

EXHIBIT 2

ASSET PURCHASE AGREEMENT

"NONPROPRIETARY"

Exhibit No. 4  
Date FM 4/25/02 Case No. TM-2002-232  
Reporter KEM

ASSET PURCHASE AGREEMENT

Between

GTE MIDWEST INCORPORATED  
d/b/a  
VERIZON MIDWEST

and

CENTURYTEL OF MISSOURI, L.L.C.

VOLUME I OF II

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EXECUTION - MISSOURI

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LIST OF EXHIBITS

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| Exhibit C | Form of Intellectual Property License Agreement |
| Exhibit D | Form of Publishing Agreement                    |
| Exhibit E | Transition Plan Support Agreement               |
| Exhibit F | Buyer Highly Confidential Letters               |

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") dated as of October 22, 2001, is entered into between CENTURYTEL OF MISSOURI, L.L.C., a Louisiana limited liability company (together with its permitted successors and assigns, the "Buyer"), and GTE MIDWEST INCORPORATED d/b/a VERIZON MIDWEST, a Delaware corporation ("Seller").

### RECITALS

WHEREAS, Seller has been authorized by the Missouri Public Service Commission ("Commission") as an in-franchise provider of regulated local exchange, access and toll telephone service in certain exchanges within the state of Missouri as set forth on Exhibit A attached hereto (the "Seller Exchanges"); and

WHEREAS, Seller is or will be prior to Closing the owner of telephone network assets in the Seller Exchanges and, in connection therewith, is engaged in the business of marketing, selling and providing local exchange telephone service; access and intraLATA toll services presubscribed to Seller; and dedicated and special access, ATM, frame relay, digital subscriber line and other high speed data services; each within the Seller Exchanges to end users, interexchange carriers and other local exchange carriers (such business, as conducted by the Seller, is referred to herein as the "Business"); and

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

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and on the terms and conditions herein set forth, the parties, intending to be legally bound, agree as follows:

### ARTICLE I DEFINITIONS

**1.1 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth or referenced below:

"Accounts Receivable Settlement Statement" has the meaning set forth in Section 10.14.2.

"Acquired Assets" has the meaning set forth in Section 2.1.1.

"Active Employees" has the meaning set forth in Section 8.1.

"Affiliate" means as to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

"Buyer Savings Plan" and "Buyer Savings Plans" have the meanings set forth in Section 8.2.2(b).

"Buyer Welfare Plans" has the meaning set forth in Section 8.2.3(a).

"Buyer's Actuary" has the meaning set forth in Section 8.2.1(d)(ii).

"CABS" means the Carrier Access Billing System operated by Seller and its Affiliates which is utilized primarily to render bills to carriers for services provided by the Business.

"CALEA" means the Communications Assistance for Law Enforcement Act.

"Capital Expenditure Deficiency" has the meaning set forth in Section 5.1.6.

"CBSS" means the Customer Billing Support System operated by Seller and its Affiliates which is utilized primarily to render bills for services provided by the Business.

"CBSS Accounts Receivable" means accounts receivable arising primarily from the operation of the Business that are attributable to Seller's provision of service on or before the Closing Date that have been billed, or are billable, through Seller's CBSS system. CBSS Accounts Receivable shall not include amounts billed or billable through CABS or SSB. CBSS Accounts Receivable includes those categories of accounts receivable identified in Seller's systems as "current," "unpaid live" and "unpaid final," and shall include amounts resulting from billings pursuant to billing and collection agreements with third parties.

"CBSS Accounts Receivable Amount" means the aggregate amount of all CBSS Accounts Receivable as of the Closing Date, less a discount for anticipated uncollectible CBSS Accounts Receivable in an amount equal to the CBSS Uncollectible Factor multiplied by the CBSS Accounts Receivable as of the Closing Date; provided, however, that to the extent the percentage of CBSS Accounts Receivable which are classified as past due for more than ninety (90) days at Closing exceeds nine and one-half percent (9.5%) of the total CBSS Accounts Receivable, the CBSS Accounts Receivable shall be reduced to the extent of such excess for purposes of calculating the CBSS Accounts Receivable Amount.

"CBSS Uncollectible Factor" means five percent (5%).

"Closing" has the meaning set forth in Section 2.5.

"Closing Consents" has the meaning set forth in Section 2.5.

"Closing Date" has the meaning set forth in Section 2.5.

"Closing Date Payment" has the meaning set forth in Section 3.2.

"Closing Date Statement" has the meaning set forth in Section 3.3.1.



“ERISA Plans” has the meaning set forth in Section 4.1.13(a).

“Estimated Non-Regulated Construction Work in Process Amount” has the meaning set forth in Section 3.2.

“Estimated Regulatory Obligation Amount” has the meaning set forth in Section 3.2.

“Excluded Assets” has the meaning set forth in Section 2.1.2.

“Excluded Contracts” means all billing and collection agreements, interconnection agreements, National Account Agreements, billing media agreements, vehicle leasing agreements and other contracts listed on Schedule 2.1.2(h).

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

“Expiration Date” has the meaning set forth in Section 7.1.1.

“Final Closing Date Statement” has the meaning set forth in Section 3.3.2.

“Financial Statements” has the meaning set forth in Section 4.1.15(a).

“FCC” means the Federal Communications Commission.

“FCC Consents” has the meaning set forth in Section 5.3.2.

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

“FRP” has the meaning set forth in Section 8.2.3(d).

“Future Regulatory Obligations” has the meaning set forth in Section 2.3.1(g).

“GAAP” means United States generally accepted accounting principles.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof or any entity, including without limitation, a court, regulatory body, agency, department, authority or instrumentality exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Governmental Order” means, as to any Person, any judgment, injunction, decree, order or other determination of an arbitrator or a court or other Governmental Authority, in each case



“Purchase Price” has the meaning set forth in Section 3.1.

“Purchase Price Allocation” has the meaning set forth in Section 10.7(a).

“Quarterly Updates” has the meaning set forth in Section 5.2.3.

“Real Property Interests” means all easements, rights of way, licenses or other interests in real property of Seller that are used primarily in the operation of the Business, other than Owned Real Property or Leased Real Property.

“Real Property Leases” has the meaning set forth in Section 2.1.1(g).

“Regulatory Approvals” has the meaning set forth in Section 5.3.1.

“Remediation Activities” has the meaning set forth in Section 10.15.

“Regulatory Obligation Amount” has the meaning set forth in Section 3.1.

“Requirement of Law” means, as to any Person, any permit, license, judgment, order, decree, statute, law, ordinance, rule, regulation or arbitration award in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

“Retained Books and Records” means, collectively, all corporate records and stock books of Seller and its Affiliates, the general ledger, all records required by Law to be retained by Seller and all books and records relating to (A) Tax Returns and Tax records, (B) Excluded Assets, (C) attorney work product, and (D) the Retained Liabilities.

“Retained Employees” has the meaning set forth in Section 8.1.

“Retained Future Regulatory Obligations” has the meaning set forth in Section 2.3.1(g).

“Retained Interim Capital Expenditure Obligation” has the meaning set forth in Section 2.3.1(h).

“Retained Liabilities” has the meaning set forth in Section 2.3.2.

“SEC Basis Financial Statements” has the meaning set forth in Section 5.1.5.

“Seller Consents” has the meaning set forth in Section 4.1.4.

“Seller Exchanges” has the meaning set forth in the Recitals hereto.

“Seller Hourly Pension Plan” has the meaning set forth in Section 8.2.1(b).

“Seller Indemnification Limit” has the meaning set forth in Section 7.3.2(a).

withholding and any other tax, with all interest, penalties and additions imposed with respect to such amounts.

“Tax Returns” means any return, declaration, report, form, certificate, claim for refund, information return or statement with respect to Taxes including any schedule, attachment or work papers thereto, and including any amendment thereof.

“Telephone Plant” means all machinery, equipment, inventory, vehicles (including, subject to Seller’s performance of its obligations set forth in Section 5.1.8, leased vehicles), and all other assets and properties used primarily in the operation of the Business, including, without limitation, all plant, systems, structures, regulated construction work in progress, telephone cable (whether in service or under construction), microwave facilities (including frequency spectrum assignment), telephone line facilities, machinery, furniture, fixtures, tools, implements, conduits, stations, substations, equipment (including central office equipment, subscriber station equipment and other equipment in general), instruments, house wiring connections and other personal property used primarily in the operation of the Business, in every case whether owned by Seller or Seller’s Affiliates. Without limiting the generality of the foregoing, Telephone Plant includes the assets owned by Seller that would be properly included in the fixed assets referenced in Part 32 of the FCC Rules and Regulations (47 CFR, Part 32), as such accounts are reflected in Schedule 4.1.8.

“Third Party Claim” has the meaning set forth in Section 7.4.1.

“Third Party Consents” has the meaning set forth in Section 2.4.

