

ATTACHMENT 6

March 1, 2013
CONSOLIDATED COMMUNICATIONS

P.U.C. DOCKET NO. 41143
SOAH DOCKET NO. 473-13-2370

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| PETITION FOR RESOLUTION OF | § | BEFORE THE STATE OFFICE |
| COMPLAINT OF CONSOLIDATED | § | |
| COMMUNICATIONS OF FORT BEND | § | OF |
| AGAINST BLUECAP, LTD., | § | |
| CAPRICORN, LTD. AND FREEWAY | § | ADMINISTRATIVE HEARINGS |
| PROPERTIES, LLC d/b/a KATY | § | |
| RANCH CROSSING REGARDING | § | |
| COMPENSATION DISPUTE FOR | § | |
| BUILDING ACCESS AT THE | § | |
| COMMERCIAL DEVELOPMENT | § | |
| KNOWN AS KATY RANCH CROSSING | § | |

DIRECT TESTIMONY OF MICHAEL SHULTZ ON BEHALF OF CONSOLIDATED COMMUNICATIONS OF FORT BEND COMPANY IN SUPPORT OF INTERIM RELIEF FOR BUILDING ACCESS AT KATY RANCH CROSSING

March 1, 2013

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**P.U.C. DOCKET NO. 41143
SOAH DOCKET NO. 473-13-2370**

**DIRECT TESTIMONY
OF
MICHAEL SHULTZ
ON BEHALF OF
CONSOLIDATED COMMUNICATIONS OF
FORT BEND COMPANY**

March 1, 2013

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1 **I. QUALIFICATIONS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND PRESENT**
3 **POSITION.**

4 A. My name is Michael Shultz. My business address is 350 South Loop 336W, Conroe,
5 Texas 77304. I am Vice President Regulatory and Public Policy for Consolidated
6 Communications of Fort Bend Company (“CCFB” or “Consolidated”).

7 **Q. PLEASE SUMMARIZE YOUR EDUCATION AND YOUR BUSINESS**
8 **EXPERIENCE.**

9 A. I received a Bachelor of Arts degree in Economics from the University of Pittsburgh in
10 1985 and a Masters of Business Administration from the University of Dallas in 2000. I
11 have held the position of Vice President of Regulatory and Public Policy with
12 Consolidated since April 2004. Prior to that date I held the role of Senior Director –
13 Regulatory and Industry Affairs with TXU Communications from November 2002 to
14 April 2004. TXU Communications was acquired by Consolidated Communications in
15 April 2004.

16
17 From 1991 to 2002 I held positions of increasing responsibility with Citizens
18 Communications. The last position I held with Citizens Communications was Director of
19 Federal Regulatory & Compliance, from 1997 to 2002. In that position I was responsible
20 for federal legislative and regulatory advocacy, universal service, access and long
21 distance tariffs, earnings management, separations, economic studies and price caps.

22

1 Prior to joining Citizens Communications, I was with the consulting firm John
2 Staurulakis, Inc. from 1985 to 1991. There I worked with small rural
3 telecommunications companies. My responsibilities included providing regulatory
4 guidance, earnings management, cost development, universal service studies, economic
5 studies and revenue pooling support.

6 **Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AS VICE PRESIDENT**
7 **REGULATORY AND PUBLIC POLICY FOR CONSOLIDATED?**

8 A. I am responsible for overall regulatory and legislative strategy at both the federal and
9 state levels for Consolidated. In addition, I have responsibility for regulatory and
10 legislative advocacy, separations, economic costing, rate development, compliance
11 reporting, tariffs, interconnection, carrier relations, 911 administration, carrier relations,
12 CABS billing, network costs, billing operations, and settlements.

