

ARTICLE II
PURCHASE AND SALE

Section 2.01 Purchase and Sale of the Seller Shares. Upon the **terms** and **subject** to the conditions of this Agreement, ~~at~~ the Closing, the Seller shall sell to the Purchaser, and, the Purchaser shall purchase from the Seller all of the Seller's right, title and **interest** in such number of Shares, such that, ~~after~~ giving effect to such sale and the conversion of the Convertible Securities on the Closing Date, the Purchaser shall own 50.1% of the issued and **outstanding** equity interests of the Company on a **fully-diluted** basis, ~~assuming~~ the conversion into Shares of all the Convertible Securities in the amounts set forth in Section 3.02 of the Disclosure Schedule and the termination of the Common Stock Purchase Warrant **as** contemplated hereby (the "**Seller Shares**"). The Parties agree to make all reasonable adjustments to the number of Seller Shares **sold at the** Closing to the extent such aggregate number of Shares in Section 3.02 is increased for any reason.

Section 2.02 Purchase Price.

(a) As payment in full for the Seller Shares, Purchaser shall pay, in the manner set forth in Section 2.06, the Purchase Price, **as** determined in accordance with Sections 2.02(b) and (c) hereof.

(b) Within five (**5**) Business Days after satisfaction of the conditions set forth in Sections 7.01(c) and 7.02(c), the Seller shall select two (2) banks from the eight (**8**) internationally recognized investment banks listed on Section 2.02(b) of the Disclosure Schedule (the "Internationally Recognized Investment Banks") to submit proposals to undertake the Equity Valuation (each a "Nominee" and collectively, the "Nominees"). The Nominees shall deliver quotations for the preparation of the Equity Valuation no later than ten (10) Business Days thereafter. The Seller and the Purchaser shall select the Nominee to perform the Equity Valuation based upon the submission of the lowest fee and the most acceptable terms for the conduct of the Equity Valuation. If the Seller and Purchaser cannot agree on such selection, the Seller shall choose the Nominee to conduct the Equity Valuation. All fees and expenses of the Nominee conducting the Equity Valuation shall be paid by the Company.

(c) **In** preparing the Equity Valuation, such investment bank shall consider (i) at least the following methods of valuation: discounted cash flows; comparable transactions; and trading prices of shares of comparable publicly-held companies (applying such methods consistently with the application of such valuation methods and standards in the personal communications networks industry) and (ii) the Indebtedness of the Company. The investment bank shall thereafter present a report of the Equity Valuation within thirty (30) days ~~after~~ its selection by the Purchaser and the Seller, or the Seller, **as** the case may be, including: **among** other things, an opinion addressed to the Seller that the consideration to be received by the Seller for the Seller Shares pursuant to this Agreement is fair to the Seller from a financial point of view, **as** of the date of the Equity Valuation. At the Closing, the Purchaser shall deliver to the Seller, in full payment for the Seller Shares and in immediately available funds, such amount **as** shall be determined by multiplying the percentage of outstanding equity interests of the Company represented by the Seller Shares times the Equity Valuation (the "Purchase Price").

Section 2.03 Pre-Closing and Closing

(a) The Seller shall notify the Purchaser at such ~~time as~~ they believe that all of the conditions to Closing contained in Sections 7.01 and 7.02 have been satisfied or waived and the Equity Valuation has been completed. If the Purchaser agrees that all such conditions have been satisfied or waived, a pre-closing will be held within five (5) days of the date of such Seller notification. Such pre-closing will be held at the offices of The Telefonica Group, 1221 Brickell Avenue, Miami, Florida 33131 at 10:00 A.M. Miami time. At the pre-closing, the Seller shall provide evidence that each of the applicable conditions for the pre-closing has been satisfied and shall deliver to the Purchaser all consents, approvals, waivers and certificates specified in Section 7.02 and any and all other corporate documents contemplated in this Agreement. If the Purchaser agrees that all the conditions for the pre-closing are satisfied, the date of the pre-closing shall be deemed to be the pre-closing date (the "Pre-Closing Date").

(b) As soon as practicable following the Pre-Closing Date, the Purchaser shall obtain the corporate authorizations necessary for the approval of the payment of the Purchase Price. Subject to the conditions set forth in this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall be held at 10:00 a.m., New York time, on the date which is no later than sixty (60) Business Days after the Pre-Closing Date, at the offices of The Telefonica Group, 1221 Brickell Avenue, Miami, Florida 33131. The date upon which the Closing occurs is hereinafter referred to as the "Closing Date." The Closing shall be deemed completed as of 12:01 a.m., New York time, on the morning of the Closing Date. The pre-closing and the Closing may also be held at such other place or at such other time or on such other date as the Seller and the Purchaser may mutually agree upon in writing.

Section 2.04 Closing Deliveries by the Seller. At the Closing the Seller shall deliver or cause to be delivered to the Purchaser:

- (a) the stock certificates for the Seller Shares duly endorsed to Purchaser;
- (b) a certificate or certificates to the effect that the conditions to Closing in Section 7.02 herein have been satisfied;
- (c) a certificate or certificates by which all of the requisite Parties have agreed to waive all rights of first refusal, tag-dong and any and all other transfer restrictions with respect to the sale of the Seller Shares to the Purchaser;
- (d) the Corporate Records;
- (e) a counterpart of the Shareholders' Agreement, duly executed by the Seller;
- (f) a counterpart of the Sale Agreement, duly executed by the Seller;
- (g) the termination of the Joint Venture Agreement, duly executed by the Seller;
- (h) the certificates and other documents required to be delivered pursuant to Section 7.02; and

(i) the following, each of which shall be duly executed by Syncom and each member of the Fleet Syndicate, in form and substance reasonably satisfactory to Purchaser: (i) a counterpart to the Shareholders' Agreement, the Sale Agreement and the termination of the Joint Venture Agreement and (ii) a waiver of all pre-emptive rights, rights of first refusal, tag-along and any and all other rights in respect of the sale and purchase of the Seller Shares of the Company.

Section 2.05 Closing Deliveries by the Purchaser. At the Closing the Purchaser shall deliver or cause to be delivered to the Seller:

(a) the cash payment for the Seller Shares being transferred constituting the Purchase Price for the Seller Shares:

(b) a certificate to the effect that the conditions in Section 7.01 have been satisfied;

(c) a receipt for the Seller Shares being transferred;

(d) a counterpart of the Shareholders' Agreement, duly executed by the Purchaser;

(e) a counterpart of the Sale Agreement, duly executed by the Purchaser;

(f) the termination of the Joint Venture Agreement, duly executed by the Purchaser;

(g) the certificates and other documents required to be delivered pursuant to Section 7.01

Section 2.06 Payment of Purchase Price. The Purchase Price shall be paid in cash by wire transfer in immediately available funds to a bank account designated by the Seller not less than three Business Days prior to the Closing.

ARTICLE III REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANY

As an inducement to the Purchaser to enter into this Agreement, Seller represents and warrants to the Purchaser that as of the date hereof and the Closing Date

Section 3.01 Organization, Authority and Qualification of the Company and its Subsidiaries. The Company is a corporation duly organized, validly existing and in good standing under the laws of Puerto Rico and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except for such failures which would not have a Material Adverse Effect. True and correct copies of the organizational documents, and any amendments thereof, of the Company, as

in effect on the date hereof have been provided to the Purchaser. Section 3.01 of the Disclosure Schedule lists the officers and directors of the Company as of the date hereof. The Company has no equity interest in any Person whether of record, beneficially, or equitably except as set forth in Section 3.01 of the Disclosure Schedule.