“Third Party Intellectual Property” means Intellectual Property owned by any Person, other than Seller, without regard as to whether Seller has any rights therein or the right to assign such rights to Buyer including any such Intellectual Property included in or with the Acquired Assets.

“Third Party Intellectual Property Contracts” has the meaning set forth in Section 10.1.4.

“Transaction Taxes” has the meaning set forth in Section 10.9.

“Transferred Books and Records” means all of Seller’s customer or subscriber lists and records, accounts and billing records, plans, blueprints, specifications, drawings, surveys, engineering reports, personnel records for Transferred Employees (where applicable) and all other documents, computer data and records, in each case relating primarily to the operation of the Business, other than the Retained Books and Records.

“Transferred Employees” has the meaning set forth in Section 8.1.

“Transition Plan Support Agreement” means the Transition Plan Support Agreement in the form attached as Exhibit D hereto.

“VADI” means Verizon Advanced Data Inc.

(g) all Owned Real Property and all Leased Real Property created by leases of real property under which Seller or any Seller Affiliate is a lessee (the "Real Property Leases"), together with all appurtenances thereto;

(h) all buildings, towers, facilities and other structures and improvements held by Seller and located on the Owned Real Property or Leased Real Property (but only to the extent permitted by the Real Property Leases) and which are used primarily in the Business;

(i) all Real Property Interests;

(j) upon Seller's fulfillment of the obligations set forth in Section 5.1.7, the VADI Assets;

(k) insurance proceeds relating to any loss, damage or destruction of any of the Acquired Assets prior to the Closing to the extent not replaced prior to the Closing; and

(l) all other property, assets and rights relating exclusively to the Business or the Seller Exchanges but excluding all Intellectual Property and Excluded Marks.

Notwithstanding the foregoing, those assets located within the geographic area of the Seller Exchanges, but primarily used or held for use by Seller in an area other than the Seller Exchanges shall not be Acquired Assets.

**2.1.2 Excluded Assets.** Notwithstanding anything to the contrary in Section 2.1.1 or in any other provision of this Agreement, the Acquired Assets shall not include any of the following assets, properties and rights of Seller or its Affiliates (collectively, the "Excluded Assets"):

(a) all cash, cash equivalents and marketable securities and bonds;

(b) all rights which accrue or will accrue to Seller and its Affiliates under this Agreement, the Ancillary Documents and the certificates and other documents delivered to Seller by Buyer in connection with this Agreement;

(c) all records prepared in connection with the sale of the Business, including bids received from third parties and analysis relating to the Business;

(d) all rights, including all defenses, counterclaims and rights of indemnity, reimbursement and subrogation, related to the Retained Liabilities;

(e) the Retained Books and Records;

(f) interests in any business other than the Business, including the provision of wireless service (cellular and PCS); long distance (interLATA and intraLATA to the

- (a) all liabilities, responsibilities and obligations (including Taxes), arising out of, accruing or resulting from the operation of the Business or the use, ownership or operation of the Acquired Assets after the Closing Date;
- (b) all liabilities, responsibilities and obligations of Buyer as provided in Article VIII with respect to Transferred Employees;
- (c) all liabilities, responsibilities and obligations that arise after the Closing Date in connection with the performance of the Assigned Contracts, Real Property Interests and the Real Property Leases;
- (d) all liabilities, responsibilities and obligations to third parties that relate to arrangements and commitments between Seller and a third party for the construction of shared transmission facilities between various switching points included in the Seller Exchanges;
- (e) all liabilities, responsibilities and obligations relating to post-Closing engineering and construction required to complete scheduled construction and other capital expenditure projects for the Seller Exchanges;
- (f) all liabilities, responsibilities and obligations relating to Customer Prepayments, Customer Deposits and Construction Advances;
- (g) all liabilities, responsibilities and obligations, other than Interim Capital Expenditure Obligations, related to the Seller Exchanges arising out of any Law of any Governmental Authority after the Closing Date regardless of whether the action taken by the Governmental Authority is or purports to be based on conduct or actions that occurred at any time prior to the Closing Date ("Future Regulatory Obligations"); provided, however, Buyer shall not be liable for any Future Regulatory Obligation arising directly out of any (i) willful misconduct by Seller as judicially determined by a final order of a court or Governmental Authority of competent jurisdiction; or (ii) conduct by Seller that was not reasonably prudent based on then-prevailing circumstances, in either case which conduct occurred prior to the Closing Date ("Retained Future Regulatory Obligations"); and provided further, that Seller's reliance on a reasonable interpretation of existing Law or practice shall be deemed reasonably prudent;
- (h) all liabilities, responsibilities and obligations related to the Seller Exchanges arising out of any Law of any Governmental Authority requiring any capital expenditure after the date of this Agreement, regardless of whether the action taken by the Governmental Authority is or purports to be based on conduct, facts or actions that occurred at any time prior to the date of this Agreement ("Interim Capital Expenditure Obligations"); provided, however, Buyer shall not be liable for any Interim Capital Expenditure Obligation arising directly out of any (i) willful misconduct by Seller as judicially determined by a final order of a court or Governmental Authority of competent jurisdiction, or (ii) conduct by Seller that was not reasonably prudent based on then-prevailing circumstances, ("Retained Interim Capital Expenditure Obligations"); and, provided further, that Seller's reliance on a reasonable interpretation of existing Law or practice shall be deemed reasonably prudent. Seller shall notify

(f) all liabilities, responsibilities and obligations with respect to the Excluded Assets and Excluded Contracts.

**2.4 Regarding Consents.** Notwithstanding anything to the contrary contained in this Agreement, to the extent that the sale, conveyance, transfer, assignment or delivery or attempted sale, conveyance, transfer, assignment or delivery to Buyer of any Acquired Asset is prohibited by any applicable Law or would require any governmental or third-party authorizations, approvals, consents or waivers (other than authorizations, approvals, consents or waivers related to Third Party Intellectual Property, and other than required Regulatory Approvals and FCC Consents) (collectively, the "Third Party Consents") and such Third Party Consents shall not have been obtained prior to the Closing, this Agreement shall not constitute an agreement to assign same if any of the foregoing would constitute a breach thereof or be unlawful. If any Third Party Consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Acquired Asset in question so that Buyer would not acquire the benefit of all such rights, Seller, to the extent permitted by Law, shall act after the Closing as Buyer's agent in order to preserve and obtain for Buyer the benefits thereunder and shall cooperate, to the extent permitted by Law, with Buyer in any other commercially reasonable arrangement designed to provide such benefits to Buyer. For a period of ninety (90) days following the Closing, the parties shall use their commercially reasonable efforts, and shall cooperate with each other, to obtain promptly such Third Party Consents; provided, however, that should any Third Party Consent from any railroad be conditioned on the payment of any consideration therefor (the "Consent Fees") other than filing, recordation or similar fees payable to any Governmental Authority, which filing fees shall be shared equally by Seller and Buyer, Seller and Buyer agree to share on an equal basis any Consent Fee to the extent such Consent Fee is in an amount not greater than \$300; and provided, further, that Seller's aggregate obligation to share in the payment of Consent Fees shall not exceed One Hundred Thousand Dollars (\$100,000.00).

**2.5 The Closing.** Unless this Agreement shall have been earlier terminated in accordance with the provisions of Article XI, the closing under this Agreement (the "Closing") shall be held at 9:00 A.M. local time at the offices of Verizon Services Group, at 600 Hidden Ridge, Irving, Texas 75038, on the date agreed upon by the parties, which date shall be (a) the last Business Day of a month, and (b) at least five (5) Business Days, but not more than ninety (90) days, after the date either party notifies the other party in writing of its determination that all required Regulatory Approvals, Debtholder Consents and FCC Consents (collectively, the "Closing Consents") have been obtained, or at such other time and place as the parties may agree in writing; provided, however, the parties shall take all commercially reasonable actions to cause the Closing to occur promptly after all Closing Consents have been obtained, but in no event shall the Closing be required to occur (i) prior to June 30, 2002 or (ii) on the same date as the closing of any other transaction involving the sale or purchase of wireline assets between Affiliates of the parties hereto. The date of the Closing is referred to herein as the "Closing Date." Such Closing shall be deemed to have occurred as of 11:59 P.M. on the Closing Date.

**2.6 Deliveries and Proceedings at Closing.** At the Closing, and subject to the terms and conditions herein contained:

of the Closing Date of (a) the Regulatory Obligation Amount (the "Estimated Regulatory Obligation Amount"), (b) the Non-Regulated Construction Work in Process Amount (the "Estimated Non-Regulated Construction Work in Process Amount") and (c) any Capital Expenditure Deficiency. On the Closing Date, Buyer shall pay to Seller an amount equal to the sum of (x) the Base Purchase Price, (y) the Estimated Regulatory Obligation Amount, and (z) the Estimated Non-Regulated Construction Work in Process Amount, less the Deposit and any Capital Expenditure Deficiency (the "Closing Date Payment"). The Closing Date Payment shall be made by wire transfer of immediately available funds to such account or accounts as Seller shall designate to Buyer at least two (2) Business Days prior to the Closing Date. Payments from Buyer to Seller for CBSS and SSB Accounts Receivable and from Seller to Buyer for Customer Prepayments and Customer Deposits will occur subsequent to Closing in accordance with Article X.

