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Before the

FEDERAL COMMUNICATIONS COMMISSION

MAR 21 2001

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Docket No. 94-129 /

Xspedius Corp.'s
Acquisition of Customer Base
of Actel Integrated Communications, Inc.

PETITION FOR WAIVER OF COMMISSION RULES

1. Xspedius Corp. ("XC") a wholly owned subsidiary of Xspedius Holding Corp., requests that the Federal Communications Commission (the "Commission") grant a waiver of its rules and orders governing the authorization and verification necessary to change a consumer's preferred carrier. As demonstrated herein, good cause exists for the granting of the waiver requested: the purposes for the general rule for which the waiver is being sought will be fulfilled by the measures proposed by XC, and the granting of the waiver requested will be in the public interest in general, and specifically in the interest of the customers whose accounts are affected by the change in carrier. See *Northeastern Cellular Telephone Company v. F.C.C.*, 897 F.2d 1164 (D.C. 1990); and *WAIT Radio v. F.C.C.*, 418 F.2d 1153 (D.C. 1969).

2. Within the next several weeks, XC intends to purchase certain assets from Actel Integrated Communications, Inc. ("Actel"), pursuant to a written Asset Purchase Agreement attached hereto as Exhibit "A".

The assets purchased by XC include, but are not limited to: Actel's customer accounts; Actel's accounts receivables; agreements, contracts, letters of agency (LOAs), or other authorizations of Actel's customers; deposits of Actel's customers; and certain

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other non-customer assets of Actel. XC is in good standing in each jurisdiction required to provide interexchange services to the former Actel customers. The special circumstances warranting a deviation or waiver from the Commission's rules and orders include the need to provide seamless transitions of long distance service for the affected Actel customers.

3. XC and Actel intend to engage in two separate customer notification processes. Both customer notification letters are attached to this filing (see Exhibit B). One letter will be sent prior to consummation of the transaction and the other will be sent post-transaction. The first letter will inform all Actel customers of the proposed assumption of the customers' service by XC, assuring the customers that they will either receive the same or better rates and services than those which they were receiving from Actel, and advising the customers that they can choose a different preferred carrier should they desire. The second letter will confirm consummation and reiterate the foregoing information, assurances and advice.

Further, XC will amend its domestic tariff to include any Actel tariffed rates for any customers for which XC will provide service. Additionally, XC will take responsibility to investigate, respond, and attempt to cure any complaints of former Actel customers after the sale.

4. The number of lines involved in the transaction is 20,177.
5. The exchanges involved in the transaction are Bell South in AL, FL, GA, LA, MS and TN.
6. The Commission is charged with administration in the "public interest." XC

submits that allowing it to continue service to the former Actel customers would be a seamless transition, in that there would be no P.I.C. charges incurred by any of the former Actel customers and no interruption of service. Thus, the granting of the requested waiver by the commission will be in the public interest in general, and specifically in the interest of the Actel customers whose accounts are affected by the proposed and pending sale.

WHEREFORE, for each of the above reasons and subject to the foregoing conditions, XC requests that, effective immediately, the Commission grant a waiver of its rules and orders to allow XC to be designated the preferred long distance carrier for current customers of Actel without obtaining the customers' authorization and verification.

This 21st day of March, 2001.

Respectfully submitted,



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Attorneys for Xspedius Corp. and Actel
Integrated Communications, Inc.

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement") dated as of March {232}, 2001, by and among (i) Xspedius Holding Corp., a Delaware corporation (the "Parent"), (ii) Xspedius Corp., a Delaware corporation and a wholly-owned subsidiary of the Parent (the "Purchaser"), (iii) Actel Integrated Communications, Inc., a Delaware corporation (the "Company"), and (iv) DB Capital Investors, L.P. and Sandler Capital Management, constituting the direct or indirect controlling stockholders of the Company (the "Stockholders").

A. The Company is engaged in the provision of telecommunications services in the States of Alabama, Georgia, Louisiana, Mississippi, Florida and Texas pursuant to operating authorities granted by the public service or public utilities commissions of such states (the "Business").

B. The Company desires to sell, assign and transfer, and the Purchaser desires to purchase and acquire, substantially all of the assets of the Company, subject to the assumption by the Purchaser of certain specified liabilities and obligations relating to the Business, all on the terms and conditions set forth herein.

C. As a condition to the Parent's execution of this Agreement, the Stockholders have entered into a Preferred Stock and Warrant Purchase Agreement with Parent (the "Stock Purchase Agreement") whereby the Stockholders have agreed to purchase shares of the Parent's Series B Preferred Stock, \$.01 par value (the "Preferred Stock"), and warrants to purchase shares of the Parent's Common Stock, \$.01 par value (the "Common Stock").

D. Concurrently with the execution of this Agreement, the Purchaser and the Company have entered into a Management Agreement (the "Management Agreement") providing for the day-to-day management of the Business by the Purchaser prior to the closing hereunder.

NOW THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants contained herein, the parties agree as follows:

Article I

Purchase and Sale of Assets

Section 1.1 Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, at the Closing (as defined in Section 2.1 below), the Purchaser shall purchase from the Company, and the Company shall sell, assign and transfer to the Purchaser, all right, title and interest of the Company or any Affiliate (as defined in Section 10.1 below) of the Company in all assets,

properties or rights of whatever nature used in or forming a part of the Business (collectively, the "Transferred Assets"), including without limitation the following (but excluding any of the following that constitute Excluded Assets as defined in Section 1.2 below):

(i) all real property, improvements, fixtures, leaseholds and other interests in land used in or forming a part of the Business, including all right, title and interest of the Company in collocation facilities and equipment installed therein;

(ii) all machinery, equipment, vehicles, furnishings, supplies, inventories and all other items of tangible personal property used in or forming a part of the Business;

(iii) all accounts receivable relating to products sold or services rendered in connection with the Business, whether or not invoices relating thereto have been issued, and all accounts receivable relating to carrier access charges and reciprocal compensation, whether or not invoices relating thereto have been issued;

(iv) all Assumed Contracts (as defined in Section 1.4 below);

(v) all prepaid expenses, advances and deposits relating to the Business;

(vi) all causes of action, demands, judgments, claims (including insurance claims), indemnity rights or other rights relating to the Transferred Assets or the Business or arising under express or implied warranties from suppliers with respect to the Transferred Assets;

(vii) all Intellectual Property (as defined in Section 3.12 below) used in or forming a part of the Business and all income, royalties, damages and payments due at Closing or thereafter with respect to any of the foregoing and all other rights with respect thereto (including without limitation rights to damages and payments for past, present or future infringements or misappropriations thereof);

(viii) all governmental permits, consents and authorizations relating to the Business and any pending applications therefor, to the extent the same are transferable, including without limitation the Licenses (as defined in Section 3.7 below) listed on Schedule 3.7 and the Company's CIC Code and associated ACNA;

(ix) all right, title and interest of the Company or any Affiliate of the Company in and to the Business as a going concern, including its goodwill;

(x) originals or copies of all books and records relating to the Business, including but not limited to employment records, production records, accounting records, property records, mailing lists and customer and vendor lists;

(xi) all rights to the "Actel" name and all other names and marks associated with the Business;

(xii) the Company's 800 customer service number and "Resporg" contract with its underlying 800 provider;

(xiii) all collection accounts and any cash balance therein on the Closing Date;

(xiv) all of the outstanding capital stock of the Company's wholly-owned subsidiary Actel Properties, Inc. ("Actel Properties") and all of the capital stock or other ownership interest held directly or indirectly by the Company in all other Subsidiaries (as defined in Section 3.1 below) of the Company; and

(xv) all other assets and properties of whatever nature reflected on the Closing Date Balance Sheet (as defined in Section 2.3).