Section 3.02 Capital Stock of the Company; Ownership of the Shares. The authorized capital stock of the Company is set forth in Section 3.02 of the Disclosure Schedule. As of the date hereof, the Company has issued and outstanding the amount of shares of capital stock indicated in Section 3.02 of the Disclosure Schedule. All of the Shares are validly issued, fully paid and nonassessable. Section 3.02 of the Disclosure Schedule lists the number of Shares of the Company held by each of the Purchaser, the Seller, Syncom and each member of the Fleet Syndicate. Except as listed in Section 3.02 of the Disclosure Schedule, there are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating the Seller or the Company to issue or sell any shares of capital stock of, or any other interest in, the Company. All of the outstanding Convertible Securities are convertible into that number of Shares set forth on Section 3.02 of the Disclosure Schedule. Except as listed in Section 3.02 of the Disclosure Schedule, there are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

Section 3.03 No Conflict. To the Knowledge of the Seller, assuming that all consents, approvals, authorizations and other actions described in Section 3.03 of the Disclosure Schedule have been obtained and all filings and notifications listed in Section 3.03 of the Disclosure Schedule have been made, the execution, delivery and performance by the Company of the Transaction Documents to which it is a party do not and will not (a) violate, conflict with or result in the breach of any provision of the charter, by-laws (or similar organizational documents) of the Company, (b) conflict with or violate any Law or Governmental Order applicable to the Company, or (c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Encumbrance on any of the assets or properties of the Company pursuant to, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Company is a party or by which any of the Shares or any of such assets or properties is bound or affected, except in the case of (b) and (c) for conflicts, violations, breaches or defaults which would not reasonably be expected to have a Material Adverse Effect on the Company or materially delay or prevent the consummation of the transactions contemplated hereby.

Section 3.04 Financial Information. True and complete copies of the audited balance sheets of the Company for each of the three fiscal years ended as of December 31, 1999, 2000 and 2001, and the related audited statements of operations, stockholders' equity and cash flows for the years then ended, together with all related notes, schedules thereto, accompanied by the reports thereon of the Company's Accountants (collectively referred to herein as the "Financial Statements") are included in Section 3.04 of the Disclosure Schedule.

Section 3.05 Absence of Certain Changes. To the Knowledge of the Seller, except as reflected in the Interim Financial Statements or otherwise set forth in Section 3.05 of the Disclosure Schedule, since December 31, 2000 through the date hereof, the Company has conducted its business in the ordinary course and there has not been: (a) any declaration, set aside or payment of any dividend in respect of the capital stock of the Company or direct or indirect purchase, acquisition or redemption of any such stock; (b) any issuance of any shares of capital stock or securities, or options, warrants, convertible or exchangeable securities or other rights to purchase or acquire any securities, of the Company, except for outstanding securities described in Section 3.01 of the Disclosure Schedule; (c) any incurrence, assumption or guarantee by the Company of any Indebtedness outside of the ordinary course of business; (d) any creation or assumption of any Encumbrance on any asset of the Company (other than Encumbrances (i) arising under the secured financing arrangements described in Section 3.09 of the Disclosure Schedule, (ii) incurred in the ordinary course of business or (iii) incurred in connection with any debt for borrowed money, which will not, individually or in the aggregate, materially detract from the value of the property subject thereto or, impair the use of such property in the conduct of the business of the Company) or any sale, transfer or other disposition of any material asset of the Company, except in the ordinary course of business; (e) any making of any loan, advance or capital contribution to or investment in any Person by the Company in an amount exceeding \$10,000 for any individual transaction or \$25,000 in the aggregate; (f) any significant adverse change to, restriction in or termination of any of the Listed Licenses or (g) any arrangement to take or contemplating any of the actions set forth in this Section 3.05.

Section 3.06 Litigation. Except as listed in Section 3.06 of the Disclosure Schedule, to the Knowledge of the Seller, there is no Action (including, without limitation, with respect to Taxes) by or against the Company pending before any Governmental Authority (or, to the knowledge of the Company, threatened to be brought by or before any Governmental Authority) which would reasonably be expected to have a Material Adverse Effect on the Company.

Section 3.07 Telecommunications Licenses. Each license, permit, authorization and concession granted by any Person and held by the Company, relating to the provision of telecommunications services is listed in Section 3.07 of the Disclosure Schedule ("Listed Licenses") true and correct copies of which have been provided to the Purchaser. Except as set forth in Section 3.07 of the Disclosure Schedule, the Company has no knowledge that any Person has been or is infringing upon, using or claiming any right to use any of such frequency ranges or rights of the Company. Except as otherwise indicated in Section 3.07 of the Disclosure Schedule, each Listed License is in full force and effect and the Company has no knowledge that any Person has been or is infringing upon, using or claiming any right granted under a Listed License. Except as provided in Section 3.07 of the Disclosure Schedule, the holder of a Listed License has complied in all respects with the obligations contained under the Listed License (including, without limitation, the payment of all costs, fees and expenses, and any build-out requirements set forth therein) and has not defaulted under any of the Listed Licenses and except as set forth in Section 3.07 of the Disclosure Schedule, the Company has no knowledge of any basis or plans by any Person (including, without limitation, any Governmental Authority) for any termination of, or adverse modification or revocation of, any of the Listed Licenses, or any grounds for any such termination or, adverse modification or revocation. Except as set forth in Section 3.07 of the Disclosure Schedule, each of the Listed Licenses was properly awarded, obtained and issued in accordance with applicable Laws.

Section 3.08 Intellectual Property Rights To the Knowledge of the Seller, Section 3.08 of the Disclosure Schedule contains an accurate and complete description of all material Intellectual Property Rights and Trademarks presently owned, held or used by the Company and specifically indicates any such Intellectual Property Rights or Trademarks that have been licensed by the Company to or from any Person (it being understood that the Company does not own, hold or use in the telecommunications business any Intellectual Property Rights or Trademarks other than those described in Section 3.08 of the Disclosure Schedule). Except as specified in Section 3.08 of the Disclosure Schedule (a) the Company owns the entire right, title and interest in and to the Intellectual Property Rights and Trademarks, free and clear of all Encumbrances (except for software licenses for which the Company owns rights legally sufficient for its current and contemplated uses), (b) no claim or demand has been made alleging that the Company does not own any right, title or interest in and to any part of the Intellectual Property Rights or Trademarks, (c) all fees, dues and other actions necessary to perfect and protect the Intellectual Property Rights and Trademarks have been paid or performed, (d) all of the Intellectual Property Rights and Trademarks are valid and enforceable, (e) the use of any of the Intellectual Property Rights or Trademarks by the Company does not infringe upon any right of any Person, (f) the Company has no knowledge of any claim that any of the Intellectual Property Rights, Trademarks or any of the past or current operations of the Company, infringes on any right of any Person and (g) the Company has no knowledge that any Person is infringing any of the Intellectual Property Rights or Trademarks. The enforceability of the Intellectual Property Rights and Trademarks will not be affected in any material manner by the execution and delivery of this Agreement or the effectuation of the transactions contemplated hereby.

Section 3.09 Contracts. Except as described in Section 3.09 of the Disclosure Schedule, and other than this Agreement, the Joint Venture Agreement, the Letter Agreement dated June 22, 2001, the Technology Transfer Agreement, the Sale Agreement and the Management Agreement, there is no currently effective written or oral agreement among shareholders relating to the Company.