### **3.3 Calculation of Final Purchase Price.**

**3.3.1 Closing Date Statement.** Within sixty (60) days after the Closing Date, Seller shall prepare and deliver to Buyer a written statement reasonably detailing the Regulatory Obligation Amount, the Non-Regulated Construction Work in Process Amount and any Capital Expenditure Deficiency, together with supporting documentation (the "Closing Date Statement"). Absent manifest error, the Closing Date Statement shall be deemed correct. Within thirty (30) days after receipt of the Closing Date Statement, Buyer shall, in a written notice to Seller, describe in reasonable detail any proposed adjustments to the Closing Date Statement and the reasons therefor. If Seller shall not have received a notice of proposed adjustments aggregating Fifty Thousand Dollars (\$50,000) or more within such thirty (30) day period, Buyer will be deemed to have accepted irrevocably such Closing Date Statement.

**3.3.2 Disputes Regarding Closing Date Statement.** Seller and Buyer shall negotiate in good faith to resolve any disputes over any proposed adjustments to the Closing Date Statement, during the thirty (30) days following Seller's receipt of the proposed adjustments. If the parties are unable to resolve such dispute within such thirty (30) day period, then, at the written request of either party (the "Dispute Resolution Request"), each party shall appoint a knowledgeable, responsible representative to meet in person and negotiate in good faith to resolve the disputed matters. The parties intend that these negotiations be conducted by experienced business representatives empowered to decide the issues. Such negotiations shall take place during the fifteen (15) day period following the date of the Dispute Resolution Request. If the business representatives resolve the dispute, such resolution shall be memorialized in a written agreement (the "Final Closing Date Statement"), executed within five (5) Business Days thereafter. If the business representatives do not resolve the dispute, within five (5) Business Days Buyer and Seller shall jointly select a nationally recognized independent public accounting firm (which is not the regular independent public accounting firm of either party) to resolve such disputes, which resolution shall be final and binding. Such accounting firm shall resolve such dispute by reference to the records of Seller used to calculate the amounts appearing on the Closing Date Statement, the provisions contained herein regarding items properly included in the Regulatory Obligation Amount and the Non-Regulated Construction Work in Process Amount and, based on the foregoing, such other records as such firm, in its reasonable judgment, deems appropriate. The fees and expenses of such accounting firm shall be



accordance with the provisions of this Section 3.4.2), Buyer shall deliver to Seller a replacement letter or letters of credit in lieu thereof no later than 30 days prior to the expiration of the preceding letter of credit. If Buyer shall fail to obtain any replacement of the Deposit L/C (and/or any replacement thereof furnished in accordance with the provisions of this Section 3.4.2), then Seller shall draw down the full amount of the existing Deposit L/C and retain the same as security for the covenants, agreements and obligations of Buyer under this Agreement. Any replacement of any Deposit L/C shall be in a form reasonably acceptable to Seller. Buyer acknowledges that Seller has agreed to accept the Deposit L/C in lieu of a cash down payment against the Purchase Price solely as an accommodation to Buyer. Buyer acknowledges that, in the event Buyer elects to provide a Deposit L/C in lieu of a cash Deposit, Buyer shall not be entitled to interest at the Applicable Rate as provided in Section 3.4.1 of this Agreement.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

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

**4.1.1 Corporate Organization and Related Matters.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Seller has the requisite power and authority to own its properties and to carry on the Business as it is now being conducted. Seller holds valid permits, licenses, franchises, approvals and authorizations issued or granted by any Governmental Authority and adequate for the operation of the Business as currently conducted, except to the extent absence of any such permit, license, franchise, approval or authorization would not have a Material Adverse Effect. Seller has the requisite power, authority and legal right to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and the Ancillary Documents executed or to be executed by Seller have been duly authorized by all necessary corporate action on the part of Seller and Verizon. This Agreement has been, and the Ancillary Documents when executed will be, duly executed and delivered by Seller and any applicable Seller Affiliate and this Agreement constitutes, and the Ancillary Documents when executed and delivered will constitute, the legal, valid and binding obligations of Seller (or its Affiliate named therein), enforceable against it (or such Seller Affiliate) in accordance with their respective terms, except as such enforceability may be limited by bankruptcy laws and other similar laws affecting creditors' rights generally, and subject to the exercise of judicial discretion in accordance with principles of equity.

**4.1.2 Compliance with Laws.** Except as set forth in Schedule 4.1.2, Seller in its conduct of the Business has complied since January 1, 1997 in all material respects with, and is currently not in violation of, any Requirement of Law of a Governmental Authority to which the Business is subject, except for any such noncompliance or violation which would not be reasonably likely to constitute a Material Adverse Effect.

**4.1.3 Litigation.** Except as set forth in Schedule 4.1.3, there is no litigation, arbitration, investigation or other proceeding of or before any Governmental Authority pending or, to the Knowledge of Seller, threatened against the Seller, the Business or any of the Acquired

generally and subject to the exercise of judicial discretion in accordance with the principles of equity. Except as otherwise disclosed in Schedule 4.1.6(a), there is no material default or material breach of a covenant by Seller under any of the Real Property Leases.

(b) To the knowledge of Seller, Schedule 4.1.6(b) sets forth a true and accurate list of all its Real Property Interests within the geographic area covered by the Seller Exchanges. Such Real Property Interests constitute substantially all of the Real Property Interests used primarily in the operation of the Business as of June 30, 2001, except as such (i) has been disposed of since January 1, 2001 in the ordinary course of business, (ii) is not material to the operation of the Business, or (iii) constitutes a right of way or similar interest licensed to Seller by Genuity Telecom Inc.

**4.1.7 Tangible Assets.** Except as set forth in Schedule 4.1.7, all of the material tangible Acquired Assets are in good operating condition and repair, normal wear and tear excepted, and are useable in the regular and ordinary course of business consistent with past practice. Except as set forth in Schedule 4.1.7 or elsewhere in this Agreement, Seller has, on or prior to the Closing Date will have, good and marketable title to each of the material tangible Acquired Assets (other than office equipment subject to leases, and other than Third Party Intellectual Property included in or with the material tangible Acquired Assets) free and clear of any Lien other than Permitted Encumbrances. Except as set forth on Schedule 4.1.7, Seller has not received any written notice within the twelve (12) months prior to the date hereof of a violation of any ordinances, regulations or building, zoning and other similar Laws with respect to such assets that would have a Material Adverse Effect. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4.1.7, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OR FITNESS OF THE TANGIBLE ACQUIRED ASSETS AND HEREBY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INFRINGEMENT.

**4.1.8 Schedules of Telephone Plant and Material and Supply Inventory.** Schedule 4.1.8 sets forth a materially accurate summary of the Telephone Plant and Material and Supply Inventory as of June 30, 2001 as maintained by Seller in accordance with past practice. Such Telephone Plant constitutes substantially all of the Telephone Plant used primarily in the operation of the Business as of June 30, 2001, except as such (i) has been disposed of since January 1, 2001 in the ordinary course of business or (ii) is not material to the operation of the Business.

**4.1.9 Material Contracts.**

(a) Except as listed and set forth in Schedule 4.1.9(a) (such schedule to be updated on or prior to the Closing Date to identify Assigned Contracts entered into after the date hereof consistent with the provisions of Section 5.1.1 and which are required to be scheduled by the provisions of this Section 4.1.9(a)) or any other Schedule, there is no Assigned Contract (other than the Assigned Contracts entered into after the date of this Agreement consistent with the provisions of Section 5.1.1(b) hereof) that is:

**4.1.10 Insurance.** The Acquired Assets of an insurable nature and of a character usually insured by companies carrying on similar businesses is insured under insurance policies or self insured in such amounts and against such losses or casualties as is usual in Seller's industry.

**4.1.11 Taxes.** Except as set forth on Schedule 4.1.11, and with regard to the Business and the Acquired Assets, (a) there are no Liens with respect to Taxes upon any of the Acquired Assets; (b) Seller has collected all material sales, use, excise and receipts Taxes required to be collected and has remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Authority; (c) Seller has duly and timely withheld from employee salaries, wages and other compensation and paid over to the appropriate Governmental Authorities all amounts required to be so withheld and paid over for all periods under any applicable Requirement of Law; (d) Seller is not a "foreign person" within the meaning of Section 1445(b)(2) of the Code; (e) all Tax returns required to be filed by Seller or any Seller Affiliate with respect to the Business or the Acquired Assets on or before the Closing Date have been or will have been filed and all Taxes shown as due and payable have been or will be paid by Seller or such Seller Affiliate as required by Law; and (f) no deficiencies or assessments for any Taxes (other than those being disputed in good faith) have been asserted in writing to Seller or any Seller Affiliate that remain unpaid and that relate to the Business or the Acquired Assets.