Section 1.2 Excluded Assets. Notwithstanding the provisions of Section 1.1, the Purchaser shall not purchase any of the following assets (collectively, the "Excluded Assets"), all of which shall be retained by the Company following the Closing:

(i) all cash and cash-equivalents and all bank accounts (other than collection accounts and any cash balance therein on the Closing Date);

(ii) all rights under this Agreement, including the right to receive and retain the consideration for the Transferred Assets;

(iii) the Company's corporate franchise and records;

(iv) all accounts receivable of the Company that are past due by 90 days or more as of the Closing Date or that relate to the Company's Texas customers;

(v) all Contracts (as defined in Section 3.13 below) that are not Assumed Contracts;

(vi) all claims for refunds of Taxes (as defined in Section 3.8 below) of the Company or its Subsidiaries related to periods prior to the Closing;

(vii) all rights under insurance policies that relate to the Excluded Liabilities and all prepaid premiums relating thereto; and

(viii) the assets listed on Schedule 1.2 hereto.

Section 1.3 Purchase Price. In consideration of the transfer, conveyance and assignment of the Transferred Assets, at the Closing, the Purchaser shall (i) deliver to the Company a number of newly-issued shares of Preferred Stock equal to (x) 8,256,272 shares, less (y) the number of shares of Preferred Stock equal to the Estimated Adjustment Amount (as defined in Section 2.3 below) divided

by \$4.81, and (ii) ~~deliver to the Company warrants in the form of Exhibit A hereto to purchase a total of 433,333 shares of Common Stock at an exercise price of \$4.81 per share (the "Warrants");~~ and (iii) pay to the Company cash in an amount equal to the Liabilities Settlement Amount (as defined in Section 2.3 below) by wire transfer of immediately available funds to an account specified by the Company at least two Business Days (as defined in Section 10.1 below) prior to Closing, and (iiiv) assume the Assumed Liabilities (as defined in Section 1.4 below) (collectively, the "Purchase Price"). The Preferred Stock shall have the terms set forth in the Parent's Amended and Restated Certificate of Incorporation set forth as Exhibit AB hereto, and all anti-dilution adjustments that would apply to the Preferred Stock in accordance with the Amended and Restated Certificate of Incorporation based on events occurring subsequent to the date hereof and prior to the Closing Date shall be reflected in the shares of Preferred Stock issued at Closing pursuant to this Section 1.3. The Preferred Stock portion of the Purchase Price shall be subject to adjustment following the Closing as set forth in Section 2.3 below.

Section 1.4 Assumed Liabilities. In connection with the purchase and sale of the Transferred Assets pursuant to Section 1.1, the Purchaser shall assume the following liabilities and obligations of the Company (collectively, the "Assumed Liabilities"):

(i) all trade payables, accrued expenses and other current liabilities reflected on the Closing Date Balance Sheet, but only to the extent so reflected;

(ii) all obligations of the Company under (A) all customer Contracts for communications services entered into in the ordinary course of the Business other than the Company's customer Contracts in the State of Texas, (B) all leases of real property set forth on Schedule 3.10 other than the leases relating to the Company's Biloxi, Mississippi, Atlanta, Georgia, Austin, Texas and Lafayette, Louisiana facilities listed on Schedule 3.10, (C) the Contracts set forth on Schedule 3.13 and Schedule 1.4 hereto, and (D) all Contracts entered into by the Company at the direction or with the express consent of the Purchaser subsequent to the date hereof (collectively, the "Assumed Contracts"), excluding any liability for breach or non-performance of any of the foregoing described in clauses (A), (B) and (C) existing on or prior to the Closing Date that is not expressly disclosed by the Company and assumed by the Purchaser in writing;

(iii) all liabilities and obligations arising from the operation of the Business following the Closing Date, including liabilities for Taxes for periods or portions thereof subsequent to the Closing Date;

(iv) all premium obligations associated with the Company's directors' and officers' liability insurance to the extent required by Section 6.9 below; and

(v) the other liabilities and obligations set forth on Schedule 1.4 hereto.

Section 1.5 Excluded Liabilities. The Purchaser does not assume, and shall not be responsible for, any liabilities or obligations of the Company or any affiliate of the Company other

than the Assumed Liabilities (collectively, the "Excluded Liabilities"), including without limitation the following:

(i) expenses of the Company payable to third parties arising in connection with the Company's execution, delivery and performance of this Agreement or any of the transactions contemplated hereby (including, without limitation, legal, accounting, brokerage, investment banking or finder's fees);

(ii) liabilities or obligations for Taxes that relate to the Business for periods or portions thereof ending on or prior to the Closing Date, including sales, transfer or similar Taxes associated with the purchase and sale of the Transferred Assets, except to the extent reflected as a current liability on the Closing Date Balance Sheet;

(iii) except as expressly provided in Section 6.7 or to the extent reflected as a current liability on the Closing Date Balance Sheet, liabilities and obligations of the Company in favor of or relating to any of Company's employees, former employees, retirees and former job applicants, whether or not arising from the termination of any employee in connection with the transactions contemplated hereby, including without limitation any obligations or liabilities arising from (A) the severance of any employee, (B) any pension, profit sharing, retirement, bonus, stock option, health, or other employee benefit plan or compensation arrangement, including without limitation the Company's benefit plans and any supplemental income paid to retired employees, (C) any group insurance arrangement, (D) any payroll taxes, (E) any accrued vacation, sick pay, unemployment compensation, salary withholding obligations and other employee costs, (F) any employment contracts, whether oral or written, express or implied, (G) any commission payments, (H) any liabilities, including withdrawal liability, associated with any "multi-employer plan" within the meaning of Section 3(37) of the Employee Retirement Security Act of 1974, as amended ("ERISA"), (I) any failure to comply with the overtime pay requirements of the Fair Labor Standards Act, (J) the Worker Adjustment and Retraining Notification Act other than liabilities or obligations arising under the WARN Act with respect to Transferred Employees (as defined in Section 6.7 below) subsequent to the Closing Date, or (K) amounts owed under applicable workers compensation laws based on events or circumstances occurring on or prior to the Closing Date, whether or not the claim is filed before the Closing Date, including but not limited to wage replacement costs, medical costs pursuant to bills received after the Closing Date for medical services and hospitalization and workers disability benefits;

(iv) liabilities arising out of any litigation, arbitration or similar proceeding to which the Company is a party or that otherwise relates to the Business;

(v) any obligation or liability of the Company relating to environmental pollution, contamination or other impairment of any nature based on facts or circumstances in existence on the Closing Date, whether known or unknown to the Company, including without limitation any obligation or liability under environmental laws resulting from (i) the operation

of the Business or the condition of its real property prior to the Closing Date or (ii) any and all operations, assets and activities of the Company, its predecessors or any other person unrelated to Purchaser on any real property now or previously owned, leased or used by the Company;

(vi) liabilities and obligations of the Company to any stockholder of the Company or any Affiliate of any such stockholder;

(vii) liabilities resulting from the Company's failure to comply with "bulk transfer" or similar laws in connection with the transactions contemplated hereby; ~~and~~

(viii) all costs and expenses of any kind or nature incurred by the Company in connection with the liquidation of the Company or payable by the Company thereafter, including without limitation general and administrative costs and expenses or other amounts payable to third parties; and

(ix) all premium obligations associated with the Company's directors' and officers' liability insurance in excess of amounts required by Section 6.9 to be paid by the Purchaser.:

Section 1.6 Non-Assignable Assets. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to transfer, sublease or assign any contract, License, lease, commitment, sales or purchase order or any other agreement if any such attempted transfer, sublease or assignment without the consent of any third party would constitute a breach thereof or would in any way materially and adversely affect the rights of the Purchaser thereunder following the Closing. The Company shall use all commercially reasonable efforts to obtain the consent of any third party or parties to such transfer, sublease or assignment in all cases in which such consent is required. If any such consent is not obtained, or if an attempted assignment would be ineffective or would materially and adversely affect the rights of the Purchaser thereunder, the Company shall perform such agreement for the account of the Purchaser to the extent permitted under the terms thereof or otherwise cooperate with the Purchaser in any reasonable arrangement necessary or desirable to provide for the Purchaser or its designees the benefits of any such agreement for a reasonable period of time following the Closing, including without limitation enforcement for the benefit of the Purchaser of any and all rights of the Company against the other party thereto arising out of the breach, termination or cancellation of such agreement by such other party or otherwise. Nothing herein shall be deemed to waive or modify the provisions of Article VII or Article IX, and nothing herein shall require the Company to maintain its corporate existence beyond the period required to effect a complete liquidation in accordance with Section 6.8.

Section 1.6 Allocation of Purchase Price. The Purchaser shall allocate the Purchase Price among the Transferred Assets for tax purposes on the basis of their respective fair market values. The Company and the Stockholders agree to adhere to such allocation for tax reporting purposes and, if requested by the Purchaser, to execute and deliver an IRS Form 8594 reflecting such allocation.

Article II

Closing; Post-Closing Adjustment

Section 2.1 Closing. The closing of the purchase and sale of the Transferred Assets pursuant to Section 1.1 (the "Closing") shall be held at the New Orleans, Louisiana offices of Corroero Fishman Haygood Phelps Walmsley & Casteix, LLP at 10:00 a.m. (local time) on the third business day following the satisfaction or waiver of the conditions (other than those conditions to be satisfied at Closing) set forth in Article VII (the "Closing Date"), or at such other place and time as the parties may mutually agree.

Section 2.2 Deliveries at Closing. At the Closing, the parties shall make the deliveries described below, provided that the obligation of each to do so shall depend upon the performance by the other parties of their obligations hereunder.

(a) The Company shall execute and deliver, or cause to be executed and delivered, to the Purchaser the following documents and certificates (which shall be in form and substance reasonably satisfactory to the Purchaser):

(i) one or more Bills of Sale in the form of Exhibit BC hereto and such other instruments of transfer and conveyance as shall be effective to vest in the Purchaser good and marketable title to the tangible personal property included in the Transferred Assets;

(ii) one or more General Assignments in the form of Exhibit CD hereto and assignments of all patents and trademarks included in the Transferred Assets in the forms attached to such General Assignment;

(iii) one or more Quitclaim Deeds (or local equivalent) in the form of Exhibit DE hereto with respect to each parcel of owned real property included in the Transferred Assets or owned by the Company's Subsidiaries, together with a commitment for title insurance from a reputable title insurance company in form and substance (including coverage amount) reasonably satisfactory to the Purchaser;

(iv) one or more Leasehold Assignments in the form of Exhibit EF hereto with respect to each of the leasehold interests included in the Transferred Assets;
~~together with (to the extent required by the Purchaser's lenders) a landlord's consent and estoppel letter with respect to each such lease in form and substance reasonably satisfactory to the Purchaser;~~

(v) the certificate required by Section 7.2(a);

(vi) the opinion of counsel required by Section 7.2(c);

(vii) UCC-3 lien termination statements and/or other instruments necessary to release and discharge all liens, pledges, security interests, mortgages, charges and similar encumbrances on the Transferred Assets other than Permitted Liens (as defined in Section 3.10 below); and

(viii) such other documents as may be reasonably necessary to consummate the transactions contemplated hereby.

(b) The Purchaser shall deliver to the Company the following:

(i) Certificates representing the shares of Preferred Stock and ~~Warrants~~ included in the Purchase Price duly registered in the name of the Company;

(ii) a wire transfer of immediately available funds in the amount of the cash portion of the Purchase Price;

(iii) an Assumption Agreement in the form of Exhibit FG hereto;

(iv) the officers' certificate required by Section 7.3(a);

(v) the opinion of counsel required by Section 7.3(c); and

(vi) such other documents as may be reasonably necessary to consummate the transactions contemplated hereby.

Section 2.3 Purchase Price Adjustments. The number of shares of Preferred Stock issued to the Company as consideration for the purchase of the Transferred Assets pursuant to Section 1.3 shall be subject to adjustment following the Closing as set forth in this Section 2.3:

(a) Not less than three Business Days (but no more than five Business Days) prior to the Closing, the Company shall prepare and deliver to the Purchaser a certificate setting forth a computation in reasonable detail of the estimated Adjustment Amount as of the Closing Date (the "Estimated Adjustment Amount"), together with sufficient supporting information to enable the Purchaser to verify the Estimated Adjustment Amount. For purposes of this Section 2.3, the "Adjustment Amount" shall be the sum of the following: (i) the amount, if any, by which the Company's current liabilities exceed its current assets as of the Closing Date, excluding for such purpose all Excluded Assets and Excluded Liabilities (the "Working Capital Shortfall"), (ii) the amount of Excluded Liabilities in excess of cash retained by the Company or such greater or lesser amount as the Company shall certify to the Purchaser that is required to discharge all Excluded Liabilities in full, including any reserve for unknown or contingent liabilities established by the Company's board of directors in good faith (the "Liabilities Settlement Amount"), and (iii) an amount

(the "Additional Discharge Amount") equal to the excess of (x) the amount required as of the Closing Date to discharge in full the Company's operating leases for its Class 5 switches located in Birmingham and Mobile, Alabama or otherwise to enable the Purchaser to obtain title to such equipment as of the Closing Date free and clear of all liens, pledges, security interests, mortgages, charges and similar encumbrances (other than Permitted Liens) over (y) the amount to be realized by the Purchaser upon disposition of its Class 5 switch in Birmingham and its DRM in Mobile within 30 days following the Closing Date, net of all costs incurred in connection with such disposition. For purposes of this Section 2.3, (A) any increase in the Purchaser's indebtedness as a result of the conversion of such operating leases to capital leases or to a debt facility shall be deemed to be amounts required to discharge such operating leases, and (B) any reduction in the Purchaser's indebtedness as a result of the surrender of the Purchaser's Birmingham switch and/or Mobile DRM for credit pursuant to the Purchaser's credit facility with Lucent Technologies, Inc. ("Lucent") shall be deemed to be amounts realized by the Purchaser upon the disposition of such equipment. The Company (with the cooperation of the Purchaser) shall exercise all commercially reasonable efforts prior to the Closing to obtain clear title to its Birmingham and Mobile switches and to enter into arrangements for the disposition of the Purchaser's Birmingham switch and Mobile DRM, including the possible surrender of such equipment to Lucent, which arrangements shall be conditioned upon the Closing of the transactions contemplated hereby and shall otherwise be reasonably acceptable to the Purchaser.

(b) As soon as practicable (but in no event later than 30 days) following the Closing Date, the Company shall prepare and deliver to the Purchaser a balance sheet of the Company as of the Closing Date (the "Closing Date Balance Sheet"). The Closing Date Balance Sheet shall be prepared in accordance with generally accepted accounting principles applied on a basis consistent with the accounting principles used in preparing the Financial Statements described in Section 3.4, except that the Closing Date Balance Sheet shall present the Excluded Assets and Excluded Liabilities as separate line items to clearly differentiate such items from the Transferred Assets and the Assumed Liabilities. To the extent that it is not reasonably practicable to cause bills relating to utility charges or real property or other *ad valorem* taxes or business occupancy taxes associated with the Business to be rendered by the appropriate utilities or governmental authorities as of the Closing Date, such utility charges and taxes shall be apportioned as of the Closing Date and reflected on the Closing Date Balance Sheet. The Purchaser shall have a period of 30 days following the delivery of the Closing Date Balance Sheet to raise any objections thereto. If no objection is made within such 30-day period, the Closing Date Balance Sheet shall be final and binding on all parties. If an objection is made that cannot be resolved by the parties within ten business days, a mutually acceptable accounting firm shall be engaged to resolve such dispute (the fees and expenses of which shall be borne by the Purchaser and the Company in the same proportion that the successfully disputed amount bears to the entire disputed amount), and the determination of such firm shall be final and binding on all parties.

(c) As soon as practicable (but in no event later than 30 days) following the Closing Date, the Purchaser shall prepare and deliver to the Company a certificate setting forth the calculation of the actual Additional Discharge Amount (the "Parent Certificate"), together with sufficient supporting information to enable the Company to verify such actual Additional Discharge

Amount. The Company shall have a period of 30 days following the delivery of the Parent Certificate to raise any objections thereto. If no objection is made within such 30-day period, the Parent Certificate shall be final and binding on all parties. If an objection is made that cannot be resolved by the parties within ten business days, a mutually acceptable accounting firm shall be engaged to resolve such dispute (the fees and expenses of which shall be borne by the Company and the Purchaser in the same proportion that the successfully disputed amount bears to the entire disputed amount), and the determination of such firm shall be final and binding on all parties.

(d) Upon the final determination of the Working Capital Shortfall and the Additional Discharge Amount, the parties shall calculate the final Adjustment Amount (it being understood that no adjustment shall be made to the Liabilities Settlement Amount). If the final Adjustment Amount exceeds the Estimated Adjustment Amount determined pursuant to Section 2.3(a), the number of shares of Preferred Stock issued pursuant to Section 1.3 shall be decreased by a number of shares determined by dividing the amount of such excess by \$4.81. Notwithstanding the foregoing, no adjustment shall be made pursuant to this Section 2.3 with respect to the Working Capital Deficit if the amount of such adjustment would be less than \$25,000. The Company or, following the liquidation of the Company pursuant to Section 6.8, the Stockholders (severally and not jointly and in proportion to the respective amounts of Preferred Stock received by them pursuant to such liquidation) shall satisfy any adjustment pursuant to this Section 2.3 by an immediate surrender of shares of Preferred Stock previously issued pursuant to Section 1.3 for cancellation by the Parent. The Company and the Stockholders hereby irrevocably appoint the Parent as their agent and attorney-in-fact for purposes of effecting such surrender and cancellation, and the Preferred Stock issued pursuant to Section 1.3 shall bear an appropriate restrictive legend to such effect.

Section 2.4 Further Assurances. From time to time after the Closing, the Company and the Stockholders will execute and deliver to the Purchaser such instruments of sale, transfer, conveyance, assignment and delivery, and such consents, assurances, powers of attorney and other instruments, as may be reasonably requested by the Purchaser or its counsel in order to vest in the Purchaser all right, title and interest of the Company and its Affiliates in and to the Transferred Assets and otherwise in order to carry out the purpose and intent of this Agreement. Effective upon the Closing, the Company hereby irrevocably constitutes and appoints the Purchaser as its true and lawful attorney-in-fact, with full power of substitution, in the name of the Company and for the benefit of the Purchaser, to endorse (without recourse) all checks, notes and other instruments relating to the Transferred Assets. The Company agrees that the foregoing powers are coupled with an interest and shall be irrevocable by the Company. The Company further agrees that the Purchaser shall retain for its own account any amounts collected pursuant to the foregoing powers, and the Company agrees to promptly transfer and deliver to the Purchaser any cash or other property received by it directly or indirectly at any time after the Closing in respect of any Transferred Assets.

Article III

Representations and Warranties of the Company

The Company represents and warrants to the Parent and the Purchaser as follows:

Section 3.1 Organization and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the requisite corporate power and authority to carry on its business as now being conducted. The Company and each Subsidiary of the Company is duly qualified to do business, and is in good standing, in each jurisdiction where the character of its properties owned or leased or the nature of the Business makes such qualification necessary, except where the failure to be so qualified would not have a Material Adverse Effect. Copies of the certificate of incorporation, by-laws and other organizational documents of the Company and each Subsidiary of the Company (and all amendments thereto) have previously been provided to the Purchaser, and such copies are accurate and complete as of the date hereof. Except as set forth on Schedule 3.1, the Company has no Subsidiaries (defined as (x) any corporation or other legal entity in which the Company and/or one or more Subsidiaries directly or indirectly own a majority or more of the outstanding capital stock or other ownership interests or otherwise have the power to elect a majority of the board of directors or similar managerial body of such entity or (y) any partnership or joint venture of which the Company or any Subsidiary is a general partner or joint venturer), and no portion of the Business is presently conducted by any legal entity other than the Company. Actel Properties and each other Subsidiary of the Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite corporate power and authority to carry on its business as currently conducted. Except as set forth in Schedule 3.1, all of the outstanding capital stock or other securities of each Subsidiary is held by the Company, free and clear of all liens, charges and encumbrances other than Permitted Liens. Actel Properties conducts no business operations, and has no material assets or liabilities, other than holding title to the real property comprising the Company's headquarters in Mobile, Alabama and activities incidental thereto. Except where the context requires otherwise, all references to the "Company" in this Article III shall be deemed to refer to the Company and each of its Subsidiaries.

Section 3.2 Corporate Authorization. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company's corporate powers and have been duly authorized by all necessary action by the Company's board of directors and stockholders. Assuming due execution and delivery by all parties hereto (other than the Company), this Agreement constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and to general equitable principles, whether invoked in a proceeding in equity or at law.

Section 3.3 Consents and Approvals. Except as set forth on Schedule 3.3 and except for notice filings that, if not made, would not individually or in the aggregate have a Material Adverse Effect, the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby require no action by or in respect of, or filing with or notice to, any governmental or regulatory body, agency or official. Except as set forth on Schedule 3.3, neither the execution, delivery and performance by the Company of this Agreement, nor

the consummation of the transactions contemplated hereby, will (i) violate, conflict with, or result in a breach of any provision of the organizational documents of the Company or of any law, statute, rule, regulation, license or other operating authority applicable to the Company, or (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract which the Company is a party or by which the Company or any of the Transferred Assets may be bound, except for such of the foregoing as would not have a Material Adverse Effect.

Section 3.4 Financial Statements. The Company has previously furnished to the Purchaser copies of its audited consolidated balance sheet and consolidated statements of income, stockholders' equity and cash flows as of and for the fiscal year ended December 31, 1999, including all notes thereto (the "Audited Financial Statements"), and its unaudited consolidated balance sheet and consolidated statements of income, stockholders' equity and cash flows as of and for the fiscal year ended December 31, 2000, including all notes thereto (the "Unaudited Financial Statements" and, together with the Audited Financial Statements, the "Financial Statements"). The Financial Statements (including all notes thereto) (i) fairly present in all material respects the consolidated financial condition of the Company as of the dates thereof and the consolidated results of operations of the Company for the periods covered thereby; and (ii) have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods involved ("GAAP"), subject in the case of the Unaudited Financial Statements only to normal year-end audit adjustments and the absence of full footnote disclosures.

Section 3.5 Absence of Undisclosed Liabilities. Except as set forth on the Company's balance sheet included in the Unaudited Financial Statements (the "Latest Balance Sheet"), the Company has no material liabilities or obligations of any nature that would be required to be set forth on a balance sheet prepared in accordance with GAAP other than liabilities or obligations incurred in the ordinary course of the Business subsequent to the date of the Latest Balance Sheet. Except as set forth on Schedule 3.5, since the date of the Latest Balance Sheet, there have been no events or changes affecting the Business that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 3.6 Litigation. Except as set forth on Schedule 3.6, there are no claims, actions, suits, investigations, or judicial or administrative complaints or proceedings pending (or to the Company's knowledge threatened) against the Company (including any of the foregoing with respect to allegations of "slamming" or "cramming") before any court, arbitrator or administrative, governmental or regulatory authority or body, nor is the Company subject to any order, judgment, writ, injunction or decree, except in either case for matters which, if adversely determined, would not individually or in the aggregate result in monetary exposure of \$250,000 or more or otherwise have a Material Adverse Effect.

Section 3.7 Compliance with Law. Except as set forth on Schedule 3.7, the Company is in compliance with all applicable statutes, laws, ordinances, regulations, rules or orders of any foreign, federal, state or local government or any other governmental department or agency (including without limitation all legal requirements relating to human health and safety and the protection of the

environment), and all judgments, decrees or orders of any court of competent jurisdiction, applicable to the Business, except where any such violation or failure to comply would not, individually or in the aggregate, have a Material Adverse Effect. Schedule 3.7 sets forth all permits, approvals, licenses, consents, waivers, franchises and other operating authorities (collectively, "Licenses") required by the Company to conduct the Business, other than those Licenses that, if not obtained, would not individually or in the aggregate have a Material Adverse Effect (collectively, the "Material Licenses").

Except as set forth on Schedule 3.7, the Company has obtained, and is in compliance in all material respects with, all Material Licenses, and no event has occurred with respect to any Material License that would permit the revocation, termination, suspension or nonrenewal thereof or could result in an impairment of the Company's rights thereunder. Without limitation of the foregoing: (a) except as set forth on Schedule 3.7, the Company is not required to obtain any Material Licenses in connection with the operation of the Business or the ownership of its properties pursuant to (x) the Communications Act of 1934, as amended, (y) any similar state laws, or (z) the rules, regulations and policies of the Federal Communications Commission, any state or local public utility commission or any similar state or local regulatory body (collectively, "Communications Laws"); (b) except as set forth on Schedule 3.7, the Company's local exchange, long distance and other communications services have been offered, and its physical facilities, systems and equipment have been operated, in compliance in all material respects with all applicable Communications Laws, except where the failure to be in compliance would not individually or in the aggregate have a Material Adverse Effect; (c) except as set forth on Schedule 3.7, the Company has filed in a timely manner all reports, applications and other information required to be filed under applicable Communications Laws, all of which are accurate and complete in all material respects, except where to failure to make such filings on a timely basis would not have a Material Adverse Effect; and (d) the Company has received no notice or other communication from any governmental authority indicating that its operations are not in compliance in any material respect with any applicable Communications Laws.

Section 3.8 Employee Benefit Plans. Each employee benefit plan, agreement or arrangement, within the meaning of Section 3(3) of ERISA, currently maintained or contributed to by the Company or any affiliate of the Company for the benefit of any employee of the Business (the "Plans"), is listed on Schedule 3.8 attached hereto. Except as set forth on Schedule 3.8, (i) each such Plan that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA has received a favorable determination letter or opinion letter from the Internal Revenue Service (the "IRS"); (ii) no such Plan is subject to the minimum funding requirements of Section 412 of the Code or Section 302 of ERISA or is otherwise subject to Title IV of ERISA; (iii) there has been no non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975(c) of the Code involving the assets of such Plan; (iv) all required employer contributions to such Plan have been made (or, in the case of contribution not yet due, have been accrued on the Company's financial statements and records); (v) the Company has delivered to the Purchaser with respect to the Company's 401(k) plan a true and correct copy of (a) the most recent annual report (Form 5500) filed with the IRS and (b) each plan, trust agreement, group annuity contract and insurance contract, if any, relating to such Plan; and (vi) each such Plan is being administered in compliance with the applicable provisions of ERISA and the Internal Revenue Code of 1986, as amended (the "Code") and the terms of such Plan, except where any such failure to comply would not have a Material Adverse Effect. Neither the Company nor any Affiliate of the Company has any actual or potential

withdrawal liability with respect to any "multiemployer pension plan" as defined in Section 3(37) of ERISA, or has any obligation to provide any welfare benefits to retired or former employees other than continuation of insurance coverage required by applicable law.

Section 3.9 Taxes. Each of the Company and its affiliates has timely filed or will timely file, or has been timely included in or will be timely included in, all federal and material state, local, territorial, possessions and foreign returns, declarations and reports, information returns and statements (collectively, "Returns") required to be filed on or before the date hereof in respect of any Taxes (as defined below) for each period ending on or before the Closing Date, which Returns are true, complete and correct in all material respects. All Taxes shown as due on such Returns have been or will be timely paid in full. No currently pending issues have been raised by the IRS or any other taxing authority in connection with any of such Returns, and no waivers of statutes of limitation have been given or requested with respect to the Company or its affiliates. Except as set forth on Schedule 3.9, no Returns filed by, or with respect to, the Company and its affiliates during the past seven years have been examined, nor has any notification of any intention to examine been made, by the IRS or by the taxing authority of any state, local entity, territory, possession or foreign entity. Schedule 3.9 sets forth a list of all jurisdictions in which the Company presently files Tax Returns, and no claim has been made by any Tax authority that the Company is or may be subject to taxation in any other jurisdiction. For purposes of this Agreement, the term "Taxes" shall include any tax based upon, or measured by, income or gross receipts, and any sales, use, *ad valorem*, transfer, franchise, withholding, payroll, employment, excise, occupation, premium, property or other taxes (including any interest or any penalties or additional amounts imposed by any tax authority).

Section 3.10 Real Property.

(a) Schedule 3.10 sets forth a complete and correct list of all real properties or premises that are owned or leased in whole or in part by the Company. The properties listed on Schedule 3.10 constitute all the real properties utilized in connection with the Business. As to each owned property, Schedule 3.10 sets forth (i) the location and legal description of such property, and (ii) a summary description of all material improvements located thereon. Except as set forth on Schedule 3.10, the Company has good and marketable title to each owned property and all improvements thereon, free and clear of all liens, pledges, security interests, mortgages, charges and similar encumbrances other than the following (collectively, "Permitted Liens"): (x) liens for Taxes, assessments and other governmental charges not yet due and payable or contested in good faith, (y) landlords', mechanics' and similar liens arising by operation of law securing the payment of sums that are not past due, and (z) other minor imperfections in title that do not materially affect the value or utility of the assets subject thereto. As to each leased property, Schedule 3.10 sets forth (i) location, (ii) lease term, (iii) monthly rental (both base and additional rent), and (iv) renewal option, if any. The Company has a valid leasehold interest in each leased property, free and clear of all liens, pledges, security interests, mortgages, charges and similar encumbrances other than Permitted Liens. Each such lease is legal, valid and binding in all material respects, ~~as between the~~ on Company and, to the Company's knowledge, the other party or parties thereto, and the Company is a tenant or possessor in good standing thereunder, free of any material default or breach by the Company and quietly enjoys the premises provided for therein.

(b) Except as set forth on Schedule 3.10 (i) the Company has obtained all legal or governmental approvals required to be obtained by the Company with respect to each of the properties and premises used or occupied by it, other than any such approvals the absence of which, individually or in the aggregate, would not have a Material Adverse Effect; (ii) the Company has good title, free and clear of all liens, pledges, security interests, mortgages, charges and encumbrances other than Permitted Liens, to each improvement, fixture or material item of equipment purported to be owned by it that is located in or on any of the properties leased or occupied by it and used in connection with the Business; (iii) each of such premises and properties is zoned for the purposes for which such premises or properties are currently being used except for such violations as would not have a Material Adverse Effect; (iv) no material portion of such premises or properties has been condemned or otherwise taken by any public authority, and to the Company's knowledge no such condemnation or taking is threatened or contemplated by any public authority; and (v) each of such properties and premises is in compliance in all material respects with all applicable environmental laws.

Section 3.11 Personal Property. Schedule 3.11 sets forth a listing of all tangible assets with a carrying value in excess of \$1,000 (other than real property) included in the Transferred Assets. Except as set forth on Schedule 3.11, the Company has good title to, or a legally enforceable right to use, all such assets, free and clear of all liens, charges and similar encumbrances other than Permitted Liens. All assets listed on Schedule 3.11 are in good repair and operating condition (subject to normal wear and tear), and to the Company's knowledge there are no facts or circumstances affecting such assets that could materially interfere with the continued use or operation thereof or their adequacy for such use.

Section 3.12 Intellectual Property. Schedule 3.12 sets forth a listing and brief description of all material patents, trademarks, service marks, inventions, copyrights and other material proprietary or intellectual property rights (the "Intellectual Property") used in or necessary for the operation of the Business. The Company owns or has a valid right to use (pursuant to license, sublicense, agreement or permission) all such Intellectual Property in connection with its Business as presently conducted except where the failure of the Company to own or have a valid right to use such Intellectual Property would not individually or in the aggregate have a Material Adverse Effect. Except as set forth on Schedule 3.12, all such Intellectual Property owned by the Company is held free of any liens, pledges, security interests, mortgages, charges or similar encumbrances other than Permitted Liens and free of any material obligation with respect to royalties, license fees or similar payments or other restrictions on use. The Company is not infringing upon the intellectual property rights of others and the Company has not received any notice of conflict with respect to the intellectual property rights of others.

Section 3.13 Sufficiency of Transferred Assets. The Transferred Assets include all of the assets, properties and other rights presently used in or necessary for the conduct of the Business. The Company owns or has a valid and enforceable right to use all telecommunications equipment and facilities utilized by the Company to provide service to customers in the geographic regions in which it operates (the "Systems"). Without limitation of the foregoing, except for such variations from the

following as would not, individually or in the aggregate, have a Material Adverse Effect: (i) all of the equipment, hardware, and software necessary to operate the Systems is in good working condition and has been installed in accordance with and complies with the manufacturer's standard and applicable industry standards, including all applicable regulatory specifications; (ii) the telecommunication facilities operated by the Company have been constructed using industry accepted guidelines and the Company has secured and is in compliance with all of the right-of-ways, vendor agreements and all other agreements, including but not limited to interconnection agreements, necessary to operate its Business; (iii) the ILEC collocation sites occupied by the Systems have been constructed according to ILEC and industry standards and the Company has complied with all of the terms and conditions of its collocation agreements; (iv) Schedule 3.13 contains a complete and accurate list of all material third party property, plant, structures and equipment used by the Company; (v) the Company has all rights necessary for the operation of all of its switches, including rights to enter, place equipment in and utilize chases, conduits and other passageways in all of the buildings, plants, structures and locations where the Company's switches are located; (vi) except as disclosed on Schedule 3.13, the Systems do not use any fiber or copper cabling owned by the Company; (vii) the Systems connect to the extent required to operate the Business to the SS7 network for signaling and corresponding features and functions, and the Company has applied for and received all NXX codes and all other applicable codes in order to function as a CLEC and interconnect to the public switch telephone network (none of which will be impaired in any material respect as a result of the transactions contemplated hereby); (viii) the Company is currently indirectly providing operator service, directory assistance and E911 services; and (ix) the Company has an inventory of spare parts and other materials of the type, nature and amount consistent with the Company's past practices.

Section 3.14 Material Contracts. Except as listed on Schedule 3.14, as of the date hereof, the Company is not a party to or bound by any written or oral leases, agreements or other contracts or legally binding contractual rights, obligations or commitments ("Contracts") relating to or in any way affecting the operation or ownership of the Business that are of a type described below (the "Material Contracts"):

(i) any interconnection, collocation or similar agreement regarding the use of third-party property, plant, structures and equipment in connection with the operation of the Systems;

(ii) any Contract for the purchase or sale of materials, supplies, merchandise, machinery, equipment, parts or other property or services requiring aggregate future payments in excess of \$50,000;

(iii) any Contract relating to the borrowing of money or the guaranty of another person's obligations, including, without limitation, all notes, mortgages, indentures and other obligations, guarantees of performance, agreements and instruments for or relating to any lending or borrowing, including assumed indebtedness;

(iv) any Contract granting any person a lien on all or any part of the assets of the Company (other than Excluded Assets);

(v) any Contract granting to any person a first refusal, first offer or similar preferential right to purchase or acquire any assets of the Company (other than Excluded Assets);

(vi) any Contract under which the Company is (a) a licensee or licensor of Intellectual Property, (b) a lessee or sublessee of any machinery, equipment, vehicle or other tangible personal property or real property, or (c) a lessor of any real property or tangible personal property owned by the Company, in any such case requiring annual payments in excess of \$50,000;

(vii) any Contract limiting, restricting or prohibiting the Company or any affiliate of the Company from conducting the Business anywhere in the United States or elsewhere in the world;

(viii) any joint venture or partnership Contract;

(ix) any employment contract, consulting contract or any other agreement relating to the employment of labor;

(x) any contract with any officer or director of the Company or any beneficial owner of 5.0% or more of any class of the Company's outstanding stock or any affiliate of any such officer, director or 5.0% beneficial owner; and

(xi) any other Contract, whether or not made in the ordinary course of business, which involves payments in excess of \$50,000 or that is otherwise material to the operation of the Business.

The Company has provided the Purchaser with a true and complete copy of each written Material Contract, including all amendments or other modifications thereto in effect as of the date hereof. Except as set forth on Schedule 3.14, each Material Contract is a valid and binding obligation enforceable in accordance with its terms, and is in full force and effect, subject only to bankruptcy, reorganization, receivership and other laws affecting creditors' rights generally and to general principles of equity, and is assignable to the Purchaser without the consent of any third party and without penalty. Except as set forth on Schedule 3.14, the Company is not in breach or default under any Material Contract, except for breaches or defaults which will not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.15 Employee Matters. The Company has paid or made provision for the payment of all salaries and accrued wages and has complied with all applicable laws, rules and regulations relating to the employment of labor, including those relating to wages, hours, collective bargaining and the payment and withholding of taxes, except for such instances of noncompliance as would not have a Material Adverse Effect, and has withheld and paid to the appropriate governmental authority all material amounts required by law or agreement to be withheld from the wages or salaries of its employees. Schedule 3.15 contains a list as of the date of this Agreement of all employees and independent contractors of the Company, their titles or positions, their current salaries or rates and the Company's salary increase guidelines. The Company has not experienced any strike, picketing,

boycott, work stoppage or slowdown or other labor dispute, and is not the subject of any allegation, charge or complaint of unfair labor practice, employment discrimination, sexual harassment or other matters relating to the employment of labor that, if determined adversely to the Company, would have a Material Adverse Effect.

Section 3.16 Insurance. Schedule 3.16 sets forth a listing and brief description of coverage with respect to each insurance policy (including policies providing property, casualty, liability and workers' compensation coverage and bond and surety arrangements) to which the Company is a party, a named insured, or otherwise the beneficiary of coverage. With respect to each such insurance policy: (A) such policy is legal, valid, binding, enforceable, and in full force and effect (except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally or by general principles of equity); (B) the Company is not in material breach or default (including with respect to the payment of premiums or the giving of notices) and no event has occurred which, with notice or the lapse of time, would constitute such a material breach or default under, or would permit termination or modification of, such policy; and (C) the Company has received no notice of cancellation or non-renewal with respect to such policy.

Section 3.17 Customers and Suppliers. Schedule 3.17 contains an accurate and complete list of all customers of the Company that are being provided local exchange services as of the date of this Agreement, and such schedule designates which customers are being served through resale of ILEC services and which are being served through the Company's switches. Schedule 3.17 contains an accurate and complete list of all customers served by the Company that are being provided Internet access or data services as of the date of this Agreement. Except as set forth on Schedule 3.17, neither the Company nor any Shareholder has received any notice that any such customer of the Company representing revenue of \$25,000 or more during such period has taken or contemplates taking any steps that could disrupt the business relationship of the Company with such customer. Schedule 3.17 contains a complete list of all vendors and suppliers to which the Company paid in excess of \$50,000 during the twelve-month period ended December 31, 2000, and neither the Company nor any Shareholder has received any notice that any such vendor or supplier has taken or contemplates taking any steps that could disrupt the business relationship of the Company with such vendor or supplier.

Section 3.18 Brokers. The Purchaser shall have no liability for any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

Section 3.19 Company Schedule Update. Not later than the fifth business day prior to the anticipated date of Closing, the Company shall deliver to the Purchaser any revisions to the Company Schedules necessary to make such Company Schedules and the representations and warranties contained in this Article III true and correct as of the Closing Date (the "Updated Company Schedules"). The delivery of Updated Company Schedules shall not be deemed to modify the Company's representations and warranties hereunder.

Article IV

Representations and Warranties of the Purchaser and the Parent

The Parent and the Purchaser represent and warrant to the Company and the Stockholders as follows:

Section 4.1 Organization and Qualification. Each of the Parent and the Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with the requisite corporate power and authority to carry on its business as now being conducted. Each of the Parent and the Purchaser is duly qualified to do business, and is in good standing, in each jurisdiction where the character of its properties owned or leased or the nature of its business makes such qualification necessary, except where to failure to be so qualified would not have a Material Adverse Effect. Copies of the certificate of incorporation, by-laws and other organizational documents of the Parent and the Purchaser (and all amendments thereto) have previously been provided to the Company, and such copies are accurate and complete as of the date hereof. The Parent has no Subsidiaries other than the Purchaser. Except where the context requires otherwise, all references to the “Parent” in this Article IV shall be deemed to refer to the Parent and the Purchaser.

Section 4.2 Corporate Authorization. The execution, delivery and performance by the Parent and the Purchaser of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of the Parent and the Purchaser and have been duly authorized by all necessary corporate action on the part of the Parent and the Purchaser. Assuming the due execution and delivery of this Agreement by each other party hereto, this Agreement constitutes a valid and binding obligation of the Parent and the Purchaser enforceable against the Parent and the Purchaser in accordance with its terms, except as such enforceability may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and to general principles of equity, whether invoked in a proceeding in equity or at law.

Section 4.3 Consents and Approvals. Except for the required filings and approvals described in Section 7.2(b), the execution, delivery and performance by the Parent and the Purchaser of this Agreement and the consummation of the transactions contemplated hereby require no action by or in respect of, or filing with, or notice to any governmental or regulatory body, agency or official which, if not obtained or made, will prevent, materially delay or materially burden the transactions contemplated by this Agreement. Neither the execution, delivery and performance by the Parent and the Purchaser of this Agreement, nor the consummation by the Parent and the Purchaser of the transactions contemplated hereby, will (i) violate, conflict with, or result in a breach of, any provision of the charters or bylaws of the Parent or the Purchaser or any law, statute, rule, regulation, License or other operating authority applicable to the Parent or the Purchaser, or (ii) assuming receipt of the Lucent Amendment referred to in Section 7.2(d) below, result in a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any

Contract to which the Parent or the Purchaser is a party, or by which their properties or assets may be bound, except for such of the foregoing as would not have a Material Adverse Effect.

Section 4.4 Litigation. There are no claims, actions, suits, approvals, investigations, informal objections, complaints or proceedings pending (or, to the Parent's knowledge, threatened) against the Parent or the Purchaser before any court, arbitrator, or administrative, governmental or regulatory authority or body, nor is the Parent or the Purchaser subject to any order, judgment, writ, injunction or decree, except in either case for matters which, if adversely determined, would not individually or in the aggregate result in monetary exposure of \$250,000 or more or otherwise have a Material Adverse Effect.

Section 4.5 Capitalization.

(a) The authorized, issued and outstanding capital stock of the Parent, immediately prior to the Closing and without giving effect to the transactions contemplated by the Stock Purchase Agreement, consists of (i) 60,000,000 shares of Common Stock, 8,119,682 shares of which are issued and outstanding, and (ii) 40,000,000 shares of Preferred Stock, 25,000,000 shares of which are designated as Series A Preferred Stock, 16,845,578 shares of which are issued and outstanding, and 15,000,000 shares of which are designated as Series B Preferred Stock, none of which have been issued. All issued and outstanding shares of the Parent's Common Stock and Series A Preferred Stock have been duly authorized and validly issued and are fully paid and non-assessable. Except for (i) the conversion privileges attached to the Parent's outstanding Series A Preferred Stock, (ii) outstanding warrants to purchase a total of 6,194,690 shares of Series A Preferred Stock and (iii) outstanding options to purchase a total of [2,777,531] shares of Common Stock, the Parent has no outstanding options, warrants or similar rights to acquire shares of its capital stock. The Parent has reserved a total of 4,800,000 shares of its Common Stock for issuance under currently outstanding options and future options to be granted pursuant to the Parent's stock option plan. Except for redemption rights attached to the Parent's outstanding Series A Preferred Stock, the Parent has no obligation (contingent or otherwise) to repurchase, redeem or otherwise retire any of its outstanding capital stock. Except as set forth in the Stockholders Agreement (as defined in Section 7.2(e) below), there are no statutory or contractual preemptive rights or rights of first refusal granted by the Parent with respect to its capital stock. All of the Purchaser's outstanding capital stock is held by the Parent.

(b) The shares of Preferred Stock to be issued pursuant to this Agreement have been duly authorized and, when issued in accordance with the terms of this Agreement, shall be validly issued and outstanding, fully paid and non-assessable. ~~The Warrants to be issued pursuant to this Agreement have been duly authorized and, when issued in accordance with the terms of this Agreement, shall be validly issued and outstanding.~~ The shares of Common Stock issuable upon conversion of the Preferred Stock ~~or exercise of the Warrants~~ have been duly reserved for such issuance and, when issued in accordance with the terms of the Preferred Stock ~~or the Warrants (as applicable)~~, shall be validly issued and outstanding, fully paid and non-assessable and free of any statutory or contractual preemptive rights granted by the Parent.

Section 4.6 Financial Statements. The Parent has previously provided the Company and the Stockholders with copies of the Parent's unaudited consolidated balance sheet and related consolidated statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2000 and the audited balance sheet and related statements of income and cash flows for the Parent's predecessor for the fiscal year ended December 31, 1999. Such financial statements (including all notes thereto) (i) fairly present the financial condition of the Parent or its predecessor (as applicable) as of the dates thereof and their results of operations for the periods covered thereby; and (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, subject in the case of the unaudited financial statements only to normal year-end audit adjustments and the absence of full footnote disclosures.

Section 4.7 Absence of Undisclosed Liabilities. Except as set forth on the Parent's unaudited consolidated balance sheet dated as of December 31, 2000 (the "Latest Parent Balance Sheet"), the Company has no material liabilities or obligations of any nature that would be required to be set forth on a consolidated balance sheet prepared in accordance with GAAP other than liabilities or obligations incurred in the ordinary course of the Parent's business subsequent to the date of the Latest Parent Balance Sheet. Since the date of the Latest Parent Balance Sheet, there have been no events or changes affecting the Parent or its business that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 4.8 Compliance with Law. The Company is in compliance with all applicable statutes, laws, ordinances, regulations, rules or orders of any foreign, federal, state or local government or any other governmental department or agency (including without limitation all legal requirements relating to human health and safety and the protection of the environment), and all judgments, decrees or orders of any court of competent jurisdiction, applicable to the Business, except where any such violation or failure to comply would not, individually or in the aggregate, have a Material Adverse Effect. The Company has obtained, and is in compliance in all material respects with, all Licenses from governmental agencies required to conduct its business as now being conducted, except for those Licenses that, if not obtained, would not have a Material Adverse Effect. No event has occurred with respect to any such License that would permit the revocation, termination, suspension or nonrenewal thereof or could result in an impairment of the Company's rights thereunder. Without limitation of the foregoing: (a) the Company is not required to obtain any Licenses in connection with the operation of the Business or the ownership of its properties pursuant to any applicable Communications Laws; (b) the Company's local exchange, long distance and other communications services have been offered, and its physical facilities, systems and equipment have been operated, in compliance in all material respects with all applicable Communications Laws; (c) the Company has filed in a timely manner all reports, applications and other information required to be filed under applicable Communications Laws, all of which are accurate and complete in all material respects, except where to failure to make such filings on a timely basis would not have a Material Adverse Effect; and (d) the Company has received no notice or other communication from any governmental authority indicating that its operations are not in compliance with any applicable Communications Laws.

Section 4.9 Title to Assets; Proprietary Rights. The Parent or the Purchaser has good and

marketable title to, or a valid right to use, all of the assets that are material to the conduct of its business, including all patents, trademarks, service marks, copyrights, licenses and other proprietary rights necessary for the conduct of its business, in each case free and clear of any liens other than Permitted Liens. Neither the Parent nor the Purchaser has received any communications alleging that it has violated or, by conducting its business as currently contemplated would violate, any proprietary rights of any other person, nor is the Parent or the Purchaser aware of any basis for any of the foregoing.

Section 4.10 Taxes. Each of the Parent and the Purchaser has timely filed or will timely file, or has been timely included in or will be timely included in, all federal income and material state, local, territorial, possessions and foreign Returns required to be filed on or before the date hereof in respect of any Taxes (as defined below) for each period ending on or before the Closing Date, which Returns are true, complete and correct in all material respects. All Taxes shown as due on such Returns have been or will be timely paid in full. No currently pending issues have been raised by the IRS or any other taxing authority in connection with any of such Returns, and no waivers of statutes of limitation have been given or requested with respect to the Company or its affiliates. No Returns filed by, or with respect to, the Parent or the Purchaser during the past seven years have been examined, nor has any notification of any intention to examine been made, by the IRS or by the taxing authority of any state, local entity, territory, possession or foreign entity.

Section 4.11 Material Contracts. Except as set forth on Schedule 4.11, neither the Parent nor the Purchaser is a party to (or otherwise bound by) any of the following: (i) any employment or consulting contract, (ii) any agreement providing for the issuance or repurchase of any of its securities, (iii) any agreement in respect of registration rights, preemptive rights, rights of first refusal, voting rights or other rights of security holders (other than the Stockholders Agreement), (iv) any agreement evidencing or providing for any indebtedness for borrowed money, (v) any material agreement with any member of the Henning family or any entity controlled by the Henning family, or (vi) any other agreement that could reasonably be deemed material to the Parent or the Purchaser. The Parent and the Purchaser are in compliance in all material respects with the agreements listed on Schedule 4.11, except where noncompliance would not have a Material Adverse Effect. To the knowledge of the Parent, no other party to any such agreement is in material default thereunder, nor does any condition exist that with notice or lapse of time or both would constitute a material default thereunder.

Section 4.12 Brokers. The Company and the Stockholders shall have no liability for any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Purchaser.

Article V

Representations and Warranties of the Stockholders