Section 3.10 Compliance with Law. To the Knowledge of the Seller, except as set forth on Section 3.10 of the Disclosure Schedule, the Company is in compliance with all laws, regulations, orders, decrees or other requirements of any Governmental Authority applicable to it or the conduct of its business other than minor noncompliance with any of the foregoing that does not affect the ability of the Company to conduct its businesses.

Section 3.11 No Payments or Benefits To Government Officials. To the Knowledge of the Seller, none of the Company, nor any director, officer, employee, agent, representative or security holder thereof or any Affiliate of any of the foregoing Persons have made or caused to be made any payments or given or caused to be given any benefits to any Person (including government official or their family members) in violation of United States or Puerto Rican law (including the Foreign Corrupt Practices Act). No unlawful contributions have been made, directly or indirectly, to a domestic or foreign political party or candidate by the Seller, or any of its executive officers; nor has any improper foreign payment (as defined in the Foreign Corrupt Practices Act) been made by the Seller.

Section 3.12 Related Party Transactions. Except as listed in Section 3.12 of the Disclosure Schedule as to the date hereof, (a) there are no agreements, arrangements or

understandings between the Company, **on** the one **hand**, and the Seller and its Affiliates (other than the Company), **on** the **other**, and **(b)** there are no liabilities, indebtedness and obligations due and owing by the Company to the Seller or any of its Affiliates (**other** than the Company).

Section 3.13 Capital Expenditures. Except as set **forth** in Sections 3.09 or 3.13 of the Disclosure Schedule, to the Knowledge of the Seller, **as** of the date hereof the Company has **no** outstanding Contracts for capital expenditures and investments.

Section 3.14 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements **as** to which the Purchaser or the Company shall be liable before or after the Closing. Any payments previously made have been reimbursed.

Section 3.15 Powers of Attorney. Section 3.15 of the Disclosure Schedule sets forth a list of all powers of attorney and other similar instruments granted by the Company.

Section 3.16 Disclosure. No representation or warranty made by the Seller **concerning** the Company pursuant to this Agreement, and no statement of the Company contained in any Exhibit, Schedule, document, certificate or other writing **furnished** to the Purchaser pursuant to this Agreement, when taken as a whole, contains any untrue statement of a material fact or **omits** to state any fact necessary to make the statements herein or therein not materially misleading.

ARTICLE IV REPRESENTATIONS AND WARRANTIES CONCERNING THE SELLER

As an inducement to the Purchaser to enter into this Agreement, the Seller represents **and** warrants to the Purchaser, that as of the date hereof and the Closing Date:

Section 4.01 Organization, Authority and Qualification. The Seller is a limited partnership duly organized **and** validly existing under the laws of Delaware and **has** all necessary power and authority to enter into the Transaction Documents to which it is a **party**, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The Seller is duly licensed or qualified to do business **as** a foreign partnership and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed or qualified would not materially adversely affect its ability to consummate the transactions contemplated by the Transaction Documents to which it is a party. The execution and delivery by the Seller of the Transaction Documents to which it is a party, the performance by the Seller of its obligations hereunder **and** the consummation by the Seller of the transactions contemplated hereby will have been duly authorized by all requisite action **on** the part of the Seller. **The** Transaction Documents to **which** the Seller is a party have been duly executed and delivered by the Seller, and (assuming due authorization, execution and delivery by the other parties) constitutes a valid and binding obligation of the Seller enforceable against it in accordance with its terms.

Section 4.02 Ownership of Shares. The Shares set forth opposite the Seller's name in Section 3.02 of the Disclosure Schedule are owned of record and beneficially solely by the Seller

and are free and clear of all Encumbrances other than those arising under arrangements described in Section 4.02 of the Disclosure Schedule.

Section 4.03 No Conflict. Assuming ~~that~~ all consents, approvals, authorizations and other actions described in Section 3.03 of the Disclosure Schedule have been obtained and all filings and notifications listed in Section 3.03 of the Disclosure Schedule have been made, the execution, delivery and performance by the Seller of the Transaction Documents to which ~~it~~ is a party do not and will not (a) violate, conflict with ~~or result~~ in the breach of any provision of the organizational documents or any limited partnership agreement of the Seller, (b) conflict with or violate any Law or Governmental Order applicable to the Seller, or (c) conflict with, result in any breach ~~of~~, constitute a default (or event which with the giving of notice or lapse of time, or ~~both~~, would become a default) under, require any consent under, or give to others any ~~rights~~ of termination, amendment, acceleration, suspension, revocation or cancellation ~~of~~, or result in the creation of any Encumbrance on any of the assets or properties of the Seller pursuant to, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Seller is a party or by which any of such Shares or any of such assets or properties is bound or affected, except in the case of (b) and (c) for conflicts, violations, breaches or defaults which would not reasonably be expected to have a Material Adverse Effect on the Seller or materially delay or prevent the consummation of the transactions contemplated hereby

Section 4.04 Litigation There is no Action (including, without limitation, with respect to Taxes) by or against any of the Seller or any Affiliate (other than the Company) thereof and relating to the Company or its businesses and pending before any Governmental Authority (~~or, to~~ the knowledge of the Seller, threatened to be brought by or before any Governmental Authority) which, if adversely determined would reasonably be expected to have a Material Adverse Effect on the Company or otherwise prohibit or materially delay the transactions contemplated hereby.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

As an inducement to the Seller to enter *into* this Agreement, the Purchaser hereby represents and warrants to the Seller as follows as of the date hereof and the Closing Date:

Section 5.01 Organization and Authority of the Purchaser. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of Puerto Rico. The Purchaser has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. ~~Upon~~ the approval of the board of directors of the Purchaser, ~~the~~ execution and delivery by the Purchaser of this Agreement, the performance by the Purchaser of its obligations hereunder and thereunder and the consummation by the Purchaser of the transactions contemplated hereby and thereby, have been duly authorized by all requisite action on the ~~part~~ of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser, and (assuming due authorization, execution and delivery by the Company and the Seller) constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.

Section **5.02** No Conflict. Assuming making **and obtaining** of all filings, **notifications**, consents, approvals, authorizations and other **actions** referred to in **Section 5.02** of the Disclosure Schedule, the execution, delivery and performance **by** the Purchaser of **this** Agreement and the other Transaction Documents to which such Purchaser is a party do **not** and will not (a) violate, conflict with or result in the breach of any **provision** of the Certificate of **Incorporation** or By-laws (or similar organizational documents) of **the** Purchaser, **(b)** conflict with or violate any Law or Governmental Order applicable to **such** Purchaser or (c) conflict with, or **result in** any breach **of**, constitute a default (or event which with **the** giving of notice or lapse or time, **or** both, would become a default) under, require any consent under, or give to others any **rights** of termination, amendment, acceleration, suspension, **revocation**, or cancellation **of**, or result in the creation of any Encumbrance **on** any of the assets **a** properties of the Purchaser pursuant **to**, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, **franchise** or other instrument or arrangement to which such Purchaser is a party or by which any of such assets or properties **are** bound or affected, except in the case of **(b)** and (c) for conflicts or violations which would not reasonably be expected to have a Material Adverse **Effect** **on** the Purchaser or have an adverse effect **on** the ability of the Purchaser to consummate the transactions contemplated by this Agreement.

Section 5.03 Litigation. Except as disclosed to the Seller in Writing prior to the date hereof, there is **no** Action by or against the Purchaser pending before any Governmental Authority (or, to Purchaser's knowledge, threatened to be brought by or before any Governmental Authority) which seeks to materially delay or prevent the consummation of the transactions contemplated by this Agreement.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to 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 Purchaser **as** to which the Company or the Seller shall be liable after the Closing.

