

and appropriate to consummate the transactions contemplated by the Purchase Agreement.

17. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Encumbrances with respect to the Acquired Assets shall not have delivered to the Debtor and Buyer prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances that the person or entity has with respect to the Debtor, the Acquired Assets or otherwise, then (a) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such assets and (b) Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances with respect to the Acquired Assets of any kind or nature whatsoever.

18. All entities that presently are, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to Buyer on the Closing Date.

19. Buyer shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Acquired Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Purchase Agreement, Buyer shall not be liable for any claims against the Debtor or any of its predecessors or affiliates, and Buyer shall have no successor or

vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to the Closing Date, including, but not limited to, (a) liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Business prior to the Closing Date and (b) liabilities based on any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger or substantial continuity.

20. Under no circumstances shall Buyer be deemed a successor of or to the Debtor for any Encumbrance against or in the Debtor or the Acquired Assets of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Acquired Assets shall not be subject to any Encumbrances, and Encumbrances of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtor. All persons holding Encumbrances against or in the Debtor or the Acquired Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Encumbrances of any kind or nature whatsoever against Buyer, its property, its successors and assigns, or the Acquired Assets, as an alleged successor or otherwise, with respect to any Encumbrance of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtor, its estate, officers, directors, shareholders, or the Acquired Assets. Following the Closing Date, no holder of an Encumbrance with respect to the Debtor shall interfere with Buyer's title to or use and enjoyment of the

Acquired Assets based on or related to such Encumbrance, or any actions that the Debtor may take in its chapter 11 case.

21. Any amounts that become payable by the Debtor pursuant to the Purchase Agreement or any of the documents delivered by the Debtor pursuant to or in connection with the Purchase Agreement shall (a) be paid by the Debtor in the time and manner as provided in the Purchase Agreement, without further order of this Court and (b) not be discharged, modified, or otherwise affected by any plan of reorganization or liquidation for the Debtor.

22. This Court retains exclusive jurisdiction over any matter or dispute arising from or relating to the implementation of this Order as well as to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining exclusive jurisdiction to (a) compel delivery of the Acquired Assets to Buyer, (b) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Order, and (d) protect Buyer against any Encumbrances with respect to the Debtor or the Acquired Assets, of any kind or nature whatsoever, attaching to the proceeds of the Transactions.

23. Nothing contained in any plan confirmed in this case or any order of this Court confirming such plan shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

24. The transactions contemplated by the Purchase Agreement are undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transactions shall not affect the validity of the Transactions as to Buyer, except to the extent such authorization is duly stayed pending such appeal prior to such consummation. Buyer is a purchaser in good faith of the Acquired Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

25. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, and its creditors, Buyer, and its affiliates, successors and assigns, and shall be binding in all respects upon any affected third parties including, but not limited to, all persons asserting Encumbrances with respect to such assets to be sold to Buyer pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) or similar party under any chapter of the Bankruptcy Code, as to which trustee(s) or similar party such terms and provisions likewise shall be binding.

26. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

27. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by all parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

28. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062 and 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and the Debtor and Buyer are authorized to close the Transactions immediately upon entry of this Order.

**DONE and ORDERED** in Tampa, Florida, on \_\_\_ January 13, 2012



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Michael G. Williamson  
United States Bankruptcy Judge

cc:

**EXHIBIT A**

**Purchase Agreement**

EXECUTION VERSION

**ASSET PURCHASE AGREEMENT**

**DATED DECEMBER 21, 2011**

**BY AND AMONG**

**ASTRO TEL, INC.**

**And**

**BIRCH COMMUNICATIONS, INC.**

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated December 21, 2011 (the "Effective Date"), by and between Birch Communications, Inc., a Georgia corporation, ("Buyer"), and Astro Tel, Inc., a Florida corporation ("Seller"), in Seller's Bankruptcy Case. Capitalized terms used herein have the meanings set forth in Article 1.