13 **II. SCOPE AND PURPOSE OF TESTIMONY**

14 **Q. WHAT IS THE SUBJECT MATTER OF YOUR TESTIMONY?**

15 A. I am presenting testimony supporting Consolidated's request for interim access to the
16 buildings owned or managed by Bluecap, Ltd., Capricorn, Ltd. and Freeway Properties,
17 LLC d/b/a Katy Ranch Crossing, which I will refer to collectively as either "Katy Ranch"
18 or "Landlord." Specifically, I will briefly address the harm Consolidated has faced as a
19 result of Katy Ranch unreasonably denying access to its property, the requirements under
20 PURA and Commission rules regarding access, and Consolidated's proposed interim
21 access agreement, which is attached as Exhibit A to my direct testimony. As I discuss in
22 more detail below, CCFB's proposed interim access agreement is preferable to that
23 proposed by Katy Ranch for the following reasons:

- 1 • It represents a reasonable, balanced solution for effecting building access within a
2 reasonable timeframe.
- 3
- 4 • It does not include irrelevant or burdensome provisions that are not required under
5 PURA or P.U.C. Substantive Rule 26.129, the Commission's building access rule.
6
- 7 • It provides that Consolidated will pay disputed compensation amounts in escrow,
8 pending a determination on the merits in this case.
9

10 It is critically important to understand that Section 26.129(g) of the Commission's
11 building access rule provides that Katy Ranch may deny Consolidated access to its
12 building(s) only if there are "space" or "safety" issues. Katy Ranch has not raised or
13 identified any space or safety issues that would otherwise prevent Consolidated from
14 accessing the Landlord's building in order to provide telecommunications service. Mr.
15 Miller describes CCFB's proposed installation plans and testifies that implementing those
16 plans will not create any space or safety issues. Finally, I should note CCFB provided
17 those plans to Katy Ranch starting in December 2012.

18 **Q. ARE YOU AWARE OF A BUILDING OWNER DENYING ACCESS OR**
19 **DEMANDING UNREASONABLE TERMS AS A CONDITION OF BUILDING**
20 **ACCESS AS CONSOLIDATED HAS EXPERIENCED WITH KATY RANCH?**

21 A. No, I am not. I have been in the telecommunications business since 1985 and have been
22 with Consolidated (or its predecessor company) since 2002. During this time I am not
23 aware of a building owner outright denying access in order for CCFB to provide service
24 to a requesting customer. Nor am I aware of another building owner other than Katy
25 Ranch demanding compensation or unreasonable terms of building access from CCFB.
26 Katy Ranch stands alone in its conduct towards CCFB.

27 **Q. DOES KATY RANCH HAVE A BUILDING ACCESS AGREEMENT WITH ANY**
28 **OTHER TELECOMMUNICATIONS COMPANY?**

1 A. Yes, it does. Prior to Consolidated requesting access to the Landlord's property in order
2 to provide service to requesting tenants, Katy Ranch signed a "Broadband Services and
3 Marketing Agreement" with En-Touch Systems, Inc. ("En-Touch"), designating En-
4 Touch as Katy Ranch's "preferred provider" for telecommunications services. That
5 agreement between Katy Ranch and En-Touch was effective July 1, 2012. Among other
6 things, this so-called "preferred provider" agreement requires Katy Ranch to develop a
7 joint marketing plan with En-Touch in order to market En-Touch services on the
8 premises of Katy Ranch. Katy Ranch is also obligated to allow En-Touch to market its
9 services "on an exclusive basis on-site" at Katy Ranch property. In exchange for this
10 exclusive marketing arrangement, En-Touch agreed to pay Katy Ranch a 2% kickback of
11 its telecommunications revenues it receives from Katy Ranch's commercial tenants.
12 Given this backdrop, I believe Katy Ranch is denying access to or demanding that
13 Consolidated sign a building access agreement with unreasonable, irrelevant terms as a
14 result of its exclusive marketing arrangement with En-Touch. My belief is also supported
15 by the testimony of CCFB witness Mr. Miller, who states that the on-site project
16 superintendent for Katy Ranch told CCFB that he was to work only with En-Touch.