Section 5.05 Investment Purpose. The **Purchaser** is acquiring the Shares for investment for its own account, not as a nominee or agent, and not with a view to any public resale or other distribution thereof except in compliance with applicable securities laws. It understands that the Shares have not been, and will not be, registered **under** the Securities Act or under any state or foreign securities laws.

ARTICLE VI ADDITIONAL AGREEMENTS

Section 6.01 Conduct of Business Prior to the Closing.

(a) The Seller covenants and agrees that, between the date hereof and the Closing Date, it will not permit any of the members of the board of directors of the Company designated by it **to** vote in a **manner** inconsistent **with** prior practice or outside of the normal course of business with respect to the conduct of the Company's business, including, without limitation (i) its employees, (ii) its properties, (iii) its Material Contracts, (iv) complying in all material respects with all applicable Laws, including, without limitation, payment (or causing

payment to be made) of all Taxes with respect to ~~the~~ Company for any taxable period ~~ending on~~ or before the Closing Date (other ~~than~~ taxes not yet due or being contested ~~in good~~ faith for which adequate reserves have been made), (v) relationships of the Company with persons having significant business relations therewith and (vi) except for any of the matters set forth ~~on Section~~ 3.07 of the Disclosure Schedule, the Listed Licenses; provided, however, that no action by the Purchaser under the Management Agreement shall be deemed to be a violation ~~of~~, or result in, the breach of any of these provisions by the Seller so long as such action is ~~not~~ a direct result of any direct instruction of the Seller.

(b) Without limiting the generality of the provisions of subsection (a), except for actions contemplated by ~~this~~ Agreement or previously approved in writing by the Purchaser (such approval not to be unreasonably withheld), the Seller covenants and agrees that, ~~between~~ the date hereof and the Closing Date, it will cause the members of the board of directors designated by it not to vote in favor of any action which would result in the Company:

- (i) amending its organizational documents;
- (ii) granting or revoking special and general powers of attorney other than in the ordinary course of business;
- (iii) except with respect to a Sale of the Company under the Sale Agreement, selling, leasing, transferring, mortgaging, encumbering or otherwise disposing of all or substantially all of its properties or assets in one transaction or liens granted to the lenders participating ~~in~~ the Project Financing Facility);
- (iv) making loans, advances or other extensions of credit in excess of an aggregate of \$25,000 at any time outstanding;
- (v) except for a bond in the maximum amount of \$250,000 to be posted in connection with the Sprint Litigation, granting any indemnity, bond or any other guarantee for the benefit of a third party;
- (vi) except with respect to a Sale of the Company under the Sale Agreement, merging, consolidating, spinning off or forming any strategic alliance or other business combination or reorganization;
- (vii) (A) acquiring by merging or consolidating with, or by purchasing all or a substantial portion of the stock or ~~assets of~~ or by any other manner acquiring, any business, properties, assets of any other Person, or (B) making any investment ~~in~~ any other Person;
- (viii) except in connection with the Sale of the Company under the Sale Agreement, making, declaring, setting aside or paying any dividend or making any other distribution ~~on~~, or directly or indirectly redeeming, purchasing or otherwise acquiring, any shares of its capital stock or other equity interests or any securities or obligations convertible into or exchangeable for any shares of its capital stock or other equity interests; provided, however, that dividends not in excess of the net income for the year of distribution, net of any prior year losses shall be permitted;

(ix) entering into any *direct* or indirect **transaction** with the Seller or any Affiliate (including the purchase, **sale**, lease or exchange of any property, or rendering of any service or modification or **amendment** of any existing agreement or arrangement);

(x) changing the nature of the business engaged in by the Company **on** the date hereof, or modifying in any **material** respect any of the Listed Licenses,

(xi) commencing any proceeding or filing any petition **in** any **court** relating to bankruptcy, reorganization, insolvency, liquidation or relief from debtors;

(xii) making any **material** change in any tax policy or practice or making any material change in any method of accounting or accounting practice or policy except **as** required by changes in U.S. GAAP with **the** concurrence of its independent accountants;

(xiii) revaluing the assets of the Company or Affiliates for accounting or tax purposes, except as may be required by law or by changes in **U.S. GAAP** with the concurrence of the Company's Accountants;

(xiv) **(A)** increasing the compensation or fringe benefits, or approving any employee stock option plan, of any of its present or former directors, officers or employees (except for increases in salary or wages in the ordinary course of business consistent with past practice), **(B)** adopting any new or amending any existing severance or termination plan or agreement with **respect** to any of its present or former directors, **officers** or employees for which Purchaser or the Company will be Liable after the Closing or **(C)** except in the ordinary course of business, loaning or advancing any money or other property **to** any of its present or former directors, officers or employees;

(xv) entering into, terminating or modifying any of its material agreements relating to its Intellectual Property or Trademarks or disposing, in whole or in part, any of its material Intellectual Property Rights and Trademarks;

(xvi) entering into any agreement not to compete with a third party or for purposes of granting exclusivity to any third party;

(xvii) incurring **(A)** any obligations in respect of indebtedness, outstanding **letters** of credit, acceptances and similar obligations in excess of **Three** Million Dollars (**\$3,000,000**), **(B)** Liabilities in excess of Three Million **Dollars** (**\$3,000,000**) secured by any Encumbrance on any property owned by the Company, even though such Person has not assumed or otherwise become liable for the payment thereof, or **(C)** Liabilities under interest rate cap agreements, interest **rate** swap agreements, foreign currency exchange agreement and other hedging agreements or arrangements, other than Liabilities under agreements to which the Company is a party **as** of the date hereof;

(xviii) making any capital **expenditure** in excess of Five Million Dollars (**\$5,000,000**), **consent** to which shall not be unreasonably withheld;

(xix) entering into any **resale** arrangements with any wireless carrier or any transport services agreement;

(xx) accelerating or delaying collection of any notes or **accounts** receivable in advance of or beyond their regular due dates or **the dates** when they would have been collected in the ordinary course of business consistent with past practices;

(xxi) delaying or accelerating payment of any accrued expense, trade payable or other liability beyond or in advance of its due date or the date when such liability would have been paid in the ordinary course of business consistent with past practices;

(xxii) agreeing to, or making any commitment to, take, or authorize, any of the actions prohibited by this **Section 6.01(b)**;

(xxiii) terminating or changing the terms of employment of present employees or hiring new employees, each in a manner inconsistent with past practices,

(xxiv) canceling, permitting **the** lapse or expiration of any casualty, public liability, worker's compensation or other insurance policy in effect **as** of the Effective Date; or

(xxv) initiating, compromising or settling any material litigation or arbitration proceeding.

(c) The Seller shall designate three (**3**) of its representatives and the Purchaser shall designate two (**2**) of its representatives of the Company to serve on a committee (the "**Management Committee**") to ensure compliance with Sections 6.01(a) and 6.01(b) between the date hereof and the Closing Date.

(i) The Management Committee shall be a decision-making body with binding authority on the parties to interpret the matters set forth in Sections 6.01(a) and 6.01(b). The Management Committee **shall** meet not less frequently than once per month.

