

authority therein other than a jurisdiction in which the Administrative Agent or such DIP Lender would not be subject to tax but for the execution and performance of this Agreement and (ii) taxes, levies, imposts, deductions, charges or withholdings (“Amounts”) with respect to payments hereunder to a DIP Lender (or Transferee) or the Administrative Agent in accordance with laws in effect on the later of the date of this Agreement and the date such DIP Lender (or Transferee) or the Administrative Agent becomes a DIP Lender (or Transferee or Administrative Agent, as the case may be), but not excluding, with respect to such DIP Lender (or Transferee) or the Administrative Agent, any increase in such Amounts solely as a result of any change in such laws occurring after such later date or any Amounts that would not have been imposed but for actions (other than actions contemplated by this Agreement) taken by a Borrower after such later date (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”). If a Borrower or any Guarantor shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to the DIP Lenders (or any Transferee) or the Administrative Agent, (i) the sum payable shall be increased by the amount necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) such DIP Lender (or Transferee) or the Administrative Agent (as the case may be) shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) the relevant Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant taxing authority or other Governmental Authority in accordance with applicable law.

(b) In addition, each Borrower agrees to pay any current or future stamp or documentary taxes or any other excise or property taxes, charges, assessments or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Document (hereinafter referred to as “Other Taxes”).

(c) Each Borrower will indemnify each DIP Lender (or Transferee) and the Administrative Agent for the full amount of Taxes and Other Taxes paid by such DIP Lender (or Transferee) or the Administrative Agent, as the case may be, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted by the relevant taxing authority or other Governmental Authority. Such indemnification shall be made within 30 days after the date any DIP Lender (or Transferee) or the Administrative Agent, as the case may be, makes written demand therefor. If a DIP Lender (or Transferee) or the Administrative Agent shall become aware that it is entitled to receive a refund in respect of Taxes or Other Taxes as to which it has been indemnified by a Borrower pursuant to this Section, it shall promptly notify such Borrower of the availability of such refund and shall, within 30 days after receipt of a request by such Borrower, apply for such refund at such Borrower’s expense. If any DIP Lender (or Transferee) or the Administrative Agent receives a refund in respect of any Taxes or Other Taxes as to which it has been indemnified by a Borrower pursuant to this

Section, it shall promptly notify such Borrower of such refund and shall, within 30 days after receipt of a request by such Borrower (or promptly upon receipt, if such Borrower has requested application for such refund pursuant hereto), repay such refund to such Borrower (to the extent of amounts that have been paid by such Borrower under this Section with respect to such refund plus interest that is received by the DIP Lender (or Transferee) or the Administrative Agent as part of the refund), net of all out-of-pocket expenses of such DIP Lender (or Transferee) or the Administrative Agent and without additional interest thereon; *provided* that such Borrower, upon the request of such DIP Lender (or Transferee) or the Administrative Agent, agrees to return such refund (plus penalties, interest or other charges) to such DIP Lender (or Transferee) or the Administrative Agent in the event such DIP Lender (or Transferee) or the Administrative Agent is required to repay such refund. Nothing contained in this subsection (c) shall require any DIP Lender (or Transferee) or the Administrative Agent to make available any of its tax returns (or any other information relating to its taxes that it deems to be confidential).

(d) Within 30 days after the date of any payment of Taxes or Other Taxes withheld by a Borrower in respect of any payment to any DIP Lender (or Transferee) or the Administrative Agent, such Borrower will furnish to the Administrative Agent, at its address referred to on the signature pages hereof, the original or a certified copy of a receipt evidencing payment thereof.

(e) Without prejudice to the survival of any other agreement contained herein, the agreements and obligations contained in this Section shall survive the payment in full of the principal of and interest on all Loans made hereunder.

(f) Each DIP Lender (or Transferee) that is organized under the laws of a jurisdiction outside the United States shall, if legally able to do so, prior to the immediately following due date of any payment by a Borrower hereunder, deliver to such Borrower such certificates, documents or other evidence, as required by the Code or Treasury Regulations issued pursuant thereto, including, but not limited to, Internal Revenue Service Form W-8BEN, W-8EC1, or W-9 and any other certificate or statement of exemption required by applicable law, properly completed and duly executed by such DIP Lender (or Transferee) establishing that such payment is (i) not subject to United States Federal withholding tax under the Code because such payment is effectively connected with the conduct by such DIP Lender (or Transferee) of a trade or business in the United States or (ii) totally exempt from United States Federal withholding tax or subject to a reduced rate of such tax as a result of the application of a provision of an applicable tax treaty or otherwise. Unless the relevant Borrower and the Administrative Agent have received forms or other documents satisfactory to them indicating that such payments hereunder are not subject to United States Federal withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, such Borrower or the Administrative Agent shall withhold taxes from such payments at the applicable statutory rate.

(g) No Borrower shall be required to pay any additional amounts to any DIP Lender (or Transferee) in respect of United States Federal withholding tax pursuant to subsection (a) above if the obligation to pay such additional amounts would not have arisen if such DIP Lender (or Transferee) had complied with the provisions of subsection (f) above.

(h) The obligations of the Borrowers under this Section 2.17 shall survive any termination of this Agreement.

SECTION 2.18. *Certain Fees.* The Borrowers shall pay to the Administrative Agent or the Collateral Agent, as the case may be, for the respective accounts of the Administrative Agent, the Collateral Agent and the DIP Lenders, as the case may be, the fees set forth in that certain letter dated June 25, 2002 among each of the Borrowers, JPMCB, CUSA, JPMSI and SSB at the times set forth therein.

SECTION 2.19. *Commitment Fees.* (a) The Borrowers shall pay to the DIP Lenders a commitment fee (the "Commitment Fee") for the period commencing on June 25, 2002 to the Termination Date or the earlier date of termination of the Total Commitment, computed (on the basis of the actual number of days elapsed over a year of 360 days) at the Commitment Fee Rate on the daily Unused Total Commitment. Commitment Fees, to the extent then accrued, shall be payable (x) monthly, in arrears, on the last calendar day of each month, (y) on the Termination Date and (z) upon any reduction or termination in whole or in part of the Total Commitment as provided in Section 2.09 hereof.

SECTION 2.20. *Letter of Credit Fees.* The Borrowers shall pay with respect to each Letter of Credit (i) to the Administrative Agent on behalf of the DIP Lenders a fee calculated (on the basis of the actual number of days elapsed over a year of 360 days) at the rate of the Applicable L/C Fee Rate per annum on the undrawn stated amount thereof and (ii) to the relevant Fronting Bank such Fronting Bank's customary fees for issuance, amendments and processing referred to in Section 2.02. In addition, each Borrower agrees to pay each Fronting Bank for its account a fronting fee in respect of each Letter of Credit issued by such Fronting Bank for such Borrower, for the period from and including the date of issuance of such Letter of Credit to and including the date of termination of such Letter of Credit, computed at a rate, and payable at times, to be determined by such Fronting Bank, the relevant Borrower and the Administrative Agent. Accrued fees described in clause (i) of the first sentence of this paragraph in respect of each Letter of Credit shall be due and payable monthly in arrears on the last calendar day of each month and on the relevant Termination Date, or such earlier date as the relevant Total Commitment is terminated. Accrued fees described in clause (ii) of the first sentence of this paragraph in respect of each Letter of Credit shall be payable at times to be determined by the relevant Fronting Bank, the relevant Borrower and the Administrative Agent.

SECTION 2.21. *Nature of Fees.* All Fees shall be paid on the dates due, in immediately available funds, as provided herein and in the letter described in Section 2.18. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.22. *Priority and Liens.*

(a) Each Loan Party hereby covenants, represents and warrants that, upon entry of the Interim Order and execution of this Agreement and the Security and Pledge Agreement, the Obligations of such Loan Party under the Loan Documents shall at all times be:

(i) subject to the Carve-Out, pursuant to Section 364(c)(1) of the Bankruptcy Code, entitled to Superpriority Claim status in the Case of such Loan Party;

(ii) subject to the Carve-Out, pursuant to Section 364(c)(2) of the Bankruptcy Code, secured by a perfected first priority Lien on (x) with respect to any Loan Party other than a Holding Company Guarantor, all unencumbered property of such Loan Party other than Excluded Property and any amounts that cash collateralize any Letter of Credit issued for the account of such Loan Party (if any) or the Unfunded Borrowing Limit of such Loan Party (if any) and (y) with respect to any Loan Party that is a Holding Company Guarantor, all unencumbered Equity Interests other than Excluded Property of any direct Subsidiary of such Holding Company Guarantor and any unencumbered cash, cash accounts and cash investments (including without limitation Permitted Investments) held by such Holding Company Guarantor (the assets described in this clause (y), collectively, with respect to each Holding Company Guarantor, the "**Holding Company Specified Assets**");

(iii) subject to the Carve-Out, pursuant to Section 364(c)(3) of the Bankruptcy Code, secured by a perfected junior Lien on (x) with respect to any Loan Party other than a Holding Company Guarantor, all property of such Loan Party that is subject to valid and perfected liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Sections 546(b) and 362(b)(18) of the Bankruptcy Code (other than the property (if any) that is subject to existing Liens that secure obligations of such Loan Party under the Pre-Petition Facility as to which such Loan Party is liable (any such Liens, "**Primed Liens**"), which Liens shall be primed by the Liens described in clause (iv) below) and (y) with respect to any Loan Party that is a Holding Company Guarantor, its Holding Company Specified Assets that are subject to valid and perfected liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Sections 546(b) and 362(b)(18) of the Bankruptcy Code (other than the property (if any) that is subject to existing Liens that secure obligations (if any) of such Holding Company Guarantor under the Pre-Petition Facility as to which such Holding Company Guarantor is liable, which Liens shall be primed by the Liens described in clause (iv) below); and

(iv) subject to the Carve-Out, pursuant to Section 364(d)(1) of the Bankruptcy Code, secured by a perfected first priority, senior priming lien on all of the property of such Loan Party that is subject to any of the Primed Liens (including, without limitation, inventory, accounts receivable, property, plant, equipment, patents, copyrights, trademarks, tradenames and other intellectual property and capital stock of subsidiaries), all of which Primed Liens shall be primed by and made subject and subordinate to the perfected first priority senior liens to be granted to the Agents, the Fronting Banks and the DIP Leaders, as well as the Permitted Inter-Group Debt Liens. Except for the Carve-Out, the Superpriority Claims shall at all times be senior to the rights of the Loan Parties, any chapter 11 Trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 Trustee, or any other creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 cases if any of the Loan Parties' cases are converted to cases under chapter 7 of the Bankruptcy Code.

(b) As to all real property the title to which is held by any Loan Party, or the possession of which is held by any Loan Party pursuant to leasehold interest, each Loan Party hereby assigns and conveys as security, grants a security interest in, hypothecates, mortgages, pledges and sets over unto the Collateral Agent on behalf of the Agents, the Fronting Banks and the DIP Lenders all of the right, title and interest of such Loan Party in all of such owned real property and in all such leasehold interests, together in each case with all of the right, title and interest of such Loan Party in and to all buildings, improvements, and fixtures related thereto, any lease or sublease thereof, all general intangibles relating thereto and all proceeds thereof, with the rank and priority set forth in subsection (a). Each Loan Party acknowledges that, pursuant to the Orders, the Liens in favor of the Collateral Agent on behalf of the Agents, the Fronting Banks and the DIP Lenders in all of such real property and leasehold instruments shall be perfected without the recordation of any instruments of mortgage or assignment.

SECTION 2.23. *Right of Set-off.* Subject to the provisions of Section 7.01, Section 8.03 and the Orders, upon the occurrence and during the continuance of any Event of Default and at least 5 days' prior notice to the applicable Loan Party, each Agent, each Fronting Bank and each DIP Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law and without further order of or application to the Bankruptcy Court, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by each such Agent, each such Fronting Bank and each such DIP Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or hereafter existing under the Loan Documents, irrespective of whether or not such Agent, Fronting Bank or DIP Lender shall have made any demand under any Loan Document and although such obligations may not have been accelerated. Each DIP Lender, Fronting Bank and Agent agrees promptly to notify the applicable Loan Party after any such set-off and application made by such DIP Lender, Fronting Bank or Agent, as the case may be, *provided* that the failure to give such notice shall not

affect the validity of such set-off and application. The rights of each DIP Lender, Fronting Bank and Agent under this Section are in addition to other rights and remedies that such DIP Lender, Fronting Bank and Agent may have upon the occurrence and during the continuance of any Event of Default.

SECTION 2.24. *Security Interest in Letter of Credit Accounts, General Collateral Accounts, and Unfunded Borrowing Limit Accounts.* Pursuant to Section 364(c)(2) of the Bankruptcy Code, each Loan Party hereby assigns and pledges to the Collateral Agent, for the ratable benefit of the DIP Lenders, the Fronting Banks and the Agents, a first priority security interest, senior to all other Liens, if any, in all of each Loan Party's right, title and interest in and to each Letter of Credit Account, General Collateral Account, and Unfunded Borrowing Limit Account and direct investment of the funds contained therein. Cash held in each Letter of Credit Account, each General Cash Collateral Account, and each Unfunded Borrowing Limit Account shall not be available for use by any Borrower or any other Loan Party, whether pursuant to Section 363 of the Bankruptcy Code or otherwise.

SECTION 2.25. *No Discharge: Survival of Claims.* Each Loan Party agrees that (i) its obligations hereunder shall not be discharged by the entry of an order confirming any Plan of Reorganization (and each Loan Party, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Agents, the Fronting Banks and the DIP Lenders pursuant to the Order and described in Section 2.22 and the Liens granted to the Collateral Agent pursuant to the Order and described in Sections 2.22 and 2.24 shall not be affected in any manner by the entry of an order confirming any Plan of Reorganization.

SECTION 2.26. *Use of Cash Collateral.* Notwithstanding anything to the contrary contained herein, no Borrower shall be permitted to request a Credit Event unless all Loan Parties shall at that time have the use of all cash collateral subject to the Orders for the purposes described in Section 3.10.

SECTION 2.27. *General Provisions as to Payments.* Each Borrower shall make each payment of principal of, and interest on, its Loans, of its Reimbursement Obligations and of fees hereunder, not later than 12:00 noon (New York City time) on the date when due in Federal or other funds immediately available in New York City, without set-off or counterclaim, to the Administrative Agent, the Collateral Agent or the applicable Fronting Bank or DIP Lender, as the case may be, at their respective addresses referred to in Section 10.01. Whenever any such payment shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time.

SECTION 2.28. *Nature of Obligations of each Borrower.* The Obligations of each Several Borrower in any Several Borrower Group under the Loan Documents are joint

and several within such Several Borrower Group and several as to any other Borrower Group. The Obligations of each Joint and Several Borrower in any Joint and Several Borrower Group under the Loan Documents are joint and several within such Joint and Several Borrower Group as well as all other Joint and Several Borrower Groups and all Several Borrower Groups.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

In order to induce the DIP Lenders and the Fronting Banks to extend credit pursuant to any Credit Event, each Loan Party represents and warrants to the Agents, the DIP Lenders and the Fronting Banks as follows (in accordance with and subject to the limitations set forth in Section 3.15):

SECTION 3.01. *Organization and Authority.* Such Loan Party (i) is duly organized and validly existing under the laws of the State of its incorporation or formation, (ii) is duly qualified as a foreign corporation (or other entity) and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect, (iii) subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable) has the requisite corporate power and authority to effect the transactions contemplated hereby, and by the other Loan Documents to which it is a party and (iv) subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable) has all requisite corporate power and authority to own, pledge, mortgage, lease and operate its properties, and to conduct its business as now or currently proposed to be conducted.

SECTION 3.02. *Due Execution.* Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the execution, delivery and performance by such Loan Party of each of the Loan Documents to which it is a party (including, without limitation, the use of any proceeds of the Loans by such Loan Party or the grant and pledge by such Loan Party of the security interests granted pursuant to the Security and Pledge Agreement), (i) are within the respective corporate powers of such Loan Party, have been duly authorized by all necessary corporate action, including the consent of shareholders, partners or members where required, and do not (A) contravene the charter, by-laws or other organizational documents of any Loan Party, (B) violate any law (including, without limitation, the Securities Exchange Act of 1934) or regulation (including, without limitation, Regulations T or U of the Board of Governors of the Federal Reserve System), or any order or decree of any court or Governmental Authority, (C) conflict with or result in a breach of, or constitute a default under, any indenture, mortgage or deed of trust entered into after the Petition Date or any lease, agreement or other instrument entered into after the Petition Date binding on such Loan Party or any of their properties, or (D) result in or require the creation or imposition of

any Lien upon any of the property of any of the Loan Parties pursuant to any such lease, agreement or instrument, other than the Liens granted pursuant to the Loan Documents or the Orders; and (ii) do not require the consent, authorization by or approval of or notice to or filing or registration with any Governmental Authority other than (1) the entry of the Orders and (2) with respect to any Collateral consisting of franchise agreements, notice of the grant of the security interests to Persons or Governmental Authorities required to be given such notice pursuant to the terms of such franchise agreement. Except for the entry of the Orders, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the perfection of the security interests granted pursuant to the Loan Documents or, the exercise by the Agents, the Fronting Banks or the DIP Lenders of their respective rights and remedies under the Loan Documents, except in the case of a foreclosure by the Collateral Agent with respect to certain Collateral relating to franchise or similar agreements with Governmental Authorities, for any required consent, authorization by or approval of or notice to any such Governmental Authority. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), this Agreement shall have been duly executed and delivered by each of the Loan Parties. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), this Agreement, and each of the other Loan Documents to which such Loan Party is or will be a party, when delivered hereunder or thereunder, will be a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms and the Orders.

SECTION 3.03. *Statements Made.* The information that has been delivered in writing by any Loan Party to any Agent, any Fronting Bank or any DIP Lender or to the Bankruptcy Court in connection with any Loan Document, taken as a whole and in light of the circumstances in which made and taken together with the information in the Current SEC Reports, contains no untrue statement of a material fact and does not omit to state a material fact necessary to make such statements not misleading; provided that (i) the foregoing representation does not apply to historical financial statements of the Parent and its subsidiaries or to projections other than those referred to in the following item (ii) and (ii) to the extent that any such information constitutes projections delivered specifically for use in connection with this Agreement, such projections were prepared in good faith on the basis of assumptions, methods, data, tests and information believed by the Loan Parties to be reasonable at the time such projections were furnished.

SECTION 3.04. *Current SEC Reports, No Material Adverse Change.* (a) The information in the Current SEC Reports with respect to financial statements of the Parent and its subsidiaries is, taken as a whole, true and correct in all material respects.

(b) Since December 31, 2001 no event or condition has occurred which has resulted, or could reasonably be expected to result in, a Material Adverse Effect, other than (w) the commencement of the Cases and events typically occurring as a result of the commencement of a proceeding under chapter 11 of the Bankruptcy Code, (x) the

matters set forth in the Current SEC Reports or otherwise disclosed in writing by the applicable Loan Party to the Initial DIP Lenders prior to the date of this Agreement, (y) any downgrading or suspension of any rating of indebtedness of the Parent or any subsidiary thereof (provided that any such downgrading or suspension after the date of this Agreement could not reasonably be deemed to have resulted from or been made in anticipation of any event or condition that would otherwise constitute a Material Adverse Effect) or (z) any criminal indictment of any member of the Rigas family (provided that this clause (z) shall not preclude a determination that any event or condition first occurring after the date of this Agreement and relating to any such indictment was not otherwise a Material Adverse Effect).

SECTION 3.05. *Subsidiaries.* (a) The corporate organization chart provided by the Loan Parties to the Co-Lead Arrangers prior to the date hereof is true and correct in all material respects.

(b) Each Person that is a borrower or a guarantor under any Pre-Petition Facility is a Loan Party.

(c) Each Loan Party is a debtor and a debtor-in-possession in a case pending under chapter 11 of the Bankruptcy Code.

SECTION 3.06. *Liens.* There are no Liens of any nature whatsoever on any assets of any Loan Party other than Liens permitted under Section 6.01. No Loan Party is party to any contract, agreement, lease or instrument (other than the Loan Documents) entered into on or after the Petition Date the performance of which, either unconditionally or upon the happening of an event, will result in or require the creation of a Lien on any assets of such Loan Party or otherwise result in a violation of the Loan Documents.

SECTION 3.07. *Compliance with Law.* (a) (i) The operations of the Loan Parties comply with all applicable environmental, health and safety statutes and regulations, including, without limitation, regulations promulgated under the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); (ii) none of the operations of the Loan Parties is the subject of any pending Federal or state investigation evaluating whether any remedial action involving a material expenditure by any Loan Party is needed to respond to a release of any Hazardous Waste or Hazardous Substance (as such terms are defined in any applicable state or Federal environmental law or regulations) into the environment; and (iii) no Loan Party has any material contingent liability arising under applicable State or Federal environmental law or regulations in connection with any release of any Hazardous Waste or Hazardous Substance into the environment, except in the case of each of items (i), (ii) and (iii) above, for any matter referred to therein that would not result in a Material Adverse Effect.

(b) No Loan Party is in violation of any applicable State or Federal environmental law, rule or regulation, or in default with respect to any judgment, writ,

injunction or decree legally issued pursuant to any such State or Federal environmental law, rule or regulation by any Governmental Authority the violation of which, or a default with respect to which, would have a Material Adverse Effect.

SECTION 3.08. *Insurance.* All policies of insurance of any kind or nature owned by or issued to the Loan Parties, including, without limitation, policies of life, fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation, employee health and welfare, title, property and liability insurance, are in full force and effect and are of a nature and provide such coverage as is customarily carried by companies of the size and character of the Loan Parties.

SECTION 3.09. *The Orders.* On or prior to the date of the initial Credit Event, the Interim Order will have been entered and as of the date of the initial Credit Event, the Interim Order will not have been stayed, amended, vacated, reversed or rescinded. On or prior to the date of any Credit Event, the Interim Order or the Final Order, as the case may be, will have been entered and as of the date of such Credit Event, the Interim Order or the Final Order, as the case may be, will not have been amended, stayed, vacated or rescinded.

SECTION 3.10. *Use of Proceeds.* The Letters of Credit and the proceeds of the Loans will be used by the relevant Borrower only as permitted by Section 5.08.

SECTION 3.11. *Litigation.* Except as disclosed in the Borrower's Form 10-K for the year ended December 31, 2000, the Borrower's Form 10-Q for the quarter ended March 31, 2001, and the Current SEC Reports and Environmental Reports, there are no unstayed actions, suits or proceedings pending or, to the best knowledge of the Borrower or the Guarantors, threatened against or affecting the Borrower or the Guarantors or any of their respective properties, before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that are reasonably expected to be determined adversely to the Borrower or the Guarantors and, if so adversely determined, would have a Material Adverse Effect.

SECTION 3.12. *Intellectual Property.* The information set forth in the Intellectual Property Schedule is true, correct and complete in all material respects. Except as described in the Intellectual Property Schedule, no claim has been asserted and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Loan Party know of any such claim, and, to the knowledge of any Loan Party, the use of such Intellectual Property by the Loan Parties does not infringe on the rights of any Person, except for such claims and infringement that, in the aggregate, would not be reasonably expected to have a Material Adverse Effect. The representations and warranties set forth in this Section 3.12 shall not be made (or deemed made) on any date prior to the date on which the Loan Parties have delivered to the Collateral Agent the Intellectual Property Schedule pursuant to Section 5.07.

SECTION 3.13. *Franchise Agreements.* Schedule 3.13 sets forth, with respect to each Loan Party, as of the date of this Agreement, (i) the franchise agreements to which such Loan Party is a party as of the Petition Date and (ii) the locations and the minimum number of subscribers in each region in which the related Borrowing Group operates.

SECTION 3.14. *No Event of Default.* No Default or Event of Default has occurred and is continuing (other than, solely if this representation is made by any Several Borrower, a Financial Covenant Event of Default with respect to any other Borrower Group or a True-Up Event of Default with respect to a single test date or time and with respect to a single other Borrower Group).

SECTION 3.15. *Loan Parties Making Representations and Warranties.* The representations and warranties set forth in the preceding Sections of this Article 3 are made (or deemed made) by the Loan Parties on any date as specified in the Loan Documents as follows: (i) each Loan Party in any Several Borrower Group is making such representations and warranties joint and severally with any other Loan Party in such Several Borrower Group, and severally as to any other Loan Party and (ii) each Loan Party (other than a Loan Party described in clause (i) is making such representations and warranties joint and severally with any other Loan Party.

#### ARTICLE 4 CONDITIONS OF LENDING

SECTION 4.01. *Conditions Precedent to Closing and Initial Credit Event.* The occurrence of the Closing Date and obligation of the DIP Lenders (including, if applicable, any Fronting Bank) to extend credit pursuant to the initial Credit Event, is subject to the following conditions precedent:

(a) *Supporting Documents.* The Administrative Agent shall have received for each Loan Party: (i) a copy of such entity's constituent documents, as amended up to and including the Closing Date, certified by the Secretary of State (or other applicable Governmental Authority) of the jurisdiction of such entity's organization, (ii) a certificate of such Secretary of State (or other applicable Governmental Authority) of such entity's jurisdiction of organization, dated as of a recent date, as to the good standing of such entity and as to the constituent documents on file in the office of such Secretary of State (or other applicable Governmental Authority), (iii) a certificate of the Secretary or an Assistant Secretary of each such entity dated as of the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws of such entity as in effect on the date of such certification, (B) that attached thereto is a true and complete copy of resolutions adopted by the governing body of such entity authorizing the Borrowings and Letter of Credit extensions hereunder, the execution, delivery and performance in accordance with their respective terms of the Loan Documents and any

other documents required or contemplated hereunder or thereunder and the granting of the Liens on the Collateral contemplated hereby, and that such resolutions are in full force and effect without modification or amendment, (C) that the constituent documents of such entity have not been amended since the date of the last amendment thereto indicated on the certificate of the Secretary of State furnished pursuant to clause (i) above and (D) as to the incumbency and specimen signature of each officer of such entity executing this Agreement or any other Loan Documents or any other document delivered by it in connection herewith or therewith (such certificate to contain a certification by another officer of such entity as to the incumbency and signature of the officer signing the certificate referred to in this clause (iii)); and (iv) such other documents as the Administrative Agent may reasonably request.