17 **Q. WHAT HAS BEEN CONSOLIDATED'S EXPERIENCE WITH OTHER**
18 **BUILDING OWNERS IN ITS SERVICE TERRITORY?**

19 A. In my experience, building owners cooperate with Consolidated and want Consolidated
20 to install its telecommunications facilities because they view this telecommunications
21 infrastructure as an added benefit to their property and their tenants.
22
23

1 **III. BACKGROUND OF DISPUTE WITH KATY RANCH**

2 **Q. PLEASE DESCRIBE THE CONSOLIDATED'S EFFORTS TO ACCESS THE**
3 **KATY RANCH PROPERTY IN ORDER TO PROVIDE**
4 **TELECOMMUNICATIONS SERVICES.**

5 A. The chronology of events is set forth in greater detail in the testimony of Mr. Kenneth
6 Miller. Briefly, however, CCFB became aware in mid-August, 2012 of Katy Ranch
7 taking affirmative steps to deny CCFB access to its property after CCFB received a
8 request for service from Main Event, a new tenant at Katy Ranch. It was only after
9 CCFB obtained an injunction against Katy Ranch in district court that it was allowed to
10 run its telecommunications lines from the public right of way onto the Katy Ranch
11 development. Main Event subsequently cancelled its service order request due to the
12 delay CCFB suffered as a result of Katy Ranch denying access. CCFB subsequently
13 received requests for service from Goodwill and Guitar Center, which is what prompted
14 CCFB to file this proceeding due to its inability to reach a reasonable building access
15 agreement with Katy Ranch. Since filing this complaint, CCFB received a service order
16 request from Spec's.

17 **Q. WHAT IS THE STATUS OF THESE ORDERS?**

18 A. Goodwill and Spec's cancelled their orders and Guitar Center cancelled part of its order.

19 **Q. ARE THESE SERVICE ORDER CANCELLATIONS THE REASON WHY IT IS**
20 **IMPORTANT FOR THE COMMISSION TO DETERMINE REASONABLE**
21 **TERMS OF ACCESS ON AN INTERIM BASIS?**

22 A. Yes, they are. Absent a reasonable building access agreement, Consolidated will
23 continue to be wrongly denied access in order to timely provide service to the requesting

1 tenants of Katy Ranch. This, in turn, will result in additional service order cancellations
2 as CCFB has already experienced with regard to Goodwill, Spec's, and (in part) Guitar
3 Center. Despite the fact that the Broadband Services and Marketing Agreement between
4 Katy Ranch and En-Touch grants En-Touch a development-wide easement that has
5 allowed En-Touch to pre-wire the lease space, Katy Ranch insists on CCFB having a
6 separate license agreement for each requesting tenant. It is, therefore, critically important
7 that the interim order in this case state that CCFB and Katy Ranch be directed to use the
8 same interim access agreement for subsequent requesting tenants during the pendency of
9 this proceeding. In the absence of such a directive, I believe that Katy Ranch will only
10 seek to further delay CCFB's efforts to timely provision service to future requesting
11 tenants under the guise of "negotiating" each and every subsequent building access
12 agreement.

13 **IV. BUILDING ACCESS REQUIREMENTS UNDER PURA AND COMMISSION**
14 **REGULATIONS**

15 **Q. UNDER WHAT CONDITIONS MAY A BUILDING OWNER DENY ACCESS OF**
16 **A TELECOMMUNICATIONS CARRIER SEEKING TO PROVIDE SERVICE**
17 **TO A REQUESTING TENANT?**

18 **A.** As I discussed previously, a building owner may deny access only if there are space or
19 safety issues. Katy Ranch has not identified any space or safety issues related to CCFB's
20 plan to provision service to Main Event, Goodwill, Guitar Center or Spec's. The details
21 of provisioning services to Goodwill, Guitar Center and Spec's are largely identical as all
22 tenants are located in the same strip center-type building. CCFB witness Mr. Miller
23 discusses these provisioning details in his testimony.