(ii) The Chairman shall be one of Seller's appointees (selected by Seller). Any member of the Management Committee may call meetings of the Management Committee. The quorum required for any meeting of the Management Committee shall be three (**3**) persons present, comprising not **less** than **one** Seller appointee and one Purchaser appointee. **The** Chairman must be present to constitute a **quorum**. Members of the Management Committee may participate in such meeting by means of a telephonic conference call or similar means of communication if all persons participating in such meeting **are** able to hear each other at all times. Each member of the Management Committee shall have one vote on any matter voted on. Decisions shall be taken by simple majority vote. The Chairman shall have a second or casting vote. Any member may appoint another member as **his** alternate to attend and vote in his place. The Chairman shall keep (or appoint someone to keep) minutes, tallies of votes and all other

records of such meetings. **The** initial Management Committee members are identified on Exhibit C.

Section 6.02 Access to Information.

(a) From the date hereof until the Closing, upon reasonable notice, **the Seller** shall cause the Company, and each of its officers, directors, employees, agents, representatives, accountants and counsel to afford the officers, employees and authorized agents, accountants, counsel, and representatives of the Purchaser reasonable access, during normal business hours, to (i) the properties, offices and other facilities, and the books and records of the Company and (ii) the officers, directors, employees, accountants and **counsel** of the Company who have material relevant knowledge relating to the Company.

(b) The Seller and the Purchaser will provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Return, amended Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, participating in or conducting any audit or other proceeding in respect of Taxes or making representations to or furnishing information to parties subsequently desiring to purchase the Company from the Purchaser. The Seller and the Purchaser shall retain all Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for each taxable period first ending after the Closing Date and for all prior taxable periods until the later of (a) the expiration of the statute of limitations of the taxable periods to which such Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. or (b) six years following the due date (without extension) for such Returns. Any information obtained under this **Section 6.02(b)** shall be kept confidential except **as** may be otherwise **necessary** in connection with the filing of Returns or claims for refund or in conducting an audit or other proceeding.

Section 6.03 Regulatory Authorizations: Notices and Consents. The Seller shall **cause** the Company to repay any indebtedness of **the** Company to the FCC, the repayment of which **is** a condition to the approval by the FCC of the transaction contemplated in this Agreement. The Seller and the Purchaser agree (i) to file as soon as practicable all applicable applications, notices or other filings required in connection with the transactions contemplated by this Agreement and the other Transaction Documents, including all notification and filings which may be required (A) by the FCC and (B) under the HSR Act, (ii) to respond as promptly **as** practicable to any inquiries **or** requests for additional information or documentation from any Governmental Authority, and (iii) cooperate fully with each other in seeking to obtain all such authorizations, consents, orders and approvals as promptly as practicable.

Section 6.04 Ensure Conditions are Met: Further Action

(a) Subject to the terms and conditions of this Agreement, each Party shall **use** commercially reasonable efforts to take or cause to be taken all actions and do or cause to be done all things required in order to consummate the transactions contemplated hereby including execution and delivery of all required documents and other papers and shall further refrain from taking any actions which could result in a failure to satisfy the conditions to the obligations of

the Seller and Purchaser under Sections 7.01 and 7.02, respectively. With respect to the Sella, the foregoing shall include, but not be limited to, ~~not~~ engaging, directly or indirectly, in any type of transaction with respect to the Seller Shares or any other securities involving, ~~directly~~ or indirectly, the acquisition, encumbrance or transfer of any rights with respect to the ~~Seller~~ Shares.

(b) The Purchaser covenants and agrees that, between the date hereof and the Closing Date, the Purchaser shall not take any action that would reasonably be expected to (i) adversely affect the ability of the Purchaser to consummate the transactions contemplated by this Agreement or (ii) delay the Closing.

Section 6.05 Publicity. Except as and to the extent required by law, or as expressly contemplated by this Agreement, none of the Parties or any of their respective Affiliates shall issue or cause the publication of any press release or other public announcement with respect to the transactions contemplated by this Agreement without the consent of the other parties hereto. In the event a party believes such press release or public announcement is required by law, the party believing that such press release or public announcement is required shall, to the extent practicable, notify the parties not later than 24 hours after such determination, including the basis for such determination, and thereafter the parties shall negotiate in good faith with respect to the content of the proposed press release or public announcement, and the time and place that the press release or public announcement will be made. Notwithstanding the foregoing, no such release shall be made unless the parties are in agreement or the release is required by law. In addition, and subject to applicable law, nothing in the foregoing shall prohibit disclosure by any party to analysts or the investor community.

Section 6.06 No Negotiation.

(a) Neither the Seller nor the Company shall authorize or permit any of their Representatives to: (i) participate in any discussions or negotiations with any third party regarding any sale of debt or equity securities of the Company or any other transaction that would impair or prevent, or be competitive with, the transactions contemplated herein (an "Alternative Transaction"); (ii) enter into any agreement with respect to any Alternative Transaction or (iii) furnish to any person any information or take any other action to facilitate any inquiries or the making of any proposal, with respect to any Alternative Transaction. Without limiting the foregoing, it is understood that any violation of the restrictions set forth in the preceding sentence by any Representative of the Seller or the Company, whether or not such Representative is purporting to act on behalf of such Party, shall be deemed to be a breach of this Section 6.06(a). The Company and the Seller receiving any contract shall promptly inform the Purchaser in writing of any inquiry, proposal or Alternative Transaction in process and the identity of the Person proposing, inquiring or negotiating an Alternative Transaction.

(b) The Purchaser shall not authorize or permit any of their respective Representatives to enter into any agreement with respect to any merger, consolidation, acquisition or other business combination that would reasonably be expected to materially impair, prevent or substantially delay the transactions contemplated herein.

Section 6.07 Notification. Each of the parties shall promptly **notify** the other parties in writing if such party becomes aware of any fact or condition that **causes** or constitutes a **breach** of any of the representations and warranties made by such party pursuant to **this** Agreement or would prevent the lawful or proper completion of any of the transactions contemplated under this Agreement. **In** addition, the Seller agrees to notify the Purchaser of any **Actions** with respect to the Company except Actions with respect to employment matters which **arise** in the ordinary course of business.

Section 6.08 Duty to Supplement. Each of the Company and **the** Seller shall have **the** right and obligation until the Closing to promptly supplement or amend the Disclosure Schedule with respect to any fact, circumstance or condition discovered that, if existing or **known** at the date of this Agreement, would have **been** required to be **set** forth or described in the Disclosure Schedule relating to such party; provided, however, that for the purpose of the rights and obligations of the parties under this Agreement, **no** supplement or amendment to such Disclosure Schedule shall have any effect for the purpose of determining the satisfaction of the conditions set forth **in** Article **VII** or for purposes of determining whether any Person is entitled to indemnification pursuant to Article VIII unless the fact, circumstance or condition did not **arise as** a result of any breach of this Agreement.

Section 6.09 Conveyancing and Withholding Taxes. The Seller shall pay any stock transfer, sales, **use**, value added and stamp taxes and any transfer, recording, registration fees which become payable in connection with the **transactions** contemplated by this Agreement. The Purchaser shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or **any** provision of state, local or foreign tax law, including the tax laws of Puerto **Rico**. Purchaser **and** Seller agree to cooperate in obtaining any forms or certifications that will reduce or eliminate any form of withholding taxes.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated by this Agreement shall be subject to the **fulfillment** or waiver by the Seller (other than those conditions in Sections 7.01(a), 7.01(c) and 7.01(e) which may not be waived) at or prior to the Closing, of each of the following conditions:

(a) Representations, Warranties and Covenants. The representations and warranties of the Purchaser contained in this Agreement shall have been true and correct when **made** and shall be true and correct as of the Closing, with the same force and effect as if **made** as of the Closing Date, other than such representations and warranties **as** are made as of another date, which shall be true and correct as of such date, and the covenants and agreements contained in this Agreement to be complied with by the Purchaser **on** or before the Closing shall have been complied with in all material respects, and the Seller shall have received a certificate from the Purchaser to such effect signed by a duly authorized officer thereof.

