liability whatsoever to any Equityholder by reason of any error in judgment or other act or omission performed or omitted hereunder or in connection with this Agreement, the Paying Agent Agreement or any such other agreement, except in the case of Equityholder Representative's willful misconduct and (ii) Equityholder Representative shall be entitled to rely on the advice of counsel, public accountants or other independent experts experienced in the matter at issue, and any error in judgment or other act or omission of Equityholder Representative (which is not the result of willful misconduct) whether or not pursuant to such advice shall in no event subject Equityholder Representative to liability to Equityholders.

(b) All of the indemnities, immunities and powers granted to Equityholder Representative under this Agreement shall survive the Closing or any termination of this Agreement or the Paying Agent Agreement.

(c) Equityholders, in accordance with their respective Fully Diluted Proportionate Share, shall (i) indemnify Equityholder Representative from and against all Damages incurred by Equityholder Representative in connection with his performance of his duties and obligations as Equityholder Representative unless arising out of Equityholder Representative's willful misconduct, and (ii) pay Equityholder Representative a commercially reasonable fee and reimburse Equityholder Representative for any out-of-pocket expenses incurred by Equityholder Representative, in each case arising out of the performance of his duties and obligations hereunder. The Equityholder Representative may pay such amounts from amounts otherwise payable to Stockholders hereunder.

11.5 **Successor Equityholder Representative.** Upon the death, disability or resignation of Equityholder Representative, a successor Equityholder Representative shall be appointed by a majority vote of Equityholders (on an "as-converted" basis).

11.6 **Power of Attorney.** Each Equityholder on and after the date of this Agreement hereby appoints Equityholder Representative as such Equityholder's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, in such Equityholder's name, place and stead, in any and all capacities, in connection with the Contemplated Transactions, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite, necessary or desirable to be done in connection with any of the Contemplated Transactions, as fully to all intents and purposes as such holder might or could do in person. THE POWER OF ATTORNEY GRANTED IN ACCORDANCE WITH THIS SECTION 11.6: (a) IS COUPLED WITH AN INTEREST AND IS IRREVOCABLE; (b) MAY BE DELEGATED BY THE EQUITYHOLDER REPRESENTATIVE; AND (c) SHALL SURVIVE THE DEATH, DISSOLUTION, OR INCAPACITY OF ANY SUCH EQUITYHOLDER.

11.7 **Certain Limitations.** Notwithstanding anything in this Agreement to the contrary, Equityholder Representative shall not agree to any amendment, modification, or waiver of, or consent to, the provisions of this Agreement or the Paying Agent Agreement that materially and adversely alters or

changes the amount or kind of consideration to be received at Closing in exchange for any of the Company Capital Stock, Company Stock Options or Company Warrants.

ARTICLE XII
GENERAL PROVISIONS

12.1 [INTENTIONALLY DELETED]

12.2 Disclosure Schedule. The information in the Disclosure Schedule constitutes (a) exceptions to particular representations, warranties, or covenants of Stockholders in this Agreement or (b) descriptions or lists of Equity Securities, assets, Liabilities, and other items referred to in particular representations, warranties, or covenants of Stockholders in this Agreement, and in each case when read together with the particular representation, warranty, or covenant, shall constitute and be deemed a part of such representation, warranty, or covenant; *provided, however,* that if there is any inconsistency between any provision or statement in this Agreement and any provision or statement in the Disclosure Schedule (other than a specific exception in the Disclosure Schedule to a specific representation or warranty), then the statements in this Agreement shall control. Matters reflected in any section of the Disclosure Schedule, are not necessarily limited to matters required by this Agreement to be so reflected. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. No reference to or disclosure of any item or other matter in the Disclosure Schedule shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Agreement. Without limiting the foregoing, no such reference to or disclosure of a possible breach or violation of any Contract, Law or Judgment shall be construed as an admission or indication that breach or violation exists or has actually occurred. Notwithstanding anything to the contrary contained in the Disclosure Schedule or in this Agreement, the information and disclosures contained in any section of the Disclosure Schedule shall, whether or not an explicit cross reference appears, be deemed to be disclosed and incorporated by reference in any other section of the Disclosure Schedule as though fully set forth in such other section for which, and to the extent, the applicability of such information and disclosure is reasonably apparent on the face of such information or disclosure.

12.3 Assignment.

(a) This Agreement shall be binding upon, and inure to the benefit of, each party and such Party's successors and assigns (if any).

(b) Parent shall have the right, without the consent of any other party, to assign all or a portion of its rights (including its indemnification rights under Article X), interests and obligations hereunder to one or more Affiliates and to any current or prospective lender to Parent in connection with a bona fide financing, provided that no such assignment shall relieve Parent of any of its obligations hereunder. No other assignment of a Party's rights or delegation any of a Party's obligations under this Agreement shall be permitted without the other Party's prior written consent.

12.4 No Third-Party Beneficiaries. Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such assigns, any legal or equitable rights hereunder. Without limiting the generality of the foregoing, (a) no employee of the Company shall have any rights, as an employee, under this Agreement or under any of the Transaction Documents to which he or she is not personally a party, and (b) other than as an express party to this Agreement or the Transaction Documents, if applicable, no creditor of any of the parties shall

have any rights under this Agreement or any of the Transaction Documents. Nothing in this Agreement shall be deemed or construed to affect any change or amendment to any Company Benefit Plans, and nothing in this Agreement modifies or shall be deemed to modify the ability of any such Company Benefit Plan to be amended or terminated in accordance with its terms.

12.5 Notices. All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally, telecopied, sent by nationally recognized overnight courier that provides proof of delivery, to the Parties at the addresses set forth on Appendix A attached hereto or to such other address as the Party to whom notice is to be given may have furnished to the other parties hereto in writing in accordance herewith. Any such notice or communication shall be deemed to have been delivered and received (a) in the case of personal delivery, on the date of such delivery; (b) in the case of telecopier, on the date sent if confirmation of receipt is received and such notice is also promptly mailed by registered or certified mail (return-receipt requested); and (c) in the case of a nationally recognized overnight courier on the date of receipt.

12.6 Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic image scan transmission in .pdf shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or electronic image scan transmission in .pdf shall be deemed to be their original signatures for all purposes. Any Party that delivers an executed counterpart signature page by facsimile or by electronic image scan transmission in .pdf shall promptly thereafter deliver a manually executed counterpart signature page to each of the other Parties; *provided, however*, that the failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

12.7 Entire Agreement. This Agreement, the other Transaction Documents and the Confidentiality Agreement, along with the Exhibits, Schedules and Disclosure Schedule hereto and thereto, contain the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Parties have voluntarily agreed to limit or exclude their rights, liabilities and obligations respecting the Merger exclusively in contract pursuant to the express terms and provisions of this Agreement; and the Parties expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Agreement. Furthermore, the parties each hereby acknowledge that this Agreement embodies the justifiable expectations of sophisticated parties derived from arm's-length negotiations; the Parties specifically acknowledge that no party has any special duty to or relationship with another Party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm's-length transaction. Except in the case of fraud or willful misconduct, the sole and exclusive remedies for any breach of the terms and provisions of this Agreement (including any representations and warranties set forth herein, made in connection herewith or as an inducement to enter into this Agreement) or any claim or cause of action otherwise arising out of or related to the Contemplated Transactions shall be those remedies available at law or in equity for breach of contract only (as such contractual remedies have been limited or excluded pursuant to the express terms of this Agreement).

12.8 Amendments. This Agreement may not be amended except pursuant to the written agreement of Parent, the Company and Equityholder Representative and any attempted amendment to the contrary shall be void *ab initio*.

12.9 Severability. If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other Persons or circumstances, so long as the economic and legal substance of the Contemplated Transactions is not effected in any manner materially adverse to either Party.

12.10 Governing Law; Consent to Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

(b) Each Party agrees that any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced exclusively in the Delaware Court of Chancery, New Castle County, or if that court does not have jurisdiction, any state or federal court located in the State of Delaware. Each Party:

(i) expressly and irrevocably consents and submits to the jurisdiction of each state and federal court located in the State of Delaware (and each appellate court located in the State of Delaware) in connection with any such legal proceeding, including to enforce any settlement, order or award;

(ii) consents to service of process in any such proceeding anywhere in the world in a manner consistent with Rule 4 of the Federal Rules of Civil Procedure or in a manner consistent with the applicable Law of the jurisdiction in which process is served;

(iii) agrees that each state and federal court located in the State of Delaware shall be deemed to be a convenient forum;

(iv) waives and agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in any state or federal court located in the State of Delaware, any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court; and

(v) agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this Section 12.10 by the state and federal courts located in the State of Delaware and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of any other jurisdiction.

(c) In the event of any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement, the prevailing party shall be entitled to payment by the non-prevailing party of all costs and expenses (including reasonable attorneys' fees) incurred by the prevailing party, including any costs and expenses

incurred in connection with any challenge to the jurisdiction or the convenience or propriety of venue of proceedings before any state or federal court located in the State of Delaware.

12.11 **Remedies Cumulative; Specific Performance**. Except as provided in Sections 9.2, 10.5 and 12.7, the rights and remedies of the Parties hereto shall be cumulative (and not alternative). Each of the Parties acknowledges that the Parties will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Except as contemplated by Section 9.2, the Parties agree that: (a) in the event of any breach or threatened breach by any Party of any covenant, obligation, or other provision set forth in this Agreement, the other parties shall be entitled (in addition to any other remedy that may be available to it) to (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision and (ii) an injunction restraining such breach or threatened breach and (b) no Party shall be required to provide any bond or other security in connection with any such decree, order, or injunction or in connection with any related action or Proceeding.

12.12 **Waiver in Writing**.

(a) No failure on the part of any Party to exercise any power, right, privilege, or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege, or remedy under this Agreement, shall operate as a waiver of such power, right, privilege, or remedy; and no single or partial exercise of any such power, right, privilege, or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege, or remedy.

(b) No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege, or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

12.13 **Construction**.

(a) Each Party acknowledges that it has participated in the drafting of this Agreement, and, as a result, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

(b) The headings contained in this Agreement; any Appendix, Exhibit, or Schedule attached to this Agreement; the Disclosure Schedule; and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized terms used in any Appendix, Exhibit, Schedule, or the Disclosure Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.

[The remainder of page intentionally left blank.]

The parties have duly executed this Agreement as of the date first written above.

PARENT:

ZAYO GROUP, LLC,
a Delaware limited liability company

By: _____
Name: Kenneth desGarennes
Title: Vice President and Chief Financial Officer

By: _____
Name: Scott Beer
Title: Vice President and General Counsel

MERGER SUB:

ZAYO AFS ACQUISITION COMPANY, INC.,
a Delaware corporation

By: _____
Name: Kenneth desGarennes
Title: Chief Financial Officer and Treasurer

By: _____
Name: Scott Beer
Title: Secretary

THE COMPANY:

AMERICAN FIBER SYSTEMS HOLDING CORP.,
a Delaware corporation

By: _____
Name: David G. Rusin
Title: Chief Executive Officer

[Signatures Continue on Following Page]

The parties have duly executed this Agreement as of the date first written above.

PARENT:

ZAYO GROUP, LLC,
a Delaware limited liability company

By: _____
Name: Kenneth desGarennes
Title: Vice President and Chief Financial Officer

By: _____
Name: Scott Beer
Title: Vice President and General Counsel

MERGER SUB:

ZAYO AFS ACQUISITION COMPANY, INC.,
a Delaware corporation

By: _____
Name: Kenneth desGarennes
Title: Chief Financial Officer and Treasurer

By: _____
Name: Scott Beer
Title: Secretary

THE COMPANY:

AMERICAN FIBER SYSTEMS HOLDING CORP.,
a Delaware corporation

By: _____
Name: David G. Rusin
Title: Chief Executive Officer

[Signatures Continue on Following Page]

EQUITYHOLDER REPRESENTATIVE:

Robert E Ingalls, Jr.

Robert E. Ingalls, Jr.

STATE OF NEW YORK §
§ ss:
COUNTY OF MONROE §

VERIFICATION

Bruce T. Frankiewich, being duly sworn, deposes and say that I am the General Counsel and Vice President of Regulatory Affairs for American Fiber Systems Holding Corp.; that I am authorized to make this Verification on behalf of American Fiber Systems, Inc.; that the information filed in Docket 10-00154 was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Bruce T. Frankiewich, General Counsel
and Vice President of Regulatory Affairs
for American Fiber Systems Holding Corp.
100 Meridian Centre, Suite 300
Rochester, NY 14618
(585) 785-5821 (Tel)
(585) 785-5822 (Fax)
bfrankiewich@afsnetworks.com

Sworn and subscribed before me this 11 day of August, 2010.

Notary Public

My commission expires: 8/11/10

CHRISTINE M. CARACCI
NOTARY PUBLIC, State of New York
Monroe Co., Reg. No. 4928956
My Commission Expires 2/22/14

ATTACHMENT C

STATE OF COLORADO §
§ ss:
COUNTY OF BOULDER §

VERIFICATION

Scott E. Beer, being duly sworn, deposes and say that I am the General Counsel of Zayo Group, LLC; that I am authorized to make this Verification on behalf of Zayo Group, LLC: that the information filed in Docket 10-00154 was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Scott E. Geer, General Counsel
of Zayo Group, LLC
400 Centennial Parkway, Suite 200
Louisville, CO 80027
(303) 381-4664 (Tel)
(303) 226-5923 (Fax)
sbeer@zayo.com

Sworn and subscribed before me this 12 day of August, 2010.

LAURA C. MARTINEZ
Notary Public
State of Colorado

Notary Public

My commission expires: April 1, 2012

STATE OF NEW YORK §
§ ss:
COUNTY OF MONROE §

VERIFICATION

Bruce T. Frankiewich, being duly sworn, deposes and say that I am the General Counsel and Vice President of Regulatory Affairs for American Fiber Systems Holding Corp.; that I am authorized to make this Verification on behalf of American Fiber Systems, Inc.; that the information filed in Docket 10-00154 was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Bruce T. Frankiewich, General Counsel
and Vice President of Regulatory Affairs
for American Fiber Systems Holding Corp.
100 Meridian Centre, Suite 300
Rochester, NY 14618
(585) 785-5821 (Tel)
(585) 785-5822 (Fax)
bfrankiewich@afsnetworks.com

Sworn and subscribed before me this 11 day of August, 2010.

Notary Public

My commission expires: 8/11/10

CHRISTINE M. CARACCI
NOTARY PUBLIC, State of New York
Monroe Co., Reg. No. 4926956
My Commission Expires 2/28/14