**4.1.12 Tariffs; FCC Licenses.**

(a) Schedule 4.1.12 sets forth a list of all regulatory tariffs applicable to the Business. The regulatory tariffs applicable to the Business stand in full force and effect on the date of this Agreement in accordance with their terms, and there is no outstanding notice of cancellation or termination or, to Seller's Knowledge, any threatened cancellation or termination in connection therewith, nor is Seller subject to any restrictions or conditions applicable to its regulatory tariffs that limit or would limit the operation of the Business (other than restrictions or conditions generally applicable to tariffs of that type). Each such tariff has been duly and validly approved by the Commission or any Governmental Authority having jurisdiction thereof. Seller is not in material default under the terms and conditions of any such tariff and there is no basis for any claim of default by Seller in any material respect under any such tariff. Except as set forth in Schedule 4.1.12(a), as of the date hereof, there are no applications by Seller or complaints (other than routine or immaterial End-User complaints), or petitions by others or proceedings pending or threatened before the Commission relating to the Business or its operations or the regulatory tariffs that, in Seller's opinion, would reasonably be expected to have a Material Adverse Effect. To the Knowledge of Seller, there are no material violations by subscribers or others under any such tariff. A true and correct copy of each tariff applicable to the Business has been made available to Buyer.

(b) Schedule 4.1.12(b) identifies each of the FCC Licenses held by Seller and used in the operation of the Business. Each such FCC License is in full force and effect on the date of this Agreement in accordance with its terms, and there is no outstanding notice of cancellation or termination or, to Seller's Knowledge, any threatened cancellation or termination in connection therewith, nor are any of such FCC Licenses subject to any restrictions or conditions that limit the operation of the Business (other than restrictions or conditions

(other than liability for premiums due to the PBGC), unless such liability has been, or prior to the Closing Date will be, satisfied in full.

(c) Except as set forth on Schedule 4.1.13(c), with respect to the ERISA Plans, other than those ERISA Plans identified on Schedule 4.1.13(d) as "multiemployer plans":

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

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

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

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

(v) There are no pending material claims against any of the ERISA Plans by any employee or beneficiary covered under any such ERISA Plan, or otherwise involving any such ERISA Plan (other than routine claims for benefits and routine expenses).

(d) Except as set forth on Schedule 4.1.13(d), none of the ERISA Plans is a "multiemployer plan," as that term is defined in Section 3(37) of ERISA, and with respect to any such multiemployer plans (as so defined) listed in Schedule 4.1.13(d), Seller has not made or incurred, and the transactions contemplated by this Agreement will not result in Seller making or incurring, a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA that would result in the incurrence of a material liability by Seller.

(e) Except as set forth on Schedule 4.1.13(e), as of the date hereof, (i) none of the employees who, upon the Closing, will be Transferred Employees are represented by a labor union or labor organization, and (ii) Seller is not subject to any collective bargaining agreement covering any employee who, upon the Closing, will be a Transferred Employee. As of the date hereof, there are no strikes, slowdowns, work stoppages or lockouts by or with respect to any employee who, upon the Closing, will be a Transferred Employee covered by collective bargaining agreements. Except as set forth on Schedule 4.1.13(e), to the Knowledge of Seller, during the twelve (12) months preceding the date of this Agreement, there have not been any

(e) As used herein:

"Environmental Claims" means any and all administrative or judicial actions, suits, orders, claims, Liens, notices, violations or proceedings related to any applicable Environmental Law or any Environmental Permit brought, issued or asserted by: (i) a Governmental Authority for compliance, damages, penalties, removal, response, remedial or other action pursuant to any applicable Environmental Law or Environmental Permit; or (ii) a third party seeking damages, contribution, remediation or other action for personal injury or property damage relating to any Environmental Law or resulting from the release of a Hazardous Material at, to or from any facility of Seller's Business or any real property upon which any current facility of the Seller which is primarily used in the Business is located.

"Environmental Laws" means all applicable federal, state and local laws, statutes, ordinances, codes, rules and regulations related to protection of the environment and/or the handling, presence, use, generation, treatment, storage, transportation, release, discharge, emission or disposal of Hazardous Materials in effect as of the date hereof.

"Environmental Permits" means all permits, licenses, approvals, authorizations, or consents required by any Governmental Authority under any applicable Environmental Law and includes any and all orders, consent orders or binding agreements issued or entered into by a Governmental Authority under any applicable Environmental Law.

"Hazardous Material" means any hazardous or toxic substance, material or waste which is regulated as of the Closing Date by any Governmental Authority, including, without limitation, any material or substance that is: (i) defined as a "hazardous substance" under applicable state law; (ii) petroleum; (iii) friable asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. (33 U.S.C. §1321); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"); (vii) defined as a "regulated substance" pursuant to Section 9001 of the Federal Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6991); or (viii) otherwise regulated under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq., or the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136, et seq.

#### **4.1.15 Financial Statements.**

(a) Schedule 4.1.15(a) contains the financial statements for the Business for the years ended December 31, 1998, December 31, 1999 and December 31, 2000 (collectively the "Financial Statements"). The Financial Statements have been prepared based on the books and records of Seller. Such books and records have been maintained in accordance with GAAP, adjusted as necessary to comply with regulatory accounting rules prescribed by the

**4.2.2 Litigation.** There is no suit, action or other proceeding, or injunction or final judgment relating thereto, pending, or to the Knowledge of Buyer or its Affiliates, threatened against Buyer, before any Governmental Authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that would be reasonably likely to result in any such suit, action or proceeding is pending or, to the Knowledge of Buyer or its Affiliates, threatened.

**4.2.3 Validity of Contemplated Transactions.** Upon the receipt of requisite FCC Consents as described in Section 5.3.2, the Regulatory Approvals as described in Section 5.3.1, compliance with any applicable requirement of the HSR Act, and the receipt of the consents set forth on Schedule 4.2.3 (the "Buyer Consents"), the execution, delivery and performance of this Agreement and the Ancillary Documents by Buyer do not and will not violate, conflict with or result in the breach of any term, condition or provision of, or require the consent of any other Person under, (a) the charter and other organizational documents of Buyer, (b) any existing Requirement of Law to which Buyer is subject, or (c) any judgment, order, writ, injunction, decree or award of any Governmental Authority or any other Governmental Order which is applicable to Buyer.

**4.2.4 Financial Capabilities.**

(a) Except as contemplated by the next sentence, Buyer has cash or other available sources of funds sufficient to pay in full the Purchase Price in the manner specified in Sections 3.1 and 3.2, together with all related fees and expenses. In addition, if and to the extent Buyer is relying upon any financing to be provided by third parties in order to pay any part of the Purchase Price and related fees and expenses, Buyer has received letters from reputable lenders indicating they are highly confident they can arrange binding financing commitments (the "Highly Confident Letters") in amounts which, together with immediately available funds in cash or cash equivalents of Buyer are and will at the Closing be sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement. True and correct copies of the Highly Confident Letters are attached hereto as Exhibit E, and the Highly Confident Letters are current and valid and have not been modified in any respect.

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

Affiliates nor any other Person makes any other express or implied representation or warranty with respect to the transaction contemplated hereby.

## ARTICLE V COVENANTS AND AGREEMENTS PENDING CLOSING

**5.1 Agreement of Seller Pending the Closing.** From the date of this Agreement until the Closing, and except as otherwise consented to in writing by Buyer (which consent shall not be unreasonably withheld):

**5.1.1 Conduct of the Business in the Ordinary Course.** Seller shall conduct the Business in the ordinary course except as expressly contemplated by this Agreement or the Ancillary Agreements or as required by applicable laws, regulations, orders or decrees. Without limiting the generality of the foregoing, Seller shall:

(a) keep available to the Business those services of Seller's Affiliates to the same extent generally available on the date hereof;

(b) operate the Business in substantially the same manner as it is currently being conducted and, with respect to the Business, refrain from entering into any Contract that would be a Material Contract other than in the ordinary course of business;

(c) not institute any proceeding with respect to, or otherwise materially change, amend or supplement any of its local exchange, intrastate toll or intrastate and interstate access tariffs affecting the Business (other than Verizon-wide proceedings with the FCC, subject to Seller's commercially reasonable efforts, upon Buyer's request, to exempt from such filings the Seller Exchanges) without the prior written consent of Buyer, which consent shall not be unreasonably withheld or make any other filings with the Commission except in the ordinary course of business, and except as set forth in Schedule 4.1.12(a);

(d) maintain the tangible Acquired Assets in good repair, order and condition, reasonable wear and tear excepted;

(e) maintain the material insurance policies with respect to the Acquired Assets consistent with past practice; provided that the parties acknowledge that Seller or Verizon may at any time cancel prospectively or not renew any of the Verizon corporate insurance programs as to coverage relating to events after the Closing Date or insured risks other than those associated with the Business on or prior to the Closing Date;

(f) make capital expenditures as required to maintain the current operation of the Business and to support normal customer growth in a manner consistent with the provisions of Section 5.1.6 hereof;

(g) maintain the books and records of the Business substantially in accordance with prior practice, except as changes are mandated by Governmental Authorities or required by GAAP;

Property and other Acquired Assets, and to those employees of Seller as Buyer reasonably requests, to the extent that such access does not materially interfere with the Business; provided, that Buyer and any such representatives comply with the confidentiality and nondisclosure obligations set forth in this Agreement.

**5.1.3 Consents.** Seller shall use its commercially reasonable efforts, subject to the conditions set forth in Section 2.4 of this Agreement, to obtain prior to Closing the Seller Consents. Buyer agrees to cooperate in good faith with Seller in obtaining the Seller Consents.

**5.1.4 Debtholder Consents.** Seller shall use its commercially reasonable efforts to obtain from its Lienholders the termination or release or defeasance, at Closing, of all security agreements, mortgages and financing statements relating to the Acquired Assets (such termination or release being hereinafter referred to as the "Debtholder Consents"). Buyer agrees to cooperate in good faith with Seller in obtaining the required Debtholder Consents.

**5.1.5 Financial Statements.** To the extent Buyer requires the preparation and/or audit of financial statements with respect to the Business in order to comply with the reporting requirements of the Securities and Exchange Commission under Regulations S-K and S-X or as required by any Financing Commitment (the "SEC Basis Financial Statements"), Seller will, upon Buyer's request, assist Buyer in the preparation of the SEC Basis Financial Statements, and cooperate with any independent auditors chosen by Buyer to prepare and/or audit the SEC Basis Financial Statements. Seller's cooperation will include access to workpapers and other supporting documents used in the preparation of the Financial Statements or such documents as may be reasonably required by such auditors to prepare such SEC Basis Financial Statements or to render an opinion. Buyer will bear the cost of preparation of the SEC Basis Financial Statements and any audit.

**5.1.6 Capital Expenditures.** Seller shall be obligated to make capital expenditures with respect to the Business required to support normal maintenance and customer growth in a manner consistent with established regulatory performance objectives, which expenditures (exclusive of any Future Capital Expenditure Obligations or Future Regulatory Obligations) shall not be less than Fifty-seven Million Dollars (\$57 Million) during calendar year 2001, and not less than Fifty Million Dollars (\$50,000,000) during calendar year 2002, and which amount shall be discounted on a pro rata daily basis to the extent that the Closing Date occurs prior to December 31, 2002 (the "Capital Expenditure Amount"). The Capital Expenditure Amount shall be deemed to include and not be in addition to any USF funds designated for capital projects. The Purchase Price shall be adjusted down, on a dollar-for-dollar basis, to the extent that Seller's actual capital expenditures are less than the Capital Expenditure Amount (a "Capital Expenditure Deficiency"). In the event the Closing does not occur prior to January 1, 2003, the Capital Expenditure Amount shall be increased on a pro rata daily basis and Seller shall be obligated to make capital expenditures during fiscal year 2003 in the same relative amount, and the Purchase Price shall be adjusted in the same manner described above for any Capital Expenditure Deficiency occurring during the period after January 1, 2003. Between the date of this Agreement and the Closing Date, Seller will notify Buyer of any project involving Non-Regulated Construction Work in Process in excess of \$50,000.



from an authorized officer of Buyer certifying that the representations set forth in Section 4.2.4 are true and correct as of the date of such certificate. Notwithstanding the foregoing, Buyer shall immediately notify Seller upon the termination or modification of any Highly Confidential Letter provided to Seller either pursuant to Section 4.2.4 or this Section 5.2.3.

**5.3 Covenants of Seller and Buyer.** Seller and Buyer further covenant and agree that, except as otherwise agreed to in writing by Seller and Buyer:

**5.3.1 State Regulatory Approval.** Promptly after the date of this Agreement, but no later than thirty (30) days after the date hereof, Buyer and Seller shall use commercially reasonable efforts to file the appropriate applications and notices with the Commission seeking orders permitting the transfer of service in the Seller Exchanges to Buyer (collectively, the "Regulatory Approvals"). Buyer shall be responsible for seeking to establish the tariff for its post-Closing operations in the Seller Exchanges. Each of Buyer and Seller shall use its commercially reasonable efforts to obtain the Regulatory Approvals and the parties agree to cooperate fully with each other and with the applicable regulatory agency to obtain the Regulatory Approvals at the earliest practicable date. In the event the Commission imposes any condition, term or restriction as more particularly described in clauses (a) and (b) of Section 6.3.2, each of Buyer and Seller shall use its commercially reasonable efforts to seek modification or removal of such condition such that the Regulatory Approvals shall conform to the standards set forth in Section 6.3.2.

**5.3.2 FCC Consents.** Promptly after the date of this Agreement, but no later than thirty (30) days after the date hereof, the parties shall use their commercially reasonable efforts to obtain (a) the FCC's consent to the transfer of the FCC Licenses from Seller to Buyer and (b) the FCC waivers set forth on Schedule 5.3.2 (all such consents or waivers are collectively referred to as the "FCC Consents").

**5.3.3 HSR Act Review.**

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

(b) Seller and Buyer shall each cause their respective counsel to furnish the other party such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of necessary filings or submissions under

**ARTICLE VI  
CONDITIONS PRECEDENT TO THE CLOSING**

**6.1 Conditions Precedent to Obligations of Buyer.** The obligations of Buyer to consummate the Closing shall be subject to the fulfillment or satisfaction prior to or at the Closing, of each of the following conditions precedent which may be waived in writing in whole or in part only by Buyer:

**6.1.1 Representations and Warranties True as of Closing.** All of the representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing Date, other than any such representations and warranties made as of a specified date, which shall be true and correct as of such date, except to the extent that the failure to be true and correct shall not have had or would not reasonably be expected to have a Material Adverse Effect.

**6.1.2 Compliance with this Agreement.** Seller shall have performed and complied in all material respects (or shall have cured any material nonperformance or noncompliance) with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing, except to the extent that the failure to do so shall not have had or would not reasonably be expected to have a Material Adverse Effect.

**6.1.3 Closing Certificate.** Buyer shall have received a certificate from an authorized officer of Seller, dated the Closing Date, certifying that the conditions specified in Sections 6.1.1 and 6.1.2 have been fulfilled.

**6.1.4 Other Agreements.** Seller and/or its applicable Affiliate shall have tendered an executed Bill of Sale, Assignment and Assumption Agreement, the Publishing Agreement and License Agreement substantially in the forms attached hereto; together with those agreements set forth on Schedule 5.3.5.

**6.2 Conditions Precedent to Obligations of Seller.** The obligations of Seller to consummate the Closing shall be subject to the fulfillment or satisfaction prior to or at the Closing, of each of the following conditions precedent, which may be waived in writing in whole or in part only by Seller:

**6.2.1 Representations and Warranties True as of Closing.** All of the representations and warranties of Buyer contained in this Agreement shall be true and correct as of the Closing Date, other than any such representations and warranties made as of a specified date, which shall be true and correct as of such date, except to the extent that the failure to be true and correct shall not have had or would not reasonably be expected to have a material adverse effect on Seller.

**6.2.2 Compliance with this Agreement.** Buyer shall have performed and complied in all material respects (or shall have cured any material nonperformance or noncompliance) with all covenants, agreements and conditions required by this Agreement to be

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

## ARTICLE VII INDEMNIFICATION

### 7.1 Survival of Representations and Warranties.

**7.1.1 Survival Period.** All representations and warranties made by the parties in this Agreement shall survive the Closing Date until the later of (a) one (1) year following the Closing Date or (b) the completion of Buyer's first audit cycle (the "Expiration Date"); provided, however, in no event shall the Expiration Date extend beyond fifteen (15) months following the Closing Date, and provided, further, that the representations and warranties contained in Sections 4.1.1, 4.1.17, 4.1.18, 4.2.1, 4.2.5, 4.2.7 and 4.2.8 shall survive the Closing without limitation.

**7.1.2 Period for Claims.** This Article VII shall survive any termination of this Agreement and the indemnification contained in this Article VII shall survive the Closing and shall remain in effect (a) with respect to any claim related to the breach of any representation and warranty, until the expiration of the applicable survival period set forth in Section 7.1.1; and (b) indefinitely (except to the extent expressly set forth in this Agreement), with respect to any claim arising under Section 2.3.2 (Retained Liabilities) or 2.3.1 (Assumed Liabilities). Unless a claim for indemnification with respect to any alleged breach of any representation or warranty is asserted by notice given as herein provided that specifically identifies a particular breach and the underlying facts relating thereto, which notice is given within the applicable period of survival for such representation or warranty, such claim may not be pursued and is irrevocably waived after such time. Without limiting the generality or effect of the foregoing, no claim for indemnification with respect to any representation or warranty will be deemed to have been properly made except (i) to the extent it is based upon a Third Party Claim made or brought prior to the expiration of the survival period for such representation or warranty, or (ii) to the extent based on Losses actually incurred by an Indemnitee prior to the expiration of the survival period for such representation or warranty.

### 7.2 Indemnification.

**7.2.1 Indemnification Obligation of Seller.** From and after the Closing, and subject to the other provisions of this Article VII, Seller shall indemnify, defend and hold harmless Buyer and its Affiliates and their respective directors, officers, agents and employees (each, a "Buyer Indemnitee" and collectively the "Buyer Indemnitees") from and against all Losses incurred or suffered by any Buyer Indemnitee relating to, resulting from or arising out of (a) any inaccuracy in any of the representations and warranties made by Seller in Section 4.1 of this Agreement, (b) a breach by Seller of any covenant of Seller contained in this Agreement, which covenant requires performance by Seller at or after the Closing, and (c) any of the Retained Liabilities.

Purchase Price (the "Seller Threshold"), and then Seller shall be liable for all such Included Claims in excess of the Seller Threshold. The aggregate liability of Seller for indemnifiable Losses with respect to any Included Claims under Section 7.2.1 hereof shall not exceed the amount which is ten percent (10%) of the Purchase Price (the "Seller Indemnification Limit")

(b) No Indemnitor shall be liable to or obligated to indemnify any Indemnitee hereunder for any consequential, special, multiple, punitive or exemplary damages including, but not limited to, damages arising from loss or interruption of business, profits, business opportunities or goodwill, loss of use of facilities, loss of capital, claims of customers, or any cost or expense related thereto, except to the extent such damages have been recovered by a third person and are the subject of a Third Party Claim for which indemnification is available under the express terms of this Article VII.

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

(d) The provisions of this Section 7.3 shall not apply to obligations associated with the Assumed Liabilities or the Retained Liabilities.

#### **7.4 Defense of Claims.**

**7.4.1 Third Party Claims.** If any Indemnitee receives notice of the assertion of any claim or of the commencement of any action or proceeding by any entity that is not either a Buyer Indemnitee or a Seller Indemnitee (a "Third Party Claim") against such Indemnitee, with respect to which an Indemnitor is obligated to provide indemnification under this Agreement, the Indemnitee will give such Indemnitor reasonably prompt written notice thereof, but in any event not later than ten (10) calendar days after receipt of notice of such Third Party Claim; provided, however, that the failure of an Indemnitee to notify the Indemnitor within the time period set forth herein shall only relieve the Indemnitor from its obligation to indemnify to the extent that the Indemnitor is materially prejudiced by such failure or delay (whether as a result of the forfeiture of substantive rights or defenses or otherwise). Upon receipt of notification of a Third Party Claim, the Indemnitor shall be entitled, upon written notice to the Indemnitee, to assume the investigation and defense thereof with counsel reasonably satisfactory to the Indemnitee. Whether or not the Indemnitor elects to assume the investigation and defense of any Third Party Claim, the Indemnitee shall have the right to employ separate counsel and to participate in the investigation and defense thereof; provided, however, that the Indemnitee shall pay the fees and disbursements of such separate counsel unless (a) the employment of such separate counsel has been specifically authorized in writing by the Indemnitor; (b) the Indemnitor has failed to assume the defense of such Third Party Claim within a reasonable time after receipt of notice thereof with counsel reasonably satisfactory to such Indemnitee; or (c) the named parties to the proceeding in which such claim, demand, action or cause of action has been asserted include both the Indemnitor and such Indemnitee and in the reasonable judgment of counsel to such Indemnitee, there exists one or more defenses that may be available to the Indemnitee that are in conflict with those available to the Indemnitor. Notwithstanding the foregoing, the Indemnitor

claim that any of Seller's representations or warranties in this Agreement are inaccurate, or that any covenant has been breached, if such claim is predicated on any action by a Governmental Authority (other than a tax authority) undertaken after Closing or any action a Governmental Authority (other than a tax authority) requires Buyer to undertake after Closing; provided, however, that such limitation shall not apply to the extent such action by a Governmental Authority (other than a tax authority) arises directly out of any (a) willful misconduct by Seller as judicially determined by a final order of a court or Governmental Authority of competent jurisdiction; or (ii) conduct by Seller that was not reasonably prudent based on then-prevailing circumstances and, provided further that Seller's reliance on a reasonable interpretation of existing Law or practice shall be deemed reasonably prudent.

**7.6 Other Rights and Remedies.** Following the Closing, the sole and exclusive remedy at law for Seller or Buyer for any claim (whether such claim is framed in tort, contract or otherwise) arising out of a breach of any representation, warranty, covenant or other agreement in this Agreement shall be a claim by Seller or Buyer for indemnification pursuant to this Article VII.

## ARTICLE VIII EMPLOYEES AND EMPLOYEE MATTERS

**8.1 Employment of Transferred Employees.** Schedule 8.1 lists the Active Employees (as defined below) of the Business as of the date of this Agreement, together with their job positions, service and compensation. An employee hired by Seller or its Affiliate after the date of this Agreement who would be an Active Employee but for not being employed on the date of this Agreement shall become an Active Employee as of his or her date of hire. In hiring new employees and terminating employees of the Business, Seller and its Affiliates shall follow their usual and ordinary course of business in accordance with past practice. An Active Employee who terminates employment with Seller prior to the Closing shall no longer be considered an Active Employee (without regard to the reason or circumstance for such termination). To the extent required by the foregoing, a final updated Schedule 8.1 shall be provided to Buyer on or immediately prior to the Closing Date. All Active Employees of the Business on the Closing Date (collectively, the "Transferred Employees") shall be employed by (or become the responsibility of, as applicable) Buyer as of the Closing Date in the same or comparable positions, and at the same or comparable total compensation (including base pay and bonus), as were in effect on the Closing Date, except as otherwise provided in this Agreement. An individual shall be considered an "Active Employee" of the Business if the individual is employed by Seller or an Affiliate of Seller and (i) provides substantially all of his or her services to or for the Business or (ii) provides inter-unit support services to the Business and/or similar businesses of the Seller and its Affiliates and is designated as an "Inter-Unit Services Employee" on Schedule 8.1. The number of Inter-Unit Services Employees designated on Schedule 8.1 for each job function of the Business shall be equal to the whole number of full-time equivalent positions (as reasonably determined by Seller on the basis of a standard workweek and taking into account all employees of Seller and its Affiliates who provide more than de minimis services for the Business other than those employees listed on Schedule 8.1 pursuant to subparagraph (i) above) utilized in the Business for such job function. The determination of "Active Employees" shall include all full-time and part-time employees, employees on workers' compensation, military leave, maternity leave, leave under the Family

**8.1.4 Recognition of Transferred Employee Service.** Except as otherwise provided herein, on and after the Closing Date, and subject to the provisions of any applicable collective bargaining agreement, Buyer shall recognize for all employment-related purposes the service of each Transferred Employee with Seller and its Affiliates. Schedule 8.1 shall list such service for each Transferred Employee. Except to the extent required by Section 8.2.1, Buyer shall not be required to credit any Transferred Employee with prior service for purposes of benefit accrual or contributions under any defined benefit pension plan or other retirement plan.

**8.1.5 Assumption of Obligation to Pay Bonuses.** Transferred Employees shall not accrue benefits under any employee benefit policies, plans, arrangements, programs, practices, or agreements of Seller or any of its Affiliates after the Closing Date. Buyer shall assume the obligation to pay to Transferred Employees a pro-rated portion of any bonuses that would have been payable to the Transferred Employees with respect to the calendar year in which the Closing Date occurs had the Transferred Employees remained employees of Seller or one of its Affiliates. Such pro-rated portion shall be equal to the portion of the bonus that would have accrued during the portion of the calendar year occurring after the Closing Date in accordance with the provisions of the applicable bonus policy, plan, arrangement, program, practice or agreement of Seller and its Affiliates. Seller shall pay the remaining pro-rated portion of such bonuses in the ordinary course and at the time such bonuses would have been paid without regard to this Agreement.

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

**8.1.7 Affiliate Employees.** If any employee identified in Schedule 8.1 is an employee of an Affiliate of Seller, he or she shall be considered a Transferred Employee and shall be treated under this Agreement in a manner that is comparable to the treatment given to the Transferred Employees who are employed by Seller. Seller and its Affiliates shall take and/or cause to be taken any action necessary to ensure that the Transferred Employees and any Included Employees are employed by or transferred to Seller no later than immediately prior to the Closing to allow Buyer to assume the employment obligations contemplated by Section 8.1.

## **8.2 Transferred Employee Benefit Matters.**

### **8.2.1 Defined Benefit Plans.**

(a) **Management Employees.** Effective immediately after the Closing Date, the Transferred Employees who participate in the Verizon GTE Service Corporation Plan for Employees' Pensions (the "Seller Salaried Pension Plan") will be eligible to participate under a tax-qualified defined benefit pension plan established or maintained by Buyer to the same extent (if any) as similarly-situated employees of Buyer. Such Transferred Employees shall receive

(iii) As soon as practicable after the Closing Date, Seller shall deliver to Buyer a list reflecting each Transferred Employee's service and compensation under the Seller Hourly Pension Plan.

(d) Transfer of Assets.

(i) Seller shall direct the trustee of the Seller Hourly Pension Plan to transfer to the trustee or funding agent of the Buyer Pension Plan the amount required to be transferred by Section 414(1) of the Code and the regulations thereunder for all Transferred Employees whose accrued benefits are transferred to a Buyer Pension Plan pursuant to subsection (c) of this Section 8.2.1, determined using the assumptions used by the PBGC with respect to a plan termination occurring on the Closing Date (the "Pension Assets"), as set forth on Schedule 8.2.1(d)(i), subject to any adjustment pursuant to subsection (d)(vi) of this Section 8.2. The Pension Assets shall be in the form of cash or marketable obligations. Under no circumstances shall Seller or the Seller Hourly Pension Plan be liable to transfer any additional amount to Buyer or a Buyer Pension Plan or any other Person in respect of the accrued benefits transferred to a Buyer Pension Plan pursuant to subsection (c) of this Section 8.2.1, including but not limited to any circumstance under which any Person (including a Governmental Authority) states a claim to some portion or all of the Pension Assets.

(ii) Seller shall appoint an actuary ("Seller's Actuary") to determine the amount to be transferred pursuant to subsection (d)(i) of this Section 8.2.1 and shall provide such determination to Buyer. Buyer shall appoint an actuary ("Buyer's Actuary") who shall have the right to audit and review the determination made by Seller's Actuary. Within thirty (30) days after the date Seller informs Buyer of the amount of the Pension Assets, Seller's Actuary shall provide Buyer's Actuary with a computer file containing all the employee data used by Seller's Actuary to calculate the Pension Assets. If Buyer's Actuary is unable to agree with Seller's Actuary on the amount of the transfer within sixty (60) days after Seller informs Buyer of the amount to be transferred, Seller and Buyer shall jointly select a third actuary, whose determination shall be binding on Seller and Buyer. Each of Seller and Buyer shall bear the fees, costs and expenses of their respective actuaries, and the fees, costs and expense of the third actuary shall be borne one-half by Seller and one-half by Buyer.

(iii) The Pension Assets shall be credited with interest from the Closing Date to the actual date of transfer at the assumed discount rate used in accordance with paragraph (i) of this subsection (d); provided that any Pension Assets that are distributed from the Seller Hourly Pension Plan before the date of transfer pursuant to subsection (d)(vi) of this Section 8.2.1 shall be credited with interest (such interest to be credited to the Buyer Pension Plans) only from the Closing Date to the date of distribution.

(iv) Under the terms of the Buyer Pension Plan, the accrued benefit of each Transferred Employee immediately after the transfer of assets and liabilities pursuant to this Section 8.2.1 shall not be less than the sum of each Transferred Employee's accrued benefits under the applicable Seller Hourly Pension Plan and the Buyer Pension Plan (if any) immediately before the transfer of assets and liabilities.

matching and (ii) made before the Closing Date. Such matching contributions shall be made not later than the date on which all other matching contributions are made to the Seller Savings Plans with respect to contributions made at the same time as the Transferred Employees' contributions.

### 8.2.3 Welfare Plans.

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

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

(ii) Following the termination of employment from Buyer and its Affiliates of a Transferred Employee who is not covered by a Labor Contract and who, as of the Closing Date, has at least fifteen (15) years of accredited service (within the meaning of the Seller Salaried Pension Plan) and combined years of age and accredited service of at least 74 (within the meaning of the Seller Salaried Pension Plan), Seller shall provide or cause to be provided to each such Transferred Employee (or the dependents or beneficiaries of such Transferred Employee) retiree medical, health, and life benefits under the terms and conditions of the corresponding programs then offered by Seller to its similarly situated non-collectively bargained employees retiring at such time; provided that nothing in this subsection (b)(ii) shall be construed to prevent any such Transferred Employee (or his or her dependents or beneficiaries) from voluntarily relinquishing such benefits. Buyer shall reimburse Seller for the



Program) from Seller or any plan or policy it maintains. Seller shall take any actions necessary or appropriate in respect of the immediately preceding sentence.

**8.4 Vacation Benefits.** On or after the Closing Date, Buyer shall allow Transferred Employees to receive paid time off in the calendar year of the Closing for any unused vacation time accrued prior to the Closing Date. Seller and its Affiliates shall have no liability to Transferred Employees for the vacation payments described the immediately preceding sentence. Seller shall pay Transferred Employees any banked vacation on or as soon as practicable after the Closing Date, and Buyer shall have no liability for such banked vacation benefits. Schedule 8.1 referenced above shall list the accrued but unused vacation pay, as of the Closing Date, of each Transferred Employee for the calendar year in which the Closing Date occurs.

**8.5 Employee Rights.** Nothing herein expressed or implied shall confer upon any employee of Seller or its Affiliates, or Buyer or its Affiliates, or upon any legal representative of such employee, or upon any collective bargaining agent, any rights or remedies, including any right to employment or continued employment for any specified period, of any nature or kind whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be deemed to confer upon any person (nor any beneficiary thereof) any rights under or with respect to any plan, program, or arrangement described in or contemplated by this Agreement, and each person (and any beneficiary thereof) shall be entitled to look only to the express terms of any such plan, program, or arrangement for his or her rights thereunder. Nothing in this Agreement shall cause Buyer or its Affiliates, nor Seller or its Affiliates to have any obligation to provide employment or any employee benefits to any individual who is not a Transferred Employee or, except as otherwise provided in Section 8.1.2 with respect to employment agreements, to continue to employ any Transferred Employee for any period of time following the Closing Date.

**8.6 Successors and Assigns.** In the event Buyer or any of its successors and assigns (a) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (b) transfers all or substantially all of its properties and assets to any Person, then, and in each case, proper provision shall be made so that such successors and assigns of Buyer honor the obligations of Buyer and its Affiliates set forth in this Article VIII. In the event Buyer outsources any of the Transferred Employees during the three-year period described in Section 8.3, and such employees are not paid a severance benefit in accordance with Section 8.3, then, and in each case, proper provision shall be made so that the outsourcing vendor maintains a severance pay plan or policy that provides a severance benefit for each Transferred Employee who is involuntarily terminated by the outsourcing vendor during such three-year period, which benefit is the same as the severance benefits that would otherwise have been provided to such employees in accordance with Section 8.3. For purposes of this Section 8.6, a Transferred Employee shall be considered to have been outsourced if the employee is hired by the outsourcing vendor pursuant to or in connection with an agreement entered into between Buyer or any of its Affiliates and the outsourcing vendor whereby the outsourcing vendor will provide services to or for the Buyer or any of its Affiliates.

### **10.1.2 Infringement.**

(a) Notwithstanding anything in this Agreement to the contrary, Seller shall have no obligation to defend, indemnify or hold harmless Buyer, any of its Affiliates or any of their customers, from any damages, costs or expenses resulting from any obligation, proceeding or suit based upon any claim that any activity subsequent to the Closing Date engaged in by Buyer, a customer of Buyer's, or anyone claiming under Buyer, constitutes direct or contributory infringement, misuse or misappropriation of, or inducement to infringe, any Third Party Intellectual Property.

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

### **10.1.3 Trademark Phaseout.**

(a) Buyer acknowledges and agrees that Seller or its Affiliates are the legal and beneficial owners of Excluded Marks that qualify as Excluded Assets under Section 2.1.2. Buyer acknowledges and agrees that the Excluded Marks, or any right to or license of the Excluded Marks, including any right to use, are not being transferred or conveyed to Buyer pursuant to this Agreement. Buyer acknowledges the exclusive and proprietary rights of Seller and its Affiliates in the use of the Excluded Marks, and Buyer agrees that it shall not use the Excluded Marks (or any names, domain names, marks or indicia confusingly similar to the Excluded Marks) except and to the extent expressly set forth in this Section 10.1.3, or otherwise assert any rights or claims in such Excluded Marks (or in any names, domain names, marks or when confusingly similar to the Excluded Marks). Except as set forth in the last sentence of this Section 10.1.3(a), after the Closing, all Excluded Marks of Seller and its Affiliates shall be replaced by Buyer, at Buyer's expense, as soon as possible, but in no event later than ninety (90) days after the Closing Date (the "Phaseout Period") for items existing as of the Closing Date with Excluded Marks affixed to them which Buyer has continued to use in Buyer's operation of the Business, including buildings, vehicles, heavy equipment, hard hats, tools, tool boxes, kits (safety and others) signs, public (pay) telephones, manual covers and notebooks. After the Closing, Buyer will not use, and will immediately destroy or deliver to Seller, all items with Excluded Marks affixed to them that have no valid continuing use in Buyer's operation of the Business, including items affecting customer or employee relations or items that do not reflect Buyer's true identity. Specific items to be destroyed or returned include giveaways; order, purchase or materials forms; requisitions; invoices; statements; time sheets/labor reports; bill inserts; stationery; personalized note pads; business cards; maps; organization charts; bulletins/releases; sales/price literature; manuals or catalogs; report covers/folders; program materials; and materials such as media contact lists/cards. The Phaseout Period for replacement of Excluded Marks affixed to telephone directories that were already published or closed for publication at the Closing Date shall be extended to the expiration date of such directories.

agreements with such third parties for the use of such software or other Third Party Intellectual Property. Seller makes no warranty or representation as to any matter relating to Third Party Intellectual Property or Third Party Intellectual Property Contracts.

**10.2 Confidentiality.** Whether or not the Closing occurs, the parties and their respective officers, directors, employees and representatives shall comply with the Non-Disclosure Agreement, the provisions of which are expressly incorporated herein in their entirety by this reference.

**10.3 Further Assurances.** For a period of one hundred eighty (180) days after the Closing, Seller shall use its commercially reasonable efforts to furnish to Buyer such other instruments and information as Buyer may reasonably request in order to convey to Buyer title to the Acquired Assets, to be delivered from time to time upon Buyer's reasonable request.

**10.4 Prorations.**

(a) Subject to the limitations set forth in this Section 10.4(a), any liability that calls for periodic payments shall be prorated between Seller and Buyer including, without limitation: (i) utility charges (which shall include water, sewer, electricity, gas and other utility charges) with respect to the Owned Real Property, the property subject to the Real Property Leases and customer owned equipment, (ii) rental charges (which shall include rental charges and other lease payments under the Real Property Leases), (iii) personal services (where the services charged for straddle the period both before and after the Closing Date, including charges for contract labor), and (iv) real and personal property taxes, ad valorem taxes and other similar taxes imposed on a periodic basis, (v) franchise fees, regulatory assessments or taxes and (vi) such other liability that individually calls for periodic payments in excess of Ten Thousand Dollars (\$10,000). With respect to measurement periods during which the Closing Date occurs (all such periods of time being hereinafter called "Proration Periods"). The liabilities described in clauses (i), (ii), (iii), (v) and (vi) of the preceding sentence shall be apportioned between Seller and Buyer as of the Closing Date, with Buyer bearing only the expense thereof in direct proportion to the number of days remaining in the applicable Proration Period including and following the Closing Date in comparison to the total number of days covered by such Proration Period. The liabilities described in clause (iv) of the preceding sentence shall be prorated between Buyer and Seller based on the relative periods the Acquired Assets was owned by each respective party during the fiscal period for which such taxes were imposed by the taxing jurisdiction (as such fiscal period is reflected on the bill rendered by such taxing jurisdiction). Buyer and Seller shall pay or be reimbursed for real and personal property taxes (including instances in which such property taxes have been paid before the Closing Date) on this prorated basis. If a payment on a tax bill is due after the Closing, the party that is legally required to make such payment shall make such payment and promptly forward an invoice to the other party for its pro rata share, if any. If the other party does not pay the invoice within thirty (30) calendar days of receipt, the amount of such payment shall bear interest at the Applicable Rate. Similarly, all prepayments made by Seller with respect to service or maintenance agreements with third parties or license or other fees payable to third parties and assigned to Buyer hereunder shall be prorated on an appropriate basis between Seller and Buyer.

## 10.6 Access to Books and Records.

**10.6.1 Retention Period.** After the Closing, Seller shall retain all Retained Books and Records for a period of three (3) years, except for Tax returns and supporting documentation which shall be retained until sixty (60) days after the expiration of the applicable statute of limitations, and Buyer shall retain all Transferred Books and Records for a period of five (5) years.

**10.6.2 Access.** After the Closing, upon reasonable notice and subject to the Non-Disclosure Agreement, the parties will give to the representatives, employees, counsel and accountants of the other access, during normal business hours, to books and records relating to the Business and the Acquired Assets, and will permit such persons to examine and copy such records, in each case to the extent reasonably requested by the other party in connection with Tax and financial reporting matters (including appropriate portions of Tax Returns and related information, but not attorney work product), audits, legal proceedings, governmental investigations and other proper business purposes (including such financial information and any receipts evidencing payment of Taxes as may be requested by Seller to substantiate any claim for Tax credits or refunds); provided, however, that nothing contained herein shall obligate any party to take actions that would unreasonably disrupt the normal course of its business or violate the terms of any agreement to which it is a party or to which it or any of its assets is subject. Seller and Buyer will cooperate with each other in the conduct of any Tax audit or similar proceedings involving or otherwise relating to the Business (or the income therefrom or assets thereof) with respect to any Tax, and each will execute and deliver such powers of attorney and other documents as are necessary to carry out the intent of this Section 10.6.2.

## 10.7 Purchase Price Allocation.

(a) Within ninety (90) days after the Closing Date, Buyer shall provide to Seller a draft Purchase Price allocation (the "Purchase Price Allocation"). Seller shall propose to Buyer any changes in the draft Purchase Price Allocation within 30 days of the receipt thereof. In the event that no such changes are proposed in writing to Buyer within such time, Seller shall be deemed to have agreed to the Purchase Price Allocation. If any such changes are proposed, Seller and Buyer shall negotiate in good faith and shall use their reasonable efforts to agree upon the final Purchase Price Allocation. Notwithstanding the foregoing, if Seller and Buyer cannot agree upon a Purchase Price Allocation, Seller and Buyer covenant and agree to file, and cause their respective Affiliates to file, all Tax Returns consistent with each of Seller's and Buyer's good faith allocations, unless otherwise required by law. For purposes of this subsection 10.7(a), the Purchase Price Allocation shall be done in a manner consistent with section 1060 of the Code and the Treasury regulations promulgated thereunder.

(b) If Seller and Buyer reach an agreement on the Purchase Price Allocation as provided above, Seller and Buyer agree to act in accordance with such Purchase Price Allocation for all purposes, including for purposes of any Tax Return. Except as otherwise required by a Governmental Authority or by a Taxing authority pursuant to a "determination" as defined in Section 1313(a) of the Code (or any comparable provision of state, local or foreign

pursuing any proceedings related thereto, and (iii) paying any expenses related thereto. Seller shall give prompt written notice to Buyer of any proposed adjustment or assessment of any Transaction Taxes with respect to the transaction, or of any examination of said transaction in a sales, use, transfer or similar tax audit. In any proceedings, whether formal or informal, Seller shall permit Buyer to participate and control the defense of such proceeding, and shall take all actions and execute all documents required to allow such participation. Seller shall not negotiate a settlement or compromise of any Transaction Taxes without the written consent of Buyer, which consent shall not be unreasonably withheld.

(b) Buyer shall cooperate with all reasonable requests made by Seller with respect to pursuing any Tax refund, including the filing of refund claims and of amended Tax Returns.

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

**10.11 Prepaid Non-Regulated Maintenance Agreements.** Within thirty (30) days following Closing, Seller shall provide reasonably detailed supporting documentation related to and pay to Buyer an amount equal to the pro rata portion of all prepaid but unearned revenues from Seller's customers for all non-regulated maintenance agreements assumed by Buyer hereunder as of the Closing Date.

**10.12 Vehicle Registration.** Buyer shall use its commercially reasonable efforts to file promptly the appropriate vehicle title applications and registrations to change the name of the titled owner on each vehicle title certificate and change the motor vehicle registration (with respect to license plate information) on each vehicle being transferred to Buyer from Seller pursuant to this Agreement. Buyer shall remove and destroy Seller's existing license plates from all vehicles received upon the later of receipt of new license plates or ninety (90) days following Closing.

**10.13 CABS Accounts Receivable Transition.** Seller shall render its own final bills for minutes, messages and other applicable charges billable through CABS for periods prior to and including the Closing Date. Seller shall be responsible for collecting and settling any disputes associated with its final CABS bills.

**10.14 CBSS and SSB Billing and Accounts Receivable Transition.** Buyer shall purchase Seller's CBSS Accounts Receivable and SSB Accounts Receivable and make payment to Seller for those accounts in the manner described below.

**10.14.1 Transfer of Records.** Seller shall transfer to Buyer, as soon as reasonably available after Closing, all customer account records related to CBSS and SSB as of the Closing Date. Following the Closing, Buyer will be responsible for administering those records including the application of cash receipts to customer accounts, whether related to services rendered before or after the Closing, and submission of appropriate accounts to