(b) No Order. No Governmental Order (other *than* a Governmental Order relating to the matters set forth in (c)(i) below) shall be threatened or be in force and effect against the Seller, the Purchaser, Syncom and any member of the Fleet Syndicate, or the Company restraining or materially and adversely altering the transactions contemplated by this Agreement.

(c) Consents and Approvals. The Purchaser, the Seller and the Company, as applicable, shall have received all authorizations, and approvals from all Governmental Authorities and officials and the required third party under the Loan Documents necessary or desirable to effect the transactions contemplated by this Agreement, including, without limitation (i) the approval by the FCC of application to transfer control of the Company to the Purchaser (including approval of foreign ownership), and such FCC approval is not subject to further review, modification, appeal, revocation or suspension and (ii) if applicable, the Purchaser and the Seller shall have received notice from the United States Department of Justice and the FTC that such governmental entities have terminated the applicable notification period or such notification period shall have expired without requirements for the sale or disposition of assets or limiting the Purchaser or the Company in the conduct of its business.

(d) Transaction Documents. Each of the Transaction Documents shall have been entered into by the applicable parties thereto (other than the Seller) and each shall be in full force and effect (other than the Shareholders Agreement). The Purchaser shall not have taken or failed to take any action which constitutes, or with the passage of time or notice would constitute, a material breach of any of the Transaction Documents, which material breach (i) is not capable of being cured or (ii) has not been cured *withi* thirty (30) days after the Purchaser receives written notice of such breach from the Seller.

(e) Ancillary Agreements. The Secured Convertible Promissory Note shall have been amended to provide that, upon its conversion and upon the purchase of the Seller Shares hereunder, the Purchaser shall own 50.1% of the equity interests of the Company. On the Closing Date, the Joint Venture Agreement shall be terminated and the Shareholders Agreement shall be in full force and effect. The bylaws of the Company shall have been amended to conform to the terms and conditions of the Shareholders Agreement.

(9) Project Financing Facility. The Company shall have entered into the Project Financing Facility and borrowings specifically designated by the Purchaser for the payment of any outstanding Indebtedness associated with any of the Listed Licenses have been made available to the Company.

Section 7.02 Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by the Purchaser at or prior to the Pre-Closing Date (solely with respect to 7.02(a)(i), (b), (c), (d), (f) and (g)) at or prior to the Closing Date and (solely with respect to 7.02(a)(ii), (e) and (h)) of each of the following conditions:

(a) Representations, Warranties and Covenants. (i) The representations and warranties contained in Articles III and IV shall have been true and correct when made and shall be true and correct as of the Closing Date with the same force and effect as if made as of the

Pre-Closing Date, other than such representations ~~and warranties as~~ are made as of another ~~date~~, which shall be true and correct ~~as~~ of such date, and (ii) the representations and ~~warranties~~ contained in Articles III and IV shall have been ~~true~~ and correct when made and shall be true and correct ~~as~~ of the Closing Date with the same force and effect ~~as~~ if made ~~as~~ of the **Closing Date** other than such representations and warranties ~~as~~ are ~~made~~ at another date, which shall be ~~hue~~ and correct ~~as~~ of such date.

(b) No Order. No Governmental Order (other than a Governmental Order relating to the matters ~~set~~ forth in (c)(i) below) shall be threatened or be in force and effect against the Seller, the Purchaser, Syncom and any member of the Fleet Syndicate. or ~~the~~ Company, restraining or materially and adversely ~~altering~~ the transactions contemplated ~~hereby~~ that are the subject of the Closing.

(c) Consents and Approvals. The Purchaser and the Company, ~~as~~ applicable, shall have received all authorizations, consents, orders and approvals of all Governmental Authorities and officials and the required third parties under the Loan Documents necessary or desirable to effect the transactions contemplated by ~~this~~ Agreement, including, without limitation (i) the approval by the FCC of the application to transfer control of the Company to the Purchaser (including approval of foreign ownership) without imposition of any conditions or limitations (with respect to any activities of the Company, the Purchaser or any Affiliate of the Purchaser), which the Purchaser, in the reasonable exercise of its discretion, deems ~~unacceptable~~ and (ii) if applicable, the Purchaser and the Seller shall have received notice from the United States Department of Justice and the FTC that ~~such~~ governmental entities have terminated ~~the~~ applicable notification period or such notification period shall have expired without requirements for the sale or disposition of assets or limiting the Purchaser or the Company in the conduct of its business.

(d) First Refusal Rights, Etc. ~~All~~ rights of first refusal, preemptive ~~rights, tag-~~ along rights or other similar rights held by any stockholder of the Company (including such rights held by Syncom or any member of the Fleet Syndicate) with respect to the Shares shall have expired or been waived by the holders thereof (including Syncom and any member of the Fleet Syndicate), and ~~no~~ such waiver shall impose my limits or conditions that are considered burdensome by the Purchaser.

(e) Ownership of Fully Diluted Shares. All outstanding warrants and options to purchase Shares shall have been converted into Shares; ~~provided, however,~~ that any rights of any officers, directors or employees of the Company with respect to any Shares shall have been waived without payment therefore or any obligation to make a payment therefore by the Company and without any violation of Law. All of the Seller Shares shall be owned ~~by~~ the Seller.

(f) Indebtedness, Waivers and Extensions. With respect to any Indebtedness of the Company owed to the Seller or any of its Affiliates, the Company shall have obtained (i) waivers of any operating or financial covenant with which the Company is not in compliance and (ii) an extension of the due date of any principal amount and capitalized interest of such Indebtedness to a date not prior to the sixtieth (60th) day following the Closing Date.

(g) Transaction Documents. Each of the Transaction Documents shall have been entered into by the applicable parties (other than the Purchaser) and each shall be in full force and effect (other than the Shareholders Agreement). ~~Neither~~ the Company nor the Seller shall have taken or failed to take any action which constitutes, or with the passage of time or notice would constitute, a breach of any of the Transaction Documents, which breach (i) is not capable of being cured or (ii) has not been cured within thirty (30) days after the Company and the Seller have received written notice of such breach ~~from~~ the Purchaser.

(h) Ancillary Agreements. The Secured Convertible Promissory Note shall have been amended to provide that, upon its conversion and upon the purchase of the Seller Shares hereunder, the Purchaser shall own 50.1% of the equity interests of the Company. On the Closing Date, the Joint Venture Agreement shall be terminated and the Shareholders Agreement shall be in full force and effect. The bylaws of the Company shall have been amended to conform to the terms and conditions of the Shareholders Agreement.

(i) Project Financing Facility. The Company shall have entered into the Project Financing Facility and borrowings thereunder have been made available to the Company.

(j) Common Stock Purchase Warrant. The Common Stock Purchase Warrant shall have been canceled by the Company without payment.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival of Representations and Warranties of the Seller. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Seller shall survive the Closing Date and shall remain in full force and effect for a period of twelve (12) months after the Closing Date (except the representations and warranties contained in Section 3.11 which shall remain in full force and effect until thirty (30) days after the applicable statute of limitations period has lapsed, and the representations and warranties contained in Sections 3.02 and 4.02 which shall survive indefinitely), unless notice is given pursuant to this Article VIII, in which case such representation shall survive until 30 days after the final adjudication and resolution.

