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260 FRANKLIN STREET
BOSTON, MA 02110-3173
(617) 748-6800
FACSIMILE: (617) 439-0341
E-MAIL ADDRESS: MEABH.PURCELL@LLGM.COM
WRITER'S DIRECT DIAL: (617) 748-6847
WRITER'S DIRECT FACSIMILE: (617) 897-9047

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September 7, 2005

VIA E-MAIL & FEDERAL EXPRESS

Ms. Marlene H. Dortch
Federal Communications Commission
Wireline Competition Bureau, CPD 214-Applications
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: In the Matter of the Joint Application of Susquehanna Adelphia Business Solutions et al. for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of a Partnership Interest WC Docket 05-43

Dear Ms. Dortch:

On behalf of TelCove of Pennsylvania, Inc., Susquehanna Adelphia Business Solutions, Susquehanna Media Co., Susquehanna Fiber Systems, Inc. and TelCove Holdings of Pennsylvania, Inc. (together, the "Applicants"), enclosed please find an original and six (6) copies of a Joint Petition to Adopt Conditions to Authorization and Licenses. Applicants are also submitting the Joint Petition by electronic filing.

The Applicants respectfully request that the Commission resume its consideration of the original Application, following a period of deferral to allow the Department of Justice, the Federal Bureau of Investigation and the Department of Homeland Security to address possible national security issues. As the transaction is scheduled to be closed by September 30, 2005, the Applicants also respectfully request that the Commission expedite its final review and approval of the Application.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please also direct any questions regarding the filing to the undersigned at 617-748-6847.

Very truly yours,

Meabh Purcell

Enclosure

cc: Terri Natoli, Esq.
Denise Coca, Esq.
Jack Barrett, Esq.
Tina W. Gabbrielli
Laura H. Parsky
Elaine N. Lammert
Craig Bremer, Esq.
James Means, Esq.
James France, Esq.
Jeffrey Heins, Esq.
Brian FitzGerald, Esq.

B104130

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Joint Application of TelCove of Pennsylvania, Inc., SusCom Business Solutions of PA, Inc., d/b/a SusCom Business Solutions, Susquehanna Fiber Systems, Inc., Susquehanna Adelphia Business Solutions, and TelCove Holdings of Pennsylvania, Inc., for Approval of the Transfer of Assets and Related Transfer of Customers to TelCove Holdings of Pennsylvania, Inc.	)	**WC Docket No. 05-43**

To: The Commission

JOINT PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES

TelCove of Pennsylvania, Inc. ("TelCove-PA"), Susquehanna Adelphia Business Solutions (the "Partnership"), Susquehanna Media Co. ("SusCom"), Susquehanna Fiber Systems, Inc. ("Susquehanna"), and TelCove Holdings of Pennsylvania, Inc. ("TelCove Holdings"), the United States Department of Homeland Security ("DHS"), and the United States Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), respectfully submit this Joint Petition to Adopt Conditions to Authorizations and Licenses ("Joint Petition"), pursuant to Section 1.41 of the Commission s Rules. 47 C.F.R. § 1.41. Through this Joint Petition, DHS, DOJ, and FBI advise the Federal Communications Commission (the "Commission") that they

have no objection to the FCC granting the application for the transfer of control in the above-referenced matter (hereinafter referred to as "requested relief"), provided that the Commission conditions the grant of the requested relief on compliance with the terms of the agreement reached between TelCove, Inc. ("TelCove"), on the one hand, and DHS, DOJ, and FBI, on the other (the "Agreement," a copy of which is attached hereto as Exhibit 1).

TelCove is a privately held company incorporated in Delaware with its headquarters in Canonsburg, Pennsylvania. TelCove currently provides business critical telecommunications services to enterprise companies and carriers in approximately 68 U.S. markets.

TelCove, the successor to Adelphia Business Solutions, Inc., emerged from bankruptcy protection on April 7, 2004, at which time TelCove's debt was converted to equity. TelCove acknowledges that a majority of its shares are either directly or indirectly foreign-owned for purposes of this proceeding.

This Section 214 application concerns local telephone service, local toll telephone service, and long distance service provided by the Partnership to approximately 220 business customers in York, Pennsylvania. TelCove, through its wholly owned subsidiary, TelCove-PA, owns 50% of the Partnership. It seeks approval to buy the remaining 50% of the Partnership from its equal partner, SusCom.[1]

As the Commission is aware, DHS, DOJ, and FBI maintain that their ability to fulfill their obligations to preserve the national security, to enforce the laws, and to maintain the safety of the public could be significantly impaired by transactions in which foreign entities will own or operate a part of the U.S. communications system, or in which foreign-located facilities will be

[1] SusCom owns its share of the Partnership through its subsidiary, Susquehanna.

used to provide domestic communications services to U.S. customers. Among other concerns, DHS, DOJ, and FBI seek: (1) to ensure the security and effectiveness of lawfully-authorized electronic surveillance; (2) to prevent and detect foreign-based espionage and electronic surveillance of U.S. communications, which if allowed to occur undetected would jeopardize the security and privacy of U.S. communications and undermine the prosecution of individuals involved in such activities; and (3) to protect the critical infrastructure of the United States. To address these concerns, DHS, DOJ, and FBI have entered into agreements with the appropriate parties. The agreements reached in the past have been filed by stipulation among the parties with the Commission, and the Commission has conditioned its grants of approvals of the required authorizations or transfers of control on compliance with the terms of the agreements.[2]

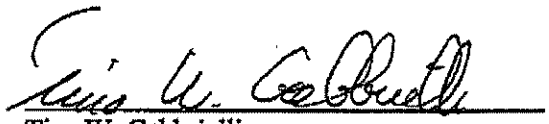
On June 15, 2005, DHS, DOJ, and FBI entered into the Agreement with TelCove (Exhibit 1).[3] This Agreement is intended to ensure that DHS, DOJ, and FBI and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. Accordingly, DHS, DOJ, and FBI hereby advise the Commission that they have no objection to the Commission granting the pending application, filed as WC Docket No. 05-43, provided that

[2] *See, e.g., VSNL America Inc.*, 19 FCC Rcd 16,555 (2004); *Loral Satellite, Inc. and Intelsat North America, LLC*, Memorandum Opinion, Order and Authorization, 19 FCC Rcd 2404, 2004 WL 253309 (2004); *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom, Inc.*, 18 FCC Rcd 23,140 (2003); *Global Crossing, Ltd. and GC Acquisition Limited*, Memorandum Opinion, Order and Authorization, 18 FCC Rcd 20,301, 2003 WL 22309107 (2003); *XO Communications, Inc.*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19,212, 2002 WL 31235646 (2002) (agreement adopted by the Commission, but the transaction was not consummated); *VoiceStream Wireless Corporation, Powertel, Inc., et al. and Deutsche Telekom AG*, 16 FCC Rcd 9779, 2001 WL 476559 (2001).

[3] This Agreement has already been filed with the Commission in connection with conditions imposed by the Commission on its recent grant of the application by TelCove to obtain certain assets from KMC Telcom Holdings and related entities. That matter was submitted to the Commission as both File No. ITC-T/C-20050302-00078 and WC Docket No. 05-90. This Agreement is also being filed in connection with a Section 310(b)(4) Petition filed by TelCove, File No. ISP-PDR-20041115-00013.

the Commission conditions its grant of the application on compliance with the terms of the attached Agreement between DHS, DOJ, and FBI, on the one hand, and TelCove, on the other.

Respectfully submitted,



Tina W. Gabbrielli
Director of Intelligence Coordination and
Special Infrastructure Protection Programs
Office of the Assistant Secretary for
Infrastructure Protection
United States Department of Homeland Security
Nebraska Avenue Complex
Washington, D.C. 20528

Counsel for the Department of Homeland Security

Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-3928

Counsel for the Department of Justice

the Commission conditions its grant of the application on compliance with the terms of the attached Agreement between DHS, DOJ, and FBI, on the one hand, and TelCove, on the other.

Respectfully submitted,

Tina W. Gabbrielli
Director of Intelligence Coordination and
Special Infrastructure Protection Programs
Information Analysis and Infrastructure
Protection Directorate
United States Department of Homeland Security
Nebraska Avenue Complex
Washington, D.C. 20528

Counsel for the Department of Homeland Security

Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-3928

Counsel for the Department of Justice

Craig W. Bremer, Esq.
Susquehanna Pfaltzgraff Co.
140 East Market Street
York, PA 17401

Counsel for Susquehanna Fiber Systems, Inc., and
Susquehanna Media Co.

Elaine N. Lammert
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20532
(202) 324-1530

Counsel for the Federal Bureau of Investigation

Brian FitzGerald, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
One Commerce Plaza, Suite 2020
99 Washington Avenue
Albany, NY 12210-2820

Meabh Purcell, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
260 Franklin Street, Suite 2300
Boston, MA 02110-3173

Counsel for TelCove-PA, TelCove Holdings and the Partnership

Dated: ~~August~~ Sept 6 ___, 2005

B10359

EXHIBIT 1

AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of the date of the last signature affixed hereto, by and between TelCove, Inc. ("TelCove") on the one hand, and the U.S. Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), and the U.S. Department of Homeland Security ("DHS"), on the other hand (referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see e.g., Executive Order 13231, Critical Infrastructure Protection in the Information Age, and Homeland Security Presidential Directive / HSPD-7, Critical Infrastructure Identification, Prioritization, and Protection);

WHEREAS, protection of Classified and Sensitive Information is also critical to U.S. national security;

WHEREAS, TelCove is a Delaware corporation that provides business critical telecommunications services to enterprise companies and carriers including the U.S. government and the State of Pennsylvania;

WHEREAS, TelCove's principal place of business is in Canonsburg, Pennsylvania and all its facilities are located in the United States;

WHEREAS, TelCove is a competitive local exchange carrier that is a facilities-based provider of wireline data and voice telecommunications services;

WHEREAS, TelCove currently offers local and long distance voice, dedicated data, ATM, frame relay, and Internet services, via fiber optic facilities, in approximately 50 markets in the United States;

WHEREAS, TelCove has an obligation to protect from unauthorized disclosure the contents of wire and electronic communications;

WHEREAS, TelCove provides electronic communication services including telephone services which are subject to U.S. privacy and electronic surveillance laws;

WHEREAS, TelCove expects to provide Voice Over Internet Protocol or "VOIP" telephone service;

WHEREAS, TelCove has direct physical and electronic access to a variety of customer and end-user information that is subject to U.S. privacy and electronic surveillance laws;

WHEREAS, TelCove's ownership changed on its emergence from bankruptcy protection on April 7, 2004 when its debt was converted to equity;

WHEREAS, on March 4, 2005, TelCove represented to the Federal Communications Commission ("FCC") that 63% of its equity is foreign owned or in the hands of unknown owners who are presumed to be foreign for FCC purposes with 20.4 percent of that equity held by Bay Harbour Partners, Ltd. of the Cayman Islands, 15.6 percent held by Goldman Sachs entities and 10.2 percent held by Credit Suisse First Boston;

WHEREAS, individuals associated with Bay Harbour Partners, Ltd. hold four of the seven seats on the TelCove Board of Directors;

WHEREAS, a wholly owned subsidiary of TelCove, TelCove Long Haul, L.P., holds FCC microwave licenses -- 177 of the 39 GHz and 193 of the LMDS point-to-point or point-to-multipoint geographic service area radio licenses -- that are designated as common carrier licenses but that have not yet been used to provide commercial service to customers;

WHEREAS, on November 15, 2004, TelCove and TelCove Long Haul, L.P. petitioned the FCC for a Declaratory Ruling, *nunc pro tunc*, under Section 310(b)(4) of the Communications Act of 1934, as amended, File No. ISP-PDR-200411115-00013 P, that the public interest would be served by allowing as much as a 51.5 percent indirect foreign investment in TelCove Long Haul, L.P. and for advance authorization for an additional 25 percent foreign ownership so long as any such additional foreign ownership above 51.5 percent does not cause the amount attributable to a single entity from a World Trade Organization member country, or cumulatively to entities from non-WTO countries, to exceed 25 percent of TelCove's total ownership;

WHEREAS, a wholly owned subsidiary of TelCove, TelCove of Pennsylvania, Inc., owns 50% of a partnership, Susquehanna Adelphia Business Solutions, that provides local telephone service, local toll telephone service and long distance service to approximately 220 business customers in York, Pennsylvania;

WHEREAS, on or about December 6, 2004, a TelCove subsidiary agreed to buy out the 50% of Susquehanna Adelphia Business Solutions that is owned by Susquehanna Fiber Systems, Inc.;

WHEREAS, on January 28, 2005, the parties to the Susquehanna Adelphia Business Solutions transaction, including TelCove subsidiaries, filed an application with the FCC pursuant to Section 214 of the Communications Act as amended, File No. WC Docket No. 05-43, for FCC approval of the transfer of control of the remaining 50% of Susquehanna Adelphia Business Solutions to TelCove Holdings of Pennsylvania;

WHEREAS, pursuant to an Asset Purchase Agreement dated February 2, 2005 ("KMC Agreement"), TelCove agreed to buy certain assets, including certain customer accounts, from KMC Telecom Holdings, Inc.("KMC") and certain of its subsidiaries;

WHEREAS, under the KMC Agreement, TelCove agreed to buy a portion of the 5ESS switches and related assets, network operations, and customer bases of KMC in 21 markets including 3 markets already served by TelCove;

WHEREAS, on March 1, 2005, TelCove, certain of its subsidiaries, KMC, and certain of the subsidiaries of KMC, applied to the FCC pursuant to Section 214 of the Communications Act, as amended, for authority to transfer KMC assets to TelCove, pursuant to the terms of the KMC Agreement, FCC Files Nos. WC Docket No. 05-90 and ITC-T/C-20050302-00078;

WHEREAS, DHS, DOJ, and FBI will request that the FCC's grant of the three currently pending TelCove Applications be made subject to resolution of issues relating to national security, law enforcement, and public safety, and whereas TelCove has agreed to enter into this Agreement with DHS, DOJ, and FBI to address issues raised by DHS, DOJ, and FBI, and to jointly petition that the FCC condition the requested authorization on compliance with this Agreement;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety concerns.

ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1 "**Affiliate**" means any entity that TelCove owns or Controls.

1.2 "**Call Associated Data**" or "**CAD**" means any information related to a Domestic Communication or related to the sender or recipient of that Domestic Communication and includes without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post-cut-through dialed digit extraction, in-band and out-of-band signaling, and party add, drop and hold.

1.3 "**Classified Information**" shall have the meaning indicated in Executive Order 12958, as amended by Executive Order 13292, or any successor executive order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act of 1954.

1.4 "**Control**" and "**Controls**" means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:

(a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;

(b) the dissolution of the entity;

(c) the closing and/or relocation of the production or research and development facilities of the entity;

(d) the termination or nonfulfillment of contracts of the entity;

(e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.4(a) through (d); or

(f) TelCove's obligations under this Agreement.

1.5 "***De facto***" and "***de jure***" control have the meanings provided in 47 C.F.R. § 1.2110.

1.6 "**DHS**" means the U.S. Department of Homeland Security.

1.7 "**DOJ**" means the U.S. Department of Justice.

1.8 "**DOD**" means the U.S. Department of Defense.

1.9 "**Domestic Communications**" means (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.

1.10 "**Domestic Communications Infrastructure**" means (a) transmission, switching, bridging and routing equipment (including software and upgrades) used by or on behalf of TelCove to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment used by or on behalf of TelCove that are physically located in the United States; and (c) facilities used by or on behalf of TelCove to control the equipment described in (a) and (b) above. Domestic Communications Infrastructure does not include equipment or facilities used by service providers other than TelCove or its Affiliates that are:

(1) interconnecting communications providers; or

(2) providers of services or content that are

(A) accessible using the communications services of TelCove or its Affiliates, and

(B) available in substantially similar form and on commercially reasonable terms through communications services of companies other than TelCove or its Affiliates.

The phrase "on behalf of" as used in this Section does not include entities with which TelCove or any of its Affiliates has contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the Parties may agree.

1.11 "**Effective Date**" means the date of this Agreement.

1.12 "**Electronic Communication**" has the meaning given it in 18 U.S.C. § 2510(12).

1.13 "**Electronic Surveillance**" means (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and

electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) access to, or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable State laws.

1.14 "**FBI**" means the Federal Bureau of Investigation.

1.15 "**Foreign**" where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.16 "**Government Authority**" or "**Government Authorities**" means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.

1.17 "**Intercept**" or "**Intercepted**" has the meaning defined in 18 U.S.C. § 2510(4).

1.18 "**Lawful U.S. Process**" means lawful U.S. federal, state or local Electronic Surveillance or other court orders, processes, or authorizations issued under U.S. federal, state, or local law for physical search or seizure, production of tangible things, or access to or disclosure of Domestic Communications, Call Associated Data, Transactional Data or Subscriber Information.

1.19 "**Network Management Information**" means network management operations plans, processes and procedures; descriptions of the placement of Network Operating Center(s) and linkages (for service offload or administrative activities) to other domestic and international carriers, ISPs and other critical infrastructures; descriptions of networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique or proprietary control mechanisms as well as operating and administrative software; and network performance information.

1.20 "**Outsourcing Contract**" means a contract between TelCove and an individual or entity to perform functions covered by this Agreement which are normally performed by employees of companies in the business of providing those telecommunications services that TelCove provides. Outsourcing Contract also includes any contract to perform a specific activity that is required to be performed by TelCove under the express terms of this Agreement.

1.21 "**Party**" and "**Parties**" have the meanings given them in the Preamble.

1.22 "***Pro forma* assignments**" or "***pro forma* transfers of control**" are transfers that do not involve a substantial change in ownership or control as provided by Section 63.24 of the FCC's Rules (47 C.F.R. § 63.24).

1.23 "**Sensitive Information**" means information that is not Classified Information regarding (a) the persons or facilities that are the subjects of Lawful U.S. Process, (b) the identity of the government agency or agencies serving such Lawful U.S. Process, (c) the location or identity of

the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance pursuant to Lawful U.S. Process, (d) the means of carrying out Electronic Surveillance pursuant to Lawful U.S. Process, or (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process; as well as all other information that is not Classified Information but is designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information" of some type recognized by the agency involved. The designation "Sensitive" as used in this paragraph may refer to information marked or labeled "Official Use Only," "Limited Official Use Only," "Law Enforcement Sensitive," "Sensitive Security Information," "Sensitive but Unclassified," "Controlled Unclassified Information" or other similar designations, and all such information shall be deemed "Sensitive Information" for purposes of this Agreement.

1.24 "**Subscriber Information**" means information relating to subscribers or customers of TelCove of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.25 **"TelCove"** means TelCove, Inc., a Delaware corporation, all Affiliates and all subsidiaries.

1.26 "**Transactional Data**" means:

(a) "call identifying information," as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;

(b) any information possessed by TelCove, or an entity acting on behalf of TelCove, relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, Internet Protocol ("IP") addresses, Uniform Resource Locators ("URLs"), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (d) below;

(c) the time, date, size, or volume of data transfers, duration, domain names, Media Access Control ("MAC") or IP addresses (including source and destination), URL's, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics associated with any Domestic Communication, including electronic mail headers showing From: and To: addresses; and

(d) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.

The term includes all records or other information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c)(1) and (d) but does not include the content of any communication. The phrase "on behalf of" as used in this Section does not include entities with which TelCove has contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the Parties may agree.

1.27 "**United States**," "**US**," or "**U.S.**" means the United States of America, including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.28 "**Wire Communication**" has the meaning given it in 18 U.S.C. § 2510(1).

1.29 **Other Definitional Provisions**. Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

ARTICLE 2: FACILITIES, INFORMATION STORAGE AND ACCESS

2.1 **Domestic Communications Infrastructure**. Except to the extent and under conditions concurred in by DHS, DOJ, and FBI in writing:

(a) all Domestic Communications Infrastructure shall at all times be located in the United States and will be directed, controlled, supervised and managed by TelCove; and

(b) all Domestic Communications that are carried by or through, in whole or in part, the Domestic Communications Infrastructure shall pass through a facility under the control of TelCove and physically located in the United States, from which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. TelCove will provide technical or other assistance to facilitate such Electronic Surveillance.

2.2 **Compliance with Lawful U.S. Process.** TelCove shall take all practicable steps to configure their Domestic Communications Infrastructure to be capable of complying, and TelCove employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with:

(a) Lawful U.S. Process;

(b) the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382); and

(c) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

2.3 **Information Storage and Access**. Unless otherwise agreed to by the Parties, TelCove shall store exclusively in the United States the following:

(a) stored Domestic Communications, if such communications are stored by or on behalf of TelCove for any reason;

(b) any Wire Communications or Electronic Communications received by, intended to be received by, or stored in the account of a customer or subscriber of TelCove, if such communications are stored by or on behalf of TelCove for any reason;

(c) Transactional Data and Call Associated Data relating to Domestic Communications, if such data are stored by or on behalf of TelCove for any reason;

(d) Subscriber Information, if such information is stored by or on behalf of TelCove for any reason;

(e) billing records of customers and subscribers for so long as such records are kept and at a minimum for so long as such records are required to be kept pursuant to applicable U.S. law or this Agreement; and

(f) Network Management Information.

The phrase "on behalf of" as used in this Section does not include entities with which TelCove has contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the Parties may agree.

2.4 **Billing Records**. TelCove shall store for at least two years all billing records described in Section 2.3(e) above.

2.5 **Storage Pursuant to 18 U.S.C. § 2703(f)**. Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Government Authority within the United States to preserve any information in the possession, custody, or control of TelCove, including any information that is listed in Section 2.3 above, TelCove shall store such preserved records or other evidence in the United States.

2.6 **Compliance with U.S. Law**. Nothing in this Agreement shall excuse TelCove from any obligation they may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data as well as all applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. Section 1001, et seq.

2.7 **Routing of Domestic Communications**. TelCove shall not route Domestic Communications outside the United States.

2.8 **CPNI**. TelCove shall comply, with respect to Domestic Communications, with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. § 222(h)(1).

2.9 **Storage of Protected Information**. TelCove shall store all Classified and Sensitive Information in the United States.

ARTICLE 3: SECURITY

3.1 **Measures to Prevent Improper Use or Access**. TelCove shall take all reasonable measures to prevent the use of or access to the Domestic Communications Infrastructure to conduct Electronic Surveillance, or to obtain or disclose Domestic Communications, Classified Information or Sensitive Information in violation of any U.S. federal, state, or local laws or the terms of this Agreement. These measures shall include creating and complying with: 1) the policies and procedures required by the Federal Communications Commission's security policy regulation, 47 C.F.R. § 64.2103, 2) written TelCove policies and 3) written TelCove procedures.

3.2 **Access by Foreign Government Authorities**. TelCove shall not, directly or indirectly, disclose or permit disclosure of, or provide access to Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information stored by or on behalf of TelCove to any person if the purpose of such access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, component or subdivision thereof, without the express written consent of DHS, DOJ, and FBI or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process shall be reported to DHS, DOJ, FBI, and DOD as soon as possible and in no event later than ten (10) business days after such request or legal process is received by or known to TelCove. TelCove shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

3.3 **Disclosure to Foreign Government Authorities**. TelCove shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

(a) Classified or Sensitive Information;

(b) Subscriber Information, Transactional Data, Call Associated Data, or a copy of any Wire or Electronic Communications, intercepted or acquired pursuant to Lawful U.S. Process; or

(c) the existence of Lawful U.S. Process that is not already a matter of public record

to any foreign government, identified representative, component or subdivision thereof, without satisfying all applicable U.S. federal, state and local legal requirements, and without obtaining either the express written consent of DHS, DOJ, and FBI or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a foreign government, an identified representative, a component or subdivision thereof to TelCove for the communications, data or information identified that is maintained by TelCove shall be referred to DHS, DOJ, FBI, and DOD as soon as possible and in no event later than ten (10) business days after such request or legal process is received by or known to TelCove, unless the

disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. TelCove shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

3.4 **Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities**. Within fourteen (14) days after receiving legal process or requests from foreign non-governmental entities for access to or disclosure of Domestic Communications, TelCove shall notify DHS, DOJ, FBI, and DOD in writing of such legal process or requests, unless such disclosure would be in violation of an order of a court of competent jurisdiction within the United States.

3.5 **Security of Lawful U.S. Process**. TelCove shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified and Sensitive Information in accordance with U.S. federal and state law or regulation and this Agreement.

3.6 **Points of Contact**. Within fourteen (14) days after the Effective Date, TelCove shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to its customers or subscribers. The points of contact shall be in the United States, shall be available 24 hours per day, 7 days per week and shall be responsible for accepting service and maintaining the security of Classified Information, Sensitive Information and any Lawful U.S. Process relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to TelCove's customers or subscribers. Promptly after designating such points of contact, TelCove shall notify DHS, DOJ, FBI, and DOD in writing of the points of contact, and thereafter shall promptly notify DHS, DOJ, FBI, and DOD of any change in such designation. The points of contact shall be resident U.S. citizens who, based on the information in TelCove's possession, are eligible for appropriate U.S. security clearances. TelCove shall cooperate with any request by a government entity within the United States that a background check, security clearance process or both be completed for a designated point of contact.

3.7 **Information Security Plan.** TelCove shall, within security office(s) in the United States:

(a) take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified or Sensitive Information;

(b) assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;

(c) upon request from DHS, DOJ, or FBI, provide the name, social security number and date of birth of each person who regularly handles or deals with Sensitive Information;

(d) require that personnel handling Classified Information shall have been granted appropriate security clearances pursuant to Executive Order 12968;

(e) provide that the points of contact described in Section 3.6 of this Agreement shall have sufficient authority over any of TelCove's employees who may handle Classified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and

(f) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified or Sensitive Information.

3.8 **Nondisclosure of Protected Data**. TelCove shall not directly or indirectly disclose information concerning Lawful U.S. Process, Classified Information, or Sensitive Information to any third party, or officer, director, shareholder, employee, agent, or contractor of TelCove, including those who serve in a supervisory, managerial or officer role with respect to the employees working with the information, unless disclosure has been approved by prior written consent obtained from DHS, DOJ, and FBI, or there is an official need for disclosure of the information in order to fulfill an obligation consistent with the purpose for which the information is collected or maintained.

3.9 **Notice of Obligations**. TelCove shall instruct appropriate officials, employees, contractors, and agents as to TelCove's obligations under this Agreement, including the individuals' duty to report any violation of this Agreement and the reporting requirements in Sections 5.2, 5.4, 5.5, and 5.8 of this Agreement, and shall issue periodic reminders to them of such obligations.

3.10 **Access to Classified or Sensitive Information**. Nothing contained in this Agreement shall limit or affect the authority of a U.S. Government Authority to deny, limit or revoke whatever access TelCove might have to Classified or Sensitive Information under that Government Authority's jurisdiction.

ARTICLE 4: DISPUTES

4.1 **Informal Resolution**. The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to the General Counsel of TelCove, the General Counsel of the FBI, the Assistant Attorney General for the Criminal Division of the DOJ, and the Assistant Secretary for Infrastructure Protection of DHS, or their respective designees, unless DHS, DOJ, or FBI believes that important national interests can be protected, or TelCove believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 4.2. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 4.2. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.

4.2 **Enforcement of Agreement**. Subject to Section 4.1 of this Agreement, if any of the Parties believes that any other party has breached or is about to breach this Agreement, that Party

may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Agency to:

(a) require that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within thirty (30) days, or whatever shorter time period is appropriate under the circumstances, upon receiving written notice of such breach;

(b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC to TelCove, request that the FCC take other action, or request that the FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty, against TelCove;

(c) seek civil sanctions for any violation by TelCove of any U.S. law or regulation or term of this Agreement;

(d) pursue criminal sanctions against TelCove, or any director, officer, employee, representative, or agent of TelCove, or against any other person or entity, for violations of the criminal laws of the United States; or

(e) seek suspension or debarment of TelCove from eligibility for contracting with the U.S. Government.

4.3 **Irreparable Injury**. TelCove agrees that the United States would suffer irreparable injury if for any reason TelCove failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, TelCove agrees that, in seeking to enforce this Agreement, DHS, DOJ, and FBI shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

4.4 **Waiver**. The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

4.5 **Waiver of Immunity**. TelCove agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of government from any legal action, suit or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably and

unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a U.S. federal, state or local Government Authority. TelCove agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq*. The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state or local Government Authority against TelCove with respect to compliance with this Agreement.

4.6 **Forum Selection**. It is agreed by and between the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

ARTICLE 5: REPORTING AND NOTICE

5.1 **Filings Concerning *de jure* or *de facto* Control of TelCove**. If TelCove makes any filing with the FCC or any other Government Authority relating to the *de facto* or *de jure* control of TelCove except for filings with the FCC for assignments or transfers of control that are *pro forma*, TelCove shall promptly provide to DHS, DOJ, FBI, and DOD written notice and copies of such filing.

5.2 **Change in Control**. If any member of the management of TelCove (including officers and members of the Board of Directors) acquires any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with TelCove's three pending FCC Applications, has or will likely obtain an ownership interest (direct or indirect) in TelCove above 10 percent, as determined in accordance with 47 C.F.R. § 63.09, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or will likely otherwise gain either (1) Control or (2) *de facto* or *de jure* control of TelCove, then such Director, officer or manager shall promptly cause TelCove to notify DHS, DOJ, FBI, and DOD in writing within ten (10) calendar days. Notice under this Section 5.2 shall, at a minimum:

(a) identify the entity or individual(s) (specifying the name, addresses and telephone numbers of the entity);

(b) identify the beneficial owners of the increased or prospective increased interest in TelCove by the entity or individual(s) (specifying the name, addresses and telephone numbers of each beneficial owner); and

(c) quantify the amount of ownership interest that the entity or individual(s) has or will likely obtain in TelCove and, if applicable, the basis for their prospective Control of TelCove.

5.3 **Joint Ventures**. In the event that TelCove enters into joint ventures or other arrangements under which the joint venture or another entity may provide Domestic Communications:

(a) if TelCove has the power or authority to exercise *de facto* or *de jure* control over such joint venture or entity, then TelCove will require the entity to fully comply with the terms of this Agreement; or

(b) if TelCove does not have *de facto* or *de jure* control over such joint venture or entity, the provisions of Section 5.4, Outsourcing Contracts, shall apply as if the joint venture or other arrangement was an Outsourcing Contract.

5.4 **Outsourcing Contracts**. TelCove shall not enter into an Outsourcing Contract that affords the contractor access to Sensitive Information. In any Outsourcing Contract, TelCove shall take reasonable steps to ensure that the contractor complies with the applicable terms of this Agreement. Such steps shall include the following:

(a) TelCove shall include written provisions in the Outsourcing Contract that require the contractor to comply with all applicable terms of this Agreement or shall take other reasonable, good-faith measures to ensure that the contractor is aware of, agrees to, and is bound to comply with all such terms;

(b) if the contractor may perform any of the contracted-for services outside the United States, or is identified after reasonable inquiry by TelCove as either Controlled by one or more foreign persons or combination of foreign persons under common Control, or as having ten (10) percent or more of its voting equity held, directly or indirectly, by one or more foreign persons or combination of foreign persons under common Control, then,

(i) no later than 30 days before the Outsourcing Contract becomes effective, TelCove shall notify DHS, DOJ, FBI, and DOD in writing, identifying the name of the entity, describing the functions covered by this Agreement, and attaching a complete copy of the Outsourcing Contract; and

(ii) DHS, DOJ, and FBI will have 30 days from receipt of the notice to review and provide TelCove with any objection to the Outsourcing Contract, which objection shall be based on national security, law enforcement, or public safety grounds. If DHS, DOJ, or FBI objects in accordance with this Section, TelCove shall not proceed with execution or performance of the Outsourcing Contract;

(c) TelCove shall not induce the contractor either to violate its obligations to TelCove related to this Agreement or to take any action that, if taken by TelCove, would violate this Agreement;

(d) if TelCove receives information that reasonably indicates that the contractor or any of its employees or agents has taken an action that, had it been taken by TelCove, would violate a provision of this Agreement, or has violated its obligations to TelCove related to this Agreement, TelCove (1) will notify DHS, DOJ, FBI, and DOD promptly, and (2) in consultation and cooperation with DHS, DOJ, and FBI, will take all reasonable steps necessary to rectify promptly the situation, including terminating the Outsourcing Contract (with or without notice

and opportunity for cure) or initiating and pursuing litigation or other remedies at law and equity; and

(e) neither an Outsourcing Contract nor any provision of this Section 5.4 does nor shall it be construed to relieve TelCove of any of its obligations under this Agreement.

5.5 **Notice of Foreign Influence**. If any member of the management of TelCove (including officers and members of the Board of Directors) acquires any information that reasonably indicates that any foreign government, any foreign government-controlled entity, or any foreign entity:

(a) plans to participate or has participated in any aspect of the day-to-day management of TelCove in such a way that 1) interferes with or impedes the performance by TelCove of its duties and obligations under the terms of this Agreement, 2) interferes with or impedes the exercise by TelCove of its rights under the Agreement, or 3) raises a concern with respect to the fulfillment by TelCove of its obligations under this Agreement; or

(b) plans to exercise or has exercised, as a direct or indirect shareholder of TelCove, any Control of TelCove in such a way that 1) interferes with or impedes the performance by TelCove of its duties and obligations under the terms of this Agreement, 2) interferes with or impedes the exercise by TelCove of its rights under the terms of this Agreement, or 3) raises a concern with respect to the fulfillment by TelCove of its obligations under this Agreement;

then such manager shall promptly notify DHS, DOJ, FBI, and DOD in writing of the timing and the nature of the foreign government's or entity's plans or actions.

5.6 **Procedure and Process on Reporting**. Within forty five (45) days of the Effective Date, TelCove shall adopt and distribute to all officers and directors, a written procedure or process for the reporting by officers and directors of noncompliance with this Agreement. This written procedure or process shall also provide for the reporting by employees, agents and contractors to management of information that must be reported to DHS, DOJ, FBI or DOD under Sections 5.2, 5.4, 5.5, and 5.8 of this Agreement. Any violation by TelCove of any material term of such corporate policy shall constitute a breach of this Agreement. By a written statement, TelCove shall notify all employees, contractors and agents that the general categories of information identified in Sections 5.2, 5.4, 5.5, and 5.8 of this Agreement should be disclosed to senior management and shall set forth in a clear and prominent manner the contact information for a senior manager to whom such information may be reported. The written statement informing employees, contractors, and agents of the need to report this information shall also state that TelCove will not discriminate against, or otherwise take adverse action against, anyone who reports such information to management or the United States government.

5.7 **Non-retaliation**. Within forty five (45) days after the Effective Date, TelCove shall, by duly authorized action of its Board of Directors, adopt and distribute to all officers and directors an official corporate policy that strictly prohibits TelCove from discriminating or taking any adverse action against any officer, director, employee, contractor, or agent because he or she has

in good faith initiated or attempted to initiate a notice or report under Sections 5.2, 5.4, 5.5, or 5.8 of this Agreement, or has notified or attempted to notify the management to report information that he or she believes in good faith is required to be reported to DHS, DOJ, FBI, and DOD under either Sections 5.2, 5.4, 5.5, or 5.8 of this Agreement or under TelCove's written notice to employees on the reporting of any such information. Any violation by TelCove of any material term of such corporate policy shall constitute a breach of this Agreement.

5.8 **Reporting of Incidents**. TelCove shall report to DHS, DOJ, FBI, and DOD any information acquired by TelCove or any of its officers, directors, employees, contractors or agents that reasonably indicates:

(a) a breach of this Agreement;

(b) access to or disclosure of Domestic Communications, or the conduct of Electronic Surveillance, in violation of federal, state or local law or regulation;

(c) access to or disclosure of CPNI or Subscriber Information in violation of federal, state or local law or regulation (except for violations of FCC regulations relating to improper commercial use of CPNI); or

(d) improper access to or disclosure of Classified or Sensitive Information.

This report shall be made in writing by the appropriate TelCove officer to DHS, DOJ, FBI, and DOD no later than ten (10) calendar days after TelCove acquires information indicating a matter described in this Section. TelCove shall lawfully cooperate in investigating the matters described in this Section. TelCove need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States.

5.9 **Access to Information and Facilities**. DHS, DOJ, or FBI may visit, at any time, any part of TelCove's Domestic Communications Infrastructure and security offices to conduct on-site reviews concerning the implementation of the terms of this Agreement and may at any time require unimpeded access to information concerning technical, physical, management, or other security measures needed by DHS, DOJ, or FBI to verify compliance with the terms of this Agreement.

5.10 **Access to Personnel**. Upon reasonable notice from DHS, DOJ, or FBI, TelCove shall make available for interview any officers or employees of TelCove and any contractor located in the United States, who is in a position to provide information to verify compliance with the terms of this Agreement.

5.11 **Annual Report**. On or before the last day of January of each year, a designated senior corporate officer of TelCove shall submit to DHS, DOJ, FBI, and DOD a report assessing TelCove's compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

(a) a copy of the then current policies and procedures adopted to comply with this Agreement;

(b) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes;

(c) a summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and

(d) identification of any other issues that, to TelCove's knowledge, will or reasonably could affect the effectiveness of or its compliance with this Agreement.

5.12 **Notices**. Effective upon execution of this Agreement by all the Parties, all notices and other communications relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an email is specified below or in a subsequent notice) and one of the following methods: (a) delivered personally, (b) sent by facsimile, (c) sent by documented overnight courier service, or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such addresses as the Parties may designate in accordance with this Section:

Department of Justice
Assistant Attorney General
Criminal Division
Main Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Federal Bureau of Investigation
General Counsel
935 Pennsylvania Avenue, NW
Washington, DC 20535

With a copy to:
Federal Bureau of Investigation
The Assistant Director
National Security Division
935 Pennsylvania Avenue, NW
Washington, DC 20535

Department of Homeland Security
Washington, D.C. 20528
Attn: Assistant Secretary for Infrastructure Protection
Note: All notices and other communications shall, in addition to the foregoing methods of delivery, be sent in email to **Tina.Gabbrielli@dhs.gov** or such other email account as DHS may designate in the future.

Department of Defense
Director of Information Assurance
Rm. 3D-239 Pentagon
Washington, D.C. 20301-6000
Email: Robert.Lentz@osd.mil

Deputy General Counsel for Regulatory and International Law
Office of the General Counsel, Defense Information Systems Agency
P.O. Box 4502, HQ DISA/GC
Arlington VA 22204-4502
Email: Hillary.Morgan@disa.mil

TelCove
121 Champion Way
Canonsburg, PA 15317
Attn: Vice President and General Counsel
Email: jim.means@telcove.com

ARTICLE 6: FREEDOM OF INFORMATION ACT

6.1 **Protection from Disclosure**. DHS, DOJ, and FBI shall take all reasonable measures to protect from public disclosure all information submitted by TelCove (or other entities in accordance with the terms of this Agreement) to DHS, DOJ, or FBI in connection with this Agreement and clearly marked with the legend "Business Confidential; subject to protection under 5 U.S.C. § 553(b); not to be released without notice to the filing party" or similar designation. Such markings shall signify that it is the company's position that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from a person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted. If a request is made under 5 U.S.C. §552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, DHS, DOJ, or FBI, as appropriate, shall notify the company of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If TelCove objects to the intended disclosure and its objections are not sustained, DHS, DOJ, or FBI as appropriate, shall notify the company of its intention to release (as provided by Section 5 of E.O. 12600) not later than five (5) business days prior to disclosure of the challenged information.

6.2 **Use of Information for U.S. Government Purposes**. Nothing in this Agreement shall prevent DHS, DOJ, or FBI from lawfully disseminating information as appropriate to seek enforcement of this Agreement, or from lawfully sharing information as appropriate with other federal, state, or local Government Authorities to protect public safety, law enforcement, or national security interests, provided that DHS, DOJ, and FBI take all reasonable measures to protect from public disclosure the information marked as described in Section 6.1. Further, nothing in this Agreement shall limit the ability of DHS, DOJ, or FBI to disclose this Agreement

or any information related to this Agreement to enforce or comply with any federal law or regulation.

ARTICLE 7: FCC CONDITION

7.1 **FCC Approval**. Upon the execution of this Agreement by all the Parties, DHS, DOJ, and FBI shall, on their own motion at an appropriate time or at the request of TelCove, notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the "Condition to FCC Authorization"), DHS, DOJ, and FBI have no objection to the FCC's grant of the three pending TelCove Applications described in the Recitals of this Agreement. This Section is effective upon execution of this Agreement by all the Parties, provided however that in the case of a material modification or withdrawal of one or more TelCove Application after the execution of this Agreement the effectiveness of this Section may be suspended by DHS, DOJ, or FBI, and any such FCC filing is subject to the right to object reserved in Section 7.2.

7.2 **Right to Object to Future FCC Filings**. TelCove agrees that in any application or petition by TelCove to the FCC for licensing or other authority filed with or granted by the FCC after the execution of this Agreement, except with respect to *pro forma* assignments or *pro forma* transfers of control, TelCove shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 8.9, DHS, DOJ, and FBI reserve the right to object, formally or informally, to the grant of any other FCC application or petition of TelCove or its Affiliates for a license or other authorization under Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the laws, preserve the national security and protect the public safety raised by the services and transactions underlying any such application or petition.

ARTICLE 8: OTHER

8.1 **Right to Make and Perform Agreement**. TelCove represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of TelCove enforceable in accordance with its terms.

8.2 **Headings**. The Article and Section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

8.3 **Other Laws**. Nothing in this Agreement is intended to limit or constitute a waiver of (a) any obligation imposed by any U.S. federal, state or local laws on TelCove, (b) any enforcement authority available under any U.S. or state laws, (c) the sovereign immunity of the United States, or (d) any authority the U.S. government may possess over the activities or facilities of TelCove located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.

8.4 **Statutory References**. All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

8.5 **Non-Parties**. Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties and any Government Authorities that utilize Lawful U.S. Process.

8.6 **Entire Agreement; Modifications**. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties with respect to the subject matter. This Agreement may only be modified by written agreement signed by all of the Parties. DHS, DOJ, and FBI agree to consider promptly and in good faith possible modifications to this Agreement if TelCove believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) days after approval in writing by the Parties.

8.7 **Severability**. The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

8.8 **Changes in Circumstances for TelCove**. DHS, DOJ, and FBI agree to negotiate in good faith and promptly with respect to any request by TelCove for relief from application of specific provisions of this Agreement if there is a change in circumstances such that those provisions become unduly burdensome or have a demonstrably adverse effect on TelCove's competitive position.

8.9 **Changes in Circumstances for DHS, DOJ, or FBI**. If after the date that all the Parties have executed this Agreement, DHS, DOJ, or FBI finds that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then TelCove will negotiate in good faith to modify this Agreement to address those concerns.

8.10 **Counterparts**. This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

8.11 **Successors and Assigns**. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall also be binding on all subsidiaries, divisions, departments, branches, and other components or agents of TelCove, and on all Affiliates of TelCove.

8.12 **Effectiveness of Agreement**. Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

8.13 **Suspension of Agreement If No Foreign Ownership**. This Agreement shall be suspended in its entirety upon the written determination of DHS, DOJ, and FBI that TelCove has

provided notice and reasonably satisfactory documentation that no foreign entity or combination of foreign entities (including one or more persons under common Control) either Controls TelCove or holds, directly or indirectly, a ten (10) percent or greater interest in TelCove. *However*, this Agreement shall not be suspended with respect to TelCove if and to the extent DHS, DOJ, and FBI notify TelCove that one (1) or more of such entities have determined that suspension of this Agreement is not warranted in order to protect U.S. national security, law enforcement, and public safety concerns. If this Agreement is not suspended pursuant to this provision, DHS, DOJ, and FBI agree to consider promptly and in good faith possible modifications to this Agreement.

8.14 **Notice of Additional Services**. TelCove shall provide a minimum of thirty (30) days advanced notice to DHS, DOJ, FBI, and DOD in the event that TelCove or any Affiliate changes or intends to change the present service plans set forth in the Recitals to this Agreement such that the material representations made therein are no longer fully accurate, true and complete.

[Signature Pages Follow]

This Agreement is executed on behalf of the Parties:

TelCove, Inc.

Date:_____

By:_____
Printed Name: James E. Means
Title: Vice President & General Counsel

Federal Bureau of Investigation

Date:_____

By:_____
Printed Name: Patrick W. Kelley
Title: Deputy General Counsel

Department of Homeland Security

Date:_____

By:_____
Printed Name: Tina W. Gabbrielli
Title: Director of Intelligence Coordination and Special Infrastructure Protection Programs
Office of the Assistant Secretary for Infrastructure Protection

United States Department of Justice

Date:_____

By:_____
Printed Name: Laura H. Parsky
Title: Deputy Assistant Attorney General, Criminal Division

This Agreement is executed on behalf of the Parties:

TelCove, Inc.

Date:_____

By:_____
Printed Name:
Title:

Federal Bureau of Investigation

Date: 6/15/05

By: Patrick W. Kelley
Printed Name: Patrick W. Kelley
Title: Deputy General Counsel

Department of Homeland Security

Date:_____

By:_____
Printed Name: Tina Gabbrielli
Title: Director of Intelligence Coordination and Special Infrastructure Protection Programs

United States Department of Justice

Date:_____

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Printed Name: Laura H. Parsky
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Date: 6/15/05

By: Laura H. Parsky
Printed Name: Laura H. Parsky
Title: Deputy Assistant Attorney General, Criminal Division

EXHIBIT A
CONDITION TO FCC AUTHORIZATION

IT IS FURTHER ORDERED, that this authorization and any licenses transferred or assigned thereunder are subject to compliance with the provisions of the Agreement between TelCove, Inc. on the one hand, and the Department of Justice (the "DOJ"), including the Federal Bureau of Investigation (the "FBI"), and the Department of Homeland Security ("DHS") on the other, dated June __, 2005, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS, DOJ, and FBI regarding the authority granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.