(b) *Interim Order.* At the time of the initial Credit Event, the Agents, the Fronting Bank and the DIP Lenders shall have received a certified copy of an order of the Bankruptcy Court in substantially the form of Exhibit C (the "**Interim Order**") approving the Loan Documents and granting the Superpriority Claim status and senior priming and other Liens described in Section 2.22 which Interim Order (i) shall have been entered with the consent or non-objection of a preponderance of the Pre-Petition Lenders (as determined by the Co-Lead Arrangers in their sole discretion) upon an application or motion of the Loan Parties reasonably satisfactory in form and substance to the Co-Lead Arrangers, on such prior notice to such parties (including the Pre-Petition Lenders) as may in each case be reasonably satisfactory to the Co-Lead Arrangers, (ii) shall authorize extensions of credit in amounts satisfactory to the Co-Lead Arrangers, (iii) shall approve the payment by the Loan Parties of all of the Fees referred to in Section 2.18, (iv) shall be in full force and effect, (v) shall have authorized the use by the Loan Parties of any cash collateral in which any Pre-Petition Lender under the Pre-Petition Facilities may have an interest and shall have provided, as adequate protection for the use of such cash collateral and the priming contemplated hereby, for (A) the monthly payment of current interest and letter of credit fees (including the payment on the Closing Date of any such interest and fees that are accrued and unpaid as of the Petition Date) at the applicable non-default base rates plus applicable margins provided for pursuant to the Pre-Petition Facilities; *provided*, that, as additional adequate protection consideration for Pre-Petition Lenders under the Frontier Credit Agreement (as defined in the Interim Order) to consent to the priming of their liens and the use of their Cash Collateral, the payment described in this clause (A) shall be determined by applying the applicable non-default base rate plus applicable margin plus 40 basis points, (B) subject to the Carve-Out a Superpriority Claim as contemplated by Section 507(b) of the Bankruptcy Code immediately junior to the claims under Section 364(c)(1) of the Bankruptcy Code held by the Agents, the Fronting Banks and the DIP Lenders and the Permitted Inter-Group Debt, (C) subject to the Carve-Out a Lien on substantially all of the assets of Loan Parties (or, in the case of any Holding Company Guarantor, its Holding Company Specified Assets) having a priority immediately junior to the priming and other Liens granted in favor of the Agent, the Fronting Banks and the DIP Lenders hereunder and under the other Loan Documents and the Liens securing the Permitted

Inter-Group Debt, (D) the payment on a current basis of the reasonable fees and disbursements (including, but not limited to, the reasonable fees and disbursements of counsel and internal and third-party consultants, including financial consultants, and auditors) incurred by the respective agents under the Pre-Petition Facilities (including any unpaid pre-petition fees and expenses) and the continuation of the payment to such agents on a current basis of the administration fees that are provided for under the respective Pre-Petition Facilities and (vi) shall not have been stayed, reversed, modified or amended in any respect; and, if the Interim Order is the subject of a pending appeal in any respect, neither the extension of any credit pursuant to a Credit Event nor the performance by any Loan Party of any of their respective obligations under any Loan Documents or under any other instrument or agreement referred to therein shall be the subject of a presently effective stay pending appeal.

The adequate protection liens and the priority claims granted to the Pre-Petition Lenders as contemplated by the Interim Order shall be limited to an amount equal to the diminution, from and after the date of filing of the Interim Order, in the value of their pre-petition collateral, including, without limitation, the diminution in value of the Pre-Petition Liens as a consequence of the priming liens contemplated hereby.

(c) *Security and Pledge Agreement.* Each Loan Party shall have duly executed and delivered to the Collateral Agent a Security and Pledge Agreement in substantially the form of Exhibit D (the “**Security and Pledge Agreement**”) and each of the documents contemplated thereunder that is to be delivered prior to the occurrence of the initial Credit Event (including, without limitation, all such patent, trademark and copyright security agreements or other filings as requested by the Collateral Agent in order to perfect the Administrative Agent’s security interest in intellectual property of each Loan Party).

(d) *First Day Orders.* All of the “first day orders” entered by the Bankruptcy Court at the time of the commencement of the Cases shall be satisfactory in form and substance to the Co-Lead Arrangers.

(e) *Opinion of Counsel.* The Agents, the Fronting Banks and the DIP Lenders shall have received one or more favorable written opinions of counsel to the Loan Parties, each dated the Closing Date and each in form and substance, and from a Person, reasonably acceptable to the Co-Lead Arrangers.

(f) *Payment of Fees.* The Borrowers shall have paid the then unpaid balance of all accrued and unpaid Fees due under and pursuant to this Agreement.

(g) *Corporate and Judicial Proceedings.* All corporate, judicial and other proceedings and all instruments and agreements in connection with the transactions among the Loan Parties, the Agents, the Fronting Banks and the DIP Lenders contemplated by the Loan Documents shall be satisfactory in form and substance to the

Co-Lead Arrangers, and the Co-Lead Arrangers shall have received all information and copies of all documents and papers, including records of corporate, judicial and other proceedings, which the Co-Lead Arrangers may have requested in connection therewith, such documents and papers where appropriate to be certified by proper corporate, governmental or judicial or other authorities.

(h) *Information.* The Co-Lead Arrangers shall have received all such information (financial or otherwise) as may be reasonably requested by them and shall have discussed such information with the management of the Loan Parties and shall be satisfied with the nature and substance of such discussions.

(i) *Representations and Warranties.* All representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date except to the extent such representations and warranties expressly relate to an earlier date (which shall be true and correct in all material respects on and as of such earlier date).

(j) *No Default.* No Default or Event of Default shall have occurred and be continuing on and as of the Closing Date.

(k) *Closing Documents.* The Administrative Agent shall have received all documents required by this Agreement and the other Loan Documents and such documents shall be satisfactory in form and substance to the Co-Lead Arrangers.

SECTION 4.02. *Conditions Precedent to Each Credit Event.* The obligation of each DIP Lender and each Fronting Bank to extend credit pursuant to any Credit Event, including the initial Credit Event, is subject to the satisfaction of each of the following conditions precedent:

(a) *Notice.* The Administrative Agent shall have received a notice with respect to such Credit Event, as required by Article 2.

(b)– *Representations and Warranties.* All representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as if made on and as of such date except to the extent such representations and warranties expressly relate to an earlier date (which shall be true and correct in all material respects as of such earlier date).

(c) *No Default.* On the date of such Credit Event, before and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing (other than (x) a Financial Covenant Default with respect to a Borrower Group other than the Borrower Group to which the Borrower requesting such Credit Event belongs and (y) a

True-Up Event of Default with respect to a single test date or time and with respect to a single Borrower Group other than the Borrower Group to which the Borrower requesting such Credit Event belongs).

(d) *Orders.* The Interim Order shall be in full force and effect and shall not have been stayed, reversed, modified or amended in any respect without the prior written consent of the Co-Lead Arrangers, *provided*, that if after giving effect to such Credit Event, the aggregate Outstanding Exposure with respect to all Borrowers would exceed the amount authorized by the Interim Order, the Agents, the Fronting Banks and each of the DIP Lenders shall have received a certified copy of an order of the Bankruptcy Court satisfactory in form and substance to the Co-Lead Arrangers in their sole discretion (the "**Final Order**"), which, in any event, shall have been entered by the Bankruptcy Court no later than 45 days after the entry of the Interim Order, and at the time of such Credit Event, the Final Order shall be in full force and effect, and shall not have been stayed, reversed, modified or amended in any respect without the prior written consent of the Co-Lead Arrangers; and if either the Interim Order or the Final Order is the subject of a pending appeal in any respect, neither the occurrence of any Credit Event nor the performance by any Loan Party of any of their respective obligations under any of the Loan Documents shall be the subject of a presently effective stay pending appeal.

(e) *Payment of Fees.* The Borrowers shall have paid to the relevant parties the then unpaid balance of all accrued and unpaid Fees then payable under and pursuant to this Agreement and the letter referred to in Section 2.18.

(f) *Borrowing Limit.* After giving effect to such Credit Event, the Outstanding Exposure with respect to the Borrower requesting such Credit Event will not exceed (i) such Borrower's Borrowing Limit minus (ii) the Outstanding Permitted Inter-Group Debt of such Borrower's Borrower Group.

(g) *Monthly Usage Limit.* Solely if such Credit Event occurs on or after the First Delivery Date, after giving effect to such Credit Event, the Outstanding Exposure with respect to the Borrower requesting such Credit Event will not exceed such Borrower's Monthly Usage Limit applicable to the calendar month in which such Credit Event occurs.

(h) *Total Commitments.* After giving effect to such Credit Event, the Outstanding Exposure with respect to all Borrowers will not exceed the Total Commitment or, solely if such Credit Event occurs prior to the Incremental Availability Date, the lesser of (i) the Total Commitment and (ii) \$500,000,000.

(i) *Use of Proceeds.* The uses of the proceeds of such Credit Event shall be (i) substantially consistent with the Monthly Budget of the relevant Borrower applicable to the calendar month in which such Credit Event occurs and (ii) in compliance with Section 5.08.

The request by any Borrower for, and the acceptance by such Borrower of the proceeds of, each Credit Event shall each be deemed to be a representation and warranty by such Borrower on and as of the date of such Credit Event that each of the conditions specified in this Section have been satisfied.

**SECTION 4.03. *Occurrence of Incremental Availability Date.*** The Incremental Availability Date shall occur on the first date on which each of the following conditions shall have been satisfied:

(a) *Additional Due Diligence.* The Co-Lead Arrangers shall have advised the Borrowers in writing that the Initial Majority DIP Lenders shall have completed an additional due diligence review with respect to each Loan Party, the scope, substance and results of which due diligence review (i) shall be satisfactory to each Initial Majority DIP Lender in its sole discretion, (ii) shall include, at the request of the Initial Majority DIP Lenders in their sole discretion, an evaluation of (x) the assets of each Loan Party (including without limitation its subscribers), (y) the reporting systems of each Loan Party (including without limitation billing systems and cash management systems) and (z) the receipt of historical financial information with respect to each Loan Party and (iii) shall include, in any event, satisfaction of the Initial Majority DIP Lenders with the Loan Parties' systems for tracking cash receipt and disbursements and with the arrangements with the Adelpia Business Solutions business regarding the continued supply of certain services to the Loan Parties.

(b) *Monthly Budgets, Long-Term Budgets and Projections.* The Agents, the Fronting Banks and the DIP Lenders shall have received from each Borrower (i) the Long Term Budget with respect to such Borrower and its Borrower Group, (ii) the first Monthly Budget with respect to such Borrower and its Borrower Group, and (iii) financial projections with respect to such Borrower and its Borrower Group, showing, among other things, the effect on such Borrower Group of the filing under Chapter 11 of the Bankruptcy Code, and each of the items described in clauses (i), (ii) and (iii) shall be satisfactory in form and substance to the Co-Lead Arrangers in their sole discretion.

(c) *UCC Searches.* The Collateral Agent shall have received all of the UCC searches referred to in Section 5.07, and such UCC searches shall reflect the absence of Liens on the assets of the Loan Parties other than such Liens as may be approved by the Co-Lead Arrangers in their sole discretion and other Liens permitted under Section 6.01.

ARTICLE 5  
AFFIRMATIVE COVENANTS

From the date hereof and for so long as any Commitment shall be in effect or any Letter of Credit shall remain outstanding, or any Obligation shall remain outstanding or unpaid under the Loan Documents, each of the applicable Loan Parties specified below agrees that:

SECTION 5.01. *Financial Statements, Reports, Etc.* Each Borrower, the Parent and each other Loan Party (as applicable) will deliver to the Administrative Agent and each of the DIP Lenders:

(a) (x) within 90 days after the end of each fiscal year ended on or after the 120<sup>th</sup> Day, (i) such Borrower's consolidated balance sheet and related statement of income and cash flows, showing the financial condition of such Borrower's Borrower Group on a consolidated basis, as of the close of such fiscal year, and the results of operations during such year, such statements to be audited by PriceWaterhouseCoopers or other independent public accountants of recognized national standing acceptable to the Required DIP Lenders and accompanied by an opinion of such accountants (which shall not be qualified in any material respect other than with respect to the Cases) and, solely if such statements are being delivered on or after the SEC Reporting Date, to be certified on behalf of such Borrower by a Financial Officer of such Borrower to the effect that such consolidated financial statements fairly present the financial condition and results of operations of such Borrower Group on a consolidated basis in accordance with GAAP consistently applied and (ii) the Parent's consolidated balance sheet and related statement of income and cash flows, showing the financial condition of the Parent Group on a consolidated basis, as of the close of such fiscal year, and the results of operations during such year, such statements to be audited by PriceWaterhouseCoopers or other independent public accountants of recognized national standing acceptable to the Required DIP Lenders and accompanied by an opinion of such accountants (which shall not be qualified in any material respect other than with respect to the Cases) and, solely if such statements are being delivered on or after the SEC Reporting Date, to be certified on behalf of such Borrower by a Financial Officer of the Parent to the effect that such consolidated financial statements fairly present the financial condition and results of operations of the Parent Group on a consolidated basis in accordance with GAAP consistently applied and (y) as soon as available, for each Borrower Group and the Parent Group, the restated consolidated balance sheet and related statement of income and cash flows for any date, or any period ended, prior to the date of effectiveness of this Agreement, as applicable, such statements to be audited by PriceWaterhouseCoopers or other independent public accountants of recognized national standing acceptable to the Required DIP Lenders and accompanied by an opinion of such accountants (which shall not be qualified in any material respect other than with respect to the Cases) and to be certified by a Financial Officer of the relevant Loan Party to the effect that such consolidated financial statements fairly present the financial condition

and results of operations of the applicable Borrower Group or Parent Group, as the case may be, on a consolidated basis in accordance with GAAP consistently applied (except for such changes necessitated by such restatement and as to which such public accountants shall have concurred) (any statements delivered pursuant to this clause (y), the “Restated Statements”);

(b) within 45 days after the end of each month of each fiscal year ended on or after the 120<sup>th</sup> Day, (i) such Borrower’s consolidated balance sheets and related statements of income and cash flows, showing the financial condition of such Borrower’s Borrower Group on a consolidated basis, as of the close of such month and the results of their operations during such month and the then elapsed portion of such fiscal year, each set of such statements, solely if such statements are being delivered on or after the SEC Reporting Date, certified on behalf of such Borrower by a Financial Officer of such Borrower as fairly presenting the financial condition and results of operations of such Borrower’s Borrower Group on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments, (ii) the Parent’s consolidated balance sheets and related statements of income and cash flows, showing the financial condition of the Parent Group on a consolidated basis, as of the close of such month and the results of their operations during such month and the then elapsed portion of the fiscal year, each set of such statements, solely if such statements are being delivered on or after the SEC Reporting Date, certified on behalf of such Borrower by a Financial Officer of the Parent as fairly presenting the financial condition and results of operations of the Parent Group on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and (iii) certain operating statistics of such Borrower in a form acceptable to the Co-Lead Arrangers, certified on behalf of such Borrower by a Financial Officer of such Borrower as to the accuracy thereof;

(c) concurrently with any delivery of financial statements under (a) or (b) above with respect to any Borrower or the Parent, as the case may be, (i) a certificate of the applicable Financial Officer (A) solely if such statements are being delivered on or after the SEC Reporting Date or are being delivered pursuant to clause (iii) under (a) or (b), certifying on behalf of the Borrower the accuracy of such statements in all material respects, (B) solely if such financial statements are not Restated Statements, certifying on behalf of the Borrower that to the best of such Financial Officer’s knowledge no Default or Event of Default has occurred during the period covered by such financial statements and is continuing (other than, with respect to any Several Borrower, a Default or Event of Default with respect to any Loan Party that does not belong to such Several Borrower’s Borrower Group) or, if such a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (C) solely if such financial statements are not Restated Statements, setting forth computations in reasonable detail satisfactory to the Co-Lead Arrangers demonstrating compliance with the provisions of Sections 6.03, 6.04, 6.05, 6.10 and 6.11, (ii) solely if such financial statements are not Restated

Statements, setting forth in reasonable detail a reconciliation of the financial results set forth in such statements with the projected financial results for the relevant period set forth in the Long-Term Budget and the Monthly Budget of the applicable Loan Party and (iii) with respect to any financial statements delivered under (a) (other than Restated Statements), a certificate (which certificate may be limited to accounting matters and disclaim responsibility for legal interpretations) of the relevant accountants accompanying such financial statements certifying that, in the course of the regular audit of the business of the relevant Borrower or the Parent, as the case may be, such accountants have obtained no knowledge that an Event of Default has occurred during the period covered by such financial statements and its continuing, or if, in the opinion of such accountants, an Event of Default has occurred during the period covered by such financial statements and is continuing, specifying the nature thereof and all relevant facts with respect thereto;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Loan Party with the Securities and Exchange Commission, or any governmental authority succeeding to any of or all of the functions of said commission, or with any national securities exchange, as the case may be;

(e) as soon as available and in any event (A) within 30 days after any Loan Party or any of its ERISA Affiliates knows or has reason to know that any Termination Event described in clause (i) of the definition of Termination Event with respect to any Single Employer Plan of such Loan Party or such ERISA Affiliate has occurred and (B) within 10 days after any Loan Party or any of its ERISA Affiliates knows or has reason to know that any other Termination Event with respect to any such Plan has occurred, a statement of a Financial Officer of such Loan Party describing such Termination Event and the action, if any, which such Loan Party or such ERISA Affiliate proposes to take with respect thereto;

(f) promptly and in any event within 10 days after receipt thereof by any Loan Party or any of its ERISA Affiliates from the PBGC copies of each notice received by such Loan Party or any such ERISA Affiliate of the PBGC's intention to terminate any Single Employer Plan of such Loan Party or such ERISA Affiliate or to have a trustee appointed to administer any such Plan;

(g) promptly and in any event within 30 days after the filing thereof with the Department of Labor by any Loan Party, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Single Employer Plan of any Loan Party or any of its ERISA Affiliates;

(h) within 10 days after notice is given or required to be given to the PBGC under Section 302(f)(4)(A) of ERISA of the failure of any Loan Party or any of its ERISA Affiliates to make timely payments to a Plan, a copy of any such notice filed and

a statement of a Financial Officer setting forth (A) sufficient information necessary to determine the amount of the lien under Section 302(f)(3), (B) the reason for the failure to make the required payments and (C) the action, if any, which such Loan Party or any of its ERISA Affiliates proposed to take with respect thereto;

(i) promptly and in any event within 10 days after receipt thereof by any Loan Party or any of its ERISA Affiliates from a Multiemployer Plan sponsor, a copy of each notice received by such Loan Party or any of its ERISA Affiliates concerning (A) the imposition of Withdrawal Liability by a Multiemployer Plan, (B) the determination that a Multiemployer Plan is, or is expected to be, in reorganization within the meaning of Title IV of ERISA, (C) the termination of a Multiemployer Plan within the meaning of Title IV of ERISA, or (D) the amount of liability incurred, or which may be incurred, by such Loan Party or any of its ERISA Affiliates in connection with any event described in clause (A), (B) or (C) above;

(j) promptly after the same is available, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of such Loan Party with the Bankruptcy Court in the Cases, or distributed by or on behalf of such Loan Party to any official committee appointed in the Cases;

(k) on or prior to the 15<sup>th</sup> day of each calendar month (commencing with August 2002 for the Parent Group and October 2002 for each Borrower Group), (i) a budget with respect to each Borrower and its Borrower Group or the Parent Group (as applicable) (each, a "Monthly Budget") for each of (x) such calendar month, and (y) the two subsequent calendar months thereafter, in form and substance satisfactory to the Co-Lead Arrangers in their sole discretion and setting forth, among other things, the forecasted maximum projected principal amount of Borrowings and face amount of Letters of Credit to be used by such Borrower or the Parent Group (as applicable) during such month and the two calendar months thereafter and the projected maximum principal amount of Borrowings and face amount of Letters of Credit to be used by such Borrower or the Parent Group (as applicable) during such month and the two calendar months thereafter and (ii) together with each such Monthly Budget of each Borrower or the Parent Group (as applicable) described in clause (i) above, a reconciliation of the results of the business operations of such Borrower's Borrower Group or the Parent Group (as applicable) for the month preceding the most recently ended calendar month as compared to its corresponding Monthly Budget, in form and substance satisfactory to the Co-Lead Arrangers in their sole discretion; *provided* that, solely on August 15, 2002, the Parent Group will provide a report setting forth the results of June 2002 in lieu of such reconciliation. The delivery of items (i) and (ii) in any month shall be concurrent;

(l) (i) no later than the 120<sup>th</sup> Day, a budget with respect to each Borrower and its Borrower Group (each, a "Long-Term Budget") for the period ending not earlier than the Maturity Date, in form and substance acceptable to the Co-Lead Arrangers in their sole discretion, including, but not limited to, information regarding capital

expenditures including projected amounts, and use thereof (and the delivery of all Long-Term Budgets shall be concurrent); and (ii) from time to time, upon request by the Co-Lead Arrangers, with respect to any Borrower, an updated Long-Term Budget;

(m) on the second Business Day of each calendar week (commencing with the week of July 1<sup>st</sup>, 2002), from each Borrower (or, solely for any week ending prior to the 120<sup>th</sup> Day, from the Parent only), a statement of projected cash receipts and cash disbursements with respect to such Borrower's Borrower Group (or, solely for any week ending prior to the 120<sup>th</sup> Day, the Parent Group) for each week in the period of thirteen continuous weeks commencing with the immediately following week, in form and substance acceptable to the Co-Lead Arrangers;

(n) no later than the 10<sup>th</sup> Business Day of each calendar month, a summary (an "Inter-Group Debt Summary") from each Borrower of all (i) Permitted Inter-Group Debt incurred by any Loan Party in its Borrower Group and (ii) Permitted Inter-Group Advances made by any Loan Party in its Borrower Group, in each case outstanding as of the last Business Day of the immediately preceding calendar month, in form and substance acceptable to Co-Lead Arrangers in their sole discretion;

(o) on or prior to the 15<sup>th</sup> day of each calendar month (commencing with July 2002), from each Borrower, a summary report regarding subscribers and franchise agreements (including the status of each franchise agreement) and related matters with respect to each Borrower Group, in each case as of the end of the immediately preceding calendar month, in form and substance acceptable to the Co-Lead Arrangers in their sole discretion;

(p) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Loan Party, or compliance with the terms of any agreement as any Agent, any Fronting Bank or any DIP Lender may reasonably request; and

(q) such other financial reports or other information as such Loan Party shall provide to any Pre-Petition Lender or any agent under any Pre-Petition Facility.

**SECTION 5.02. Corporate Existence.** Each Loan Party will preserve, maintain in full force and effect, and renew as necessary all governmental rights, privileges, qualification, permits, licenses and franchises necessary or desirable in the normal conduct of its business except (i) to the extent such failure to preserve the same could not, in the aggregate, reasonably be expected to have a Material Adverse Effect and (ii) as otherwise permitted in connection with sales of assets permitted by Section 6.11.

**SECTION 5.03. Insurance.** Each Loan Party will keep its insurable properties insured at all times, against such risks, including fire and other risks insured against by extended coverage, as is customary with companies of the same or similar size in the

same or similar businesses; and maintain in full force and effect public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by such Loan Party, as the case may be, in such amounts and with such deductibles as are customary with companies of the same or similar size in the same or similar businesses and in the same geographic area, and maintain such other insurance or self insurance as may be required by law.

SECTION 5.04. *Obligations and Taxes.* Each Loan Party will pay all its material obligations arising after the Petition Date promptly and in accordance with their terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property arising after the Petition Date, before the same shall become in default, as well as all material lawful claims for labor, materials and supplies or otherwise arising after the Petition Date which, if unpaid, would become a Lien (other than a Permitted Lien) or charge upon such properties or any part thereof; *provided, however,* that such Loan Party shall not be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings (if such Loan Party shall have set aside on their books adequate reserves therefor in conformity with GAAP).

SECTION 5.05. *Notice of Event of Default, etc.* Each Loan Party will, within two Business Days thereof, give to the Administrative Agent notice in writing of (a) any Default or Event of Default and (b) any material litigation, investigations or proceedings which may exist at any time between such Loan Party and any Governmental Authority, other than those described in the Current SEC Reports.

SECTION 5.06. *Access to Books and Records.* Each Loan Party will maintain or cause to be maintained at all times true and complete books and records in accordance with GAAP of the financial operations of such Loan Party (provided that no Loan Party shall be deemed to have breached the foregoing covenant solely as a result of matters described in the Current SEC Reports, provided that such Loan Party is in compliance with Section 5.11); and provide the Agents and their respective representatives access to all such books and records during regular business hours, in order that the Agents may examine and make abstracts from such books, accounts, records and other papers. Each Loan Party will, at any reasonable time and from time to time during regular business hours, upon reasonable notice, permit any Agent or any DIP Lender or any of their respective representatives (including, without limitation, appraisers) to visit the properties of such Loan Party and to conduct examinations of and to monitor the Collateral and to discuss the affairs, finances and condition of such Loan Party with the officers and independent accountants of such Loan Party.

SECTION 5.07. *Furnishing of Additional Information.* Each Loan Party will deliver to the Collateral Agent (i) within 30 days after the date hereof, such financing

statements, security agreements, or other documents as may be necessary or desirable or as the Collateral Agent may request in order to perfect any security interest on any of the Collateral, (ii) within 15 days after the date hereof, a Perfection Certificate (as defined in the Security and Pledge Agreement) with respect to such Loan Party, in the form specified in the Security and Pledge Agreement, (iii) within 60 days after the date hereof, a schedule (the "**Intellectual Property Schedule**") setting forth a complete and accurate list of all patents, registered and material unregistered trademarks, material trade names, service marks and copyrights, and all applications pertaining to the foregoing and licenses thereof, of the Loan Parties (collectively, the "**Intellectual Property**"), showing as of the date of such schedule the jurisdiction in which registered, the registration number, the date of registration and the expiration date; (iv) within 60 days after the date hereof, UCC searches with respect to each Loan Party in the jurisdiction of its incorporation, and each jurisdiction where it conducts business and/or any of its assets are located (or deemed to be located), and (v) solely if such Loan Party is the Parent or a Borrower, within 45 days after the date hereof, customary favorable written opinions (including opinions regarding due organization, valid existence, requisite authority to enter into the transactions contemplated hereby, due execution and delivery of the Loan Documents) of in-house counsel to the Parent and each Borrower, each dated as of the Closing Date, and each in form and substance, and from a Person, reasonably acceptable to the Co-Lead Arrangers; *provided* that periods provided for delivery of documents in any of items (i), (ii), (iii), (iv) and (v) above may be extended by the Co-Lead Arrangers.

SECTION 5.08. *Use of Proceeds.* The proceeds of the Loans made to each Borrower will be used by such Borrower solely (i) for general corporate purposes of such Borrower and each other Loan Party in such Borrower's Borrower Group and (ii) to make Investments to the extent permitted by Section 6.10. The Letters of Credit issued for the account of any Borrower will be used for general corporate purposes in the ordinary course of business, including support of surety bonds and similar obligations. The use of all of such proceeds and all Letters of Credit shall be subject to the limitations set forth in the Orders.

SECTION 5.09. *Chief Restructuring Officer.* The Borrowers will at all times continue to employ a chief restructuring officer reasonably acceptable to the Co-Lead Arrangers.

SECTION 5.10. *Franchise Agreements.* Each Loan Party will preserve and maintain in full force and effect each franchise agreement or similar agreement to which it is a party from time to time (including without limitation by ensuring the timely renewal thereof), so long as after giving effect to the lapse thereof, the aggregate number of subscribers that were covered by all such franchise agreements of all Loan Parties in any Borrower Group that have lapsed since the Petition Date does not exceed (i) 10% of the aggregate amount of subscribers that were covered by all such franchise agreements of all Loan Parties in such Borrower Group on the Petition Date and (ii) 10% of the

aggregate amount of subscribers that were covered by all such franchise agreements of all Loan Parties on the Petition Date.

SECTION 5.11. *Ongoing Compliance.* Without limiting its obligations under Section 6.13, each Loan Party will use its best efforts to correct, as expeditiously as possible, any deficiencies in its financial statements and records, and in its accounting, reporting and cash management systems, described in the Current SEC Reports.

SECTION 5.12. *Maintenance of Concentration Account.* The Loan Parties shall, within 30 days after the Closing Date, and at all times thereafter, maintain with the Administrative Agent an account or accounts (the "**Concentration Account**") (a) to be used by the Loan Parties as their principal concentration accounts and (b) into which shall be swept or deposited, at the end of each Business Day, all cash of the Loan Parties and the full available balances in excess of an aggregate of \$100,000 in all of the operating and other bank accounts of the Loan Parties at any institution other than the Administrative Agent; *provided* that this covenant shall not apply to the accounts maintained with respect to the Telemedia joint ventures in accordance with past practice so long as (x) no Loan Party shall have control over the management of such accounts and (y) only amounts generated by the Telemedia joint ventures shall be deposited therein.

SECTION 5.13. *Additional Loan Parties.* Promptly and in any event within 10 days after any Subsidiary of the Parent that is not a Loan Party on the date hereof shall have filed a voluntary petition with the Bankruptcy Court under chapter 11 of the Bankruptcy Code, the Parent will cause such Subsidiary to become a party to this Agreement and the Security and Pledge Agreement by executing a counterpart of each such Loan Document (and cause the Interim Order or the Final Order, as the case may be, to be applicable to such Subsidiary), whereupon (i) such Subsidiary shall have all the rights, and be subject to all the obligations, of a Loan Party under the Loan Documents and (ii) such Subsidiary shall be designated a Several Loan Party or a Joint and Several Loan Party, as the Borrower and the Co-Lead Arrangers may agree.

## ARTICLE 6 NEGATIVE COVENANTS

From the date hereof and for so long as any Commitment shall be in effect or any Letter of Credit shall remain outstanding or any Obligation shall remain outstanding or unpaid under the Loan Documents, each of the applicable Loan Parties will not (and will not apply to the Bankruptcy Court for authority to):

**SECTION 6.01. *Liens.*** Each Loan Party will not incur, create, assume or suffer to exist any Lien on any asset of such Loan Party now owned or hereafter acquired by such Loan Party, other than: (a) Liens securing the obligations of such Loan Party under the Pre-Petition Facility to which such Loan Party is a party, (b) Liens (other than Liens described in clause (a)) existing on the Petition Date and set forth on Schedule 6.01, (c) Liens in favor of the Pre-Petition Lenders as adequate protection granted pursuant to the Orders, which Liens are junior to the Liens contemplated hereby in favor of the Agents, the Fronting Banks and the DIP Lenders and junior to any Permitted Inter-Group Debt Lien, *provided* that the Interim Order and the Final Order shall provide that the holders of such junior Liens shall not be permitted to take any action to foreclose or otherwise exercise any remedies with respect to such junior Liens (except that such holders shall not be prevented from seeking additional adequate protection or modification thereof or seeking the termination of the use of cash collateral upon the occurrence and during the continuance of any Event of Default so long as such additional adequate protection shall at all times be subject and junior to the claims and Liens in favor of the Agents, the Fronting Banks and the DIP Lenders and the Permitted Inter-Group Debt Liens, (d) Permitted Liens, (e) Liens in favor of the Agents, the Fronting Banks and the DIP Lenders securing the Obligations, (f) Permitted Inter-Group Debt Liens, and (g) Liens on cash and cash equivalents securing reimbursement obligations with respect to surety bonds in the ordinary course of business so long as the aggregate amount of such cash and cash equivalents does not exceed at any time 25% of the aggregate face amount of such surety bonds outstanding at such time.

**SECTION 6.02. *Merger, etc.*** Each Loan Party will not consolidate or merge with or into another Person, except that any Loan Party that belongs to any Borrower Group may merge or consolidate with any other Loan Party that belongs to the same Borrower Group.

**SECTION 6.03. *Indebtedness.*** Each Loan Party will not contract, create, incur, assume or suffer to exist any Indebtedness, except for (a) Indebtedness under this Agreement; (b) Indebtedness incurred prior to the Petition Date; (c) Indebtedness incurred pursuant to Intra-Group Advances, (d) Permitted Inter-Group Debt solely to the extent arising from Intercompany Advances that are permitted under clause (iv) of Section 6.10(a), (e) Indebtedness consisting of guaranties permitted by Section 6.06, (f) Indebtedness owed to any DIP Lender or any of its Affiliates in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing house transfer of funds, and (g) purchase money Indebtedness in an aggregate amount not in excess of \$40,000,000, the proceeds of which Indebtedness are applied to finance the acquisition, construction or improvement of real property, vehicles or equipment in the ordinary course of business and extensions, renewals or replacements of any such Indebtedness.

**SECTION 6.04. *Capital Expenditures.*** Each Borrower will not permit Capital Expenditures for its Borrower Group for any month ended on or after the Covenant

Addendum Date to exceed the amount set forth for such month in the Covenant Addendum.

SECTION 6.05. *Minimum EBITDA*. Each Borrower will not permit EBITDA for its Borrower Group for any month ended on or after the Covenant Addendum Date to be less than the amount set forth in the Covenant Addendum.

SECTION 6.06. *Guarantees and Other Liabilities*. Each Loan Party will not purchase or repurchase (or agree, contingently or otherwise, so to do) the Indebtedness of, or assume, guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance of any obligation or capability of so doing, or otherwise), endorse or otherwise become liable, directly or indirectly, in connection with the obligations, stock or dividends of any Person, except (i) Permitted Inter-Group Guarantees, (ii) any other guaranty of Indebtedness or other obligations of any Loan Party if such Loan Party could have incurred such Indebtedness or obligations under this Agreement, and (iii) by endorsement of negotiable instruments for deposit or collection in the ordinary course of business.

SECTION 6.07. *Chapter 11 Claims*. Each Loan Party will not incur, create, assume, suffer to exist or permit any other Superpriority Claim that is *pari passu* with or senior to the claims of the Agents, the Fronting Banks and the DIP Lenders against the Loan Parties under the Loan Documents.

SECTION 6.08. *Dividends; Capital Stock*. Each Loan Party will not declare or pay, directly or indirectly, any dividends or make any other distribution, or payment, whether in cash, property, securities or a combination thereof, with respect to (whether by reduction of capital or otherwise) any shares of capital stock (or any options, warrants, rights or other equity securities or agreements relating to any capital stock), or set apart any sum for the aforesaid purposes, except that any Loan Party (other than a Borrower) in any Borrower Group may pay dividends to any other Loan Party in such Borrower Group.

SECTION 6.09. *Transactions with Affiliates*. Each Loan Party will not sell or transfer any property to, or otherwise engage in any other material transactions with, any of its Affiliates, other than in the ordinary course of business in good faith and at prices and on terms and conditions not less favorable than could be obtained on an arms'-length basis from unrelated third parties; *provided* that nothing in this Section 6.09 shall be construed to prohibit any Investment permitted under Section 6.10.

SECTION 6.10. *Investments, Intercompany Advances*. (a) Each Loan Party will not purchase, hold or acquire any capital stock, evidences of indebtedness or other securities of, make or permit to exist any loans or advances to, or make or permit to exist any investment in, any other Person (all of the foregoing, "**Investments**"), except for (i) ownership by each Loan Party of the Equity Interests of each of its Subsidiaries referred

to in Section 3.05, (ii) Permitted Investments, (iii) Investments (other than Investments permitted by clause (i)) by each Loan Party outstanding on the Petition Date (but not any refinancings or extensions thereof or further advances of any kind in connection therewith), (iv) Intercompany Advances to the extent permitted by subsection (b), (v) prior to the Covenant Addendum Date, any Investment consisting of loans or advances made by any Loan Party that belongs to a Joint and Several Borrower Group to any Person (other than a Loan Party) that is engaged in the cable business and whose assets are managed by a Loan Party so long as (1) the aggregate amount of such Investments will not exceed \$10,000,000, (2) the proceeds of any such Investment will be used by the recipient thereof solely for working capital purposes and (3) the Loan Party that has made such Investment will use its commercially reasonable efforts to cause any such Investment to be secured by assets of the recipient of the proceeds thereof, (vi) prior to the Covenant Addendum Date, Investments not otherwise permitted by the foregoing clauses in an aggregate amount not to exceed \$3,000,000, (vii) Investments consisting of the acquisition of assets pursuant to the Settlement Agreement (so long as the terms of such acquisition, taken as a whole, are fair and reasonable) and (viii) on and after the Covenant Addendum Date, Investments to the extent permitted by the Covenant Addendum and subject to the limitations set forth therein; *provided* that no Loan Party shall be deemed to have breached this covenant solely as a result of the continuation after the date hereof and prior to the date that falls 45 days after the date hereof of matters relating to the Adelphia Cash Management System that are described in the Current SEC Reports, so long as such Loan Party is in compliance with Section 5.11.

(b) Intercompany Advances will be subject to the following restrictions:

(i) no Loan Party which belongs to any Borrower Group may make any Intercompany Advance directly to any Loan Party that belongs to any other Borrower Group;

(ii) any Loan Party which belongs to any Borrower Group may make any Intercompany Advance to any other Loan Party which belongs to the same Borrower Group (any such Intercompany Advance, an "Intra-Group Advance");

(iii) in addition to any Intra-Group Advance, any Loan Party which belongs to any Borrower Group may make any Intercompany Advance to any Loan Party that is a Holding Company Guarantor and a direct or indirect holding company of such Loan Party, subject to the proviso set forth below; and

(iv) any Holding Company Guarantor may make any Intercompany Advance to any other Holding Company Guarantor that is a direct or indirect holding company of such Holding Company Guarantor

or to a direct or indirect subsidiary of such Holding Company Guarantor, subject to the proviso set forth below;

*provided* that (x) any Permitted Inter-Group Advance may be made only so long as (1) it shall be secured by Liens on the Collateral of (i) the Loan Party (other than a Holding Company Guarantor) to which such Permitted Inter-Group Advance is made pursuant to clause (iv) above (the “**Ultimate Intercompany Borrower**”) and (ii) each other Loan Party that is a member of the same Borrower Group as the Ultimate Intercompany Borrower (any such Lien, a “**Permitted Inter-Group Debt Lien**”), which Lien shall be junior in right of payment and in all other respects to the Liens on such Collateral in favor of the Agents, the Fronting Banks and the DIP Lenders on the Collateral and shall be subordinated thereto pursuant to a subordination agreement in form and substance acceptable to the Co-Lead Arrangers in their sole discretion and (2) the repayment thereof shall be an obligation of or guaranteed by such Ultimate Intercompany Borrower pursuant to an instrument or guarantee in form and substance acceptable to the Co-Lead Arrangers in their sole discretion (any such instrument or guarantee, a “**Permitted Inter-Group Guarantee**”), (y) no Loan Party which belongs to any Borrower Group may incur any Permitted Inter-Group Debt or make any Permitted Inter-Group Advance while a Financial Covenant Event of Default has occurred and is continuing with respect to such Borrower Group (and no Loan Party which does not belong to such Borrower Group shall make any Permitted Inter-Group Advance to any Loan Party which belongs to such Borrower Group during such time) and (z) Permitted Inter-Group Debt will bear interest from time to time on a monthly basis at the rate equal to the blended rate of interest for such period under this Agreement. Obligations under any Permitted Inter-Group Guarantee shall be joint and several obligations of each Loan Party that is a member of the Borrower Group of which the Ultimate Intercompany Borrower is a member. No Loan Party will use the proceeds of any Intercompany Advance or any Loan (x) to finance expenditures related to the golf course in Coudersport, Pennsylvania, other than remediation costs and other costs associated with the shut-down of such golf course or (y) to finance expenditures incurred by or related to the Buffalo Sabres hockey team (but nothing in this clause (y) shall be construed to prohibit the wind-down of existing insurance and other operating arrangements with respect to such team).

“**Permitted Inter-Group Debt**” means any intercompany debt permitted to be incurred by any Loan Party pursuant to clauses (iii) or (iv) above.

“**Permitted Inter-Group Advance**” means any intercompany loan or advance permitted to be made by any Loan Party pursuant to clauses (iii) or (iv) above.

(c) Subject to the proviso set forth in clause (a), on any date, the sum of (i) the Outstanding Permitted Inter-Group Debt of each Borrower Group (as set forth in the Inter-Group Debt Summary for such calendar week) plus (ii) the Outstanding Exposure

of the Borrower in such Borrower Group on such date shall not exceed such Borrower's Borrowing Limit.

(d) At the times and on the dates specified in the Cash Management Protocol, each Loan Party shall repay Loans and Intercompany Advances, as applicable, in the amounts required to be repaid in the Cash Management Protocol.

SECTION 6.11. *Disposition of Assets.* Each Loan Party will not sell or otherwise dispose of any assets except for (i) sales of inventory, fixtures and equipment in the ordinary course of business, (ii) sales of surplus equipment no longer used in the businesses of the Loan Parties, (iii) sales of assets pursuant to an Asset Sale Agreement and (iv) sales of assets (other than those described in clause (i), (ii) or (iii) hereof) with an aggregate fair market value not to exceed \$15,000,000 (cumulatively for all Loan Parties); *provided* that in each of the above cases (x) the consideration received by the relevant Loan Party shall not be less than the fair market value of the assets sold or disposed of, (y) where required by law, the sale or disposition shall have received the approval of the Bankruptcy Court and (z) upon receipt by such Loan Party of any Net Proceeds of any sale or disposition described in clause (ii), (iii) or (iv) hereof constituting a Reduction Event, such Loan Party will comply with the provisions of Section 2.12.

SECTION 6.12. *Nature of Business.* Each Loan Party will not modify or alter in any material manner the nature and type of its business as conducted at or prior to the Petition Date or the manner in which such business is conducted (except as required by the Bankruptcy Code), it being understood that sales permitted by Section 6.11 shall not constitute such a material modification or alteration.

SECTION 6.13. *Cash Management System.* Each Loan Party will not conduct its cash management system on and after the Petition Date in any manner other than as described to the Co-Lead Arrangers prior to the Petition Date as the manner in which such Loan Party proposes to conduct its cash management system on and after the Petition Date and in accordance with the Cash Management Protocol.

## ARTICLE 7 EVENTS OF DEFAULT

SECTION 7.01. *Events of Default.* In the case of the happening of any of the following events and the continuance thereof beyond the applicable period of grace, if any (each, an "Event of Default"):

(a) any representation or warranty made (or deemed made) by a Loan Party in any Loan Document or in connection with any Loan Document or any Credit Event or

any statement or representation made in any report, financial statement, certificate or other document furnished by a Loan Party to any Agent, any Fronting Bank or any DIP Lenders under or in connection with any Loan Document (including without limitation the Covenant Addendum), shall prove to have been false or misleading in any material respect when made (or deemed made) or delivered; or

(b) default shall be made in the payment of (i) any principal of the Loans or Reimbursement Obligations or cash collateralization requirement pursuant to Section 2.12 when due (whether at the fixed due date thereof (including the Prepayment Date), or as a result of a Reduction Event, or by acceleration thereof or otherwise); or (ii) Fees or interest on the Loans or interest on the Reimbursement Obligations or any other amount payable under any Loan Document (other than any amount described in clause (i)) when due, and such default described in this clause (ii) shall continue unremedied for more than two (2) Business Days, or

(c) default shall be made by any Loan Party in the due observance or performance of any covenant, condition or agreement contained in Sections 5.01(k), 5.08, 5.09, 5.10 or Article 6 hereof; or

(d) default shall be made by any Loan Party in the due observance or performance of any other covenant, condition or agreement to be observed or performed pursuant to the terms of this Agreement or any of the other Loan Documents or the Orders and such default shall continue unremedied for more than ten (10) days; or

(e) any of the Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or any Loan Party shall file a motion or other pleading seeking the dismissal of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise (or any other Person shall file such motion or pleading that shall not be dismissed within 10 days after the filing thereof); a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within 30 days after the entry thereof; or an application shall be filed by any Loan Party for the approval of any other Superpriority Claim (other than the Carve-Out) in any of the Cases which is *pari passu* with or senior to the claims of the Agents, the Fronting Banks and the DIP Lenders against any Loan Party hereunder, or there shall arise or be granted any such *pari passu* or senior Superpriority Claim; or

(f) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of

foreclosure or the like) on any of the assets of a Loan Party that have a value in excess of \$5,000,000 in the aggregate; or

(g) a Change of Control shall occur; or

(h) any provision of any Loan Document shall, for any reason, cease to be valid and binding against any Loan Party or any Loan Party shall so assert in any pleading filed in any court; or

(i) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying for a period in excess of ten (10) days, vacating or otherwise modifying either of the Orders or terminating the use of cash collateral by the Loan Parties pursuant to the Orders; or

(j) any judgment or order as to a post-petition liability or debt for the payment of money in excess of \$5,000,000 shall be rendered against any Loan Party and the enforcement thereof shall not have been stayed; or

(k) any non-monetary judgment or order with respect to a post-petition event shall be rendered against any Loan Party which does or would reasonably be expected to have a Material Adverse Effect and there shall be any period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(l) except as permitted by the Orders, any Loan Party shall make any Pre-Petition Payment other than Pre-Petition Payments authorized by the Bankruptcy Court in respect of: (i) employee reimbursement, health care, and welfare claims, (ii) sales and use taxes in a total amount not in excess of \$5,000,000, (iii) any fees due to regulatory authorities in a total amount not in excess of \$46,000,000, (iv) any E-rate program rebates in a total amount not in excess of \$1,300,000, (v) accrued employee wages and salaries, (vi) insurance premiums and any retroactive adjustments, (vii) warehouse expenses in a total amount not in excess of \$500,000 and (viii) expenses related to customer programs (including deposits, marketing offers and charitable events); or

(m) any Termination Event described in clauses (iii) or (iv) of the definition of such term shall have occurred and shall continue unremedied for more than ten (10) days and the sum (determined as of the date of occurrence of such Termination Event) of the Insufficiency of the Plan in respect of which such Termination Event shall have occurred and be continuing and the Insufficiency of any and all other Plans with respect to which such a Termination Event (described in such clauses (iii) or (iv)) shall have occurred and then exist is equal to or greater than \$2,000,000; or

(n) (i) Any Loan Party or any ERISA Affiliate thereof shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such

Multiemployer Plan, (ii) such Loan Party or such ERISA Affiliate does not have reasonable grounds to contest such Withdrawal Liability and is not in fact contesting such Withdrawal Liability in a timely and appropriate manner and (iii) the amount of such Withdrawal Liability specified in such notice, when aggregated with all other amounts required to be paid to Multiemployer Plans in connection with Withdrawal Liabilities (determined as of the date of such notification), exceeds \$2,000,000 allocable to post-petition obligations or requires payments exceeding \$2,000,000 per annum in excess of the annual payments made with respect to such Multiemployer Plans by such Loan Party or such ERISA Affiliate for the plan year immediately preceding the plan year in which such notification is received; or

(o) any Loan Party or any ERISA Affiliate thereof shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, if as a result of such reorganization or termination the aggregate annual contributions of such Loan Party and its ERISA Affiliates to all Multiemployer Plans that are then in reorganization or being terminated have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years that include the date hereof by an amount exceeding \$2,000,000; or

(p) any Loan Party or any ERISA Affiliate shall have committed a failure described in Section 302(f)(1) of ERISA (other than the failure to make any contribution accrued and unpaid as of the Petition Date) and the amount determined under Section 302(f)(3) of ERISA is equal to or greater than \$2,000,000; or

(q) it shall be determined (whether by the Bankruptcy Court or by any other judicial or administrative forum) that any Loan Party is liable for the payment of claims arising out of any failure to comply (or to have complied) with applicable environmental laws or regulations the payment of which will have a Material Adverse Effect on the financial condition, business, properties, operations or assets of the Loan Parties, taken as a whole, and the enforcement thereof shall not have been stayed; or

(r) default shall be made by any Loan Party in the due observance or performance of any term or condition contained in any Order;

(s) the Covenant Addendum Date shall not have occurred on or prior to the 120<sup>th</sup> Day;

then, and in every such event and at any time thereafter during the continuance of such event, and without further order of or application to the Bankruptcy Court, subject to the proviso set forth at the end of this paragraph, the Administrative Agent or the Collateral Agent, as the case may be, may, and at the request of the Required DIP Lenders shall, take one or more of the following actions, at the same or different times: (i) terminate forthwith the Total Commitment; (ii) declare the Loans then outstanding to be forthwith

due and payable, whereupon the principal of the Loans together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Loan Parties, anything contained herein or in any other Loan Document to the contrary notwithstanding; (iii) require each Borrower upon demand to forthwith deposit in its Letter of Credit Account cash in an amount that, together with any amounts then held in such Letter of Credit Account, is equal to the sum of 110% of the then outstanding Letters of Credit issued for the account of such Borrower; (iv) upon at least 5 days' prior notice to the applicable Loan Party, set-off amounts in each Letter of Credit Account, each Unfunded Borrowing Limit Account, each General Cash Collateral Account or any other accounts maintained by any Loan Party with any Agent and apply such amounts to the Obligations of such Loan Party hereunder and in the other Loan Documents; and (v) exercise any and all remedies under the Loan Documents and under applicable law available to the Agents, the Fronting Banks and the DIP Lenders (subject, in the case of clause (iv), to the notice specified therein); *provided* that upon the occurrence and at any time during the continuance of (xx) a Financial Covenant Event of Default with respect to a Borrower Group or (yy) a True-Up Event of Default with respect to any test date or time and with respect to a Borrower Group (so long as no True-Up Event of Default with respect to such Borrower Group occurred on the immediately prior test date or time) and, in the case of clauses (xx) or (yy), the occurrence and continuance at such time of no other Event of Default, the Administrative Agent and the Collateral Agent may not, and Required DIP Lenders may not request either of them to, (1) take the action described in clause (i), (2) take any actions described in clause (ii) with respect to any Loans other than the Loans of the Borrower (the "**Defaulting Borrower**") whose failure to comply with Section 6.04, 6.05 or 6.10(d), as the case may be, has resulted in such Financial Covenant Event of Default or True-Up Event of Default, as the case may be, (3) take any actions described in clauses (iii) and (iv) with respect to any Letter of Credit Account, Unfunded Borrowing Limit Account, any General Cash Account or other account other than the Letter of Credit Account, Unfunded Borrowing Limit Account, and the General Cash Account and any other account of the Defaulting Borrower, of any Several Guarantor that belongs to the same Borrower Group as the Defaulting Borrower, of any Joint and Several Borrower and of any Joint and Several Guarantor (all such Loan Parties, collectively, the "**Defaulting Group**") and (4) take any actions described in clause (v) with respect to any Loan Party other than a Loan Party that belongs to the Defaulting Group.

ARTICLE 8  
THE AGENTS

SECTION 8.01. *Administration by Agents.* The general administration of the Loan Documents shall be performed by the Agents as contemplated therein. Each DIP Lender hereby irrevocably authorizes the appropriate Agent, at its discretion, to take or refrain from taking such actions as such Agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto (including the release of Collateral in connection with any transaction that is expressly permitted by the Loan Documents). The Agents shall have no duties or responsibilities except as expressly set forth in this Agreement and the remaining Loan Documents.

SECTION 8.02. *Advances and Payments.*

(a) On the date of each Loan, the Administrative Agent shall be authorized (but not obligated) to advance, for the account of each of the DIP Lenders, the amount of the Loan to be made by it in accordance with its Commitment hereunder. Should the Administrative Agent do so, each of the DIP Lenders agrees forthwith to reimburse the Administrative Agent in immediately available funds for the amount so advanced on its behalf by the Administrative Agent, together with interest at the Federal Funds Effective Rate if not reimbursed on the date due from and including such date but not including the date of reimbursement.

(b) Any amounts received by any of the Agents in connection with any Loan Document (other than amounts to which such Agent is entitled to receive for its own account pursuant to Sections 2.18, 2.20, 8.06, 10.05 and 10.06 of this Agreement), the application of which is not otherwise provided for in any Loan Document shall be applied, *first*, in accordance with each DIP Lender's Commitment Percentage to pay accrued but unpaid Commitment Fees or Letter of Credit Fees, and *second*, in accordance with each DIP Lender's Commitment Percentage to pay accrued but unpaid interest and the principal balance outstanding and all reimbursed Letter of Credit drawings, and then to cash collateralize any outstanding Letter of Credit Obligations and to pay any other outstanding Obligation. All amounts to be paid to a DIP Lender by the Administrative Agent shall be credited to that DIP Lender, after collection by the Administrative Agent, in immediately available funds either by wire transfer or deposit in that DIP Lender's correspondent account with the Administrative Agent, as such DIP Lender and the Administrative Agent shall from time to time agree.

SECTION 8.03. *Sharing of Setoffs.* Each DIP Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against any Loan Party, including, but not limited to, a secured claim under Section 506 of the Bankruptcy Code or other security interest arising from, or in lieu of, such secured claim and received by such DIP Lender under any applicable bankruptcy, insolvency or other

party, and engage in other transactions with any Loan Party, as though it were not an Agent of the DIP Lenders under Loan Documents.

SECTION 8.08. *Independent DIP Lenders.* Each DIP Lender acknowledges that it has decided to enter into this Agreement and the other Loan Documents and to make the Loans hereunder based on its own analysis of the transactions contemplated hereby and of the creditworthiness of the Loan Parties and agrees that the Agents shall bear no responsibility therefor.

SECTION 8.09. *Notice of Transfer.* Each of the Agents may deem and treat a DIP Lender party to this Agreement and any other Loan Document as the owner of such DIP Lender's portion of the Loans for all purposes, unless and until a written notice of the assignment or transfer thereof executed by such DIP Lender shall have been received by each of the Agents.

SECTION 8.10. *Successor Agents.* Each Agent may resign at any time by giving written notice thereof to the DIP Lenders and the Borrowers. Upon any such resignation, the Required DIP Lenders shall have the right to appoint a successor Agent, which shall be reasonably satisfactory to the Borrowers. If no successor Agent shall have been so appointed by the Required DIP Lenders and shall have accepted such appointment, within 30 days after the retiring Agent's giving of notice of resignation, the retiring Agent may, on behalf of the DIP Lenders, appoint a successor Agent, which shall be a commercial bank organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least \$100,000,000, which shall be reasonably satisfactory to the Borrowers. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement or any Loan Document. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article 8 shall inure (as applicable) to its benefit as to any actions taken or omitted to be taken by it while it was Agent under the Loan Documents.

## ARTICLE 9 GUARANTY

### SECTION 9.01. *Guaranty.*

(a) Each of the Guarantors unconditionally and irrevocably guarantees the due and punctual payment and performance of the Guaranteed Obligations of such Guarantor. Each of the Guarantors further agrees that the Obligations included in such Guarantor's Guaranteed Obligations may be extended or renewed, in whole or in part,

without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon this guaranty notwithstanding any extension or renewal of any of such Obligations.

(b) Each of the Guarantors waives presentation to, demand for payment from and protest to any other Loan Party, and also waives notice of protest for nonpayment. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of any Agent, any Fronting Bank or any DIP Lender to assert any claim or demand or to enforce any right or remedy against any other Loan Party under the provisions of any Loan Document or otherwise; (ii) any extension or renewal of any provision thereof; (iii) any rescission, waiver, compromise, acceleration, amendment or modification of any of the terms or provisions of any Loan Document (except as and to the extent any of the foregoing explicitly related to the Obligations of such Guarantor, in which case the Guaranty shall be modified accordingly); (iv) the release, exchange, waiver or foreclosure of any security for any of the Obligations of any Loan Party (except as and to the extent any of the foregoing explicitly related to the Obligations of such Guarantor, in which case the Guaranty shall be modified accordingly); (v) the failure of any Agent, the Fronting Bank or any DIP Lender to exercise any right or remedy against any other Loan Party; (vi) the release or substitution of any Loan Party; or (vii) any other event or condition which, but for the provisions hereof, would constitute a legal or equitable discharge of the obligations of such Guarantor hereunder.

(c) Each of the Guarantors further agrees that this guaranty constitutes a guaranty of performance and of payment when due of the Guaranteed Obligations of such Guarantor and not just of collection, and waives any right to require that any resort be had by any Agent, any Fronting Bank or any DIP Lender to any security held for payment of such Guaranteed Obligations (or any other Obligations) or to any balance of any deposit, account or credit on the books of any Agent, any Fronting Bank or any DIP Lender in favor of any Loan Party or to any other Person.

(d) Each of the Guarantors hereby waives any defense that it might have based on a failure to remain informed of the financial condition of any other Loan Party and any circumstances affecting the ability of any other Loan Party to perform under any Loan Document.

(e) Each Guarantor's guaranty hereunder shall not be affected by the genuineness, validity, regularity or enforceability of any of its Guaranteed Obligations (or any other Obligations) or any other instrument evidencing any Guaranteed Obligations (or any other Obligations), or by the existence, validity, enforceability, perfection, or extent of any Collateral therefor or by any other circumstance relating to its Guaranteed Obligations (or any other Obligations) that might otherwise constitute a defense to this guaranty. No Agent, Fronting Bank or DIP Lender makes any representation or warranty in respect to any such circumstances.

(f) Upon any of the Obligations becoming due and payable (by acceleration or otherwise), the Agents, DIP Lenders and the Fronting Bank shall be entitled to immediate payment of such Obligations by each of the Guarantors whose Guaranteed Obligations include such Obligations, upon written demand by the Administrative Agent, without further application to or order of the Bankruptcy Court.

**SECTION 9.02. *No Impairment of Guaranty.*** The obligations of each of the Guarantors hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, other than repayment in full of the Obligations to which such Guaranty relates, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations that are included in such Guarantor's Guaranteed Obligations or any other Obligations. Without limiting the generality of the foregoing, the obligations of each of the Guarantors hereunder shall not be discharged or impaired or otherwise affected by the failure of any Agent, any Fronting Bank or any DIP Lender to assert any claim or demand or to enforce any remedy under any Loan Document or any other agreement or instrument, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of any of the Guarantors or would otherwise operate as a discharge of any of the Guarantors as a matter of law, unless and until the Obligations that are included in such Guarantor's Guaranteed Obligations are paid in full (in which case they will be terminated) or in part (in which case they will be reduced by the amount of such payment).

**SECTION 9.03. *Subrogation.*** Upon payment by any Guarantor of any sums to any Agent, any Fronting Bank or any DIP Lender hereunder, all rights of such Guarantor against any other Loan Party arising as a result thereof by way of right of subrogation or otherwise, shall in all respects be subordinate and junior in right of payment to the prior final payment in full of all the Obligations and the Permitted Inter-Group Debt of all the Loan Parties. If any amount shall be paid to such Guarantor for the account of any other Loan Party, such amount shall be held in trust for the benefit of the Agents, the Fronting Banks and the DIP Lenders and shall forthwith be paid to the Administrative Agent to be credited and applied to the relevant Obligations, whether matured or unmatured. If (i) any Guarantor shall make payment to any Agent, Fronting Bank or DIP Lender of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, (iii) the Termination Date shall have occurred and (iv) all Letters of Credit shall have expired or been terminated, such Agent, Fronting Bank or DIP Lender will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents necessary to evidence the transfer by subrogation to such Guarantor of an interest in the

Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

SECTION 9.04. *Nature of Obligations of each Guarantor.* The obligations of each Joint and Several Guarantor hereunder are joint and several. The obligations of each Several Guarantor hereunder are (i) joint and several as to each other Several Guarantor which belongs to the same Several Borrower Group as such Several Guarantor and (ii) several, and not joint, as to each other Loan Party.

## ARTICLE 10 MISCELLANEOUS

SECTION 10.01. *Notices.* Notices and other communications provided for herein shall be in writing (including telegraphic, telex, facsimile or cable communication) and shall be mailed, telegraphed, telexed, transmitted, cabled or delivered to any Loan Party at One North Main Street, Coudersport, PA 16915, Attention: Ron Stengel and Christopher Dunstan with copies to Cornelius T. Finnegan III, Willkie Farr & Gallagher, 787 Seventh Avenue, New York, NY 10019-6099, to a DIP Lender at its address shown on the records of the Administrative Agent or the Administrative Agent, JPMorgan Chase Bank, 270 Park Avenue, New York, NY 10017, Attention: Gloria Javier, to the Collateral Agent, Citicorp USA, Inc., 388 Greenwich Street, New York, NY, 10013,, Attention: Hien Nugent, to the Syndication Agent, Citicorp USA, Inc., 388 Greenwich Street, New York, NY, 10013, Attention: Michael Schadt, to the Joint Bookrunners and Co-Lead Arrangers, J.P. Morgan Securities Inc., 270 Park Avenue, New York, NY 10017, Attention: Gloria Javier, and Salomon Smith Barney Inc., 390 Greenwich Street, New York, NY, 10013, Attention: Caesar W. Wyszomirski, and to counsel to the Administrative Agent, Tiziana M. Tabucchi, Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017, or such other address as such party may from time to time designate by giving written notice to the other parties hereunder. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the fifth Business Day after the date when sent by registered or certified mail, postage prepaid, return receipt requested, if by mail; or when delivered to the telegraph company, charges prepaid, if by telegram; or when receipt is acknowledged, if by any telegraphic communications or facsimile equipment of the sender, in each case addressed to such party as provided in this Section 10.01 or in accordance with the latest unrevoked written direction from such party; provided, however, that in the case of notices to the Administrative Agent notices pursuant to the preceding sentence with respect to change of address and pursuant to Article 2 shall be effective only when received by the Administrative Agent.

SECTION 10.02. *Survival of Agreement, Representations and Warranties, etc.* All warranties, representations and covenants made by any Loan Party herein or in any

certificate or other instrument delivered by it or on its behalf in connection with this Agreement shall be considered to have been relied upon by the DIP Lenders and shall survive the making of the Loans herein contemplated regardless of any investigation made by any DIP Lender or on its behalf and shall continue in full force and effect so long as any amount due or to become due hereunder is outstanding and unpaid and so long as the Commitments have not been terminated. All statements in any such certificate or other instrument shall constitute representations and warranties by the Loan Parties hereunder with respect to the Loan Parties.

SECTION 10.03. *Successors and Assigns.*

(a) This Agreement shall be binding upon and inure to the benefit of the Loan Parties, the Agents and the DIP Lenders and their respective successors and assigns. No Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of all of the DIP Lenders. Each DIP Lender may sell participations to any Person in all or part of any Loan, or all or part of its Commitment, in which event, without limiting the foregoing, the provisions of Section 2.14 shall inure to the benefit of each purchaser of a participation (provided that such participant shall look solely to the seller of such participation for such benefits and the Loan Parties' liability, if any, under Sections 2.14 and 2.17 shall not be increased as a result of the sale of any such participation) and the *pro rata* treatment of payments, as described in Section 2.16, shall be determined as if such DIP Lender had not sold such participation. In the event any DIP Lender shall sell any participation, such DIP Lender shall retain the sole right and responsibility to enforce the obligations of each Loan Party relating to the Loans, including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement (provided that such DIP Lender may grant its participant the right to consent to such DIP Lender's execution of amendments, modifications or waivers that (i) reduce any Fees payable hereunder to the DIP Lenders, (ii) reduce the amount of any scheduled principal payment on any Loan or reduce the principal amount of any Loan or the rate of interest payable hereunder or (iii) extend the maturity of any Loan Party's obligations hereunder). The sale of any such participation shall not alter the rights and obligations of the DIP Lender selling such participation hereunder with respect to the Loan Parties.

(b) Each DIP Lender may assign to one or more DIP Lenders or Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the same portion of the related Loans at the time owing to it), *provided, however*, that (i) other than in the case of an assignment to a DIP Lender Affiliate of the assignor DIP Lender or to another DIP Lender, the Administrative Agent and the Fronting Bank must give their respective prior written consent to such assignment, which consent will not be unreasonably withheld, (ii) the aggregate amount of the Commitment of the assigning DIP Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent)

shall, unless otherwise agreed to in writing by the Administrative Agent, in no event be less than \$1,000,000 or the remaining portion of such DIP Lender's Commitment, if less and (iii) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register (as defined below), an Assignment and Acceptance with blanks appropriately completed, together with a processing and recordation fee of \$3,500 (for which no Loan Party shall have any liability). Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, which effective date shall be within ten Business Days after the execution thereof (unless otherwise agreed to in writing by the Administrative Agent), (A) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a DIP Lender hereunder and (B) the DIP Lender thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning DIP Lender's rights and obligations under this Agreement, such DIP Lender shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, the DIP Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim, such DIP Lender assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any of the other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Loan Documents; (ii) such DIP Lender assignor makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any of the other Loan Documents or any other instrument or document furnished pursuant hereto, (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents; (iv) such assignee will, independently and without reliance upon the Administrative Agent, such DIP Lender assignor or any other DIP Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee appoints and authorizes the Administrative Agent to take such action as Administrative Agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms thereto, together with such powers as are reasonably incidental hereof; and (vi) such assignee agrees that it will perform in accordance with their terms all obligations that by the terms of this Agreement are required to be performed by it as a DIP Lender.

(d) The Administrative Agent shall maintain at its office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the

names and addresses of the DIP Lenders and the Commitments of, and principal amount of the Loans owing to, each DIP Lender from time to time (the "Register"). The entries in the Register shall be conclusive, in the absence of manifest error, and the Loan Parties, the Administrative Agent and the DIP Lenders shall treat each Person the name of which is recorded in the Register as a DIP Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by any Loan Party or any DIP Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Acceptance executed by an assigning DIP Lender and the assignee thereunder together with the fee payable in respect thereto, the Administrative Agent shall, if such Assignment and Acceptance has been completed with blanks appropriately filled and consented to by the Administrative Agent and the Fronting Bank (to the extent such consent is required hereunder), (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt written notice thereof to the Borrowers (together with a copy thereof). No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(f) Any DIP Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 10.03, disclose to the assignee or participant or proposed assignee or participant, any information relating to any Loan Party furnished to such DIP Lender by or on behalf of any Loan Party; *provided* that prior to any such disclosure, each such assignee or participant or proposed assignee or participant shall agree in writing to be bound by the provisions of Section 10.04.

(g) Each Loan Party hereby agrees to actively assist and cooperate with the Administrative Agent in the Administrative Agent's efforts to sell participations herein (as described in Section 10.03(a)) and assign to one or more DIP Lenders or Eligible Assignees a portion of its interests, rights and obligations under this Agreement (as set forth in Section 10.03(b)).

**SECTION 10.04. Confidentiality.** No Agent or DIP Lender shall use the Confidential Information in violation of any applicable law. Notwithstanding the foregoing, nothing herein shall prevent any Agent or any DIP Lender from disclosing such information (a) to any officer, director, employee, agent, or advisor of such Agent or any of its Affiliates, or such DIP Lender or any of its Affiliates, to the extent such disclosure is necessary to permit such officer, director, employee, agent, or advisor to fulfill their duties with respect to the Obligations, (b) as required by any applicable law or any subpoena or similar process, (c) upon the order of any Governmental Authority, (d) upon the request or demand of any Governmental Authority having jurisdiction over such Agent or such DIP Lender, (e) that is or becomes available to the public or that is or becomes available to such Agent or DIP Lender as a result of a disclosure by a Person not otherwise bound by this Agreement, (f) in connection with any litigation to which

such Agent or any of its Affiliates, or such DIP Lender or any of its Affiliates may be a party, (g) in connection with the exercise of any remedy under the Loan Documents, (h) to any actual or proposed assignee, so long as such proposed assignee executes a confidentiality agreement, (i) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Loan Parties; (j) with the consent of the Loan Parties; (k) to the extent such Confidential Information (i) becomes publicly available other than as a result of a failure to comply with this Section 10.04 or (ii) becomes available to any Agent or any DIP Lender on a nonconfidential basis from a source other than a Loan Party; or (l) to the National Association of Insurance Commissioners or any other similar organization or any nationally recognized rating agency that requires access to information about a DIP Lender's or its Affiliates' investment portfolio in connection with ratings issued with respect to such DIP Lender or its Affiliates.

SECTION 10.05. *Expenses.* Whether or not the transactions hereby contemplated shall be consummated, the Loan Parties agree to pay all expenses incurred by the Agents (including but not limited to the reasonable fees and disbursements of Davis Polk & Wardwell, special counsel for the Co-Lead Arrangers, any other counsel that the Co-Lead Arrangers shall retain and any internal or third-party appraisers, consultants and auditors advising any Agent and its counsel) in connection with the preparation, execution, delivery and administration of this Agreement and the other Loan Documents, the making of the Loans and the issuance of the Letters of Credit, the perfection of the Liens contemplated hereby, the syndication of the transactions contemplated hereby, the costs, fees and expenses of the Administrative Agent and the Collateral Agent in connection with its periodic field audits, monitoring of assets (including reasonable and customary internal collateral monitoring fees) and publicity expenses, and, following the occurrence of an Event of Default, all expenses incurred by the DIP Lenders, the Fronting Banks and the Agents in the enforcement or protection of their respective rights in connection with this Agreement or the other Loan Documents, including but not limited to the reasonable fees and disbursements of any counsel for the DIP Lenders, the Fronting Banks and the Agents. Such payments shall be made on the date of the Interim Order and thereafter on demand upon delivery of a statement setting forth such costs and expenses. The obligations of the Loan Parties under this Section 10.05 shall survive any termination of this Agreement.

SECTION 10.06. *Indemnity.* Each Loan Party agrees to indemnify and hold harmless each Agent, Fronting Bank and the DIP Lenders and their respective directors, officers, employees, agents and Affiliates (each an "Indemnified Party") from and against any and all expenses, losses, claims, damages and liabilities incurred by such Indemnified Party arising out of claims made by any Person in any way relating to the transactions contemplated hereby, but excluding therefrom all expenses, losses, claims, damages, and liabilities to the extent that they are determined by the final judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful

misconduct of such Indemnified Party. The Loan Parties' obligations under this Section 10.06 shall survive any termination of this Agreement.

**SECTION 10.07. CHOICE OF LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL IN ALL RESPECTS BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE AND THE BANKRUPTCY CODE.**

SECTION 10.08. *No Waiver.* No failure on the part of the Administrative Agent or any of the DIP Lenders to exercise, and no delay in exercising, any right, power or remedy hereunder or any of the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

SECTION 10.09. *Extension of Maturity.* Should any payment of principal or of interest or any other amount due hereunder become due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, in the case of principal, interest shall be payable thereon at the rate herein specified during such extension.

SECTION 10.10. *Amendments, etc.*

(a) No modification, amendment or waiver of any provision of this Agreement or the Security and Pledge Agreement and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Loan Parties and the Required DIP Lenders, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given; *provided, however*, that (1) no such modification or amendment shall, without the written consent of the DIP Lender affected thereby (x) increase the Commitment of a DIP Lender, or (y) reduce the principal amount of any Loan or any Reimbursement Obligation or the rate of interest payable thereon, or extend any date for the payment of interest hereunder or reduce any Fees payable hereunder or extend the final maturity of any Borrower's obligations hereunder; (2) any waiver of compliance with the reporting requirements set forth in Section 5.01(k), 5.01(l), 5.01(m), 5.01(n) and 5.01(o) or any Event of Default arising solely from non-compliance therewith shall be binding on all the DIP Lenders if consented to by the Co-Lead Arrangers, (3) no such modification or amendment shall, without the written consent of (A) all of the DIP Lenders (i) amend or modify any provision of this Agreement that provides for the unanimous consent or approval of the DIP Lenders, (ii) change the percentage set forth in the definition of Required DIP Lenders or Super-Majority DIP Lenders or any other

provision of any Loan Document specifying the number or percentage of DIP Lenders required to take any action thereunder or (iii) amend or modify the Superpriority Claim status of the DIP Lenders contemplated by Section 2.22 or the rank of the Liens for the benefit of the Agents, the Fronting Banks and the DIP Lenders contemplated thereby, (B) the Super-Majority DIP Lenders (as hereinafter defined), release all or substantially all of the Collateral or all or substantially all of the Guarantors, or (C) all of the Initial DIP Lenders, change any provision set forth in the definition of Initial Majority DIP Lenders and (4) no such modification or amendment shall, without the written consent of the Initial Majority DIP Lenders, modify, amend or waive any provision that expressly requires the consent or approval of the Initial Majority DIP Lenders so as to amend, modify or waive the requirement of such consent or approval. No such amendment or modification may adversely affect the rights and obligations of any Agent or any Fronting Bank hereunder without its prior written consent. Each assignee under Section 10.03(b) shall be bound by any amendment, modification, waiver, or consent authorized as provided herein, and any consent by a DIP Lender shall bind any Person subsequently acquiring an interest on the Loans held by such DIP Lender.

(b) Notwithstanding anything to the contrary contained in Section 10.10(a), in the event that the Borrowers request that this Agreement be modified or amended in a manner that would require the unanimous consent of all of the DIP Lenders (or the consent described in clause (B) of the first sentence of Section 10.10(a)) and such modification or amendment is agreed to by the Super-Majority DIP Lenders (as hereinafter defined), then with the consent of the Borrowers and the Super-Majority DIP Lenders, the Borrowers and the Super-Majority DIP Lenders shall be permitted to amend the Agreement without the consent of the DIP Lender or DIP Lenders that did not agree to the modification or amendment requested by the Borrowers (such DIP Lender or DIP Lenders, collectively the "Minority DIP Lenders") to provide for (w) the termination of the Commitment of each of the Minority DIP Lenders, (x) the addition to this Agreement of one or more other financial institutions (each of which shall be an Eligible Assignee), or an increase in the Commitment of one or more of the Super-Majority DIP Lenders (with the written consent thereof), so that the Total Commitment after giving effect to such amendment shall be in the same amount as the Total Commitment immediately before giving effect to such amendment, (y) if any Loans are outstanding at the time of such amendment, the making of such additional Loans by such new financial institutions or Super-Majority DIP Lender or DIP Lenders, as the case may be, as may be necessary to repay in full the outstanding Loans of the Minority DIP Lenders immediately before giving effect to such amendment and (z) such other modifications to this Agreement as may be appropriate. As used herein, the term "Super-Majority DIP Lenders" shall mean, at any time, DIP Lenders holding Loans representing at least 66-2/3% of the aggregate principal amount of the Loans outstanding, or if no Loans are outstanding, DIP Lenders having Commitments representing at least 66-2/3% of the Total Commitment.

(c) Prior to the later of (i) 45 days after the Interim Order is entered and (ii) the date on which the Final Order is entered, the Co-Lead Arrangers, JPMCB and CUSA

shall be entitled, after consultation with the Parent and the Borrowers and disclosure to the Bankruptcy Court, to change the amount of the Total Commitment (other than increase the Total Commitments to an amount in excess of \$1,500,000,000), the pricing, structure (including without limitation collateral and guarantee arrangements) or terms of this Agreement and the other Loan Documents if they determine that such changes are necessary or advisable in order to ensure the completion of the syndication of the credit facility hereunder in a manner satisfactory to them. Each Loan Party agrees that it shall enter into any amendments or modifications of any Loan Document, or any additional documents, as may be necessary or desirable in order to effect the foregoing changes.

(d) Without limiting the provisions of subsection (c), and for the purposes set forth therein the Co-Lead Arrangers, JPMCB and CUSA shall be entitled, after consultation with the Parent and the Borrowers, to designate a portion of the Loans outstanding hereunder as a separate tranche of term loans (which shall rank *pari passu* in all respects with the Loans and have the benefit of all the collateral and guarantees contemplated hereby), which tranche of loans shall continue to be "Loans" hereunder (and which Loans shall have a final maturity date that is no later than the Maturity Date), and each Loan Party agrees that it shall enter into any amendments or modification of any Loan Documents as may be necessary or desirable to effect such tranching.

SECTION 10.11. *Severability.* Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.12. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

SECTION 10.13. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

SECTION 10.14. *Further Assurances.* Whenever and so often as reasonably requested by the Administrative Agent or the Collateral Agent, each Loan Party will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully vest in the Administrative Agent and the Collateral Agent all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred by this Agreement and the other Loan Documents.

SECTION 10.15. *Prior Agreements.* This Agreement, the other Loan Documents and the Orders represent the entire agreement of the parties with regard to the subject matter hereof and thereof. The terms of any letters and other documentation entered into between any Loan Party and any DIP Lender or any Agent prior to the execution of this Agreement which relate to any Loans to be made hereunder shall be replaced by the terms of this Agreement, the other Loan Documents and the Orders except for: (i) that certain letter dated June 25, 2002 among each of certain Loan Parties, JPMCB, CUSA, JPMSI and SSB, (ii) the Engagement Letter dated as of June 19, 2002 among each of certain Loan Parties, JPMCB, CUSA, JPMSI and SSB.

SECTION 10.16. *WAIVER OF JURY TRIAL.* EACH LOAN PARTY, EACH AGENT, EACH FRONTING BANK AND EACH DIP LENDER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY.

1062750.9

**Schedule 1**

**List of Borrowers**

1062750.9

**Borrowers:**

UCA LLC

Century Cable Holdings, LLC

Century-TCI California, L.P.

Olympus Cable Holdings, LLC

Parnassos, L.P.

FrontierVision Operating Partners, L.P.

ACC Investment Holdings, Inc.

1062750.9

**Schedule 2**

**List of Pre-Petition Credit Agreements**

**Pre-Petition Credit Agreements:<sup>1</sup>**

1. CREDIT AGREEMENT dated as of September 28, 2001, among OLYMPUS CABLE HOLDINGS, LLC, ADELPHIA COMPANY OF WESTERN CONNECTICUT, HIGHLAND VIDEO ASSOCIATES, L.P., COUDERSPORT TELEVISION CABLE COMPANY, and ADELPHIA HOLDINGS 2001, LLC, as the Borrowers, FIRST UNION SECURITIES, INC. and THE BANK OF NOVA SCOTIA, as the Joint Lead Arrangers and Joint Book Runners, BANK OF MONTREAL, as the Administrative Agent, FIRST UNION NATIONAL BANK and THE BANK OF NOVA SCOTIA, as the Syndication Agents, FLEET NATIONAL BANK and THE BANK OF NEW YORK, as the Documentation Agents and the Managing Agents defined therein, and LENDERS NAMED THEREIN, as the Lenders, as in effect on the Petition Date.

Approximate Amount: \$1,300,000,000

2. CREDIT AGREEMENT dated as of April 14, 2000, among CENTURY CABLE HOLDINGS, LLC, FT. MYERS CABLEVISION, LLC, and HIGHLAND PRESTIGE GEORGIA, INC., as the Restricted Borrowers, BANC OF AMERICA SECURITIES LLC and CHASE SECURITIES INC., as Joint Lead Arrangers and Joint Book Managers, BANK OF AMERICA, N.A. and THE CHASE MANHATTAN BANK, as Co-Administrative Agents, TORONTO DOMINION (TEXAS), INC., as the Syndication Agent, CIBC WORLD MARKETS CORP., as the Documentation Agent, BARCLAYS BANK PLC, as the Arranging Agent and the Managing Agents defined therein, and THE LENDERS NAMED THEREIN, as the Lenders, as in effect on the Petition Date.

Approximate Amount: \$2,500,000,000

3. CREDIT AGREEMENT dated as of December 3, 1999, among CENTURY-TCI CALIFORNIA, L.P., as the Borrower, CERTAIN LENDERS, SOCIÉTÉ GÉNÉRALE and DEUTSCHE BANK SECURITIES INC., as the Co-Syndication Agents, SALOMON SMITH BARNEY INC., as the Lead Arranger and Sole Book Manager, MELLON BANK, N.A., as the Documentation Agent and CITIBANK, N.A., as the Administrative Agent, as in effect on the Petition Date.

Approximate Amount: \$1,000,000,000

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<sup>1</sup> The Pre-Petition Credit Agreements do not include any credit arrangements that Pre-Petition Secured Lenders may have that are not subsumed in the agreements listed on this schedule.