Section 8.02 Survival of Representations and Warranties of the Purchaser. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Purchaser shall survive the Closing Date and shall remain in Full force and effect for a period of twelve (12) months after the Closing Date, unless notice is given pursuant to this Article VIII, in which case such representation shall survive until 30 days after the final adjudication and resolution.

Section 8.03 Indemnification of the Purchaser. The Seller agrees, subject to the other terms and conditions of this Agreement, to defend, indemnify and hold harmless the Purchaser and each of the Purchaser's Subsidiaries, Affiliates, officers, directors, employees, agents, representatives and their successors and assigns (the Purchaser and all such other Persons are collectively referred to as the "Purchaser's Indemnified Persons"), ~~from~~ and against, and shall reimburse the Purchaser's Indemnified Persons for, each and every Loss paid, imposed on or

incurred by any Purchaser's Indemnified Person directly or indirectly relating to, resulting from or arising out of (a) any breach of any representation or warranty of the Company or the Seller or any covenant required to be performed prior to the Closing, in each case contained in this Agreement, or (b) any breach of any other covenant or agreement made by the Company or the Seller in this Agreement. A Purchaser's Indemnified Person shall give the Seller written notice of any matter which such Purchaser's Indemnified Person has determined has given or could give rise to a right of indemnification hereunder within sixty (60) days of such determination, supported by reasonable documentation setting forth the nature of the circumstances entitling the Purchaser's Indemnified Persons to indemnity hereunder (including, but not limited to, references to the provisions hereof upon which the Purchaser's Indemnified Person is relying in making such claim).

Section **8.04** Indemnification of the Seller. The Purchaser agrees, subject to the other terms and conditions of this Agreement, to indemnify and hold harmless the directors, officers, employees, agents and representatives of the Seller and their respective successors, assigns, heirs and legal and personal representatives (the Seller and such other Persons are collectively referred to as the "Seller's Indemnified Persons") from and against, and shall reimburse the Seller's Indemnified Persons for, each and every Loss paid, imposed on or incurred by the Seller's Indemnified Persons, directly or indirectly, relating to, resulting from or arising out of (a) any breach of any representation or warranty of the Purchaser or any covenant of the Purchaser required to be performed prior to the Closing in each case contained in this Agreement and (b) any breach of any other covenant or agreement made by the Purchaser in this Agreement. A Seller Indemnified Person shall give the Purchaser prompt written notice of any matter which such Seller Indemnified Person has determined has given or could give rise to a right of indemnification hereunder within sixty (60) days of such determination, supported by reasonable documentation setting forth the nature of the circumstances entitling the Seller Indemnified Person to indemnity hereunder (including, but not limited to, references to the provisions hereof upon which the Seller Indemnified Person is relying in making such claim).

Section 8.05 Notice and Defense of Third Party Claims. If any claim or proceeding shall be brought or asserted under this Article VIII against an indemnified party or any successor thereto (each, an "Indemnified Person") in respect of which indemnity may be sought under this Article VIII from an indemnifying Person or any successor thereto (each, an "Indemnifying Person"), the Indemnified Person shall give prompt written notice of such claim or proceeding to the Indemnifying Person in accordance with Section 8.03 or 8.04, who shall assume the defense thereof, including the employment of counsel and the payment of all expenses; provided that any delay or failure so to notify the Indemnifying Person shall relieve the Indemnifying Person of its obligations hereunder only to the extent, if at all, that it is materially prejudiced by reason of such delay or failure. The Indemnified Person shall have the right to employ separate counsel in any of the foregoing claims or proceedings and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Person unless the Indemnified Person shall reasonably determine that there exist defenses available to the Indemnified Party that are not available to the Indemnifying Party. The Indemnified Person's right to participate in the defense or response to any claim or proceeding should not be deemed to limit or otherwise modify its obligations under this Article VIII. In the event that the Indemnifying Person, within fifteen (15) days after notice of such claim or proceeding, fails to assume the defense thereof, the Indemnified Person shall have the right to undertake the defense,

compromise or settlement of such claim or proceeding, subject to the **right** of the Indemnifying Person to assume the defense of such claim or proceeding with **counsel** reasonably satisfactory to the Indemnified Person at any time prior to the settlement, compromise or final determination thereof. Anything in **this** Article VIII to the contrary notwithstanding, the Indemnifying Person shall **not**, without the Indemnified Person's prior written consent (**not** to be unreasonably withheld), settle or compromise any claim or proceeding or consent to the entry of any judgment with respect to any claim or proceeding. In the event the Indemnifying Party exercises the right to undertake any such defense **against** any claim hereunder, the Indemnified Person shall cooperate with the Indemnifying Person in such defense and make available to the Indemnifying Person, all witnesses, pertinent records, materials and information in the Indemnified Person's possession or reasonably available to the Indemnified Person or under the Indemnified Person's control relating thereto **as** is reasonably requested by the Indemnifying Person.

Section 8.06 Limitation. An Indemnified Person shall not be entitled to indemnification under this Article VIII unless notice of a claim for indemnity shall have **been** given within the applicable survival period under Section 8.01 or 8.02, **as** the case may be.

Section 8.07 Insurance Proceeds: Tax Benefits. Any indemnification payment required to be made pursuant to this Agreement shall be (a) reduced by any insurance proceeds received or recoverable by the Indemnified Party or any of its Affiliates with respect to the item giving rise to the indemnification payment and (b) reduced to take account of any net Tax benefit "actually realized" by the Indemnified Person arising from the incurrence or payment of any such indemnified amount. **In** computing the amount of any such Tax benefit, the Indemnified Person shall be deemed to recognize all other items of loss, deduction or credit before recognizing any item arising **from** the incurrence or payment of any indemnified amount except that carrybacks of net operating losses **or** other tax attributes shall be applied in making such computation after recognizing any item arising from the incurrence or payment of **an** indemnified amount. Any indemnification payment hereunder shall initially be made **without** regard to adjustment for net Tax benefit under this Section 8.07 and shall be increased or reduced to reflect any such net Tax benefit within ten (10) Business Days after the Indemnified Person would be required to pay but for the incurrence or payment of such indemnified amount. The parties shall make any adjusting payment between each other **as** is required under this Section 8.07 within ten (10) Business Days of the date an Indemnified Person is deemed to have actually realized each **net** Tax benefit. The amount of any reduction hereunder shall be adjusted to reflect any final determination with respect to the Indemnified Person's liability for taxes and payments to reflect such adjustment shall be made by the Indemnifying Person if necessary within ten (10) Business Days of such determination.

ARTICLE IX TERMINATION AND WAIVER

Section 9.01 Termination. This Agreement may be terminated at any time prior to the **Closing**:

(a) by either the Seller or the Purchaser if (i) the Closing Date shall not have occurred by October 31, 2003; (ii) the Project Financing Facility has not been executed and all

conditions to closing and funding thereunder satisfied prior to July 15, 2002; or (iii) any regulatory authority has denied approval of the purchase of the Seller Shares and such denial has become final and unappealable or has approved the purchase of the Seller Shares subject to the conditions that, in the judgment of the Purchaser would restrict it or its Affiliates in their respective spheres of operations and business activities after the Effective Date; provided, however, that the right to terminate this Agreement under this Section 9.01(a) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(b) by the Purchaser, upon a breach of any representation, warranty, covenant or agreement of the Company or the Seller set forth in this Agreement, or if any representation or warranty of any of the Company or the Seller shall have become untrue, in either case such that the conditions set forth in Section 7.02 would not be satisfied, provided that such breach is not capable of being cured or has not been cured within thirty (30) days after the Company and the Seller receive Written notice of such breach from the Company;

(c) by the Seller, upon a breach of any representation, warranty, covenant or agreement of the Purchaser set forth in this Agreement, or if any representation or warranty of the Purchaser shall have become untrue, in either case such that the conditions set forth in Section 7.01 would not be satisfied, provided that such breach is not capable of being cured or has not been cured within thirty (30) days after the Purchaser has received written notice of such breach from the Seller;

(d) by the mutual written consent of the Seller and the Purchaser.