### RECITALS

WHEREAS, Seller is engaged in the business of providing telecommunications services to certain business and residential customers;

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell, assign, transfer, convey and deliver to Buyer, free and clear of any Encumbrances, all of the Acquired Assets upon the terms and conditions hereinafter set forth;

WHEREAS, the Parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Acquired Assets pursuant to section 363 of the Bankruptcy Code; and

WHEREAS, the execution and delivery of this Agreement and Seller's ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of an Order of the Bankruptcy Court under, *inter alia*, section 363 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS

#### 1.1 Definitions.

For purposes of this Agreement, the following terms have the meanings specified or referenced below.

"Acquired Assets" has the meaning set forth in Section 2.1.

"Action" means any legal action, suit or arbitration, or any inquiry, proceeding or investigation, by or before any Governmental Authority.

"Accounts" means the Retail Business Accounts, the Retail Residential Accounts and the Wholesale Accounts.

“Active” means (a) customer accounts that are service activated, provided that the associated accounts are not more than forty-five (45) days past due as of the Closing Date according to Seller’s customary billing practices and (b) lines associated with those accounts set forth on Schedule I.1(a). Active customer accounts shall include the one account with a large June invoice that is on a payment plan.

“Affiliate” shall mean, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such Person. For purposes of this definition, “control” (including, with correlative meaning, the terms “controlled” and “common control”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the introductory paragraph.

“Assigned Contracts” has the meaning set forth in Section 2.1(i).

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement, in a form to be mutually agreed upon by the Parties.

“Bankruptcy Case” means the chapter 11 bankruptcy case of Seller pending in the Bankruptcy Court with Case Number 8:10-bk-29992-MGW.

“Bankruptcy Code” means Title 11 of the United States Code, Sections 101 *et seq.*

“Bankruptcy Court” means the United States Bankruptcy Court for the Middle District of Florida.

“Base Purchase Price” has the meaning set forth in Section 3.1.

“Bill of Sale” means the Bill of Sale, in a form to be mutually agreed upon by the Parties.

“Books and Records” means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, ledgers, journals, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), and other similar materials in each case to the extent in the possession or control of Seller as of the Closing.

“BSS” has the meaning set forth in Section 2.1(l).

“Business” means the business of operating the Acquired Assets

“Business Day” means any day of the year on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized to close.

“Buyer” has the meaning set forth in the introductory paragraph.

“Buyer Adjustments” has the meaning set forth in Section 3.3(d).

“CABS” means Carrier Access Billings.

“CABS A/R” has the meaning set forth in Section 2.1(f).

“CABS Commission” has the meaning set forth in Section 3.3(b).

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” means the date as of which the Closing occurs as set forth in Section 4.1.

“Closing Date Payment” has the meaning set forth in Section 3.2(b).

“Closing Statement” has the meaning set forth in Section 3.2(a).

“Confidentiality Agreement” has the meaning set forth in Section 12.2.

“Effective Date” has the meaning set forth in the introductory paragraph.

“Encumbrance” means any charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, third party interest or other restriction or limitation of any kind.

“Escrow Account” means the account maintained by the Escrow Agent in which the Escrow Amount shall be deposited at Closing.

“Escrow Agent” means U.S. Bank N.A.

“Escrow Agreement” means the Escrow Agreement by and among Buyer, Seller and the Escrow Agent, in a form mutually agreeable to the Parties, which shall provide for release of the balance of the escrow funds which are not the subject of any claims or any objections or disputes pursuant to Section 3.3 to Seller six months (6) months following the Closing Date.

“Escrow Amount” means \$25,000.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Expenses” means an amount equal to Buyer’s actual costs and expenses reasonably incurred in connection with the transactions contemplated herein which shall be paid as set forth in Section 11.2.

“Final Order” means an action taken or order issued by the applicable Governmental Authority as to which: (i) no request for stay of the action or order is pending, no

such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or order, or protest of any kind, is pending before the Governmental Authority and the time for filing any such petition or protest is passed; (iii) the Governmental Authority does not have the action or order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof, or if an appeal has been commenced, no stay is in effect.

**“Governmental Authority”** means any United States federal, state or local or any foreign government, governmental authority or regulatory or administrative authority or any court, tribunal or judicial body.

**“Legal Requirement”** means any federal, state, provincial, local, municipal, foreign, international, multinational, or other administrative Order, constitution, law, ordinance, principle of common law, regulation, statute or treaty.

**“Network Assets”** has the meaning set forth in Section 2.1(h).

**“Order”** means any award, writ, injunction, judgment, order or decree entered, issued, made, or rendered by any Governmental Authority.

**“OSS”** has the meaning set forth in Section 2.1(l).

**“Party”** or **“Parties”** means, individually or collectively, Buyer and Seller.

**“Person”** means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity or Governmental Authority.

**“Post-Closing Period”** shall mean any taxable period beginning after the close of business on the Closing Date or, in the case of any tax period which includes, but does not begin after the close of business on, the Closing Date, the portion of such period beginning after the close of business on the Closing Date.

**“Post-Closing Statement”** has the meaning set forth in Section 3.3.

**“Pre-Closing Period”** shall mean any taxable period ending on or before the close of business on the Closing Date or, in the case of any taxable period which includes, but does not end on, the Closing Date, the portion of such period up to and including the Closing Date.

**“Proceedings”** means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative, and whether one or more) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority.

“Purchase Price” has the meaning set forth in Section 3.1.

“Regulatory Authorizations” has the meaning set forth in Section 7.7.

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Retail Business Accounts” has the meaning set forth in Section 2.1(a).

“Retail Residential Accounts” has the meaning set forth in Section 2.1(b).

“Revenue” has the meaning set forth in Section 3.2(a).

“Sale Order” means an Order of the Bankruptcy Court, reasonably acceptable to Buyer, pursuant to, *inter alia*, sections 105 and 363 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Acquired Assets to Buyer on the terms and conditions set forth herein, free and clear of all Encumbrances.

“Seller Adjustments” has the meaning set forth in Section 3.3(c).

“Seller” has the meaning set forth in the introductory paragraph.

“Subscriber A/R” has the meaning set forth in Section 2.1(d).

“Tax” or “Taxes” (and with correlative meaning, “Taxable” and “Taxing”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any transferee liability in respect of any items described in clause (i) above.

“Telecommunications Services” means any local or long distance toll or toll-free voice, broadband Internet access, mobile voice or data, cable telephony, e-mail, voicemail, web hosting, or virtual private network services.

“Termination Notice” has the meaning set forth in Section 11.3.

“Transaction Documents” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

“Verizon A/R” has the meaning set forth in Section 2.1(e).

“Wholesale Accounts” has the meaning set forth in Section 2.1(c).

## 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ means U.S. dollars.

Exhibits. All Exhibits attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender includes all genders, and words imparting the singular number only include the plural and vice versa.

Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section” or “Article” are to the corresponding Section or Article of this Agreement unless otherwise specified.

Herein. Words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. Buyer, on the one hand, and Seller, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be

construed as jointly drafted by Buyer, on the one hand, and Seller, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

## ARTICLE 2

### PURCHASE AND SALE

#### 2.1 Purchase and Sale.

Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, free and clear of all Encumbrances, all right, title and interest of Seller solely in, to or under the following (herein collectively called the "Acquired Assets"):

(a) The Active accounts associated with Seller's retail business assets (the "Retail Business Accounts");

(b) The Active accounts associated with Seller's retail residential assets (the "Retail Residential Accounts");

(c) The Active accounts associated with Seller's wholesale assets (the "Wholesale Accounts");

(d) The accounts receivable of Seller with respect to its direct subscribers (the "Subscriber A/R");

(e) The accounts receivable of Seller with respect to Verizon (the "Verizon A/R");

(f) The accounts receivable of Seller with respect to CABS services (the "CABS A/R");

(g) All Seller's customer contracts and other rights to provide service associated with the Accounts, and all Books and Records related thereto (provided that Seller shall have the right to retain a copy of all Books and Records);

(h) All of Seller's telephony switches, other voice and data switching equipment, network equipment, routing equipment, interconnection equipment (including the Taqua softswitch and ten (10) central office collocations utilizing Adtran and other equipment) and all of the motor vehicles set forth on Schedule 2.1(h) and all of Seller's other equipment used in supporting such assets, including all spare parts and diagnostic tools used to manage such assets, whether or not yet deployed (collectively, the "Network Assets");

(i) All of the contracts set forth on Schedule 2.1(i) (the "Assigned Contracts");

(j) All of Seller's furniture, fixtures and equipment, including all furniture, signs and office equipment listed on Schedule 2.1(j) or otherwise used in the Business;

(k) A list of all cancelled and non-activated accounts of Seller that have been terminated within the twelve (12) months immediately preceding the Closing Date and any and all rights to the customer accounts and relationships associated therewith;

(l) All internet domain names associated with the provision of services associated with the Accounts, including astrotel.us, customer service telephone numbers used to service lines associated with the Accounts and all intellectual property rights used to support the Accounts, including the trademarks set forth on Schedule 2.1(l), but excluding Seller's operations support systems ("OSS") (The OSS includes (i) SmartMail FAX, (ii) hosted PBX system, and (iii) billing support systems ("BSS"));

(m) The BSS and OSS data related to the Accounts along with associated data definition and migration assistance;

(n) Seller's lockbox account and all checks received by Seller following the Closing with respect to any of the Acquired Assets; and

(o) All goodwill of the Business.

2.2 Excluded Assets. For the avoidance of doubt, the Acquired Assets shall not include any of the following (herein collectively called the "Excluded Assets");

(a) Any of Seller's cash or cash equivalents, including any and all deposits including, but not limited to the utility deposits with Verizon, AT&T, and Florida Power and Light, other than the accounts receivable included in the Acquired Assets;

(b) Any lines located in any state other than Florida; and

(c) Any of Seller's rights pursuant to the litigation matters described on Schedule 2.2;

(d) Any of Seller's rights under this Agreement; or

(e) The personally-owned HP Compaq notebook computers belonging to (2) officers, although any AstroTel data stored therein shall be conveyed.

2.3 Liabilities. In no event shall Buyer assume any liabilities of any of Seller, other than the liabilities arising under the Assigned Contracts.

2.4 Further Assurance. At the Closing, and at all times thereafter as may be necessary, Seller shall execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary or appropriate to vest in Buyer good and indefeasible title to the Acquired Assets free and clear of all Encumbrances and to comply with the purposes and intent of this Agreement, including the written confirmations required pursuant to Section 9.5, and Seller, on the one hand, and Buyer, on the other hand, shall use their reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and execute and deliver such documents and other papers, as may be required to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

### ARTICLE 3

#### PURCHASE PRICE

##### 3.1 Purchase Price.

The purchase price (the "Purchase Price") for the purchase, sale, assignment and conveyance of Seller's right, title and interest in, to and under the Acquired Assets shall consist of cash in an amount equal to \$750,000 (the "Base Purchase Price"), as adjusted pursuant to this Article 3.

##### 3.2 Payments on the Closing Date.

(a) Two (2) Business Days prior to the Closing Date, Seller shall deliver to Buyer a written statement (the "Closing Statement"), setting forth the Closing Date Payment, including the Seller's good faith estimate of (i) the aggregate amount of total monthly accrual basis billed revenue for the Active Retail Residential Accounts, the Active Retail Business Accounts and the Active Wholesale Accounts, billed by AstroTel during the month immediately prior to the month containing the Closing Date (the "Revenue") and (ii) the outstanding amounts of CABS A/R, Subscriber A/R and Verizon A/R (exclusive of any Verizon A/R which has been waived or is not reasonable collectable) as of the Closing Date. Should Buyer object to any of the amounts or calculations in the Closing Statement, Buyer and Seller shall cooperate in a diligent good faith manner to resolve such objections prior to the Closing, and the Closing Statement shall be adjusted prior to the Closing to reflect any changes agreed to by Buyer and Seller prior to the Closing.

(b) If the Revenue set forth on the Closing Statement is greater than or equal to \$89,042, the "Closing Date Payment" shall be an amount equal to the Base Purchase Price minus the Escrow Amount; provided that, if the sum of the Subscriber A/R and the Verizon A/R set forth on the Closing Statement is less than \$182,257, the Closing Date Payment shall be reduced by such difference. If the Revenue set forth on the Closing Statement is less than \$89,042, the Closing Date Payment shall be an amount equal to the Base Purchase Price, minus the Escrow Amount, minus the difference between \$89,042 and the Revenue set forth on the Closing Statement; provided that, if the sum of the Subscriber A/R and the Verizon A/R set forth on the Closing Statement is less than \$182,257, the Closing Date Payment shall be reduced by such difference.

(c) At the Closing, Buyer shall (i) pay to Seller in cash by wire transfer of immediately available funds to the account of Seller set forth in the Closing Statement an amount equal to the Closing Date Payment and (ii) deposit the Escrow Amount into the Escrow Account.

### 3.3 Post-Closing Adjustment.

(a) No later than one hundred fifty (150) days following the Closing Date, Buyer shall deliver to Seller a written statement (the "Post-Closing Statement") setting forth Buyer's good faith determination of (i) the Revenue, (ii) the outstanding amounts of CABS A/R, Subscriber A/R and Verizon A/R (exclusive of any Verizon A/R which has been waived by Seller or found to be uncollectable by any Court) as of the Closing Date and (iii) the amount of CABS A/R collected by Buyer in the one hundred twenty (120) days immediately following Closing. Should Seller object to any of the amounts or calculations in the Post-Closing Statement, Buyer and Seller shall cooperate in a diligent good faith manner to resolve such objections as soon as possible, and the Post-Closing Statement shall be adjusted to reflect any changes agreed to by Buyer and Seller.

(b) If the amount of CABS A/R collected as set forth on the Post-Closing Statement exceeds \$56,711, then the "CABS Commission" shall be an amount equal to fifty percent (50%) of such excess. Otherwise, the CABS Commission shall be zero.

(c) The "Seller Adjustments" shall be an amount equal to the sum of (i) the CABS Commission, (ii) the amount by which the Revenue set forth on the Post-Closing Statement (provided that any amount in excess of \$89,042 shall be disregarded) exceeds the Revenue set forth on the Closing Statement, if any, and (iii) the amount by which the sum of the Subscriber A/R and the Verizon A/R set forth on the Post-Closing Statement (provided that any amount in excess of \$182,257 shall be disregarded) exceeds the sum of the Subscriber A/R and the Verizon A/R set forth on the Closing Statement, if any.

(d) The "Buyer Adjustments" shall be an amount equal to the sum of (i) the amount by which the Revenue set forth on the Closing Statement exceeds the Revenue set forth on the Post-Closing Statement, if any, and (ii) the amount by which the sum of the Subscriber A/R and the Verizon A/R set forth on the Closing Statement exceeds the sum of the Subscriber A/R and the Verizon A/R set forth on the Post-Closing Statement, if any.

(e) If the amount of Seller Adjustments exceeds the amount of the Buyer Adjustments, Buyer shall pay to Seller an amount equal to the difference between the amount of Seller Adjustments and the amount of the Buyer Adjustments in immediately available funds to the account designated by Seller in the Closing Statement; provided that, in the event the sum of the amount payable to Seller pursuant to this Section 3.3, the Escrow Amount and the Closing Date Payment would exceed \$750,000, the amount payable to Seller pursuant to this Section 3.3 shall be an amount equal to \$750,000 minus the Closing Date Payment and the Escrow Amount.

(f) If the amount of the Buyer Adjustments exceeds the amount of Seller Adjustments, Seller and Buyer shall direct the Escrow Agent to release to Buyer from the Escrow Account an amount equal to the difference between the amount of the Buyer Adjustments and the amount of Seller Adjustments; provided that, in the event the amount by

which the Buyer Adjustments exceed the amount of Seller Adjustments is greater than the remaining balance in the Escrow Account, Seller and Buyer shall direct the Escrow Agent to release to Buyer the remaining balance of the Escrow Account and Seller shall pay to Buyer the remaining difference between the amount of Buyer Adjustments and the amount of the Seller Adjustments in immediately available funds to the account designated by Buyer.

#### ARTICLE 4

##### CLOSING

###### 4.1 Closing Date.

Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets (the "Closing") shall take place at the offices of Jones Day in Atlanta, Georgia no later than the third (3rd) Business Day after the day on which all of the conditions to closing set forth in Article 9 and Article 10 are satisfied or waived (other than conditions that are intended to be satisfied at the Closing) or on such other date as Buyer and Seller shall agree in writing (such actual date of Closing, the "Closing Date").

###### 4.2 Buyer's Deliveries.

At the Closing, Buyer shall deliver or cause to be delivered

(a) to Seller:

(i) the Closing Date Payment in immediately available funds to the account designated by Seller in the Closing Statement;

(ii) the Bill of Sale, the Assignment and Assumption Agreement and each other Transaction Document to which Buyer is a party, duly executed by Buyer;

(ii) the certificates of Buyer to be received by Seller pursuant to Sections 10.1 and 10.3; and

(b) to the Escrow Agent, the Escrow Amount.

###### 4.3 Seller's Deliveries.

At the Closing, Seller shall deliver or cause to be delivered to Buyer;

(a) the Bill of Sale, the Assignment and Assumption Agreement and each other Transaction Document to which Seller is a party, duly executed by Seller;

(b) a certified copy of the Sale Order;

(c) the certificates of Seller to be received by Buyer pursuant to Sections 9.1 and 9.2;

(d) such other bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance and redesignation, in a form reasonably satisfactory to Buyer, as Buyer may reasonably request to vest in Buyer all the right, title and interest of Seller in, to or under any or all of the Acquired Assets, including any redesignation agreements or other documentation in the form required by the incumbent local exchange carrier(s) and any other vendor(s) to enable the expedited transfer of the Acquired Assets; and

(e) physical possession of all tangible Acquired Assets in the Acquired Assets' location as of November 1, 2011.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller jointly and severally represent and warrant to Buyer as follows:

#### 5.1 Authority; Validity.

Subject to Bankruptcy Court approval, Seller has the requisite corporate power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. Subject to Bankruptcy Court approval, this Agreement has been duly and validly executed and delivered by Seller and each other Transaction Document to which Seller is party will be duly and validly executed and delivered by Seller at the Closing.

#### 5.2 Litigation.

Except as set forth on Schedule 5.2, there are no Proceedings (other than Proceedings before the Bankruptcy Court) pending or, to the knowledge of Seller, threatened against Seller, that would adversely affect Seller's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

#### 5.3 Compliance with Legal Requirements.

Since January 1, 2007, the Business has been conducted and continues to be conducted in compliance with all applicable Legal Requirements, and as of the date hereof, the Business is not in violation of any such Legal Requirement (in each case, other than a violation of Legal Requirement that, with respect to the Business, is immaterial to Seller or the Business), and (ii) Seller has not received any written notice of or been charged with any violation of any Legal Requirements.

#### 5.4 Assigned Contracts.

(a) (i) Each Assigned Contract (A) is valid and binding on Seller and, to the knowledge of Seller, the other party thereto, (B) is in full force and effect and (C) upon Closing,

shall continue in full force and effect without penalty or other adverse consequences, and (ii) Seller is not, and to the knowledge of Seller, no other party thereto is, in breach of, or in default under, any Assigned Contract other than cure amounts to be paid upon closing in accordance with the Seller's Bankruptcy Plan.

(b) Seller has delivered to Buyer accurate, correct and complete copies of all Assigned Contracts, including all amendments, supplements, modifications and waivers thereof. Except as set forth on Schedule 5.4(b), all Assigned Contracts are in writing.

(c) To the knowledge of Seller, no event has occurred, and no circumstance or condition exists, that, with the lapse of time or the giving of notice or both, would (i) result in a violation or breach of any of the provisions of any Assigned Contract, (ii) give any Person the right to declare a default or exercise any remedy under any Assigned Contract, or (iii) give any Person the right to accelerate the maturity or performance of any Assigned Contract or to cancel, terminate or modify any Assigned Contract. No party to any of the Assigned Contracts has exercised any termination rights with respect thereto, and no such party has given written notice of any significant dispute with respect to any Assigned Contract which has not been resolved as of the date hereof.

#### 5.5 Brokers or Finders.

Neither Seller, nor any Person acting on behalf of Seller, has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Buyer is or will become liable, and Seller shall hold harmless and indemnify Buyer from any claims with respect to any such fees or commissions.

### ARTICLE 6

#### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

#### 6.1 Organization and Good Standing.

Buyer is a corporation validly existing and in good standing under the laws of the state of Georgia.

#### 6.2 Authority; Validity.

Buyer has the requisite corporate power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate

authority in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer, as applicable, at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity.

6.3 Litigation.

There are no Proceedings pending or, to the knowledge of Buyer, threatened against Buyer, that would adversely affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

6.4 Brokers or Finders.

Neither Buyer, nor any Person acting on behalf of Buyer, has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Seller is or will become liable, and Buyer shall hold harmless and indemnify Seller from any claims with respect to any such fees or commissions.

6.5 Financial Capacity.

Buyer will have sufficient unrestricted funds on hand or committed lines of credit to consummate the transactions contemplated by this Agreement, including, to provide adequate assurance, to pay the Purchase Price and other funding obligations under this Agreement and to perform all of its obligations hereunder.

**ARTICLE 7**

**ACTION PRIOR TO THE CLOSING DATE**

7.1 Bankruptcy Court Approval.

(a) Seller and Buyer acknowledge that this Agreement and the sale of the Acquired Assets is subject to Bankruptcy Court approval. Seller and Buyer acknowledge that to obtain such approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest and otherwise best offer possible for the Acquired Assets, and that such demonstration shall include giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court.

(b) In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Seller shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer promptly a copy of the related notice of appeal or order of

stay. Seller shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from such Order. Further, Seller shall request that the Bankruptcy Court require that any party seeking a stay pending appeal of the Sale Order post a bond in an amount no less than the Purchase Price.

7.2 Intentionally Deleted.

7.3 Sale Hearing.

The Sale Hearing will be held on January 4, 2012 at 9:30 am Eastern time in the Bankruptcy Court. Seller will use best efforts to obtain entry of the Sale Order as soon as possible.

7.4 Maintenance of Accounts.

From the date hereof until the Closing Date, Seller shall operate the Accounts in the ordinary course of business, and, except as required by law, shall not change recurring or non-recurring rates or sales strategies or collections processes for the Accounts without the prior written consent of Buyer.

7.5 Access.

From the date hereof until the Closing Date, Seller shall make available to Buyer during normal business hours any and all Books and Records and other data that is reasonably related to the Acquired Assets including billing data, pricing data, product descriptions, payment data, customer service data, regulatory data, network data and repair records data.

7.6 Migration of Data.

Seller shall cooperate with Buyer to migrate all data related to the Acquired Assets from the BSS and the OSS into Buyer's systems to Buyer's reasonable satisfaction.

7.7 Regulatory Authorizations.

Promptly following the execution of this Agreement, each of Seller and Buyer and its designated wholly-owned subsidiaries will make all such filings as Buyer deems necessary in order to obtain all approvals required for the consummation of the transactions contemplated hereby from the Federal Communications Commission and any state public service or public utilities commission having regulatory authority over the lines associated with the Accounts (collectively, the "Regulatory Authorizations"). Each of Seller and Buyer shall use their respective reasonable best efforts to obtain the Regulatory Authorizations.

7.8 Notification of Customers.

Seller and Buyer shall issue a required joint letter to all customers of Seller affected by the transactions contemplated by this Agreement at, or before, the Closing.

## ARTICLE 8

### ADDITIONAL AGREEMENTS

#### 8.1 Limited Representations and Warranties.

Seller has not made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Acquired Assets, any part of the Acquired Assets, the financial performance of the Acquired Assets or the business of Seller, other than the representations and warranties of Seller set forth in Article 5. Buyer further acknowledges that the consideration for the Acquired Assets specified in this Agreement has been agreed upon by Seller and Buyer after good-faith arms-length negotiation.

#### 8.2 Non-Solicitation.

Seller hereby agrees that from and after the Closing Date and continuing for two (2) years from the Closing Date, it shall not, directly or indirectly, solicit the Seller's residential customers, business customers, and wholesale customers. Seller agrees and acknowledges that in order to assure Buyer that the Acquired Assets will retain their value, it is necessary that Seller undertakes the foregoing restriction.

#### 8.3 Taxes.

Seller shall be responsible for and shall pay any Taxes arising or resulting from or in connection with the ownership of the Acquired Assets attributable to the Pre-Closing Period. Buyer shall be responsible for and shall pay any Taxes arising or resulting from or in connection with the ownership of the Acquired Assets attributable to the Post-Closing Period. All Taxes (not including income Taxes) levied with respect to the Acquired Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between Buyer and Seller based on the number of days included in such period through and including the Closing Date and the number of days included in such period after the Closing Date.

#### 8.4 Redesignation Charges.

Seller shall take all actions reasonably required to cause (a) all vendors, including Verizon, to redesignate, in a manner reasonably acceptable to Buyer, the Acquired Assets to Buyer under the applicable contracts between Buyer and such vendors, (b) if required, the assumption by Seller of its contracts with such vendors, in each case at no additional cost or expense to Buyer with respect to such redesignation and without the assumption of any liabilities by Buyer, and (c) all such vendors to provide Buyer with written confirmation thereof. If any vendor provides notice to Buyer or Seller that it intends to impose any cost for such redesignation, Buyer shall have the option to:

- a. Immediately terminate this agreement without penalty or,
- b. Choose not to assume the agreement with that specific vendor or,
- c. Negotiate Buyer's own terms with vendor for such redesignation to occur after closing.

Under no circumstances shall Seller be responsible for Buyer's Vendor's redesignation charges.

## ARTICLE 9

### CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

#### 9.1 Accuracy of Representations.

The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects (except that those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that representations and warranties that are confined to a specified date shall speak only as of such date). Buyer shall have received a certificate signed by Seller to such effect.

#### 9.2 Seller's Performance.

Each covenant and agreement that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects and Buyer shall have received a certificate signed by Seller to such effect.

#### 9.3 Regulatory Authorizations; No Order.

Buyer or its designated wholly-owned subsidiaries shall have received the Regulatory Authorizations and no Governmental Authority shall have enacted, issued, promulgated or entered any Order that is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or could cause any of such transactions to be rescinded following the Closing.

#### 9.4 Seller's Deliveries.

Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

#### 9.5 Redesignation.

Seller shall have taken all actions reasonably required to cause (a) all vendors, including Verizon, to redesignate, in a manner reasonably acceptable to Buyer, the Acquired Assets to Buyer under the applicable contracts between Buyer and such vendors and (b) if required, the assumption by Seller of its contracts with such vendors, in each case at no additional cost or expense to Buyer with respect to such redesignation and without the assumption of any liabilities by Buyer, and all such vendors shall have provided Buyer with written confirmation thereof. If any vendor provides notice to Buyer or Seller that it intends to impose any cost for such redesignation, Buyer shall have the option to:

- a. Immediately terminate this agreement without penalty or,
- b. Choose not to assume the agreement with that specific vendor or,
- c. Negotiate its own terms with vendor for such redesignation to occur after closing.

Under no circumstances shall Seller be responsible for redesignation charges.

#### 9.6 Sale Order.

The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall have become a Final Order. The Sale Order shall include (i) a good faith finding and the protections provided by Section 363(m) of the Bankruptcy Code, (ii) a provision that the sale of the Acquired Assets is a valid exercise of Seller's business judgment, (iii) a provision that the Acquired Assets are sold free and clear of all Encumbrances and the Buyer has no liability and no successor liability, (iv) a provision that the Sale Order is effective immediately upon entry by the Bankruptcy Court (i.e., waiver of the 14-day waiting period imposed by Bankruptcy Rules 6004(h) and 6006(d)) and (v) a provision ratifying the sale process.

#### 9.7 Non-Solicitation Agreements.

Seller shall have entered into agreements with all of its officers and directors that restrict such Persons from soliciting ("soliciting" shall mean any contact initiated by such Persons for the purpose of selling services competitive to Buyer's services) the residential customers, business customers, and wholesale customers included in the Acquired Assets for a period of two (2) years.

### ARTICLE 10

#### CONDITIONS PRECEDENT TO THE OBLIGATION OF THE SELLER TO CLOSE

Seller's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

#### 10.1 Accuracy of Representations.

The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects (except that those representations and warranties that are qualified as to materiality or similar expressions shall be true and correct in all respects) as of the