1 **Q. ARE THERE OTHER CONDITIONS IN SECTION 54.260(a) OF PURA THAT A**
2 **PROPERTY OWNER MAY REQUIRE OF A TELECOMMUNICATIONS**
3 **UTILITY?**

4 A. Yes, there are. Those requirements include:

- 5 • Reasonable time limitations to access the property to install equipment.
- 6 • Reasonable limitation on the number of utilities that have building access (if there
7 are space limitations).
- 8
- 9 • Requiring the telecommunications utility to indemnify the building owner for
10 damage caused by the utility in installing, operating or removing its facilities.
- 11
- 12 • Requiring the utility to bear the cost of installation, operating or removing its
13 facilities.
- 14

15 **Q. IS CCFB WILLING TO ABIDE BY THESE REQUIREMENTS?**

16 A. Yes, it is. Consolidated agrees to abide by reasonable time limitations regarding when it
17 will access the Katy Ranch building. There are no limitations regarding an “excessive”
18 number of utilities. Given its exclusive marketing agreement with Katy Ranch, I believe
19 En-Touch is the only telecommunications utility currently providing service. CCFB
20 agrees to indemnify Katy Ranch for any damage caused by CCFB in installing, operating
21 or removing its equipment at Katy Ranch. Finally, CCFB agrees to bear the cost of
22 installing, operating or removing its facilities.

23 **Q. ARE THERE ANY OTHER PROVISIONS IN SECTION 54.260(a) OF PURA?**

24 A. Yes. Subsection 54.260(a)(6) requires the utility to “pay compensation that is reasonable
25 and nondiscriminatory among such telecommunications utilities.” I did not include this
26 subsection in the list above because compensation is not an issue for purposes of this
27 interim hearing. The compensation issue will be addressed at the hearing on the merits.

1 In the meantime, CCFB has proposed to pay the disputed compensation amounts in
2 escrow pending a final determination of this issue.

3 **Q. WHAT ARE THE DISPUTED COMPENSATION AMOUNTS?**

4 A. The disputed compensation amounts are the same 2% kickback that En-Touch is
5 currently paying Katy Ranch. The Landlord has insisted on CCFB paying this 2%
6 kickback of its telecommunications revenues, despite the fact that CCFB's facilities will
7 not take or use otherwise leasable space in Landlord's building.

8 **Q. DOES SECTION 54.259 OF PURA SET OUT ANY RESTRICTIONS ON A**
9 **PROPERTY OWNER'S ACTIONS AGAINST A TELECOMMUNICATIONS**
10 **UTILITY?**

11 A. Yes. A property owner may not do the following:

- 12 • Prevent a utility from installing a telecommunications facility on the building
13 owner's property.
- 14 • Interfere with the telecommunications utility's installation on the owner's
15 property of a telecommunications service facility a tenant requests.
- 16 • Discriminate against a telecommunications utility regarding installation, terms or
17 compensation.
- 18 • Demand or accept an unreasonable payment of any kind from a tenant or the
19 telecommunications utility for allowing the utility on the property.
- 20 • Discriminate in favor or against a tenant in any manner, including rental charge
21 discrimination, because of the utility from which the tenant receives
22 telecommunications service.
- 23 • Discriminate in favor or against a tenant in any manner, including rental charge
24 discrimination, because of the utility from which the tenant receives
25 telecommunications service.
- 26 • Discriminate in favor or against a tenant in any manner, including rental charge
27 discrimination, because of the utility from which the tenant receives
28 telecommunications service.

28 **Q. DO YOU BELIEVE KATY RANCH HAS DISCRIMINATED AGAINST CCFB**
29 **BY VIOLATING ANY OF THESE PROVISIONS?**

30 A. Yes, I do. Katy Ranch has prevented CCFB from placing its facilities on its property in
31 the first instance. But for CCFB obtaining an injunction in district court, I believe Katy

1 Ranch would have prevented CCFB from installing any facilities. Secondly, Katy Ranch
2 is discriminating against CCFB in favor of En-Touch, the company with whom Katy
3 Ranch has an exclusive marketing arrangement. Finally, I believe Katy Ranch has
4 demanded an unreasonable payment from CCFB by demanding a 2% kickback of
5 CCFB's revenues as a condition of access, even though CCFB will not be using any
6 leasable space on the property for which Katy Ranch would otherwise collect rents.
7 While these issues will be addressed in more detail during the hearing on the merits with
8 respect to determining whether administrative penalties are assessed, I raise these points
9 in this interim hearing to further underscore the importance of establishing a reasonable,
10 workable building access agreement to be used on an interim basis.

11 **V. CCFB'S PROPOSED INTERIM BUILDING ACCESS AGREEMENT**

12 **Q. DOES CCFB HAVE A PROPOSED INTERIM BUILDING ACCESS**
13 **AGREEMENT?**

14 **A.** Yes. CCFB's proposed interim building access agreement (Exhibit A to my testimony)
15 complies with the requirements of PURA I previously noted. The key provisions of
16 CCFB's Agreement for Interim Access include:

- 17 • Providing Katy Ranch with installation plans and affording Katy Ranch three
18 days to reject CCFB's proposed plans only if there are space or safety issues.
- 19
- 20 • Requires CCFB to perform work in a good and workmanlike manner in
21 accordance with applicable industry standards.
- 22
- 23 • Requires CCFB to restore the property to substantially the same condition that
24 existed prior to the work.
- 25
- 26 • Requires CCFB to indemnify Katy Ranch for any liabilities, claims, demands or
27 damages brought by third parties arising from CCFB's construction, installation,
28 maintenance, repair, replacement, upgrade, modification or removal of CCFB's
29 building entrance facilities.
- 30

1 CCFB's agreement also provides it will be the agreement for future requesting
2 tenants. Furthermore, the agreement provides that CCFB will pay the disputed
3 compensation amounts in escrow, pending final resolution of this case.

4 **Q. IS CCFB'S PROPOSED AGREEMENT SIMILAR TO OTHER INTERIM
5 ACCESS AGREEMENTS?**

6 A. Yes. This agreement is generally based on a two-page letter agreement for interim access
7 between MCI and Trammel Crow.

8 **Q. IS THREE DAYS REASONABLE FOR KATY RANCH TO REVIEW CCFB'S
9 PROPOSED PLANS?**

10 A. Yes, it is. The building where commercial tenants are or will be located is a strip center-
11 type building, with such tenants located in a row. CCFB's installation plans for any
12 future tenants will be substantially the same as those proposed for Guitar Center,
13 Goodwill, and Spec's.

14 **Q. ARE THERE ANY PROVISIONS THAT ARE SPECIFICALLY EXCLUDED?**

15 A. Yes. CCFB's agreement does not contain an arbitration provision, which Katy Ranch has
16 insisted on. I do not think an arbitration provision is necessary for the following reasons.
17 First, Given that this is an interim agreement, an arbitration provision makes no sense
18 because either party may raise future disputes with the Commission in this proceeding.
19 Secondly, CCFB does not want to foreclose its right to access the courts, should it be
20 necessary to do so. As I noted previously, CCFB had to obtain an injunction from district
21 court just to access the property from the public right of way (*i.e.* from the street).
22 Finally, I should note that Katy Ranch's rationale for insisting on an arbitration provision
23 is based on the fact that its agreement with En-Touch contains an arbitration provision.

1 However, there are favorable provisions in the En-Touch agreement, such as granting En-
2 Touch a development-wide easement and further allowed En-Touch to pre-wire the
3 development with its telecommunications facilities, that Katy Ranch has *not* offered to
4 CCFB. Thus, Katy Ranch is picking and choosing which provisions it will offer or insist
5 on for CCFB, depending on whether it may interfere with its arrangement with En-
6 Touch, and not truly based on any “parity” rationale.

7 **VI. SUMMARY AND CONCLUSION**

8 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

9 A. My testimony supports CCFB’s proposed Agreement for Interim Access. That
10 agreement complies with the requirements set forth in PURA and do not contain
11 extraneous, irrelevant terms that Katy Ranch has demanded. Furthermore, given Katy
12 Ranch’s conduct to date and CCFB’s experience of losing customers to En-Touch as a
13 result of Katy Ranch refusing access to CCFB on reasonable terms, it is important for the
14 Commission to order interim access on the terms recommended by CCFB.

15 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 A. Yes, it does.

AFFIDAVIT

AFFIDAVIT OF MICHAEL SHULTZ

STATE OF TEXAS

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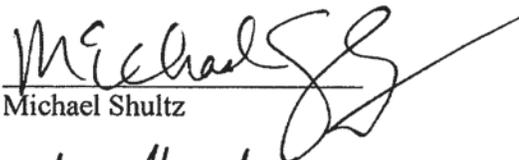
COUNTY OF Montgomery

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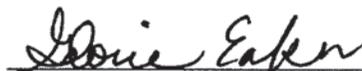
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1. "My name is Michael Shultz. The foregoing testimony offered by me and the opinions stated therein are, in my judgment and based upon my professional experience, true and correct.
2. I am over the age of 21. I am not under any disability and I am fully competent to make this affidavit. I am Vice President of Regulatory Public Policy with Consolidated Communications of Fort Bend Company."

FURTHER AFFIANT SAYETH NOT.


Michael Shultz

Sworn and subscribed to before me this 1st of March, 2013.


Notary Public

My commission expires: 3-27-13

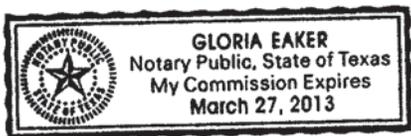


EXHIBIT A

AGREEMENT FOR INTERIM ACCESS

This Agreement for Interim Access (this "Agreement") is entered into by and between Consolidated Communications of Fort Bend Company ("Consolidated") and Bluecap, Ltd., Capricorn Ltd., and Freeway Properties, LLC d/b/a Katy Ranch Crossing (collectively, "Landlord") as of the date of the last signature below (the "Effective Date"). Hereinafter, each of the above-named shall be a "party," and all of the above-named shall collectively be the "parties".

WHEREAS, Landlord is the owner and/or operator of certain real property in Katy, Texas ("subject property" or "property") and is developing the same for commercial use under the name "Katy Ranch Crossing."

WHEREAS, Consolidated has filed a petition (and supplemental petitions) regarding a building access dispute with respect to portions of a commercial building located at the subject property with the Public Utility Commission of Texas (the "Commission") under P.U.C. Docket No. 41143 and such action has been referred to the State Office of Administrative Hearings ("SOAH") under SOAH Docket No. 473-13-2370 (collectively, the "Pending Docket"); and

NOW THEREFORE, FOR AND IN CONSIDERATION OF the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** The term of this Agreement shall be from the Effective Date until the issuance of a final, unappealable Order in P.U.C. Docket No. 41143.

2. **Scope of Interim Access.**

(a) Landlord grants Consolidated a license to access the building on the subject property identified in the installation plans attached as Exhibit A hereto for the purpose of installing the building entrance facilities identified on such installation plans as necessary to provide telecommunications service to Guitar Center, a tenant at the subject property currently requesting service from Consolidated. Consolidated agrees to install its building entrance facilities in a manner consistent with Exhibit A.

(b) Landlord grants Consolidated a license to access any building on the subject property for the purpose of installing building entrance facilities necessary to provide service to any of Landlord's tenants at the subject property who request telecommunications service from Consolidated provided that Consolidated deliver proposed installation plans to Landlord for review no later than three (3) days prior to the date any such installation is scheduled to begin. Landlord may only reject Consolidated's proposed installation by delivering written notice to Consolidated that such installation is infeasible due to either "inadequate space" or "safety concerns" and specifically identifying the conditions on the property which make such installation infeasible. If Landlord alleges that installation is infeasible due to "inadequate space," Landlord shall demonstrate the inadequate space under the procedure proscribed in P.U.C. Substantive Rule § 26.129(g)(1)(B)(i). If Landlord alleges that installation is infeasible due to a "safety concern," Landlord shall demonstrate the safety concern under the procedure proscribed in P.U.C. Substantive Rule § 26.129(g)(2)(B)(i). If the parties disagree as to the infeasibility of construction after Landlord's demonstration, Consolidated shall have the right to petition either the P.U.C. or SOAH (as appropriate) within the Pending Docket to resolve the dispute. If Landlord does not deliver a notice of rejection as

outlined above prior to the date installation is scheduled to begin, Landlord will be deemed to have accepted the installation plans.

3. **Work Performed.** All work performed by Consolidated or its agents under this Agreement, including provision of services, must be performed in a good and workmanlike manner, in accordance with all current local, state, and federal laws, rules, and regulations, including, without limitation, all building and electrical codes and any then-current amendments or revisions thereto and must meet or exceed all applicable industry standards including National Fire Protection Association (National Electric Code), Federal Communications Commission, Society of Cable Telecommunications Engineers standards, and ANS/TIA/EIA standards (TIA 568, 570-B, and 607).

4. **Restoration of Property to Prior Condition.** Consolidated agrees that it will return any property (including buildings and improvements) which has been altered or affected in any way by virtue of Consolidated's construction, installation, maintenance, repair, replacement, upgrade, modification, or removal of the building entrance facilities to substantially the same condition that existed prior to the work, ordinary wear and tear excepted.

5. **Indemnity.** Consolidated agrees to hold harmless, defend and indemnify Landlord against any suits, liabilities, claims, demands or damages, including but not limited to personal injuries and attorney's fees, brought by third parties ("Claims") arising from Consolidated's construction, installation, maintenance, repair, replacement, upgrade, modification, or removal of the building entrance facilities. Consolidated agrees to hold harmless, defend and indemnify Landlords against any Claims arising from Consolidated's entry onto the subject property in connection with any construction, installation, maintenance, repair, replacement, upgrade, modification, or removal of the building entrance facilities.

6. **Insurance.** Consolidated shall carry the insurance described on Exhibit B during the term of this Agreement. Except for the Workers' Compensation insurance, Consolidated will include Landlord, its property management company, and their respective partners, members, officers, successors, and assigns as "additional insured's," using ISO additional insured form CG 20 09 10 93, without modification.

7. **Landlords' Negligence.** The Parties agree that Landlord shall be liable for any damage to Consolidated's infrastructure resulting from Landlord's own negligence or the negligence of any agent of the Landlord.

8. **Limitation of Liability.** **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES INCURRED OR ALLEGED TO HAVE BEEN INCURRED AS A RESULT OF A BREACH OF THIS AGREEMENT.**

9. **Compensation.** Solely for purposes of obtaining interim access to provide services to tenants requesting such services at the subject property prior to resolution of the Pending Docket, at all times prior to the final resolution of the Pending Docket, Consolidated will place an amount equal to two percent (2%) of the Gross Receipts from each tenant at the subject property receiving telecommunication service from Consolidated into an escrow account selected by Consolidated, subject to the approval, not to be unreasonably withheld, of Landlord, on a quarterly basis. "Gross Receipts" means all amounts actually received by Consolidated and/or any of its affiliates, directly or indirectly, from a tenant at the subject property receiving telecommunication service and third parties on behalf of such tenant, but excluding all non-recurring charges, equipment charges and any Federal, State or Local fees or taxes. The parties agree that the proceeds of such escrow account will be distributed pursuant to the Commission's final order in the

Pending Docket (or, if either party appeals such final order, with the final order of any administrative, legislative or judicial body having appellate jurisdiction over the matter contested in the Pending Docket) and that the parties will comply with any such final order (or, if either party appeals such final order, with the final order of any administrative, legislative or judicial body having appellate jurisdiction over the Pending Docket) with regard to compensation during the term if this Agreement. The parties further agree that Consolidated will be required to place the disputed compensation amounts in escrow only when the disputed amounts reach \$500.

10. **Removal of Building Entrance Facilities.** Upon the termination of this Agreement, due to the expiration of the term of this Agreement or otherwise, Consolidated may remove, in whole or in part, any electronic equipment that is part of the building entrance facilities specifically excluding all underground conduit, fibers, and cables at the property, and all wires, fibers, cabling, and other equipment located within the walls of the buildings on the property and any connections located within the buildings on the property. Consolidated will pay for this removal unless the Agreement was terminated by Landlord without cause, in which case Landlord will bear the reasonable cost of such removal. After removing the electronic equipment which it is entitled to remove, Consolidated will, if necessary, promptly and fully repair and restore all portions of the property from which such electronic equipment has been removed. Title to the building entrance facilities (whether removable or non-removable) shall vest in Landlord sixty (60) days after termination of this Agreement. The parties agree that this provision applies solely to building entrance facilities installed to serve a specific tenant at the property which enter into and within a building at the property and not any equipment, facilities or other property of Consolidated installed in accordance with its statutory rights as affirmed in the Order Granting Plaintiff's Application for Temporary Injunction in Cause No. 2012-52231, in the District Court of Harris County Texas, which shall remain the property of Consolidated notwithstanding any provision in this Agreement or any termination of this Agreement.

11. **Construction of Terms.** The parties agree that neither party will seek to construe this Agreement or its terms as either party's final agreement regarding Consolidated's access to the subject property.

12. **No Waiver.** The parties agree that neither party's acceptance of any term in this Agreement shall waive that party's right to seek a ruling from any administrative body in the Pending Docket that any term proposed as part of a final license and access agreement is illegal under the Public Utility Regulatory Act or any substantive rule promulgated by the Public Utility Commission of Texas.

13. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

14. **Effectiveness.** This Agreement shall become effective following execution by all the Parties.

EXECUTED this _____ day of _____ 2013

**CONSOLIDATED COMMUNICATIONS
OF FORT BEND COMPANY**

By: _____
Printed Name: _____
Title: _____

BLUECAP, LTD.

By: _____
Printed Name: _____
Title: _____

CAPRICORN, LTD.

By: _____
Printed Name: _____
Title: _____

**FREEWAY PROPERTIES, LLC d/b/a KATY
RANCH CROSSING**

By: _____
Printed Name: _____
Title: _____

EXHIBIT A

GUITAR CENTER INSTALLATION PLANS

EXHIBIT B

INSURANCE

Consolidated will carry the following insurance in accordance with Section 6 of this Agreement for the term of this Agreement:

- (a) Workers' Compensation: Workers' Compensation Insurance with statutory limits, or if there are no statutory limits or Licensee is qualified to opt out of coverage, then limits of at least \$500,000.
- (b) Employers' Liability: With limits of at least \$1,000,000 for each accident.
- (c) Commercial General Liability: (1986 ISO Form or its replacement): Insurance must provide contractual liability coverage and a general aggregate limit on a per location or per property basis. The minimum limits must be \$2,000,000 general aggregate and \$1,000,000 per occurrence.
- (d) Automobile Liability: insurance for claims arising out of ownership, maintenance, or use of owned, non-owned and hired motor vehicles at, upon, or away from the Development with the following minimum limits:
 - (i) \$1,000,000 Each Accident Single Limit Bodily Injury and Property Damage combined
- (e) Umbrella: At least following form liability insurance, in excess of the Commercial General Liability, Employers' Liability, and Automobile Insurance above, with the following minimum limits:
 - (i) \$2,000,000 Each Occurrence
 - (ii) \$2,000,000 Aggregate Where Applicable