Section 9.02 Effect of Termination. In the event of termination of this Agreement prior to the Closing as provided in Section 9.01, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except (a) that the provisions of this Section 9.02 and Article X shall survive termination of this Agreement and (b) that nothing herein shall relieve either party from liability for any breach of this Agreement.

Section 9.03 Waiver. Either the Seller, on the one hand, or the Purchaser, on the other hand may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto or (c) waive compliance with any of the agreements or conditions of the other party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

**ARTICLE X
GENERAL PROVISIONS**

Section 10.01 Expenses. Except for (i) ~~fees~~ payable to the FCC or with respect to fillings under the **HSR** Act which shall be paid **by** the Purchaser and the Company, in **equal** parts, (ii) **as** otherwise specified in this **Agreement**, all costs and expenses, including, without limitation, fees and disbursements of **counsel, financial** advisors and accountants, incurred in connection with this **Agreement** and the transactions contemplated hereby shall be paid by the party incurring such costs and **expenses**, whether **or** not the Closing shall have occurred. Any such fees or expenses otherwise charged to or paid by the Company shall be reimbursed by **the** appropriate party.

Section 10.02 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by facsimile or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party **as** shall be specified in a notice given in accordance with this Section **10.02**).

- (a) if to the Seller: 268 Ave. Luis Muñoz Rivera
Suite 2206, Hato Rey Tower
San Juan, PR 00918-1913
Facsimile: 787-620-0144
Attention: Javier O. Lamoso
President
- (b) if to the Company: City View Plaza
48 Calle 165, Suite 700
Guaynabo, Puerto Rico 00968
Facsimile:
Attention:
- (c) if to the Purchaser: Telefonica Larga Distancia
Metro Office Park
17 Calle 2 Pisolo
Guaynabo, Puerto Rico 00968
Facsimile: (787) 749-5880
Attention: Maria Dolores Pizarro

with copies to:

Telefonica Móviles S.A.
Goya 24
Madrid, Spain 28002
Facsimile: (011)-34-914-423-4294
Attention: Antonio Hornedo

and

Adsuar Muñiz
Goyco & Besosa, P.S.C.
Hato Rey Tower, Suite 1400
268 Muñoz Rivera Avenue
San Juan, Puerto Rico 00918
Facsimile: (787) 756-9010
Attention: Fernando Goyco Covas, Esq

Section 10.03 Headings. The descriptive headings contained in this Agreement **are** for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.04 Severability. If any term or other provision of this Agreement is **invalid**, illegal or incapable of being enforced by any Law **or** public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated **hereby** is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties **as** closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated **as** originally contemplated to the greatest extent possible.

Section 10.05 Entire Agreement. This Agreement and the Transaction Documents constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, between or among the Seller, the Company and the Purchaser with respect to the subject matter hereof and thereof.

Section 10.06 Assignment. This Agreement may not be assigned by operation of law or otherwise without the express written consent of the Seller and the Purchaser (which consent may be granted or withheld in the sole discretion of the Seller or the Purchaser) provided, however, that no consent shall be required for the Purchaser to assign its rights or delegate its duties hereunder, in whole or in part, to one or more of its Affiliates, provided, further, however, that no such assignment or delegation shall relieve the Purchaser of its obligations hereunder, nor shall it have the effect of delaying the Closing.

Section 10.07 No Third Party Beneficiaries. Except for the provisions of ~~Article VIII~~ relating to Indemnified Parties, this Agreement **shall** be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.08 Amendment. This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf **of**, each of the parties hereto or (b) by a waiver in accordance with Section **9.03**.

Section 10.09 Governing Law. **This Agreement shall** be governed by, and **construed** in accordance with, the laws of the State of Florida, applicable to **contracts executed** in and to be performed entirely within that state.

Section 10.10 Arbitration.

(a) Any dispute, controversy or **claim** of any kind or character arising out of, relating to or in connection with this **Agreement** (whether based **in** tort, contractual or **statutory** principles), including any question regarding its **existence**, validity **or** termination, **or** regarding a breach thereof (hereafter, "**Dispute**") shall be submitted to a representative of each of the parties involved to attempt to reach an amicable resolution. **A** party wishing to initiate consideration of a dispute by such representative shall give written notice to **the** other parties hereto of the existence of such dispute and of the party's desire to have such representative consider the dispute. Such notice shall set forth a brief description of the **nature** of the dispute to be considered.

(b) If a Dispute is not settled within thirty (30) days after the notice **is** given to the other parties seeking representative consideration of a Dispute, such Dispute shall be submitted for resolution to the American Arbitration Association in accordance with **the** Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association. The September 1, 2000 version of such Commercial **Rules** shall govern the arbitration. A party wishing to submit a Dispute to arbitration shall give written notice to such effect to the other parties hereto. The arbitration shall be resolved by a three-person arbitration panel.

(c) **The** site of the arbitration shall be Miami, Florida, United **States** of America or such other location **as** the parties in arbitration may mutually agree in writing, any award shall be deemed to have been made there, and the language to be used **in** **the** arbitration proceedings shall be the English language with a simultaneous translation into Spanish. Any award shall be in writing in the English language and state the reasons and contain reference to the legal grounds upon which it is based. The award may be made public only with the **written** consent of all parties to the arbitration; provided, however, that any ruling or award, **final or** otherwise, may be cited in any subsequent dispute or proceeding to enforce such ruling.

Section 10.11 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING **OUT** OF OR RELATING TO **THIS** AGREEMENT OR THE ACTIONS OF THE PARTIES HERETO IN THE NEGOTIATION, **ADMINISTRATION,** PERFORMANCE AND ENFORCEMENT THEREOF.

Section **10.12** English Language. **In** the construction and interpretation of the terms and provisions of this Agreement, the English language version of this Agreement shall be the official version of this Agreement and any version of this Agreement that has been translated into another language shall have **no** force and **effect** except for purposes of enforcing this Agreement **in** a court of law that requires that the Agreement be presented in another language; provided, however, that any such translation must be reviewed and accepted by both parties.

Section 10.13 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused **this** Agreement **to** be executed **as** of the date first written above by their respective **officers** thereunto duly **authorized**

TELEFONICA LARGA DISTANCIA de PUERTO RICO, INC.

By: Victoria M. h.
Name: **Victoria M. Medina-Vargas**
Title: General Manager

CLEARCOMM, L.P.

By: SuperTel Communications Corp.,
Its General Partner

Name:
Title:

IN WITNESS WHEREOF. the parties have caused *this* Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized,

TELEFONICA LARGA DISTANCIA de PUERTO RICO, INC.

By: _____
Name:
Title:

CLEARCOMM, L.P.

By: SuperTel Communications Corp.,
Its General Partner

By: _____
Name:
Title:

